Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1172 OF 2008

Selvaraj … Appellant

Versus

State of Karnataka … Respondent

J U D G M E N T

ARUN MISHRA, J.

1. The appeal has been preferred as against the judgment and order convicting and sentencing the appellant for commission of offence punishable under section 5(1)(d) of the Prevention of Corruption Act, 1947, thereby reversing the judgment of acquittal passed by the trial court and sentencing him for three months with a fine of Rs.50,000/- and in default to undergo SI for six months.

2. Briefly, the prosecution case is that the appellant was working as First Division Assistant in the District Treasury, Hassan. Peter Philip, CW-1 contacted him to secure refund of loan subsidy in a sum of Rs.13,990/-. He met the accused on 28.1.1988 who demanded illegal gratification of Rs.200/-. As the complainant CW-1 did not like it, he contacted the Lokayukta Police on 1.2.1988 and lodged a complaint. On the said date itself, trap was arranged. The Investigating Officer (IO) secured presence of PW-1 and PW-2, the two officials of the Zila Parishad to act as trap witnesses and smeared phenolphthalein powder on the bait money and handed over the same to CW-1 with instruction to pay the same on demand. PW-2 was instructed to act as a shadow witness.

3. Peter Philip, CW-1, went along with PW-2 to the said office. CW-1 requested the accused for passing the bill. On demand, CW-1 paid the money to the accused who kept the same under the book on his table. PW-2 witnessed the transaction. On a signal being given by CW-1, the IO along with PW-1 came to the scene, phenolphthalein test was done on hand wash, colour of the solution turned pink, the solution was collected in a separate bottle and sealed, the money was recovered from the possession of the accused as per the seizure memo.

4. The complainant CW-1 died before the commencement of the trial. The prosecution examined, in all, 9 witnesses, 23 documents were exhibited and 8

material objects were submitted. The Special Judge, Hassan, vide judgment and order dated 16.4.1999 acquitted the accused. On appeal, the High Court has reversed the conviction, hence, the appeal has been filed in this Court.

5. It was submitted by learned counsel appearing on behalf of the appellant that several material circumstances were considered by the learned Trial Judge which have not been adverted to by the High Court while reversing the judgment of acquittal. Thus, an illegality has been committed. The evidence which has been adduced could not be said to be reliable. The inherent improbabilities have been ignored and the material contradictions have been lightly brushed aside. There is no assessment of the evidence made by the High Court while reversing the judgment of acquittal.

6. Learned counsel appearing on behalf of the State has supported the judgment and contended that the High Court has given adequate reasons so as to discard the trivial contradictions. The prosecution has proved the guilt beyond the periphery of doubt. No case for interference in the appeal is made out.

After hearing learned counsel for the parties at length, and going into the oral and documentary evidence on record, we are of the considered opinion that in the peculiar facts and circumstances of the instant case, the judgment and order of acquittal ought not to have been interfered with by the High Court.

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7. The trial court has given varied reasons while acquitting the appellant. The trial court was cautious in considering the evidence in minute details as the complainant CW-1, Peter Philip, had died who could not be examined and subjected to cross-examination by the accused. Particularly, when the complainant had died and could not be subjected to cross-examination, in our opinion, quality and credibility of the evidence adduced by the prosecution cannot be dispensed with.

8. The accused was holding the post of First Division Assistant. He had been transferred on promotion as Head Accountant in Sub-Treasurey at Sagar. He stood relieved on 30.1.1988 before the date of incident. The accused was not working as First Division Assistant in the District Treasury Office at Hassan on 1.2.1988. The trial court has relied upon the relieving order Ex. D-1. The trial court has also observed that K.C. Rajan, PW-4, has admitted that the accused had been promoted and transferred as Head Accountant and was relieved on 30.1.1988. However, he had not handed over the charge, and on 1.2.1988 the accused did not mark his attendance as he was under transfer. The accused was supposed to hand over charge to one Shivaramaiah who was not available on 1.2.1988 as he had gone to attend a departmental examination. On 1.2.1988, the accused was preparing 'charge list' in the office. Relying upon Ex. P-8 the trial court came to the

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conclusion that on transfer of the accused on 1.2.1988, G.T. Shivaramaiah was placed in charge of the work which used to be looked after by the accused. Charge list has not been produced in case it was prepared by the accused on 1.2.1988. The accused on 1.2.1988 was not competent to transact any official business. Relying upon the work distribution register, attendance register and the relieving order, the version of K.C. Rajan, PW-4, has not been accepted by the trial court. It was also opined that the surrounding circumstances did not lend credibility to the prosecution version.

