

(2020) 02 BOM CK 0004
In the Bombay High Court
Case No : Criminal Appeal No. 228 Of 2001

Central Bureau Of Investigation Anti Corruption Branch	APPELLANT
Vs	
Chandrappa Nagappa Kembhavi And Anr	RESPONDENT

Date of Decision : 03-02-2020

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13(2), 13(1)(d)
Code Of Criminal Procedure, 1973 — Section 161, 313, 378, 386

Citation : (2020) 02 BOM CK 0004

Hon'ble Judges : K.R. Shriram, J

Bench : Single Bench

Advocate : Shubhada D. Khot, Pallavi Dabholkar, Ayushi Anandpara

Final Decision : Dismissed

Judgement

1. This is an appeal impugning an order and judgment dated 5th September 2000 passed by the Special Judge, Solapur, acquitting respondent (accused) of offences punishable under Section 7, Section 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988 (PC Act).

2. On 6th January 2020 since nobody was present in Court representing respondent no.1, the Court appointed Ms. Ayushi Anandpara, an Advocate, as Amicus Curiae. Before I proceed with the case, I must express my appreciation for the distinguished assistance rendered by Ms. Ayushi Anandpara, learned Amicus Curiae. The endeavour put forth by Ms. Anandpara, Amicus Curiae, has been of immense value in rendering the judgment.

3. It is the case of prosecution that accused Chandrappa Nagappa Kembhavi was working as a Sub-divisional Officer of Phones (external) in the office of Telecom Department as District Manager, Solapur. Accused, on 15th May 1996, demanded Rs.600/-, which was reduced to Rs.500/-, as illegal gratification other than regular remuneration for showing the favour to complainant (PW-1) Mehboobsab Pailwan, a vegetable merchant of Solapur for urgent and early installation of new

telephone connection allotted to complainant in his shop premises bearing no.D-26, Siddheshwar Market Yard, Solapur. Accused is alleged to have agreed to accept the amount on 16th May 1996 in the shop of complainant at about 4.00 p.m.

4. The charge framed against accused reads as under:

"That you in the month of May 1996, while functioning as the Sub-Divisional Officer of Phones in the office of the Telecom District Manager, Solapur and as such a public servant, demanded a sum of Rs.600/- on 15-5-96 as a illegal gratification, other than regular remuneration as a motive or reward for showing favour in exercise of your official function to the complainant Shri Mahiboobsaheb Sharifsaheb Pailwan, a vegetable merchant of Solapur to wit, for expediting installation of new telephone connection allotted to the said complainant Shri M.S. Pailwan at his shop premises situated at Shop No.26, E, Sidheshwar Bhavan, Market yard, Solapur and reduced the said amount to Rs.500/- and further agreed to accept the said amount of Rs.500/- on 16-5-96, in complainant M.S. Pailwan's said shop at about 4.00 p.m. However, on 16-5-1996 you did not visit the shop of complainant Shri M.S. Pailwan at the appointed time for accepting the agreed bribe amount. Thereafter on 17-5-96 in the morning hours you contacted complainant M.S. Pailwan, on his telephone at his residence, asking him to keep the agreed bribe amount of Rs.500/- ready with him and told him that the said amount would be collected by you from the shop of complainant on that day, i.e., on 17-5-96 at about 11.00 A.M. to 11.30 A.M.

And in pursuance of the aforesaid demand on 17-5-96 you actually accepted the illegal gratification amount of Rs.500/- from the complainant Shri M.S. Pailwan, and thereby committed an offence punishable under Section 7 of the Prevention of Corruption Act 1988 and within my cognizance.

That during the aforesaid period you being sub Divisional Officer of phones in the office of the Telecom District Manager, Solapur, and as such a public servant have obtained yourself, as a pecuniary advantage of Rs.500/- on 17-5-96 from complainant Shri M.S. Pailwan by corrupt or illegal means or by otherwise abusing your position as a public servant and thereby committed an offence punishable under Section 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act 1988 and within my cognizance.

And I hereby direct that you be tried by me on the said charge.

