

(2024) 05 GUJ CK 0064
In the Gujarat High Court
Case No : R/Criminal Appeal No. 2147 Of 2006

State Of Gujarat	Vs	APPELLANT
Girdharbhai Dhanjibhai Gohil		RESPONDENT

Date of Decision : 31-05-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 378 (1)(3)
Prevention of Corruption Act, 1988 — Section 7, 13(1)(D), 13(2)

Citation : (2024) 05 GUJ CK 0064

Hon'ble Judges : M. R. Mengdey, J

Bench : Single Bench

Advocate : Chintan Dave, BY Mankad, Agneya B Mankad

Final Decision : Dismissed

Judgement

M. R. Mengdey, J

1. The present appeal has been filed by the State under the provisions of Section 378 (1)(3) of the Criminal Procedure Code, 1973 challenging the judgment and order dated 20.7.2006 passed by learned Special Judge and Fast Track Court-2, Amreli, in Sessions Case No.6 of 1997, whereby the present respondent was acquitted of the charges for the offences punishable under Sections 7, 13(1)(D) and 13(2) of the Prevention of Corruption Act, 1988 (herein after referred to as the "Act").

2. The brief facts of the case of the prosecution is that the the present respondent was working as a Deputy Engineer with the Gujarat Electricity Board. On 1.6.1996, the respondent along with the other employees of the GEB had gone to the village Kathrota for checking the electricity connections and several irregularities were found in the connections obtained by various agriculturists and therefore, those connections were disconnected and fine of Rs.9,000/- each was imposed upon these agriculturists. Out of those agriculturists, (1) Purshottambhai Naranbhai and (2) Rambhai Jivabhai Aahir had already paid the

amount of fine / penalty, however, despite the same their connections were not reconnected and therefore, those two persons had approached the first informant for reconnection of their electricity connections and asked him to request the respondent to reconnect the electricity as early as possible. Therefore the first informant had met the respondent and asked him to reconnect the two connections of these two persons upon which the respondent had asked Rs.5,000/- for each connections towards illegal gratification which was subsequently reduced to Rs.2,000/- per connection after negotiations. On the basis of the aforesaid information, a trap was organized on 1.6.1996 itself and the respondent was caught red-handed accepting the amount of illegal gratification at his residence.

3. After the investigation, the charge-sheet came to be filed against the present respondent before the concerned Trial Court and since the respondent pleaded not guilty, he was put to trial by framing charge vide Exh.5 for the aforesaid offences.

4. The prosecution had examined as many as 7 witnesses to bring home the charge levelled against the respondent and several documents were also relied upon. The concerned Trial Court, after considering the evidence adduced on record, was pleased to acquit the respondent of the charges levelled against him vide impugned judgment and order.

5. Being aggrieved and dissatisfied with the impugned judgment and order, the appellant-State has preferred the present appeal.

6. Learned APP appearing for the appellant-State has submitted that the concerned Trial Court has not considered the evidence adduced on record in proper perspective. The evidence adduced on record made amply clear that the present respondent was guilty of the charges levelled against him, however, despite the aforesaid clinching evidence, the concerned Trial Court has recorded the finding to the effect that the respondent is not guilty of the charges levelled against him. The concerned Trial Court has committed an apparent error of law and facts in recording the order of acquittal in favour of present respondent.

6.1 Learned APP has submitted that the concerned Trial Court ought to have considered the aspect that the demand and acceptance of illegal gratification by the respondent had been duly proved, and therefore, ought to have convicted the respondent for the charges levelled against him.

6.2 Learned APP has submitted that the concerned Trial Court has sought to rely upon the minor contradictions in the evidence adduced by the prosecution against the respondent. He, therefore, submitted to allow the present appeal and quash and set aside the impugned judgment and order by convicting the respondent for the offences in question.

7. Learned advocate Mr.B.Y.Mankad appearing for the respondent has opposed the present appeal. He has taken this court through various findings recorded by

learned Special Judge in the impugned judgment and order. He submitted that learned Special Court cannot be said to have committed any error in recording those findings. The prosecution has miserably failed in proving charges levelled against the respondent and therefore learned Special Court has rightly passed the impugned judgment and order, which does not require interference of this court. He therefore submitted to dismiss the present Appeal.

8. At the outset, it is required to be noted that the scope for this Court to interfere with the order of acquittal recorded by the Special Court is very limited. The Apex Court in its recent judgment in case of Mallappa Vs. State of Karnataka reported in 2024 (3) SCC 544 has observed and held as under:-

"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.

25. No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on the High Court to re-appreciate or re-visit the evidence on record. However, the power of the High Court to re-appreciate the evidence is a qualified power, especially when the order under challenge is of acquittal. The first and foremost question to be asked is whether the Trial Court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the Trial Court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the Trial Court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

26. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The 'two-views theory' has been judicially recognized by the Courts and it comes into play when the appreciation of evidence results into two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the Trial Court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by reappreciating the evidence. If

such a course is permissible, it would make it practically impossible to settle the rights and liabilities in the eyes of law. In *Selvaraj v. State of Karnataka*, (2015) 10 SCC 230.

