THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No.36 of 2012
CNR No. ODHC010303302012

(In the matter of an application under Section 378 (1) & (3) of the Criminal Procedure Code, 1973)

State of Orissa ……. ***Petitioner***

-Versus-

Kumuda Chandra Jena ……. ***Opposite Party***

For the Petitioner : Mr. Sangram Das, SC (Vigilance)

For the Opposite Party : None

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 17.09.2026 : Date of Judgment: 31.10.2026

S.S. Mishra, J. The present appeal is directed against the judgment of acquittal dated 04.03.2011 passed by the learned Special Judge (Vigilance), Berhampur, Ganjam in T.R. No.33 of 2000, arising out of Berhampur Vigilance P.S. Case No.2 of 1999, whereby the respondent was acquitted of the charges under Section 13(2) read with Section

13(1)(d) of the Prevention of Corruption Act, 1988, as well as Sections 468, 471 and 477-A of the Indian Penal Code.

2. Heard Mr. Sangram Das, learned Standing Counsel (Vigilance) for the petitioner.

3. The prosecution case, in brief, is that the respondent was appointed as an Assistant Teacher in the U.G.M.E. School, Khamankhola, within Balliguda Educational District of Kandhamal, on 01.02.1979. It was alleged that at the time of his appointment he produced a forged High School Certificate (HSC) and a forged C.T. Pass Certificate purportedly issued from S.T. School, Kuarmunda, in Sundargarh district, on the strength of which he obtained the appointment. During the vigilance enquiry, it was allegedly detected that although the respondent had relied upon an HSC pass certificate for securing employment, the Headmaster of Peoples School, Buguda, in Ganjam district, informed the authorities that the respondent had appeared in the HSC Examination of 1974 but had not passed the said examination. On the basis of the materials collected during investigation, the prosecution alleged that the respondent had dishonestly used forged

educational certificates to obtain government service and thereby committed offences under the Prevention of Corruption Act and the Indian Penal Code.

4. Upon completion of investigation, charge-sheet was submitted against the respondent for the offences under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, and Sections 468, 471 and 477-A of the Indian Penal Code. The learned trial court framed charges accordingly, whereafter the case proceeded to trial. In order to substantiate the allegations, the prosecution examined nine witnesses and proved documents marked as Exts.1 to 8/3, while the defence contested the prosecution case and sought acquittal.

5. Upon appreciation of evidence, the learned trial Court held that the prosecution had failed to establish the essential ingredients of forgery and use of forged documents beyond reasonable doubt. The court observed that the Investigating Officer had died before examination, that the appointing authority had not been examined, that the service book and pay records seized during investigation were not exhibited before the court, and that no advertisement or notification prescribing the

educational qualifications for appointment had been produced. Holding that these deficiencies created substantial doubt regarding the prosecution case, the learned Special Judge, Vigilance extended the benefit of doubt to the accused. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

> *"7. Learned counsel for the defence submitted that the prosecution has not produced the advertisement or notification to show that to be appointed as a teacher in a primary school, the minimum qualification by then was Matric C.T. In the absence of xxx (not readable) it cannot be said that the accused without being qualified for the post appointed as teacher. Except the police officer, other witnesses who have been examined in this case were seizure witnesses who have proved the seizure list of the service book of the accused and pay acquittance roll. The service book, pay acquittance roll have not been produced before this court for verification to see as to what was the qualification of the accused wherein his signature and hand writing would have appeared and that he could have fastened into not, but in this case such things have not been produced. No explanation whatsoever has been offered by the prosecution for not producing the same before this court. In this case, a photo copy of Matric C.T. certificate of the accused has been filed and it has been marked as an exhibit. The question is, when a person is given an appointment for the post of a teacher, there must be on the basis of such advertisement or subsequently by any notification or against any post sanctioned. Those things have not*

been produced before the court. The appointing authority, the D.I. of Schools of that point of time must have verified the original certificate of the accused before giving him appointment. Such person has not been examined in this case. If at all this court finds that false certificate has been utilized to secure a job, the appointing authority, the D.I. of Schools, must be in hand and glove with the accused as otherwise service records, the attested copies of the original certificates not provisional and verifications of the same by the appointing authority must be there. In this particular case though the witnesses have stated that the service book, the acquittance roll etc. have been seized by the Vigilance Police, that alone has not proved the crime as those documents are not produced. The most vital thing is the I.O. who was also the informant, is to be examined in this case has died in the meantime and as such the light on the prosecution could not be thrown or the prosecution case could not be unfolded for proof. In this case, it cannot be said that there has not been forgery or fabrication of documents by the accused to secure a job but there is no legal evidence or no proof has been made as the I.O. who was the informant in this case has not been examined and he has not taken pain to see the original advertisement, the certificates, or interrogated the accused in a through manner so also the appointing authority.

8. In view of this, the prosecution case has become doubtful and as such the accused is given the benefit of doubt and he is acquitted on the charges leveled against him.

9. In the result, I hold the accused not guilty under sections 13(2) read with 13(1)(d) of the Prevention of

Corruption Act, 1988/468/474/477(A) of IPC and acquit him under the provisions of Section 248(1) Cr.P.C."