5. I have reproduced the charge because it is the case of complainant that his application was to transfer an existing telephone connection no.328344 from Gala No.D-26 to Gala No.67-E. It is not complainant's case that the application, which was pending, for which accused demanded money, was for a new connection at Gala No.67-E as mentioned in the chargesheet.

6. Prosecution arranged a trap on 16th May 1996 but the trap was unsuccessful as accused did not arrive at the time fixed. Thereafter, on 17th May 1996

according to complainant accused gave him a call over telephone at about 8.00 a.m. on the telephone at his residence (the evidence do not indicate any telephone connection at the residence of complainant because complainant has all through said he has telephone connections only at Gala D-26, Gala 67-E and a shop near J-Shell hall). It is also not complainant's case that his residence was connected to one of the galas. It seems accused informed complainant that he would visit on 17th May 1996 at about 11.00 a.m. to 11.30 a.m. at which time complainant should pay the bribe amount of Rs.500/-. Prosecution has alleged that respondent demanded an amount of Rs.500/- on 17th May 1996 and actually accepted the same from PW-1 and thereby respondent has committed an offence punishable under Section 7 of PC Act. It is prosecution's case that on the same day, time and place, accused in the capacity being public servant had obtained an amount of Rs.500/- by way of pecuniary advantage by following corrupt and illegal means and thereby committed offence punishable under Section 13 (2) read with Section 13 (1) (d) of PC Act.

7. PW-6 - Mohamad Yunus Ismail Shaikh, Police Inspector, A.C.B. Solapur, investigated the matter and after obtaining necessary sanction, filed this complaint. During the investigation, the house of accused was also searched but nothing incriminating was found. Statement of complainant, panch witnesses and others were recorded and after obtaining a sanction against accused from respondent no.9, a complaint was filed and accused was chargesheeted. Accused pleaded not guilty to any of the charges and claimed to be tried.

8. To drive home its charge, prosecution led evidence of nine witnesses, viz., Mehboob Mohammad Sharif Pahelwan, complainant as PW-1, Dilip Savale, panch witness as PW-2, Ayub Makulsahab Kamtikar, brother-in-law of PW-1 as PW-3, Arun Shridhar Pathak, Assistant General Manager, Public Relations, Telecom Department as PW-4, Chakradhar Ventrapragada Narayanrao, Division Engineer (Rural), Telecom Department, Solapur as PW-5, Mohamed Ismail Sheikh, Police Inspector, A.C.B., Solapur as PW-6, Vinayak Shankarrao Suryavanshi, Police Inspector, C.B.I., Jodhpur as PW-7, Balasaheb Rangnath Sahani, Police Inspector, C.B.I. as PW-8 and Pradhan Shambhu Saran, Member Services, Telecom Communication as PW-9.

9. Various documents were also exhibited. After recording evidence, the statement of accused under Section 313 of the Code of Criminal Procedure was recorded and the stand of accused was of total denial. After considering the evidence, the impugned judgment was passed on various grounds.

10. The Apex Court in Ghurey Lal V/s. State of U.P. (2008) 10 SCC 450 has culled out the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraphs 72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above :

1. The appellate court may review the evidence in appeals against acquittal

under Section 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappraise the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty.

The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

- i) The trial court's conclusion with regard to the facts is palpably wrong;
- ii) The trial court's decision was based on an erroneous view of law;
- iii) The trial court's judgment is likely to result in "grave miscarriage of justice";
- iv) The entire approach of the trial court in dealing with the evidence was patently illegal;
- v) The trial court's judgment was manifestly unjust and unreasonable;
- vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.
- vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

The Apex Court in many other judgments including Muralidhar and Ors. V/s. State of Karnataka 2014 (5) SCC 730 has held that unless, the conclusions

reached by the Trial Court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice. Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that 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.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court.

