THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No.154 of 2013
CNR No. ODHC010307232013
(In the matter of an application under Section 378 of the Criminal Procedure Code, 1973)

State of Orissa ……. ***Petitioner***

-Versus-

Hemanta Kumar Parija ……. ***Opposite Party***

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

For the Opposite Party : Mr. Deba Prasad Das, Advocate

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 01.10.2026 : Date of Judgment: 31.10.2026

S.S. Mishra, J. The present appeal is directed against the judgment of acquittal dated 13.09.2013 passed by the learned Additional District Judge-cum-Special Judge (Vigilance), Balasore, in VGR No. 26 of 1997 corresponding to T.R. No. 225 of 2007, whereby the opposite party,

Hemanta Kumar Parija, was acquitted of the charges under Sections 7 and 13(1)(d), punishable under Section 13(2) of the Prevention of Corruption Act, 1988.

2. Heard Mr. Sangram Das, learned Standing Counsel (Vigilance) for the petitioner and Mr. Deba Prasad Das, learned counsel for the opposite-party.

3. The prosecution case, in brief, is that the informant was the owner of two tractors. On 23.05.1997, one of his tractor-trolleys, bearing registration Nos. OR-01A-4656 and OR-01A-4657, was transporting morum from a quarry at Charanpal to his village, Singiri, when the vehicle was intercepted by personnel of the Forest Department near Sinduragoura Thakurani Temple. The opposite party, who was then working as a Forester at Nilagiri, was a member of the patrolling party. As the informant could not produce the requisite transit permit, the prosecution alleged that the Range Officer and the opposite party demanded illegal gratification for releasing the vehicle and refraining from initiating prosecution. The alleged demand of Rs.5,000/- was subsequently settled at Rs.2,000/-, payable on or before 27.05.1997.

4. Aggrieved by the alleged demand, the informant submitted a written report before the Vigilance authorities on 26.05.1997. During the preparatory meeting conducted, the vigilance officer demonstrated the reaction between phenolphthalein powder and sodium carbonate solution in the presence of the informant and the official witnesses, including P.W.8 and P.W.10. The currency notes intended to be used in the trap were treated with phenolphthalein powder, and the informant was instructed to hand over to the opposite party only upon demand. According to the prosecution, when the informant subsequently met the opposite party at the Nilagiri Forest Range Office, he offered the amount of Rs.2,000/-. The opposite party allegedly retained a sum of Rs.500/- in his wallet and placed the remaining currency notes on his table. Upon receiving the predetermined signal, the vigilance party entered the room, recovered the currency notes and conducted the hand-wash procedure, during which the sodium carbonate solutions turned pink. The relevant currency notes, wash solutions and other articles were seized, and the chemical examination report confirmed the presence of phenolphthalein

in the relevant solutions. On completion of investigation and obtaining sanction for prosecution, the charge-sheet was submitted.

5. The prosecution examined eleven witnesses to establish the charges. The defence examined D.W.1, who was present at the time of trap.

6. Upon appreciation of evidence, the learned trial Court held that the prosecution had failed to establish the charges beyond reasonable doubt. The learned trial Court observed that the alleged prior demand had not been satisfactorily proved through the testimony of the informant or other reliable evidence and that the circumstances surrounding the trap did not establish an unequivocal demand or voluntary acceptance of illegal gratification by the opposite party. It further noted the discrepancies concerning the number and recovery of the currency notes and considered the defence explanation supported by D.W.1 and the evidence relating to the exchange of currency. Holding that the recovery of tainted money and the positive hand-wash test, by themselves, were insufficient to establish the charges in the absence of satisfactory proof of the requisite demand and acceptance, the learned trial Court declined

to draw the statutory presumption under Section 20 of the Prevention of Corruption Act, 1988, and acquitted the opposite party. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

