

(2020) 02 BOM CK 0066
In the Bombay High Court
Case No : Criminal Appeal No. 1492 Of 2003

State Of Maharashtra

APPELLANT

Vs

Jayawant Tatyaba Khaire

RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13(2), 13(1)(d), 17, 20
Code Of Criminal Procedure, 1973 — Section 378, 386

Citation : (2020) 02 BOM CK 0066

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

Bench : Single Bench

Advocate : S.V. Gavand, Rohan Savant

Final Decision : Dismissed

Judgement

1. This is an appeal impugning an order and judgment dated 29th May 2003 passed by the Special Judge, Solapur, acquitting accused of offences

punishable under Section 7 (Public servant taking gratification other than legal remuneration in respect of an official act), Section 13 (2) read with

Section 13 (1) (d) of Prevention of Corruption Act, 1988 (PC Act).

2. On 13th February 2020 since nobody was present in Court representing respondent, the Court appointed Mr. Rohan Savant, an Advocate, as

Amicus Curiae. Before I proceed with the case, I must express my appreciation for the assistance rendered and endeavour put forth by Mr. Rohan

Savant, learned Amicus Curiae, for it has been of immense value in rendering the judgment.

3. It is the case of prosecution that accused was working as Taluka Agricultural Officer attached to Madha office, District Solapur. Complainant

(PW-3) Tanaji Sathe, was a licensed seller of saplings of pomegranates. The

Agricultural Department issued coupons on the basis of which saplings were being sold and amount was paid by the Government. It is prosecution's case that in the year 1998-99, accused sold saplings worth Rs.2,40,000/- and submitted his bills alongwith coupons to the Agricultural office at Madha. PW-3 requested accused to pay the bills. On 31st December 1999, when PW-3 made demand of bills, accused demanded Rs.20,000/- as bribe and also told PW-3 that unless the amount is paid his bills will not be paid.

4. On 3rd January 2000, complainant (PW-3) met accused at 11.30 a.m. in the office of accused when accused is supposed to have been told complainant that if he paid Rs.10,000/-, half the bills will be settled. Accused also asked complainant how much amount was with him and complainant told him that he had only Rs.2,000/- on him. Accused said alright you pay that amount atleast and that amount was paid.

5. Accused then told PW-3 (complainant) to meet him on the next day in Kurduwadi office between 4.00 p.m. to 5.00 p.m. PW-3 thereafter, telephoned A.C.B. office at Pune when he was told by the Investigating Officer "Suresh Deshpande (PW-6) that he would be coming at Indapur Rest house at 9.00 a.m. on 4th January 2000. On 4th January 2000, the Investigating Officer alongwith panchas and other staff came to Indapur Rest house where complaint given by PW-3 came to be recorded. Pre-trap panchnama was prepared and a sum of Rs.8,000/- was used as trap amount.

When the raiding party went to the office of accused on 4th January 2000, accused was not found and the raid was called off.

6. Once again on 5th January 2000, trap was laid and when PW-3 with panch no.1, viz., Jayprakash Nimbalkar (PW-1) entered the office of accused, accused informed them to wait outside. Accused came out later and asked PW-3 as to whether he has brought the amount and when complainant (PW-3) asked accused whether the cheque was ready, accused told him the cheque was ready upon which time PW-3 removed Rs.8,000/- and paid to accused. Accused accepted the amount with his right hand and kept it in his pant pocket. Upon complainant giving the signal, the raiding party rushed and caught hands of accused. With the help of panch no.2, the amount was recovered from the pocket and there were traces of anthracene powder on the fingertips of both the hands of accused and also in his trouser

pocket. Subsequently, post-trap panchnama was prepared and the complaint was registered. Investigation was also carried out by PW-6. The papers were sent to S.P., A.C.B., Pune, who forwarded the same to the concerned authority under whom accused was working and after receipt of sanction, chargesheet was filed. Accused pleaded not guilty and claimed to be tried. The defence is of total denial. In answer to question no.43, it is the case of accused that complainant had supplied plants illegally and it was not possible for accused to prepare the bills and therefore, a false case has been filed to implicate him.

7. 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. Paragraph Nos.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 sections 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 Murlidhar & Ors. V/s. State of Karnataka (2014) 5 SCC 73 0has 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) 97 2has 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.

8. I have perused the impugned judgment, considered the evidence and also heard Mr. Savant, learned Amicus and Mr. Gavand, learned APP. I do

not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment.

9. In so far as the offence under Section 7 of PC Act is concerned, it is 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 (2014) 13 SCC 55).

10. A learned single Judge of this court in Khushalchand Yashwant Gaikwad V/s. The State of Maharashtra 2018 SCC Online Bom. 107 3also has

held that it is well settled law that mere possession and recovery of currency notes without proof of demand will not bring home the offence under

Section 7 since the demand of illegal gratification is sine qua non to constitute the offence. The same will also be conclusive in so far as offence under

section 13 (1) (d) is concerned, as in the absence of any proof of demand of illegal gratification, the use of corrupt or illegal means or abuse of position

as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on the proof of acceptance of illegal

gratification that presumption can be drawn under section 20 of the PC Act that such gratification was received for doing or forbearing to do any

official act. Unless there is proof of demand of illegal gratification, proof of acceptance will not follow. Paragraph-12 of the said judgment reads as

under :-

“It is well settled law that, mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the

offence under Section 7, since the demand of illegal gratification is sine-qua-non to constitute the said offence. The same also will be conclusive

insofar as the offence under Section 13 (1)(d) is concerned as in the absence of

any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as to public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Prevention of Corruption Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow.

