THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No.129 of 2013
CNR No.ODHC010402742013

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

State of Orissa (G.A. Department) ***…….*** ***Petitioner***

-Versus-

Kanhu Charan Samal ***…….*** ***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: 01.10.2026 : Date of Judgment: 31.10.2026

S.S. Mishra, J. The present appeal is directed against the judgment of acquittal dated 12.10.2010 passed by the learned Special Judge (Vigilance), Sambalpur in C.T.R. Case No.28 of 1998, whereby the opposite party, namely, Kanhu Charan Samal, has been acquitted of the

offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 34 of the Indian Penal Code.

2. During pendency of the trial, accused Gangadhar Mishra expired and the proceeding against him was abated on 25.08.2010.

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

4. The prosecution case, in brief, was that the complainant, Sri Mikhel Ekka, was undertaking construction of residential houses on contract basis and, in connection with such work, had collected certain wooden poles from old construction material at Bileigarh. According to the prosecution, the Range Officer of Rajgangpur Forest Range and the present opposite party, who was then working as a Forest Guard, demanded illegal gratification from the complainant on the threat that the wooden poles would otherwise be seized. It was alleged that the opposite party demanded Rs.2,000/- for the Range Officer, Rs.500/- for the Forester and Rs.500/- for himself. Subsequently, on 05.12.1997, the opposite party took the complainant to the Forest Range Office,

Rajgangpur, where the Range Officer allegedly insisted upon payment of Rs.2,000/- and the opposite party demanded an additional sum of Rs.1,000/-. On 06.12.1997, the complainant allegedly paid Rs.1,000/- to the Range Officer, who insisted upon payment of the remaining amount. Being aggrieved by the alleged illegal demand, the complainant approached the Vigilance authorities. His oral report was reduced into writing and treated as the F.I.R. Thereafter, a trap was arranged.

5. On 08.12.1997, the complainant, along with the Vigilance officials and trap witnesses, assembled at the Vigilance Unit Office, Rourkela. The complainant produced ten Government Currency Notes of Rs.100/- denomination. Their serial numbers were noted by the trap witnesses. Phenolphthalein powder was applied to the currency notes and the complainant was instructed to hand over the tainted money to the accused only on demand. Sri Pradip Kumar Purohit was instructed to accompany the complainant and observe the transaction. The Range Officer allegedly asked the complainant whether he had brought the money and thereafter directed him to hand over the same to the present opposite party. The opposite party then allegedly asked the complainant

whether he had brought the money and, upon receiving an affirmative answer, accepted Rs.1,000/-. The Vigilance Inspector reached the spot, disclosed his identity and challenged the opposite party regarding acceptance of bribe. His hands were washed in sodium carbonate solution and the solution allegedly turned pink. The tainted currency notes were thereafter recovered from the left pocket of his pant. The serial numbers were found to tally with the numbers noted during preparation of the trap. The left pant pocket was also washed in sodium carbonate solution and the solution allegedly turned pink. The hand-wash and pant-pocket wash were subsequently sent for chemical examination and were found to contain phenolphthalein.

6. The prosecution examined five witnesses. The complainant was examined as P.W.2. Sri Pradip Kumar Purohit, the accompanying witness, was examined as P.W.1. Sri Durga Charan Ojha, a trap witness, was examined as P.W.3. Sri Hari Shankar Upadhyay, who had accorded sanction for prosecution, was examined as P.W.4, and the Vigilance Inspector Sri Bishnu Charan Dash was examined as P.W.5. The prosecution relied upon documentary evidence marked Exts.1 to 16. The

defence examined one Banamali Patra, a Forest Guard, as D.W.1. The defence of the opposite party was one of complete denial of the allegation.

