REPORTABALE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 747 OF 2008

V. SEJAPPA ...Appellant

Versus

THE STATE BY POLICE INSPECTOR
LOKAYUKTA, CHITRADURGA ...Respondent

J U D G M E N T

R. BANUMATHI, J.

This appeal impugns the order dated 05.02.2008 passed by the High Court of Karnataka at Bangalore in Criminal Appeal No.851 of 2002, allowing the appeal filed by the State, thereby setting aside the order of acquittal passed by the trial court. The High Court held the appellant-accused guilty of the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. Complainant-N.Ramakrishnappa (PW-1) retired as Special Grade Junior Engineer, Well Boring Sub-Division of Department of Public Health Engineering at Chitradurga. The complainant received his service benefits such as group insurance

amount, medical reimbursement, GPF on 10.11.1997 and 14.11.1997 except D.C.R.G. and leave encashment benefits. The accused was then the Assistant Executive Engineer of the same Well Boring Sub-Division of Public Health Engineering at Chitradurga. On 16.12.1997, PW-1-complainant made an oral complaint before Police Inspector of Lokayukta, Chitradurga alleging that on 09.12.1997, the accused demanded a sum of Rs.5,000/- as illegal gratification from him for handing over 'No Objection Certificate' (NOC) to process his pension papers and other retiral benefits. Based on the said complaint, PW-12-Police Inspector of Lokayukta registered FIR in Crime No.6/97 against the appellant for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. PW-12 made arrangement to lay a trap of the accused on 17.12.1997. On 17.12.1997 at about 10.15-10.25 a.m., the raiding party consisting of the complainant-N.Ramakrishnappa (PW-1) along with Obaiah (PW-2) and R. V. Srinivasa (PW-3) went to the office of the accused. The raiding party and PW-3 were waiting outside the office. PW-1 and PW-2 went to the office and the accused is alleged to have demanded Rs.5,000/- from PW-1 and PW-1 gave tainted currency note of Rs.5,000/- and the accused received the money and kept it in a diary and the diary was kept inside his table. On receiving signal from PW-1, the raiding party went to the office of the accused and

questioned the accused and recovered the amount of Rs.5,000/- from the accused. The accused also tested positive when his right hand was immersed in the sodium carbonate solution. After obtaining necessary sanction from the government and on completion of investigation, a chargesheet was filed against the accused for the offences as above mentioned.

3. In order to establish the guilt of the accused, prosecution examined twelve witnesses and exhibited documents Ex.P1 to Ex.P34 and marked material objects-M.Os.1 to 18. Appellant-accused was questioned about the incriminating evidence and circumstances under Section 313 Cr.P.C. The accused denied the demand and pleaded that on 09.12.1997, he was at Bangalore on official duty and a false case was foisted against him. The accused has produced documents Exs.D1 to D8. Upon consideration of the evidence, the trial court held that the prosecution has failed to prove the demand and acceptance of illegal gratification of Rs.5,000/- by the accused from PW-1 for issuing 'No Objection Certificate' (NOC) for settlement of his retiral benefits. The trial court also held that in Ex.P31-Sanction Order issued by PW-8-S.Sampath, Under Secretary to Government, Public Works Department, there is no reference to the documents referred to by the authority for the purpose of granting sanction to prosecute the accused and held that there was no valid sanction to prosecute the

accused and thus acquitted the accused of all the charges.

4. Being aggrieved by the order of acquittal, the State preferred appeal before the High Court under Section 378 Cr.P.C. The High Court reversed the findings of the trial court and held that valid sanction order was obtained by the prosecution to prosecute the accused. The High Court allowed the appeal holding that the prosecution has proved the appellant's demand and acceptance of illegal gratification of Rs.5,000/- to do an official act in connection with issuance of 'No Objection Certificate' to PW-1 and held the accused guilty of offences. The High Court sentenced the accused to undergo imprisonment for six months under Section 7 of the Prevention of Corruption Act and further sentenced him to undergo two years imprisonment under Section 13(1)(d) read with Section 13(2) of the Act and both the sentences were ordered to run concurrently. Being aggrieved, the appellant-accused has preferred this appeal.

5. Learned counsel for the appellant Mr. Tara Chand Sharma contended that there could not have been any demand of bribe on 09.12.1997 and the High Court failed to appreciate the defence plea that the appellant had not attended the office in Chitradurga from 07.12.1997 to 10.12.1997 on account of his official duty in attending a seminar in Bangalore and that on the evening of 10.12.1997, the appellant alongwith PW-7 had taken delivery of a van allotted to

Chitradurga PHE, Sub-Division at Bangalore. It was further contended that the High Court erred in ignoring the testimony of PW-2 who has specifically stated that PW-1 gave a sum of Rs.5,000/- to the appellant stating that he was returning the money which was taken by PW-1 for purchasing diesel. It was further contended that the High Court failed to properly appreciate the defence plea in the light of evidence adduced by the prosecution and the High Court was not justified in interfering with the order of acquittal recorded by the trial court.