Reliance is placed on (i) N.Sunkanna v. State of Andhra Pradesh; (ii) T.K.Ramesh Kumar v. State through Police Inspector Bangalore; (iii) Khaleel

Ahmed v. State of Karnataka; ((iv) Suraj Mal v. The State (Delhi Administration); and (v) Sita Ram v. The State of Rajasthan.â??

11. Therefore, it is settled law that mere possession and recovery of currency notes without proof of demand will not bring home the offence under

Section 7 since the demand of illegal gratification is sine qua non to constitute the offence.

12. Learned Amicus submitted that PW-6 had no authority to investigate the matter. Though admittedly, at the relevant time, PW-6 was working as

Deputy Superintendent of Police, A.C.B. and was authorised to investigate under Section 17 of the PC Act, the Solapur jurisdiction was not under

him. Learned Amicus submitted and rightly so, that there was some kind of strange enthusiasm on the part of PW-6 to take over the investigation,

which was not of his jurisdiction and that also without a written complaint and permission. Learned Amicus also submitted that even the preliminaries

required for PW-6 in his office to be met with before he commenced his actions have not been complied with. Learned Amicus pointed out that the

Solapur came within the jurisdiction of Superintendent of Police, A.C.B., Pune. Under Superintendent of Police, A.C.B., Pune, there were four units,

viz., Pune unit, Satara unit, Sangli unit and Solapur unit and PW-6 was attached to Pune unit. PW-6 admits that the Pune unit jurisdiction was of Pune

District and Pune City and Solapur was not attached to his unit and that was an independent unit. PW-6 admits that he even told complainant (PW-3)

that he should be approaching the Solapur unit. It seems PW-3 (complainant) orally told him that he wanted it to be handled only by the Pune unit

because accused may have persons known to him in Solapur unit or A.C.B. office of Solapur. I ask myself why should PW-6 take up the burden.

PW-6 could have sent complainant either to Sangli unit or Satara unit because both those units will be closer to Solapur than to Pune. Strangely, PW-6

did not even consider it necessary to take permission from the Superintendent of Police because he says that it is true that Superintendent of Police

can depute any person from one unit to the jurisdiction of other unit by his order. No such order is produced.

13. PW-6 says he asked complainant to come to Pune but complainant told him that he is coming to Indapur and therefore, PW-6 goes to Indapur and

meets complainant at the Rest house at 9.00 a.m. on 4th January 2000. It is at this Rest house where pre-trap panchnama is supposed to have been

prepared. But in the cross examination, it has come that there are no entries of his stay at Indapur. Moreover, PW-6 says that he has gone through the

Anti Corruption Manual and there are circulars issued from time to time giving directions. PW-6 admits that there are directions not to leave office

unless demand is verified. Though PW-6 says he has verified the demand at first, PW-6 did not make any such entry in the office record. PW-6 also

admits that he did not verify any document for identification of complainant and PW-6 relied only on his oral submissions. PW-6 admits that the basis

of trap on 4th January 2000 was the complaint given at Indapur and when the trap fails, it should be withdrawn by drawing panchnama. PW-6 admits

that there was no such panchnama drawn. PW-6 also admits that he did not send complainant again after withdrawal of the trap in order to confirm

about fresh demand and he has not recorded any fresh complaint about laying fresh trap the second time. PW-6 admits that in the post-trap

panchnama and in the FIR, there is no mention about PW-3 (complainant) removing the amount and handing over the amount to accused and accused

accepting it and keeping in his pant pocket. PW-6 admits in his examination in chief it was for the first time that he says that he saw complainant

giving the amount to accused and accused keeping the same in his pant pocket. In his examination in chief, PW-6 says on checking hands of accused,

he found anthracene powder on fingertips of both the hands of accused and also in his trouser pocket. PW-6 admits that in the post-trap panchnama

there are corrections which have not been countersigned by the panch witnesses. PW-6 also says â??it is true that immediately when accused was

caught he stated that amount was on his motor-cycle which he picked up and immediately he was caughtâ??. There are so many other contradictions

and loopholes which have all been listed in the impugned judgment. For the sake of brevity, I am not reproducing all those.

14. It gives a feeling that Investigating Officer himself seems to be an interested person by the way he took over the investigation without any

permission from the Superintendent of Police. Investigating Officer says he found Rs.9,000/- in the pocket of accused, of which Rs.8,000/- was the

trap amount. Of the balance Rs.1,000/-, there was traces of anthracene powder on one note of Rs.100/-. So, therefore, the said note of Rs.100/- was

attached while the balance of Rs.900/- was given to accused. But the panch witnesses are totally silent on this Rs.100/- note being attached.

15. The learned APP in fairness submitted that the Investigating Officer should not have without permission from the Superintendent of Police taken

over the investigation of another unit of which he had no jurisdiction and that also raises credibility on his conduct and evidence.

16. 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.

17. 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.

18. Appeal dismissed.

19. 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. 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.

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.