6. The learned counsel for the petitioner-State submitted that the learned trial Court gravely erred in acquitting the accused by ignoring the cogent oral and documentary evidence adduced by the prosecution. He contended that although the Investigating Officer, Sri S.L. Rao, had expired before the trial, the prosecution successfully proved the written report submitted by him through P.W.9, Sri P.C. Mishra, Officer-in-Charge of Vigilance Police Station, Berhampur. The written report was exhibited as Ext.8 and the formal F.I.R. prepared by P.W.9 was marked as Ext.8/3. He further argued that P.W.5, the Senior Clerk in the office of the D.I. of Schools, Buguda, categorically proved Ext.6, the school leaving certificate, and deposed that the xerox copy of the certificate issued by the Headmaster of People's School, Buguda unmistakably revealed that the accused had failed in the H.S.C. Examination of 1974. P.W.7, the Headmaster of People's School, Buguda, deposed that on the requisition of the Investigating Officer, the school admission register and Transfer Certificate Book were verified and the xerox copy of

Transfer Certificate No.71/74 relating to the accused was obtained during investigation. P.W.7 also proved the seizure list marked as Ext.7.

7. He further submitted that the non-production of the service book and pay acquaintance roll created a doubt regarding the prosecution case. Such records were wholly unnecessary for proving the offences alleged, particularly when the opposite party's appointment and service as Assistant Teacher in U.G.M.E. School, Kamanakhal, as well as his receipt of salary, were admitted facts and were never in dispute. He argued that admitted facts require no formal proof, and the seizure of the service book and pay acquaintance register had already been proved through the evidence of P.Ws.1, 5 and 7. Therefore, the trial court's insistence upon production of those records amounted to misappreciation of evidence and resulted in an erroneous acquittal despite overwhelming evidence establishing that the respondent had secured public employment by relying upon forged educational certificates.

8. This Court has carefully examined the judgment passed by the learned trial Court, the reasons assigned therein, and the evidence

adduced by both the prosecution and the defence during trial. This Court has also considered the grounds urged in the present appeal and heard the learned counsel appearing for the petitioner-State at length.

9. Before interfering with an order of acquittal, this Court is also required to bear in mind the well-settled principles governing an appeal against acquittal. In ***Tulasareddi @ Mudakappa & Anr. v. State of Karnataka & Ors.,*** reported in ***2026 INSC 67***, the Hon'ble Supreme Court has reiterated that where two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court. It has further been held that if the view taken by the trial Court is a possible view based on the evidence available on record, the appellate Court cannot overturn the order of acquittal merely because another view is also possible. Interference is warranted only when the judgment of acquittal suffers from patent perversity, is based on misreading or omission of material evidence, or where compelling and substantial reasons exist showing that the acquittal is

clearly unreasonable. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

> *"29. From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, if the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible. The following principles have to be kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:*
>
> *(a) whether the judgment of acquittal suffers from patent perversity;*
>
> *(b) whether the judgment is based on misreading/omission to consider the material evidence on record;*
>
> *(c) an order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.*
>
> *(d) the appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;*
>
> *(e) if the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and*
>
> *(f) the appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."*

Equally, in ***Mallappa & Ors. v. State of Karnataka*****,** reported in ***2024 INSC 104***, the Hon'ble Supreme Court has held that the presumption of innocence, which every accused enjoys during trial, gets strengthened and concretized once the trial culminates in an order of acquittal. Consequently, while exercising appellate jurisdiction against an acquittal, a higher threshold is required to rebut such reinforced presumption. Unless the findings recorded by the trial Court are manifestly unsustainable or perverse, the appellate Court ought to exercise great restraint in upsetting the acquittal. It was held thus:-

> *"24. We may firstly discuss the position of law regarding the scope of intervention in a criminal appeal. For, that is the foundation of this challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused, unless proven guilty. The presumption continues at all stages of the trial and finally culminates into a fact when the case ends in acquittal. The presumption of innocence gets concretized when the case ends in acquittal. It is so because once the Trial Court, on appreciation of the evidence on record, finds that the accused was not guilty, the presumption gets strengthened and a higher threshold is expected to rebut the same in appeal."*

10. The appellate jurisdiction against an order of acquittal is, therefore, not intended to facilitate a fresh substitution of the opinion of the trial Court merely because a different view on the evidence is conceivable. As reiterated by the Hon'ble Supreme Court in ***Tulasareddi @ Mudakappa & Anr. v. State of Karnataka & Ors. (supra)***, the appellate Court must first satisfy itself that the judgment of acquittal is vitiated by patent perversity, misreading or non-consideration of material evidence, or is so unreasonable that no prudent person could have arrived at such a conclusion. Equally, as held in ***Mallappa & Ors. v. State of Karnataka (supra)***, the reinforced presumption of innocence following an acquittal places a higher threshold upon the appellate Court before upsetting the findings recorded by the trial Court. Thus, unless the conclusions reached by the trial Court are wholly unsustainable on the evidence available on record, judicial restraint rather than substitution of views remains the governing principle in an appeal against acquittal.

Applying the aforesaid principles to the present case, this Court finds that the appreciation of evidence by the learned trial Court cannot be said to be either perverse or wholly unreasonable. Merely

because another view may also be possible, the same cannot furnish a ground to reverse the acquittal in exercise of appellate jurisdiction.

11. At this distant point in time, the absence of compelling and substantial reasons warranting interference, reversal of the acquittal would itself occasion serious prejudice and would be a travesty of justice. At this belated stage, presumption of innocence prevailed in favour of the opposite party for more than 15 years, as he was acquitted by the Court below. Reversing such presumption at this stage would not only be harsh, but it would be against the cardinal principle of reformatory criminal jurisprudence. This Court, therefore, finds no legal or factual justification to unsettle the well-reasoned judgment of acquittal passed by the learned trial Court. In view of the aforementioned, this Court is not inclined to grant leave against the judgment of acquittal impugned herein.

12. Accordingly, the CRLLP stands dismissed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack
Dated the 31st October, 2026/Ashok

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Signed by: ASHOK KUMAR JAGADEB MOHAPATRA
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