7. Upon appreciation of evidence, the learned trial Court held that although recovery of the tainted currency notes from the possession of the accused and the positive hand-wash and pant-pocket wash were proved, the prosecution had failed to establish beyond reasonable doubt that the amount had been received as illegal gratification. The learned Court found the evidence of the accompanying witness, P.W.1, to be materially inconsistent. The complainant himself did not support the prosecution case and, according to the trial Court, supported the defence version that the amount had been paid towards fine. The trial Court further noticed that P.W.1 admitted in cross-examination that he had not actually heard the conversation between the complainant and the accused regarding the alleged demand. The evidence of P.Ws.3 and 5 regarding demand was found to be hearsay. The learned trial Court, therefore, held that the essential ingredient of demand of illegal gratification had not been established and that mere recovery of the tainted money, separated

from the circumstances in which it was received, was insufficient to sustain a conviction. Accordingly, the opposite party was acquitted. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

> *"23. To sum up, the complainant has not supported the prosecution case. On the other hand, he has supported the defence plea by saying that, he was in possession of some fresh wooden poles and for that, he was required to pay fine. The evidence of accompanying witness is not found to be credible. No other substantive evidence is there to establish that, the accused demanded bribe from the complainant. The evidence of P.W. Nos. 3 and 5, in this regard, are hear-say in nature. No where they have stated to have heard the accused demanding bribe from the complainant. Again, it is the settled position of law that, the defence is required to establish its case by a preponderance of probability and the defence must be convincing. The complainant himself has admitted that, he was required to pay fine. D.W.1 has evidenced that, the complainant paid Rs.1000/- to the accused with a request to hand over the same to the forester Sri Saraf towards payment of fine. Again, it is admitted case of the prosecution that, at the relevant time, the accused was serving as a Forest Guard at Rajgangpur. The place, where the wooden poles were kept by the informant, comes under the jurisdiction of Lying Beat. The Forest Guard of Rajgangpur, had no authority to file any forest case against the informant, as the place involved in this case, was covered under Lying Beat. Accordingly, there was no scope for him to demand bribe from the complainant. Keeping in view of the afore-said infirmities in the prosecution case, I do not feel it safe to proceed against the accused.*
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> *24. Keeping in view of my above discussed evidence, I step to a confirmed conclusion that, the prosecution has failed to establish its case U/Ss. 7 and 13 (2) read with Sec.13 (1) (d) of the Act and 34 of the I.P.C. against the accused. Hence, the*

points for determination, as set forth above, are answered accordingly.

25. In the result, I hold that, the accused is found not guilty of the offences punishable U/Ss. 7 and 13 (2) read with Sec.13 (1) (d) of the Act and U/S.34 of the I.P.C. Accordingly, I acquit him there from U/S.248 (1) of the Cr.P.C. He is set at liberty."

8. The learned counsel appearing for the State submitted that the judgment of acquittal is contrary to the evidence on record. It is contended that the recovery of the tainted Government Currency Notes from the conscious possession of the opposite party is an undisputed circumstance. The hand-wash and pant-pocket wash having turned pink and the chemical examination having confirmed the presence of phenolphthalein, the acceptance of the tainted money stood established. Once acceptance of gratification is established, the statutory presumption under Section 20 of the Prevention of Corruption Act comes into operation and the burden shifts upon the accused to rebut the same. According to learned counsel, the defence explanation that the money represented payment of fine was neither probable nor satisfactorily established.

9. Learned counsel for the State has further submitted that the learned trial Court attached undue importance to the complainant

having turned hostile. According to him, the evidence of a hostile witness is not liable to be discarded in its entirety and the portion of such evidence which supports the prosecution can be relied upon. It is argued that the evidence of P.W.1, read with the recovery of the tainted notes, the preparation report, detection report and chemical examination report, establishes the prosecution case. It is also submitted that the defence failed to explain satisfactorily how the tainted currency notes bearing the very serial numbers noted during the trap came into the possession of the opposite party.

10. 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.

11. 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."*

12. 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.

13. 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.

14. Accordingly, the CRLLP stands dismissed.

(S.S. Mishra)
Judge

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

Signature Not Verified
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Signed by: ASHOK KUMAR JAGADEB MOHAPATRA
Reason: Authentication
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