6. Per contra, learned counsel for the State Mr. V.N. Raghupathy submitted that upon appreciation of evidence, the High Court had rightly held that the prosecution has proved its case against the appellant by establishing demand and acceptance of illegal gratification of a sum of Rs.5,000/- by the appellant to perform an official act in connection with the issuance of 'No Objection Certificate' (NOC).

7. We have carefully considered the rival contentions and perused the impugned judgment and also the judgment of the trial court and the material on record.

8. Before we proceed to consider the evidence adduced by the prosecution regarding proof of demand and acceptance of illegal gratification by the appellant, we may refer to the findings of courts

below regarding Ex.P31-sanction order. Sanction Order was obtained from PW-8-S.Sampath, Under Secretary to Government, Public Works Department. Trial court took the view that there was no valid sanction since in the sanction order there was no reference to the authority which took decision to grant sanction to prosecute the appellant also there was no reference to the documents referred to by the authority to satisfy itself about the *prima facie* case against the appellant while granting sanction to prosecute the appellant. The trial court noted that the prosecution failed to produce any document which could suggest that the powers vested in the competent authority by virtue of Section 19 of the Act was delegated to PW-8 and therefore held that prosecution has not obtained a valid sanction order to prosecute the appellant.

9. Per contra, referring to the evidence of PW-8-Sampath, High Court held that there was a valid sanction and PW-8, Under Secretary was only carrying out the decision of the Government by issuing Ex.P31-sanction order. As per the evidence of PW-8-S.Sampath, Under Secretary to Government, PWD, the file regarding the sanction for prosecuting the appellant was submitted to the Secretary, Public Works Department and the same was forwarded to PWD Minister and upon being satisfied, PWD Minister granted the sanction. After sanction so was granted, PW-8 issued Ex.P31-Sanction

Order and thus PW-8-Under Secretary was only carrying out the decision of the Government by issuing Ex.P31-sanction order. Considering the evidence of PW-8, in our view, the High Court was right in holding that there was a valid sanction to prosecute the appellant. We concur with the view taken by the High Court. As elaborated infra, as the prosecution failed to establish the demand and acceptance of the illegal gratification by the appellant, we do not propose to delve further on the aspect of 'sanction'.

10. In order to constitute an offence under Section 7 of the Prevention of Corruption Act, 'proof of demand' is a *sine quo non.* This has been affirmed in several judgments including a recent judgment of this Court in *B. Jayaraj* v. *State of Andhra Pradesh* (2014) 13 SCC 55, wherein this Court held as under:-

> "**7.** Insofar as the offence under Section 7 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. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in *C.M. Sharma* v. *State of A.P.*(2010) 15 SCC 1 and *C.M. Girish Babu* v. *CBI* (2009) 3 SCC 779."

The same view was reiterated in *P.Satyanarayana Murthy* v. *District Inspector of Police, State of Andhra Pradesh and Anr.* (2015) 10 SCC 152.

11. It is the case of the prosecution that on 09.12.1997, the

appellant demanded a sum of Rs.5,000/- as illegal gratification from PW-1 to discharge the official act of forwarding PW-1's application for pension and for release of retiral benefits. PW-1-Ramakrishnappa has deposed that on 09.12.1997, the appellant demanded a sum of Rs.5,000/- as illegal gratification for sending 'No Objection Certificate' to the office of Accountant General at Bangalore for processing the appellant's pension papers. On the contrary, the appellant has taken the plea of *alibi.* The appellant contended that on 09.12.1997, when he is alleged to have demanded illegal gratification in his office at Chitradurga, he was actually on official tour in Bangalore from 07.12.1997 to 10.12.1997 for attending a seminar and that after attending the seminar, on 10.12.1997, he along with PW-7 took delivery of a van allotted to Chitradurga PHE, Sub-Division.

