

**IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL APPEAL NO.32 OF 2024**

State

Through CBI, ACB, Goa,
Having office at Bambolim,
Tiswadi, Goa.

...Appellant

Versus

Shri Shivanand Fakirappa Bachagundi
H.No.503, Navachetna-A,
Sector-3, CGS Colony, Kane Nagar,
Antop Hill, Mumbai & Permanent
resident of S-3, Mukund Residency,
2nd, Above Canara Bank.
Mandopa Road, Shanti Nagar,
Margao, Salcete, Goa.
Native of C/o. M.B. Kempasanna,
Post : Karadi Gudda, Taluka Dharwad,
Dist.: Dharwad, Karnataka.

... Respondent

Mr Pravin Faldessai, Special Public Prosecutor for the Appellant.
Ms Pushpinder Kaur, Advocate for the Respondent.

CORAM : ASHISH S. CHAVAN, J.

Reserved on : 1st APRIL 2026
Pronounced on : 20th MAY 2026

JUDGMENT :

1. By way of this Appeal, the Central Bureau of Investigation, Anti-Corruption Branch (hereinafter referred to as CBI-ACB), the Appellant herein has assailed the judgment and order dated 16.03.2021 passed by District & Sessions Judge, South Goa, Margao, in Special Corruption Case No.1 of 2017, *inter alia*, acquitting the Accused (hereinafter referred to as the

Respondent) of the offences punishable under Section 409, 420, 471 of IPC along with Section 13(2) r/w 13(1)(d) of PC Act, 1988.

2. The chronology of events leading to the judgment under challenge can be summarised as under:

- (i) The Respondent was working as Assistant Director of Micro Small and Medium Enterprises – Development Institute, Margao, Goa (hereinafter referred to as MSME-DI) since the year 1997. In June 2011, one Mr P.V. Velayudhan was posted as Director, MSME-DI. He was examined as PW34. The Respondent was also the Drawing and Disbursing Officer (DDO).
- (ii) In the month of February 2013, the National Vendor Development Programme 2012-13 (NVDP) was organised in collaboration with DITC, SIDVI and Goa Shipyard Limited and was held on 15th and 16th February 2013. Funds to the extent of Rs.4,50,000/- (Rupees Four Lakhs Fifty Thousand only) was allotted by the DC (MSME), New Delhi vide letter dated 31.07.2012. By an order dated 05.12.2012 issued by PW34, he gave sanction for the withdrawal of advance of Rs.2,25,000/- (Rupees Two Lakhs Twenty Five Thousand only) out of the sanctioned amount of Rs.4,50,000/- (Rupees Four Lakhs Fifty Thousand only) for the expenditure to be incurred to organise the said NVDP and appointed the Respondent as the Coordinating Officer of the programme.

- (iii) Accordingly, the said sum of Rs.2,25,000/- (Rupees Two Lakhs Twenty Five Thousand only) was deposited in the personal account of the Respondent. The Respondent submitted a bill dated 22.03.2013 along with particulars of expenditure and the accompanying bills to the Accounts Office of MSME-DI, Mumbai.
- (iv) On 08.07.2014, on the basis of an oral source information, an FIR was registered against the Respondent by Additional SP for suspected offences of criminal conspiracy, criminal breach of trust by public servant, cheating and dishonestly inducing delivery of property, forgery for the purpose of cheating, using forged documents as genuine and criminal misconduct by public servant punishable under Sections 409, 420, 471 of IPC along with Section 13(2) r/w 13(1)(d) of PC Act, 1988.
- (v) The Investigating Officer (PW44), after conducting investigation sought sanction to prosecute the Respondent and filed the chargesheet for offences as enumerated hereinabove. The sum and substance of the chargesheet was that the Respondent was solely responsible for the expenditure of sanctioned amount of Rs.4,50,000/- (Rupees Four Lakhs Fifty Thousand only) and using twelve forged bills/vouchers, some of which were used for services and heads not used or purchased for falsely claiming an amount of Rs.94,090/- (Rupees Ninety Four Thousand Ninety only) and further claiming a sum of Rs.3,92,811/- (Rupees Three Lakhs Ninety Two Thousand Eight Hundred & Eleven only) as paid to

one Thomson Enterprises when actually only Rs.3,48,934/- (Rupees Three Lakhs Forty Eight Thousand Nine Hundred & Thirty Four only) was paid.