The Apex Court in Ramesh Babulal Doshi V/s. State of Gujarat 1996 SCC (Cri) 972 has held that if the Appellate Court holds, for reasons to be recorded that the order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

11. In so far as the offence under Section 7 of PC Act is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. This position has been well laid down in several judgments of the Apex Court and all other High Courts including Bombay High Court (B. Jayaraj V/s. State of Andhra Pradesh 1996 SCC (Cri) 972).

12. I have perused the impugned judgment, considered the evidence and also heard Ms. Khot, learned APP and Ms. Anandpara, the Amicus Curiae. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. Having considered the evidence, prosecution, in my view, has miserably failed in proving that there was a demand and acceptance also.

13. As stated earlier, the entire case of complainant was that he had a telephone connection no.328344 at his Gala D-26, which due to his increase in business, he wanted to shift to Gala 67-E and he had filed necessary application. PW-1 says that accused made a demand of bribe on 15th May 1996 for transfer of the said telephone connection no.328344 from Gala D-26 to Gala 67-E and the demand was repeated on 17th May 1996 and the bribe amount was given at his unnumbered gala near J-Shell hall, Solapur. However, PW-2, who is a panch witness, and PW-6, who is an Investigating Officer of A.C.B., both state that the trap was arranged in Gala No.67-E and the bribe amount was also demanded in Gala 67-E and the amount was also paid in Gala 67-E. That is how the

panchnama also is recorded and PW-2 and PW-6 also repeated the same in their evidence. PW-1 in his cross examination states that he informed while lodging his complaint (Exhibit 20) that the place where the complainant was going to collect the bribe amount was the shop premises near J-Shell hall but he cannot assign why there is no reference to his shop near J-Shell hall in the complaint. PW-1 also says that he informed the Investigating Officer (PW-6) that the amount was to be accepted by accused in his shop near J-Shell hall on 16th May 1996 and both the panchas were not present. PW-1 also admits in his cross examination that he told PW-6 that accused will attend the shop near J-Shell hall in order to accept the amount as demanded by him and he was not told by PW-6 that he and PW-2 shall stand near the shop premises bearing no.67-E. PW-1 also denies that he or PW-2 sat in the premises of Gala No.67-E at about 4.00 p.m. on 16th May 1996 waiting for the arrival of accused or was he present in that shop alongwith PW-2 till 6.30 p.m. PW-1 also denies that he told PW-6 that accused did not attend shop premises bearing no.67-E. PW-1 denies that what is stated in his statement recorded under Section 161 of the Code of Criminal Procedure that he was given instructions by PW-6 that he should be in the shop premises bearing no.67-E, Siddheshwar Market Yard, Solapur alongwith PW-2 is not correct. PW-1 also states that it is not true to state as recorded in his statement under Section 161 of the Code of Criminal Procedure, that he and PW-2 remained present in Gala no.67-E or that he and PW-2 were waiting for accused upto 6.30 p.m. in Gala no.67-E. PW-1 states that he did not even disclose to PW-6 that PW-1 and members of raiding party and panch no.2 - Potphode were present near Gala no.67-E by watching the arrival of accused and he never mentioned any of these things to PW-6 when his statement was recorded. PW-1 categorically states "I have already told you that I was not present in shop premises bearing no.67-E, alongwith panch no.1, as suggested by you, on 16.05.96. According to me, I myself and panch no.1, were waiting for the accused on 16.5.96, in the cabin of J-Shell hall, Siddheshwar Market Yard, Solapur". The same thing appears even as regards the place where the bribe amount was asked for, given, trapped and accused allegedly was caught red handed. Everywhere the place shown is Gala no.67-E, whereas it is the case of complainant that it happened in the premises near J-Shell hall.

14. At the cost of repetition, I would say the application, for which PW-1 had approached accused, was to transfer his telephone no.328344 which was installed in Gala no.D-26 to Gala no.67-E and the demand of bribe and giving bribe is between 15th May 1996 and 17th May 1996. PW-4, who was working in Telecom Department as Assistant General Manager (Planning Department), Solapur Division, has in his evidence stated that the telephone no.328344 was allotted to PW-1 and also installed only on 28th June 1996. That also shows the case of the prosecution is improbable.