12. To appreciate the rival contentions, the evidence of PWs 4 and 5 becomes relevant. PW-4-Mohd. Shaffiulla, First Division Assistant, Well Boring Sub-Division, Public Health Engineering Department, Chitradurga has stated in his cross-examination that as per the contents of attendance register (Ex.P16), the column relating to the attendance of the appellant was blank from 03.12.1997 to 11.12.1997. PW-4 had admitted that about one week prior to the trap on 17.12.1997, a new van was allotted to Chitradurga PHE, Sub-Division and that the appellant and Pampanna-PW-7, Junior Engineer

had taken the delivery of the van at Bangalore and brought it to Chitraduga. It was stated that Chitradurga is at a distance of about 250 kms. from Bangalore. Though PW-4 has not specifically spoken about the official tour of the appellant, the fact remains that on 10.12.1997, the appellant had taken the delivery of the van allotted to Chitradurga PHE, Sub-Division from Bangalore.

13. PW-5-A.M.Prabhakara who was working as Executive Engineer, Well Boring Division, PHE at Bangalore from 01.06.1996 to 18.12.1999 has stated in his cross-examination that the appellant had come to Bangalore on 08.12.1997 for attending a seminar on 09.12.1997. PW-5 has further stated that on 10.12.1997 after taking delivery of the van allotted to the Chitradurga PHE, Sub-Division, the appellant left Bangalore in the evening. Much credence has to be attached to the evidence of PW-5-A.M.Prabhakara, working as Executive Engineer, Well Boring Division PHE at Bangalore as he is the competent witness to speak about the appellant's attendance in a seminar in Bangalore on 09.12.1997. Moreover, PW-7-Pampanna, who was working as a Junior Engineer in the Well Boring Sub-Division at Chitradurga has deposed in his cross-examination that he had accompanied the appellant to attend a seminar on 09.12.1997 at Bangalore. PW-7 further stated that on 10.12.1997, the appellant and he took the delivery of a van allotted to PHE Well Boring Sub-Division,

Chitradurga and they left Bangalore around 3.00 p.m. and travelled in the said van and reached Chitradurga at 7.30 p.m. on 10.12.1997.

14. Considering the evidence of PWs 4, 5 and 7 coupled with the attendance register marked as Ex.P16, the defence version that the appellant was not present in the office at Chitradurga from 08.12.1997 to 10.12.1997and that he was attending the seminar in Bangalore on 09.12.1997 is highly probablised. In his cross-examination, PW-1 denied the suggestion that on 09.12.1997, the appellant was not working in his office and that he had not met the appellant. However, the appellant has not disputed the fact that in a diary marked as Ex.P19, the appellant has mentioned that on 08.12.1997 he had attended the meeting at division office in Bangalore and that he had taken delivery of a van on 10.12.1997. Upon appreciation of evidence, trial court recorded a finding that the prosecution failed to prove that on 09.12.1997 appellant had made a demand of Rs.5,000/- from PW-1. The finding of the trial court is borne out by evidence on record and as a reasonable possible view, in our opinion, the High Court ought not have interfered with the findings of the trial court.

15. Let us now consider the claim of PW-1, the purpose for which he is said to have paid the bribe amount. As noticed earlier, PW-1 retired on 31.10.1997 as Special Grade Junior Engineer PHE at

Chitradurga. A perusal of Ex.D1 shows that the service register of PW-1 was sent to Borewell Sub-Division at Chitradurga on 22.11.1997. PW-1 has deposed that he submitted an application for leave encashment benefit (Ex.P3) on 04.11.1997 and since PW-1 had not given a covering letter for the same, it could not be processed. On 04.12.1997, PW-1 had given a covering letter for encashment of earned leave. During course of cross-examination, PW-4-Mohd. Shafiulla has admitted that as instructed by the appellant as per Ex.D2 (04.12.1997), on 07.12.1997 PW-4 prepared a detailed note. PW-4 further stated that due to the absence of appellant in the office from 07.12.1997 to 10.12.1997, he could not place the office note (Ex.D2) before the appellant and PW-4 has placed the office note (Ex.D2) before the appellant on 11.12.1997. It is also the evidence of PW-1 that the documents (Ex. P6 to P15) submitted by him for processing his pension papers were not attested as they were supposed to be. PW-1 was aware that he was expected to submit these documents after proper attestation. Referring to Ex. P6 to P15, trial court held thus:-

> "...from the contents of the documents marked as Ex.P3 to P15, it is not possible to hold that PW-1 had submitted declarations for payment of pension and gratuity on 02.12.97. On the other hand a perusal of these documents would give an indication that these documents were brought into existence on 17.12.97..."

Considering the evidence of PW-4 and documents and circumstances,

it appears that the papers for settling the retiral benefits were processed in the normal course.

16. Viewed in the above background coupled with absence of proof of demand, case of the prosecution and the evidence of PWs 1 and 2 regarding acceptance of money calls for close scrutiny. On 17.12.1997, PW-1-Ramakrishnappa went to the office of the appellant accompanied by PW-2-Obaiah and the raiding party and PW-3-Srinivasa were waiting outside the office. PW-2-Obaiah was standing near the door of the chamber of the appellant and inside the room PW-1 had handed over the tainted currency to the appellant. On receiving the signal from PW-1, the raiding party and PW-3 entered into the office of the appellant and tainted currency notes were recovered from the appellant.