(vi) The Respondent pleaded not guilty and claimed to be tried. The prosecution examined 44 witnesses on behalf of the prosecution. The Respondent has not examined either himself or any witnesses in defence.

(vii) By way of the impugned judgment and order, the Respondent was acquitted of the offences punishable under Sections 409, 420, 471 of IPC along with Section 13(2) r/w 13(1)(d) of PC Act, 1988.

3. Aggrieved by the impugned judgment and order, the CBI-ACB approached this Court by way of the present Appeal. This Court, vide order dated 08.07.2024, admitted the Appeal, which is finally heard by consent with the able assistance of the respective Counsels.

4. On behalf of the Appellant, learned Special Public Prosecutor, Mr Faldessai, has assailed the order of acquittal on several grounds. He argued that the finding of the learned Trial Court that the sanctioning order does not disclose application of mind is erroneous. According to him, the learned Trial Court ought to have considered the evidence of PW39, who has very clearly deposed how the competent Authority had the jurisdiction and the competence to grant sanction to prosecute the Respondent and that the learned Trial Court ought not to have held that there was no sanction to prosecute the Respondent only because the IO failed to comply with the

circular of 2015. He contended that the Trial Court ought to have considered that complying with the aforesaid circular was not sine qua non but only to assist the sanctioning Authority in arriving at an opinion.

5. The learned Special Public Prosecutor criticised the finding of the learned Trial Court, which has exonerated the Respondent on the ground that he was not solely responsible for the purchase/procurement of stores in view of the fact that a committee was constituted by PW34 and the Respondent was only a member of the said committee, by arguing that the Respondent was not only the Assistant Director but also the DDO and hence he was responsible for the purchase/procurement of stores.

6. The learned Special Public Prosecutor has assailed the finding of the learned Trial Court that since the Lease Agreement of Balaji Stationers was not produced, the prosecution had failed to prove that PW31 was the owner of Balaji Stationers. According to the learned prosecutor, the Trial Court ought to have considered that once the bill was produced and exhibited on behalf of the prosecution, the burden shifts on the Respondent to show that the bill was used by him for claiming and disbursement of money. Since the Respondent failed to discharge this burden, the learned Trial Court ought to have drawn adverse inference against the Respondent. PW40, who was shown the bill no.537 has deposed that the signature on the bill is not his, which clearly indicated that the Respondent had produced a fake and forged bill on the basis of which he claimed the amount.

7. The learned Special Public Prosecutor also assailed the finding of the learned Trial Court in coming to the conclusion that it was doubtful as to whether PW14 received payment against three bills and disbelieved the said evidence, by arguing that only because PW14 did not remember whether he had received the payment of the aforesaid bills, his entire evidence could not be discarded.

8. The learned Special Public Prosecutor has criticised the finding of the learned Trial Court, disbelieving the evidence on the point of fake bills connected with the evidence of PW13, Proprietor of a stationery shop, on the ground that the amounts under the bills were claimed by the Respondent, which clearly shows that the Respondent made use of the fake documents knowingly. He also finds fault with the observation of the learned Trial Court that the inquiry report in pursuance to the departmental inquiry exonerated the Respondent when, according to him, there was other clear evidence against the Respondent on record and that the departmental inquiry had no bearing on the investigation in the present case.

9. The learned Special Public Prosecutor has further argued that an adverse inference ought to have been drawn by the learned Trial Court against the Respondent insofar as the bills issued by PW18 were concerned, since according to him, the Respondent has not discharged the burden of showing as to how the payment was made to PW18 by him. He has also criticised the

finding of the learned Trial Court, which disbelieved the seizure panchanama conducted in the house of the Respondent, wherein some documents were seized. He has also found fault with the observation of the learned Trial Court, which disbelieved the opinion of the handwriting expert PW42, while not considering the evidence in proper perspective and also ignoring the fact that the case before the learned Trial Court was not based solely on the opinion of the expert, but there was other independent corroborative material to prove the guilt of the Respondent.

10. According to the learned Special Public Prosecutor, the learned Trial Court has erred in holding that the sanction was issued by the competent Authority only on the basis of the statement of PW1, who deposed that the Development Commissioner MSME-DI was the controlling and appointing Authority of the Respondent. According to him, the non-production of a copy of the gazette Notification relating to the appointment of the Officer signing the order to the office held by the Respondent at the time of the sanction was not fatal to the prosecution. These were at the highest mere irregularities in sanction to prosecute and the Respondent had not demonstrated that non adherence of the aforesaid technicalities resulted in failure of justice. Further, according to him, the learned Trial Court has ignored the evidence of those witnesses, who have deposed about the blank bills, which according to the prosecution were issued at the request of the Respondent. The learned Special Public Prosecutor prayed for reversing the order of acquittal.