15. As regards the sanction to prosecute accused, the sanctioning authority (PW-9) says after receipt of papers he studied the entire matter and came to a conclusion that there was prima facie case against accused in connection with

allegations made against him. Therefore, after completion of entire study of investigation papers, he signed the draft sanction by passing the order that the case be lodged against accused under PC Act. The fact that PW-9 has not applied his mind is evident from the cross examination. The documents, which were provided to PW-9 alongwith the papers, are at Exhibit 67. Ms. Khot, learned APP states that the documents submitted with the proposed charge were in Marathi language. In his cross examination, PW-9 admits that he does not know Marathi language, reading and writing. PW-9 also says that possibly an English translation might have been supplied to him alongwith Marathi language documents. Therefore, PW-9 assumes that an English translation was provided. No such endorsement is made in his sanction order. PW-9 also does not confirm that he was satisfied with the so called translation and it was a true and correct translation.

16. The Apex Court in *P. L. Tatwal V/s. State of Madhya Pradesh* (2014) 11 SCC 431 has held that grant of sanction is a serious exercise of power by the competent authority who has to take a conscious decision on the basis of relevant materials. The purpose of grant of sanction and the principles governing the issue can be found in paragraphs 12, 13 and 14 of the said judgment, which read as under:

12. The grant of sanction is only an administrative function. It is intended to protect public servants against frivolous and vexatious litigation. It also ensures that a dishonest officer is brought before law and is tried in accordance with law. Thus, it is a serious exercise of power by the competent authority. It has to be apprised of all the relevant materials, and on such materials, the authority has to take a conscious decision as to whether the facts would reveal the commission of an offence under the relevant provisions. No doubt, an elaborate discussion in that regard in the order is not necessary. But decision making on relevant materials should be reflected in the order and if not, it should be capable of proof before the court.

13. In a recent decision in *State of Maharashtra through Central Bureau of Investigation v. Mahesh G. Jain*, the court has referred to the various decisions on this aspect from paragraph 8 onwards. It has been held at paragraph 8 as follows:

"8. In *Mohd. Iqbal Ahmed v. State of A.P.* this Court lucidly registered the view that (SCC p. 174, para 3) it is incumbent on the prosecution to prove that a valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out constituting an offence and the same should be done in two ways; either (i) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction, and (ii) by adducing evidence aliunde to show the facts placed before the sanctioning authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab

initio."

14. After referring to subsequent decisions, the main principles governing the issue have been culled out at paragraph 14 which reads as follows:

"14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.

14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.

14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

14.6. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.

14.7. The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity."

(emphasis supplied)

17. Moreover, a learned single Judge of this court (S.B.Shukre, J.) in State of Maharashtra through Deputy Superintendent of Police ACB Nagpur V/s. Devidas s/o. Narayanrao Bobde 2014 SCC Online Bom.1045 has held that signing on draft sanction order submitted by A.C.B would indicate non application of mind and by signing the draft sanction order the sanctioning authority has not ascertained the root cause of the demand of bribe by respondent. Moreover, PW-9 has admitted that he does not read or understand Marathi language. On this ground alone, the entire proceedings are rendered void ab initio.

18. The Apex Court in Chandrappa & Ors. V/s. State of Karnataka (2007) 4 SCC 415 in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under:

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal

against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If 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."

19. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, accused having secured acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

20. In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

21. Appeal dismissed.

22. The Government/Appropriate Authority shall pay over to respondent, within a period of 30 days from today, all pensionary or other benefits/dues stalled, in view of pendency of this appeal. No authority shall demand certified copy for reimbursing the benefits/dues as directed above. All to act on authenticated copy

of this order. Certified copy expedited. If during the service, in view of this matter, the promotions or increments of accused have been affected, the concerned Authority/Department will pay, proceed and calculate on the basis that there was no such matter ever on record against accused and will factor in all promotions and increments that accused would have been entitled to and all the amounts shall be accordingly paid within 30 days.

After 30 days interest at 12% p.a. will have to be paid by Government/ Appropriate Authority to respondent.