9. The trial court has also given reason for acquittal that K.C. Rajan, PW-4 was competent to give final clearance. The accused was not the final authority. There was some objection by the District Treasury Office. The bill was again presented for clearance to the Treasury on 21.1.1988. Thus, it was doubted that the accused had deliberately withheld the bill and demanded illegal gratification of Rs.200/- from Peter Philip, CW-1, on 28.1.1988. The same has been found to be improbable. Cogent evidence was required in the circumstances. The trial court has found that even before recording the First Information Report, the IO had sent for and secured the presence of the witnesses. Thus, the FIR was based upon the deliberations between Peter Philip, CW-1 and L.Somasekhar, PW-8. The trial court also found that there was a discrepancy from where the money was recovered; whether it was lying on the table or inside the drawer of the table. It was held that

the money was not recovered from the possession of the accused. The colour of the wash in MO-4 was not pink but contained dirty particles. The accused was not in possession of the subsidy bill. Thus, there was no reason to give him the money. The prosecution case that the accused was working as First Division Assistant on 1.2.1988 and was in-charge of the billing section, has not been found to be proved.

10. The High Court while reversing the judgment of acquittal in a short and cryptic judgment, has not cared to go into the various reasoning employed by the trial court. It has gone into only two factual aspects; firstly, into discrepancy as to time when the FIR was registered and witnesses were summoned, which was found not to be material one; and secondly, it observed whether the money was recovered from the drawer of the table or it was lying on the table, was insignificant as witnesses might not have remembered it due to lapse of time, which are the only reasons attributed for reversing the judgment of acquittal.

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11. It is apparent that the High Court has failed in its duty to come to the close quarter of the reasoning employed by the trial court while reversing the judgment of acquittal. Appreciation of evidence to hold it to be credible was required which has not been done by the High Court at all. In a cursory manner without re-appraisal of the evidence and probabilities, the judgment of acquittal has been reversed. Though the High Court has the power to re-appraise the evidence in

appeal against acquittal but that has not been done. It is incumbent upon the High Court while reviewing the evidence and to reverse the order of acquittal to consider all matters on record including the reasons given by the trial court in respect of the order of acquittal and should consider all the circumstances in favour of the accused which has not been done. In *Kanu Ambu Vish v. The State of Maharashtra* [1971 (1) SCC 503], this Court has laid down thus :

> "15. On a consideration of the evidence, we think that the reversal of the order of acquittal by the High Court was not warranted. Though the High Court has power on a review of the evidence to reverse the order of acquittal, yet in doing so it should not only consider all matters on record including the reasons given by the Trial Court in respect of the order of acquittal, but should particularly consider those aspects which are in favour of the accused and ought not also to act on conjunctions or surmises nor on inferences which do not arise on the evidence in the case. In the view we have taken, the Appeal is allowed, the judgment of the High Court reversed and the Appellant acquitted. The Appellant being on bail, his bail bond is cancelled."

12. 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 have, with the assistance of learned counsel for the parties, carefully perused the evidence, particularly, the evidence of PW-19, PW-27, PW-30, PW-31, besides PW-34. In our opinion, the appreciation of evidence by the trial court of these witnesses is sound and proper. On the other hand, the High Court has fallen into an error by treating the case as one under Section 13(1)(e) read with Section 13(2) of the 1988 Act and by proceeding to hold the appellant guilty by invoking the Explanation to Section 13(1)(e), which Explanation is conspicuous by its absence insofar as Section 5(1)(e) of the Act is concerned. We are unable to appreciate the submission of learned counsel for the State that PW-31, being the mother-in-law of the appellant who had supported the explanation offered by the appellant regarding receipt of Rs. 50,000/- and Rs. 40,000/- by him from her should not be believed. She is a prosecution witness. She was never declared hostile. The prosecution cannot wriggle out of her statement. As a matter of fact, the main sustenance is sought by the High Court of its view on the basis of her evidence. The explanation offered by the appellant has not been accepted by the High Court by invoking proviso to Section 13(1)(e). The High Court has opined that since the amount allegedly received by the appellant from his mother-in-law had "not been intimated in accordance with the provisions of law", his explanation is not acceptable and the appellant would be deemed to have committed criminal misconduct within the meaning of

> Section 13(2) of the 1988 Act. 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."

Similar is the decision of this Court in *State through Inspector of Police, A.P.v. K. Narasimhachary* [2005 (8) SCC 364] :

> "24. Having regard to the facts and circumstances of this case, we are of the opinion that two views are possible and the view of the High Court cannot be said to be wholly improbable; it cannot be said, in view of the discussions made hereinbefore, that the materials brought on record would lead to only one conclusion i.e. the guilt of the accused. The impugned judgment, therefore, is sustained."