11. Per contra, on behalf of the Respondent, it was submitted that the sanction was sought by the Appellant by suppressing the departmental inquiry report from the sanctioning Authority in violation of CVC Guidelines and observations of the Hon'ble Apex Court in the case of ***CBI V/s. Ashok Kumar Agarwal***¹. It was further submitted that in view of the non-compliance of circular no.08/05/2015 issued by CVC, which enumerates that instructions and guidelines issued by the Hon'ble Apex Court pertaining to the material to be placed before the Sanctioning Authority prior to the grant or rejection of sanction, the very foundation of the process of seeking and obtaining the sanction from the competent Authority is vitiated. The Counsel for the Respondent strenuously submitted that after going through the evidence of the Sanctioning Authority, the sanction order nowhere discloses which documents were perused by the Authority and on what basis he satisfied himself for according the sanction. All the relevant materials were not placed before the Sanctioning Authority. Arguing that application of mind on the part of the Sanctioning Authority is imperative, the order granting sanction must demonstrate application of mind of the Sanctioning Authority, which is evidently missing in the present case.

12. Arguing that the prosecution has neither pleaded nor proved any loss of funds of whatsoever nature, it was pointed out that the Respondent did not have any financial powers. All the financial powers were vested in the

¹ 2014 AIR SC 827

Director, MSME-DI. The procurement of stores was carried out in accordance with the directions of the expenditure committee and was not the sole prerogative of the Respondent. Merely because the Respondent was DDO, he cannot be saddled with the acts of the expenditure committee. Pointing out the difference, learned Counsel for the Respondent, highlighted the fact that the Respondent was a member of the organising committee of NVDP and he was also the programme coordinator, whereas the expenditure committee was responsible for the expenditure incurred. The depositing of the amount of Rs.2,25,000/- (Rupees Two Lakhs Twenty Five Thousand only) in the personal account of the Respondent was not a unilateral act on the part of the Respondent and that all the members of the expenditure committee were jointly and severally responsible/accountable. Insofar as the document at Exhibit 63 collectively, it was argued on behalf of the Respondent that DDO has no power to sign unless approved by the controlling officer. There were no irregularities insofar as Exhibit 63 is concerned. All these facts have been corroborated by PW1. In fact, PW2, PW11 and PW6 also corroborate the aforesaid facts.

13. The Respondent argued that insofar as the issue of fake and forged bills was concerned, the learned Trial Court has correctly observed that the evidence of the concerned witnesses reveals inherent and fundamental lacunae which clearly establish that these witnesses are not reliable or creditworthy. Insofar as the issue of forgery of certain bills is concerned, it was argued that the specimen handwriting of the Respondent was never taken during the

course of the investigation and, therefore, the opinion of the handwriting expert had no bearing or evidentiary value.

14. Before appreciating the merits, it must be emphasised that the scope and parameters of examining an appeal against acquittal are set out by the Hon'ble Apex Court in various judgments, some of which are *C. Antony v/s. Raghavan Nair*², *K. Prakashan v/s. P. K. Surendran*³ and *State of Goa v/s. Sanjay Thakran*⁴. The principles that can be culled out from the aforesaid judgments are that while dealing with appeals against acquittal, the Appellate Court must bear in mind that there is a presumption of innocence in favour of the accused person and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court. The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal. Unless the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law, or if such conclusions, allowed to stand, are likely to result in grave injustice, the appellate court should be reluctant to interfere with such conclusions. Merely because the appellate court, on re-appreciation and re-evaluation of the evidence, is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

² (2003) 1 SCC 1

³ (2008) 1 SCC 258

⁴ (2007) 3 SCC 755

15. Examining the impugned judgment and order in the light of the aforesaid principles, the learned Trial Court has after perusing the material on record and considering the arguments advanced by the respective Counsels, framed the following questions, which arose for its determination:

(i) Whether the accused falsely claimed an amount of ₹94,090/- by using 12 bills/vouchers for services or heads not used or purchased?

(ii) Whether the accused claimed a sum of ₹3,92,811/- as paid to Thomson Enterprises when actually only ₹3,48,934/- was paid?

(iii) Whether it is proved that the accused had committed offences under Section 409, 420, 471 IPC and Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act 1988?

