HIGH COURT OF GUJARAT

Bench: Justice M. R. Mengdey

Date of Decision: 29th May 2024

Case No.:

R/CRIMINAL APPEAL NO. 1789 of 2006

APPELLANT(S): State of Gujarat .....Appellant

VERSUS

RESPONDENT(S): Ramanbhai Bhenkabhai Patel & Anr. .....Respondents

Legislation:

Sections 7, 12, 13(1)(D), 13(2) of the Prevention of Corruption Act, 1988

Section 120 of the Indian Penal Code

Section 378(1)(3) of the Criminal Procedure Code, 1973

Subject: Criminal appeal against acquittal in a corruption case, focusing on the demand and acceptance of illegal gratification.

Headnotes:

Prevention of Corruption – Acquittal Appeal – State challenged acquittal of accused for offences under the Prevention of Corruption Act – High Court upheld acquittal, noting discrepancies in prosecution's case and lack of credible evidence against respondent No.2 – Highlighted importance of consistency and corroboration in evidence for conviction [Paras 1-13].

Evidence and Witness Testimony – Material Contradictions – Court noted significant contradictions in witness testimonies and evidence – Prosecution's case weakened by hostile witnesses and inconsistent statements regarding demand and acceptance of bribe – Emphasized need for clear and consistent evidence in corruption cases [Paras 9-10].

Legal Principles and Standards – Presumption of Innocence – Court reinforced the principle that acquittal should not be overturned unless findings

are perverse or manifestly erroneous – Referenced Supreme Court rulings underscoring cautious approach in reversing acquittals [Paras 8, 11].

Decision: Appeal dismissed – Acquittal confirmed – Trial court's judgment upheld due to lack of compelling evidence and contradictions in prosecution's case [Paras 13].

Referred Cases:

- Mallappa vs. State of Karnataka, 2024 (3) SCC 544
- Selvaraj v. State of Karnataka, (2015) 10 SCC 230
- Jagan M. Seshadri v. State of T.N., (2002) 9 SCC 639
- Sanjeev v. State of H.P., (2019) 5 SCC 436
- Allahrakha K. Mansuri vs. State of Gujarat, 2002(1) RCR (Criminal) 748

Representing Advocates:

Ms. Divyangna Jhala, Additional Public Prosecutor for the Appellant

Mr. Adil R. Mirza for the Respondent

JUDGMENT

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 31.1.2006 passed by learned Presiding Officer, 1st Fast Track Court, Valsad in Special (Corruption) Case No.61 of 2002, (Old Case No.10 of 1994) whereby the present respondents were acquitted of the charges for the offences punishable under Sections 7, 12, 13(1) (D) and 13(2) of the Prevention of Corruption Act, 1988 (herein after referred to as the "Act") as well as Section 120 of the Indian Penal Code.

2. In view of the contents of the death certificate of accused respondent No.1, who expired on 23.12.2017, the present appeal stands dismissed as abated qua the respondent No.1- accused. Accordingly, the present appeal is confined qua respondent No.2 only.

3. The facts and circumstances giving rise to filing of the present appeal are such that the first informant was carrying on his business by owning a shop. One day, the police authorities namely PSI Mr.Suthar and Ramanbhai Bhenkabhai Patel visited his shop and told his brother, who was present at the shop that they were dealing in molasses, which was used for the purpose

of preparation of country-made liquor and therefore, they were required to be booked and that, if they did not want to be booked for the said offence, an amount of Rs.15,000/- was demanded from them towards illegal gratification. After negotiations the amount was reduced to Rs.7,000/-. Ultimately it was agreed between the parties that the first informant shall pay the sum of Rs.4,500/- towards illegal gratification to one Mr.Lilachand. Since the first informant did not want to pay the amount of illegal gratification, he had approached the office of ACB, Valsad and had lodged the FIR pursuant to which investigation was carried out and charge-sheet came to be filed against the accused persons before the concerned Special court. Since the respondents pleaded not guilty, charge came to be framed against them vide Exh.3 and they were put to trial.

4. The prosecution has adduced oral as well as documentary evidence to bring home the charge levelled against the respondents.

5. Learned Special Court, Navsari after considering the evidence adduced on record was pleased to acquit the respondents from the charge levelled against them vide impugned judgment and order. Being aggrieved and dissatisfied with the same, the appellant State has preferred this appeal.