13. Coming to the question whether the view taken by the trial court while acquitting the accused was probable, we find that in view of the fact that complainant Peter Philip, CW-1 died before the trial, as such he was not available

for cross-examination with respect to the facts which were in his knowledge as to the demand of bribe and its payment. We have to carefully look into the other evidence available. In the absence of the complainant, the onus lay upon the prosecution to adduce credible evidence and to prove the guilt beyond the periphery of doubt. K.M.Eregowda, PW-2, had stated that 10 to 12 other officials were sitting in the same room in which bribe was paid. Taking of bribe in the presence of 10 to 12 other officials of the Treasury Office is quite improbable. It assumes significance in the circumstances from which place the money was recovered; whether it was from the possession of the accused. PW-1 has stated that he found currency notes on the table, and the accused was standing behind the table. Whereas K.N. Eregowda, PW-2, has stated that the currency notes were kept by the accused beneath the book on the table. Another witness L.Somashekara, PW-8, IO, has stated that he recovered the money from the drawer of the table. The versions given by the three witnesses are different from each other. Even if we ignore the contradictions between the versions of PW-1 and PW-2, the contradiction with respect to place of recovery of money whether it was inside the drawer of table or was lying on the table beneath the book is material one and could not have been ignored. Apart from that, we find that the IO has stated that he had seized Ex. P-14, release order of subsidy on 1.2.1988 and it had been mentioned thereon that it had been paid. As subsidy stood paid, it was incumbent

upon the prosecution to prove when, in fact, it was paid. Whether it was paid on 1.2.1988 or earlier, which fact has not been proved as the very basis of the crime is release of subsidy, for which bribe was being demanded by the accused. Though it is not necessary to prove whether the accused was in a position to do the work for which he has demanded the bribe, or was having the competence to do the work for which he has demanded the bribe, however, in the peculiar facts of the instant case when the accused was under transfer, he had been relieved on 30.1.1988 and while Mr. G.T. Shivaramaiah was given the charge of the post accused was occupying, he was not on duty on 1.2.1988. Even if we accept that he was preparing the 'charge list' on 1.2.1988, which has not been produced, coupled with the fact that the complaint was lodged on the same date and it appears even before registration of the FIR, trap witnesses were called, all these facts improbabilised the version of the prosecution and the trial court had opined in the circumstances that there were some deliberations before recording the FIR. Since the complainant was not available for cross-examination, the view taken by the trial court could not be said to be the one which was not possible in the prevailing scenario. Even if two views are possible on the facts, one taken by the trial court did not call for interference, especially in appeal against acquittal.

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14. In *A. Subair v. State of Kerala* [2009 (6) SCC 587], this Court has laid down that illegal gratification has to be proved like any criminal offence and when the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest the conviction on such evidence. This Court while recording acquittal, has laid down thus :

> "31. When the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence. It is true that the judgments of the courts below are rendered concurrently but having considered the matter thoughtfully, we find that the High Court as well as the Special Judge committed manifest errors on account of unwarranted inferences. The evidence on record in this case is not sufficient to bring home the guilt of the appellant. The appellant is entitled to the benefit of doubt."

15. In *State of Kerala & Anr. v. C.P. Rao* [2011 (6) SCC 450], it has been laid down that recovery of tainted money is not sufficient to convict the accused. There has to be corroboration of the testimony of the complainant regarding the demand of bribe and when the complainant is not available for examination during the trial, court has to be cautious while sifting the evidence of other witnesses. Charge has to be proved beyond reasonable doubt. This Court has laid down thus :

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"12. Those observations quoted above are clearly applicable in this case. In the context of those observations, this Court in para 28 of *A. Subair* (supra) made it clear that the prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and the accused should be considered innocent till it is proved to the contrary by proper proof of demand and acceptance of illegal gratification, which is the vital ingredient to secure the conviction in a bribery case. In view of the aforesaid settled principles of law, we find it difficult to take a view different from the one taken by the High Court.

13. In coming to this conclusion, we are reminded of the well settled principle that when the court has to exercise its discretion in an appeal arising against an order of acquittal, the Court must remember that the innocence of the accused is further re-established by the judgment of acquittal rendered by the High Court. Against such decision of the High Court, the scope of interference by this Court is an order of acquittal has been very succinctly laid down by a three-Judge Bench of this Court in *Sanwat Singh v. State of Rajasthan* [1961 (3) SCR 120]. At page 129, Subba Rao, J. (as His Lordship then was) culled out the principles as follows :

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> "9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in *Sheo Swarup* case [(1934-34) 61 I.A. 398] afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons" are not intended to

> curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified."

16. In *G.V. Nanjundiah v. State (Delhi Administration)* [1987 (Supp) SCC 266], it was laid down that the allegation of bribe taking should be considered along with other material circumstances. Demand has to be proved by adducing clinching evidence. When the fact indicating that the complainant was aware of the amount, was not withheld by the accused, this Court disbelieved the allegation of the complainant meeting the accused and presence of strangers at the time of giving bribe was held to be unnatural.

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17. Thus, acceptance of the bribe has not been established by adducing cogent evidence. In view of the circumstances discussed above, the view taken by the trial court was a plausible one and could not have been interfered with by the High Court, that too without coming to the close quarters of the reasoning and re-appraisal of the evidence. The judgment of the High Court is not only cryptic but also no attempt has been made to look into the evidence – both oral and

documentary. Thus, we have no hesitation in setting aside the judgment and order passed by the High Court and restore that of the trial court. The appeal is allowed.

…….CJI
(H.L. Dattu)

……..J.
(Arun Mishra)

New Delhi;
August 18, 2015.

…….J.
(Amitava Roy)

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