(iv) Whether the sanction to prosecute the accused suffers from any illegality?

16. Marshalling the evidence in order to answer the first question, the learned Trial Court has observed that the Respondent was not solely responsible for the purchase/procurement of stores/services in view of the order dated 03.01.2013, issued by PW34. Referring to an office order dated 24.01.2013, issued by PW34, the Trial Court has observed that the Respondent was allotted the work of printing activities of MSME-DI, visiting large-scale units in Goa and conducting cultural events in coordination with the event manager. Observing that there is absolutely no evidence indicating the person/s who had collected or submitted any of the bills, which are alleged

to be fake and fabricated, the learned Trial Court has further referred to the cross-examination of PW31 and PW12, observing that their evidence does not conclusively prove the forgery of the bills as alleged by the prosecution. Commenting on the bill nos.810 and 807 issued by 'Paradise Stationers', it cannot be concluded that these bills were not issued by 'Paradise Stationers'. Cross-examination of PW6 establishes that he has falsely deposed that he never came across a firm by name 'Photozone'. Similarly, dealing with the other purported fake and forged bills and marshalling the evidence of the corresponding witnesses, the learned Trial Court has come to the conclusion that the prosecution has failed to prove that an amount of Rs.94,090/- (Rupees Ninety Four Thousand Ninety only) were claimed by the Respondent by using 12 bills/vouchers for services neither used nor purchased. Referring to the departmental inquiry report, the learned Trial Court has observed that the Inquiry Officer/PW1, who had conducted the departmental inquiry, which records that the procurement of goods and services were made as per procedure and there was no truth in the allegations made in the FIR. Thus, the learned Trial Court has answered the first question referred to hereinabove in the negative.

17. Examining the evidence pertaining to the second question framed for determination by the learned Trial Court, it has referred to the evidence of PW18 and observed that the amount of Rs.1,68,877/- (Rupees One Lakh Sixty Eight Thousand Eight Hundred and Seventy Seven only) is paid to Thomson Enterprises as can be seen from the contingent bill at Exhibit 63. Therefore, the learned Trial Court has disbelieved the allegation that although

an amount of Rs.3,92,811/- (Rupees Three Lakhs Ninety Two Thousand Eight Hundred and Eleven only) was claimed, only a sum of Rs.3,48,934/- (Rupees Three Lakhs Forty Eight Thousand Nine Hundred and Thirty Four only) was paid to Thomson Enterprises. Hence, the learned Trial Court has answered the second question framed for determination in the negative.

18. Dealing with the evidence in order to examine whether the Accused had committed offences as alleged, the learned Trial Court, after taking a conspectus of the entire evidence, makes several observations. Firstly, that the letter dated 31.07.2012 proves the allocation and sanction of the funds by the competent Authority. This fact is corroborated by the Investigating Officer examined as PW44. PW11 has deposed that all the bills pertaining to the expenditure of NVDP programme were first placed before the Director for approval and after his approval the said bills went to the course coordinator and that no bills could be passed for payments without a prior approval of the Director. PW4 has deposed that the Respondent had submitted the bills with the approval of the Director. At the time of putting the signature on the bills, the Respondent would not be in a position to note who had submitted the bills. PW1 has deposed that the Director, MSME-DI, was closely supervising the conduct of the event and that other officers were assisting him. Every action of the Respondent in respect of the NVDP was in terms of the directions of PW34 (Director) and all the signatures on the document were put by the Respondent while working under such directions. PW1 further admits that the Respondent as DDO has no powers to sign the bills unless they are approved by the Controlling Officer. In view of the aforesaid

observations, the learned Trial Court observed that the prosecution has failed to prove either that the Respondent was entrusted with the funds or that he had dishonestly converted the funds for his own use and held that Section 409 IPC cannot be applied to the facts of the case. The learned Trial Court further observed that taking a conspectus of the evidence of PW42, PW44, the specimen handwritings of the Respondent and other evidence, there is no evidence to suggest that the documents were forged by the Respondent. There is also no material to indicate that the Respondent had any knowledge that any of the bills were forged.