6. Heard learned APP Ms.Divyangna Jhala appearing for the appellant State. She submitted that as per the case of prosecution, the present respondent No.2 had accepted the amount of Rs.4,500/- towards illegal gratification from the first informant during the trap and was caught red-handed accepting the illegal gratification. The depositions recorded during the course of trial clearly support the case of prosecution to the aforesaid effect against the respondent No.2. She further submitted that learned Special Court has not considered the evidence adduced on record in proper perspective and has passed the impugned order without considering the evidence adduced on record in due and proper manner. She further submitted that the evidence adduced on record clearly indicates that it was the present respondent who had accepted the amount of illegal gratification in the presence of panch witness, therefore, the charges levelled against the respondent No.2 has been duly proved beyond reasonable doubt. Therefore, learned Special Court ought to have convicted the respondent No.2 for the charges against him. She therefore submitted to allow the present appeal and quash and set aside the impugned judgment and order by convicting the respondent No.2 for the offences in question.

7. Learned advocate Mr.Adil Mirza appearing for the respondent No.2 has opposed the present appeal contending that there are several material contradictions in the case of prosecution and as well as in the evidence adduced on record. He further submitted that actually the first informant had lodged a complaint against PSI Mr.Suthar, however, for the reasons best known to the prosecution as well as the police authorities, no FIR was registered against the said Mr.Suthar, therefore, the first informant had also lodged a complaint in that regard before the concerned Special Court. He further submitted that the present respondent No.2 had never accepted any amount of illegal gratification as is coming forth from the record. 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 toappeal 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 twoviews 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. The prosecution during the course of trial has examined the first informant namely Manjibhai Shivjibhai vide Exh.27. He in his deposition has clearly stated that it was Mr.Suthar who had demanded the amount of illegal gratification of Rs.15,000/from him, which was thereafter reduced to Rs.4,500/- and since he did not want to pay the amount of illegal gratification to him, he had gone to the office of the ACB and the FIR came to be lodged by him. He states that he has stated in his complaint before the ACB that PSI Mr.Suthar had demanded an illegal gratification from him, thereafter he was taken to a shop named Lucky Xerox Centre, whereby Mr.Lilachand was present and first informant had handed over the amount of Rs.4,500/- to the said Mr.Lilachand. The first informant, thereafter, has been declared to have turned hostile and after having been declared as hostile witness, he has reiterated whatever was written in his statement, which was recorded during the course of investigation. In his cross-examination at the hands of defence counsel, the first informant has categorically stated that the amount of illegal gratification was demanded by PSI Mr.Suthar and the same was finally settled for Rs.4,500/- and Mr.Lilachand had accepted amount of illegal gratification from him as agreed between him and Mr.Suthar. The amount of illegal gratification was never demanded by Ramanbhai and Dhansukhbhai, that is respondent Nos.1 and 2. He also states that he had given the complaint to the ACB against Mr.Suthar and Mr.Lilachand and not against the present respondents. The present respondents had never demanded any amount of illegal gratification from him nor he had paid any such amount to any of the present respondents. Thus, upon perusal of the deposition of this witness, it clearly appears that it was PSI Mr.Suthar who had demanded the amount of illegal gratification from him and the first informant had also lodged a complaint in this regard against PSI Mr.Suthar only. However, for the reasons best known to the prosecution as well the police authorities, neither Mr.Suthar nor Mr.Lilachand have been arraigned as an accused in the FIR, nor any proceedings appear to have been initiated against them.

10. As per the case of prosecution, it was present respondent No.2 who had accepted the amount of illegal gratification from the first informant. It is also the case of prosecution that the respondent No.2 had accepted the amount of illegal gratification from the first informant in a polythene bag, whereas upon perusal of the deposition of first informant namely Manjibhai, wherein he clearly states that as instructed by Mr.Suthar, he had handed over the amount of illegal gratification at a tea stall. The amount of illegal gratification also appears to have been recovered from a tea stall and not

from the present respondent No.2. Thus, there are material contradictions in the case of prosecution as well as in the evidence adduced on record by prosecution, so far as the demand and acceptance of amount of illegal gratification is concerned.

11. 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.

12. In view of the above discussions, this court is of the opinion that the learned Judge committed no error in passing the impugned judgment and order. Hence, the present appeal deserves to be dismissed.

13. In the result, the appeal fails and is *dismissed* qua respondent No.2. The judgment and order of the Trial Court dated 31.1.2006 stands confirmed. Bail and bail bonds of the accused, if any, stands discharged. R & P be send back to the concerned trial Court, forthwith.