> *"11. In the instant case, the prosecution case rests on direct evidence. However, the prosecution has brought out no circumstances leading to an irresistible conclusion of guilt of the accused. As already indicated the circumstances indicated in the evidence of PWs 6, 8 & 10 supports the defence plea. In the facts and circumstances, therefore, it cannot be said that the defence plea has been falsified. The Hon'ble Supreme Court in Suraj Mal (supra) took a view that mere recovery of the tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery of money by itself cannot prove the charge of the prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused has voluntarily accepted the money knowing it to be the bribe. The prosecution has squarely failed to substantiate such a charge. It is the settled law that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. It is sufficient if the accused person succeeds in providing a preponderance of probability in favour of his case. As soon as he succeeds in doing so, the burden shifts to prosecution which still has to discharge its original onus that never shifts i.e. that of establishing on the whole the guilt of the accused beyond a reasonable doubt. In this connection, reference may be made to Jhangam v. State: 1966 (3) SCR 736. The Hon'ble Apex Court in State of Andhra Pradesh v. Basudeva Rao: AIR 2004 SC 960 (in a case under the old PC Act, Act-II of 1947) held that the evidence of demand of bribe need not be satisfied through direct evidence. Direct evidence is one of the modes through which a factum can be proved. Therefore, when it is proved that the accused accepted The gratification, presumption u/s 20 of the Act can be raised. In order to raise the presumption u/s 20 of the Act, the prosecution has to prove that the accused accepted or*

obtained or has agreed to obtain for himself, or any other person any gratification or any valuable thing from any person. It shall be presumed that he accepted such things as a motive or reward mentioned in Sec. 7 of the Act. For raising presumption u/s 20 of the Act, the prosecution initially must lay the basis by proving that the accused accepted or obtained gratification other than legal remuneration for himself. In the instant case, no such basis has been laid by the prosecution. The prosecution has not satisfactorily proved the acceptance either. In that view of the matter the presumption u/s 20 of the Act could not be raised. Thus the decision in M. Narsinga Rao v. State of Andhra Pradesh: 2001 SAR (Criminal) 132 accordingly, would not be applicable. In the same vein Girija Prasad v. State of Madhya Pradesh: (2007) 28 OCR (SC) 428 is also not be applicable. It has been held in the case of V. Venkata Subbarao v. State: 2007 Cri LJ 754 (SC) that presumption that money was accepted as a motive or reward cannot be raised when demand by accused has not been proved. The prosecution relied upon a decision in Som Prakash v. State of Delhi: AIR 1974 Supreme Court 989 and Girija Prasad (supra) regarding trustworthiness of police and departmental witnesses. In the instant case, evidence of PWs 9 & 11 taken in isolation would not be sufficient to prove the prosecution case. Moreover, PW 11 deposed that 18 numbers of currency notes were recovered from the table of the accused. The seizure and the evidence of PW 10 is otherwise. The recovery of three more 100 rupee currency notes remain unexplained. Accordingly, the decisions bear no assistance to the prosecution."

7. Assailing the aforesaid judgment, learned counsel appearing for the State contended that the learned trial Court committed a serious error in its appreciation of the evidence and failed to consider the circumstances as a whole. He submitted that the complainant could not be treated as an accomplice merely because he was the

person who initiated the vigilance proceedings and that his testimony, if found trustworthy, could constitute the basis of conviction without insistence upon corroboration as an inflexible rule. The evidence on record, including the statements concerning the original demand and the circumstances leading to the trap, furnished sufficient material to establish that illegal gratification had been demanded. The learned trial Court, according to the State, failed to draw the appropriate inference from the evidence of the witnesses and the surrounding circumstances.

8. He further contended that the recovery of the tainted currency notes from the table and wallet of the opposite party, coupled with the positive result of the hand-wash test, constituted significant incriminating circumstances which ought not to have been considered in isolation. The opposite party's explanation that he had merely exchanged a Rs.500/- note for smaller denomination notes was inherently improbable and did not satisfactorily account for the recovery of the tainted currency. He argued that, once the prosecution had established the acceptance of gratification other than

legal remuneration, the statutory presumption ought to have been raised and that the opposite party had failed to rebut the same by cogent evidence. The State, therefore, submitted that the findings of the learned trial Court were contrary to the evidence on record and that leave to appeal deserved to be granted.

9. 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 as well as the learned counsel for the respondent at length. The rival submissions have been duly considered in the light of the materials available on record.

10. 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."*

11. 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.

12. 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 13 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.

13. 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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