19. The learned Trial Court has while dealing with the allegations of cheating qua the Respondent, has observed that the ingredients of Section 415 of IPC, which defines the offence of cheating, are not attracted. The learned Trial Court has also observed that there is absolutely no evidence which proves any wrongdoing on the part of the Respondent insofar as the offence of criminal misconduct under Section 13(1)(d) of the PC Act, especially when considered in the backdrop of the inquiry report. Considering that the inquiry was precisely in respect of the allegations made in the FIR and considering that the nature of proof in a criminal matter is much higher than that required in a preliminary inquiry. In view thereof, he observes that the findings in the said report assume significance. Pointing to several investigation lapses, the learned Trial Court has observed that the presence of the independent witnesses at the time of search was doubtful. He further observes that even if it assumed that the said documents were found at the residence of the Respondent, it is not the case of the prosecution that the

Respondent had used any of the documents allegedly found in his residence for claiming any amount towards NVDP 2012-13 and hence even assuming that the documents were found at his residence, it does not prove any of the charges against the Respondent. In view thereof, the learned Trial Court concludes that the prosecution has failed to prove that the Respondent has committed offences punishable under Section 409, 420, 471 of IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988.

20. In answer to the last question framed by the learned Trial Court as to whether the sanction to prosecute the Respondent suffers from any illegality, the learned Trial Court has after reproducing Section 19(1)(c) of PC Act, 1988, has observed that PW39 has produced the sanction order to prosecute the Respondent for offences punishable under Sections 409, 420, 471 of IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988. During the evidence, PW39 denied that he was the Secretary of the Department of Economic Affairs. He deposed that the Respondent joined the service of the Indian Economic Service (IES), which is under the administrative control of the Department of Economic Affairs, Ministry of Finance and, as such, he was under the administrative control of the Ministry of Finance. He also deposed that he had not looked into the matter of removal of the Respondent but only looked into the aspect of sanction to prosecute him. PW44 (IO) has admitted that the letters for obtaining sanction were addressed by the Head of Branch, i.e. V. Ashok Kumar, to the MSME, New Delhi and he did not verify as to how the sanction was granted by the Department of Economic Affairs. PW44 further confirmed that the letter seeking sanction to prosecute the

Respondent was addressed to MSME, New Delhi and the sanction to prosecute was sought from the Development Commissioner, MSME, New Delhi. PW1, the Inquiry Officer, has given evidence that the Additional Secretary and the Development Commissioner, MSME-DI, was the controlling and appointing Authority of the Respondent. Since the offence was allegedly committed in February 2013, when the Respondent was under the administrative control of the Development Commissioner, MSME, it is impossible that the Department of Economic Affairs was aware of the nature of the work carried out at MSME-DI. In the light of the evidence discussed hereinabove, the learned Trial Court has come to the conclusion that the sanction was not issued by the competent Authority.

21. The learned Trial Court has referred to the circular dated 25.05.2015, issued by the CVC after referring to the judgment of the Hon'ble Supreme Court in the case of Ashok Kumar Agarwal (supra), which has directed all administrative Authorities to follow the guidelines of the aforesaid circular. The Hon'ble Supreme Court in the matter of *CBI V/s. Ashok Kumar Agarwal* (supra) has directed that the prosecution must send the entire relevant record to the sanctioning Authority, including the FIR, disclosure statements, statements of witnesses, recovery memos and all other relevant material. Adverting to the evidence of PW44, the learned Trial Court observes that PW44 did not send documents at Serial no.1 of Exhibit 67 (Inquiry Report) as he did not find it necessary. He deposed that he had read the document before filing the chargesheet and that the said document pertained to the departmental inquiry against the Respondent regarding the allegations

made in respect of NVDP 2012-13. Thus, it is evident that the preliminary inquiry report, which dealt with the charges alleged in the FIR against the Respondent and which exonerated the Respondent, was not sent to the sanctioning Authority inspite of the fact that it was forwarded by the Inquiry Officer to the Investigating Officer of CBI. Referring to various case laws and Chapter VII of CBI Manual, the learned Trial Court holds that the prosecution had failed to prove that the sanction accorded to the Respondent suffers from no illegality. In fact, the learned Trial Court has held that the sanction to prosecute the Respondent is erroneous and illegal.

22. It is upon a conspectus of the aforesaid answers marshalled by the Trial Court in response to the questions framed for determination that the Trial Court has ultimately acquitted the Respondent.

23. This Court finds that the reasoning of the learned Sessions Judge does not suffer from any infirmity. The reasoning in the impugned order is in consonance with the correct position of law and the presumption of innocence that has now accrued in favour of the Respondent.

24. The impugned order of acquittal does not require to be interfered with by this Court. In view thereof, the Appeal is dismissed.

25. The Criminal Appeal No.32 of 2024 is disposed of in the aforesaid terms.

ASHISH S. CHAVAN, J.