"13. Considering the reasons given by the trial court and on appraisal of the evidence, in our considered view, the view taken by the trial court was a possible one. Thus, the High Court should not have interfered with the judgment of acquittal. This Court in *Jagan M. Seshadri v. State of T.N.* [(2002) 9 SCC 639] has laid down that as the appreciation of evidence made by the trial court while recording the acquittal is a reasonable view, it is not permissible to interfere in appeal. The duty of the High Court while reversing the acquittal has been dealt with by this Court, thus:

"9.We are constrained to observe that the High Court was dealing with an appeal against acquittal. It was required to deal with various grounds on which acquittal had been based and to dispel those grounds. It has not done so. Salutary principles while dealing with appeal against acquittal have been overlooked by the High Court. If the appreciation of evidence by the trial court did not suffer from any flaw, as indeed none has been pointed out in the impugned judgment, the order of acquittal could not have been set aside. The view taken by the learned trial court was a reasonable view and even if by any stretch of imagination, it could be said that another view was possible, that was not a ground sound enough to set aside an order of acquittal." (emphasis supplied)

In *Sanjeev v. State of H.P.*⁴, the Hon'ble Supreme Court analyzed the relevant decisions and summarized the approach of the appellate Court while deciding an appeal from the order of acquittal. It observed thus:

"7. It is well settled that:

7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be dealt with, in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be upturned (see *Vijay Mohan Singh v. State of Karnataka*, (2019) 5 SCC 436 *Anwar Ali v. State of H.P.*, (2020) 10 SCC 166)

7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see *Atley v. State of U.P.*, AIR 1955 SC 807)

7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see *Sambasivan v. State of Kerala*, (1998) 5 SCC 412)"

9. Heard learned advocates for the parties and perused the record. As per the case of prosecution, the present respondent was working as a Deputy Engineer with the Gujarat Electricity Board. On 1.6.1996, the respondent along with the other employees of GEB had gone to the village Kathrota for checking the

electricity connections and several irregularities were found in the connections obtained by various agriculturists and therefore, those connections were disconnected and fine of Rs.9,000/- each was imposed upon those agriculturists. Out of those agriculturists, (1) Purshottambhai Naranbhai and (2) Rambhai Jivabhai Aahir had already paid the amount of fine / penalty, however, despite the same their connections were not reconnected and therefore, those two persons had approached the first informant for reconnection of their electricity connections and asked him to request the respondent to reconnect the electricity as early as possible. Therefore, the first informant had met the respondent and asked him to reconnect the two connections of these two persons upon which the respondent had asked Rs.5,000/- for each connections towards illegal gratification which was subsequently reduced to Rs.2,000/- per connection after negotiations. It is also the case of prosecution that on the basis of the aforesaid information, a trap was organized on 1.6.1996 itself, and the respondent was caught red-handed accepting the amount of illegal gratification at his residence.

10. The first informant Govindbhai Anandbhai Hirpara had been examined Exh.8 during the course of trial. He in his deposition has stated that in the afternoon the respondent and the other officers of GEB had come to the farm of five agriculturists and had disconnected their electricity connections and they were asked to pay the fine of Rs.9,000/- each. Out of those agriculturists, Purshottambhai Naranbhai and Rambhai Jivabhai, had paid the amount of fine of Rs.9,000/- in the office of the GEB, however, their electricity connections were not reconnected and therefore, they had approached the first informant and had asked him to request the respondent to reconnect their electricity connections. However, the respondent had demanded the amount of Rs.5,000/- per connection towards illegal gratification, which was subsequently reduced to Rs.2,000/- per connection after negotiations. A trap was organized on the basis of the information given by the first informant to the Police Inspector ACB and the respondent was caught red-handed accepting the amount of illegal gratification of Rs.4,000/- at his residential quarter. The witness in his examination-in-chief further stated that as a part of the trap, he along with the panch-witness had gone to the residence of the respondent. The respondent was sitting on a bench, whereas the first informant sat on a chair lying along side the bench and had paid the amount of Rs.4,000/- to the respondent, which was accepted by him and was kept on the bench on which he was sitting and a newspaper was also put on the amount of Rs.4,000/- by the respondent. Upon perusal of this part of the deposition it appears that during the trap, the first informant had not raised any such demand for payment of any illegal gratification. In his cross examination at the hands of defence counsel, he states that he was not aware as to whether the said Parshottambhai Naranbhai and Rambhai Jivabhai had already paid the amount of penalty or not, whereas, in examination-in-chief itself he has stated that the amount of fine had already been paid by these two persons. Further in his deposition also the first informant had given contradictory versions as regards the payment of fine by these two

persons. In his cross examination he further states that when he paid the amount of Rs.4,000/- during the trap to the respondent, the respondent had informed him that the said amount was to be deposited in the office towards the fine and the same was not required to be paid to him. Upon which the first informant insisted the respondent to accept the said amount, thereafter, again, the respondent informed the first informant that the said amount was required to be deposited in the office of the GEB and not to him and thus, from these part of deposition of the first informant, it appears that the amount which was paid by the first informant to the respondent was not towards any illegal gratification but was towards the amount of fine which was levied by the GEB upon the other agriculturists. He also states in his further examination that the respondent had advised him to get the said amount paid to the GEB in installments for other agriculturists, who had not paid the amount of fine. Thus, even the acceptance of amount of illegal gratification has not been proved by the prosecution.

11. As per the case of prosecution, the first informant had met the respondent for making a recommendation for two persons namely Parshottambhai and Rambhai. The record further indicates that those two persons were not alive at the time when they were supposed to have met the present first informant and they had expired much prior thereto. Therefore, the entire genesis of the incident is falsified.

12. In light of the aforesaid discussion, this court is of the considered opinion that the findings recorded by the Trial Court in acquitting the respondent-accused of the charge levelled against him are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. This court is in complete agreement with the reasoning given and the findings arrived at by the Trial Court. No interference is warranted with the judgment and order of the Trial Court.

13. In view of the above discussions, opinion that learned Judge committed no impugned judgment and order. Hence, deserves to be dismissed.

14. In the result, the appeal fails and is dismissed. The judgment and order of the Trial Court dated 20.7.2006 stands confirmed. Bail and bail bonds of the accused, if any, stands discharged. R & P be send back to the concerned trial Court, forthwith.