17. PW-2-Obaiah in his testimony has stated that he was standing near the door of the chamber of the appellant and he saw PW-1-Ramakrishnappa giving a sum of Rs.5,000/- to the appellant stating that '*he is returning the amount which he had taken from the accused for purchasing the diesel*'. PW-2 further stated that PW-3 and Lokayukta police entered the office of the appellant and the currency notes were recovered from the appellant and when the right hand of the appellant was dipped in the sodium carbonate solution, it turned pink. In his cross-examination, PW-2-Obaiah denied the suggestion

that the appellant demanded and accepted a sum of Rs.5,000/- from PW-1 as a bribe for forwarding his pension papers. PW-2 did not support the prosecution version that PW-1 gave Rs.5,000/- to the appellant as a bribe; rather, PW-2 stated that while giving the amount to the appellant, PW-1 stated that it is in lieu of amount due for the diesel purchased. PW-2-Obaiah has been declared hostile as he failed to support the prosecution version with regard to payment of money as illegal gratification to the appellant. Evidence of PW-2 thus raises serious doubts about the acceptance of illegal gratification and the prosecution case.

18. It is well settled that the initial burden of proving that the accused accepted or obtained the amount other than legal remuneration is upon the prosecution. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then the burden of proving the defence shifts upon the accused and a presumption would arise under Section 20 of the Prevention of Corruption Act. In the case at hand, all that is established by the prosecution was the recovery of money from the appellant and mere recovery of money was not enough to draw the presumption under Section 20 of the Act.

19. After referring to *Surajmal v. State (Delhi Administration)* (1979) 4 SCC 725, in *C.M. Girish Babu* v. *CBI, Cochin, High Court of*

Kerala (2009) 3 SCC 779, it was held as under:-

> "**18.** In *Suraj Mal* v. *State (Delhi Admn.) (1979) 4 SCC 725,* this Court took the view that (at SCC p. 727, para 2) mere recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe."

In *State of Kerala and Anr.* v. *C.P. Rao* (2011) 6 SCC 450, it was held that mere recovery of tainted money is not sufficient to convict the accused and there has to be corroboration of the testimony of the complainant regarding the demand of bribe.

20. While dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it illegal gratification and that the prosecution has a further duty to prove that what was paid was an illegal gratification, reference can be made to following observation in *Mukut Bihari and Anr.* v. *State of Rajasthan* (2012) 11 SCC 642, wherein it was held as under:-

> "**11.** The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While

> invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person."

21. If the evaluation of the evidence and the findings recorded by the trial court does not suffer from any illegality or perversity and the grounds on which the trial court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of acquittal if another view is possible. 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. In *State through Inspector of Police, A.P.* v. *K. Narasimhachary* (2005) 8 SCC 364, this Court reiterated the well settled principle that if two views are possible, the appellate court should not interfere with the acquittal by the lower court and that only where the material on record leads to an inescapable conclusion of guilt of the accused, the judgment of acquittal will call for interference by the appellate court. The same view was reiterated in *T. Subramanian* v. *State of T.N.* (2006) 1 SCC 401.

22. In *Muralidhar alias Gidda and Anr.* v. *State of Karnataka* (2014) 5 SCC 730, this Court noted the principles which are required to be followed by the appellate court in case of appeal against order of acquittal and in paragraph (12) held as under:-

> "12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in *Tulsiram Kanu AIR 1954 SC 1*, *Madan Mohan Singh AIR 1954 SC 637*, *Atley AIR 1955 SC 807*, *Aher Raja Khima AIR 1956 SC 217*, *Balbir Singh AIR 1957 SC 216*, *M.G. Agarwal AIR 1963 SC 200*, *Noor Khan AIR 1964 SC 286*, *Khedu Mohton (1970) 2 SCC 450*, *Shivaji Sahabrao Bobade (1973) 2 SCC 793*, *Lekha Yadav (1973) 2 SCC 424*, *Khem Karan (1974) 4 SCC 603*, *Bishan Singh (1974) 3 SCC 288*, *Umedbhai Jadavbhai (1978) 1 SCC 228*, *K. Gopal Reddy (1979) 1 SCC 355*, *Tota Singh (1987) 2 SCC 529*, *Ram Kumar (1995) Supp 1 SCC 248*, *Madan Lal (1997) 7 SCC 677*, *Sambasivan (1998) 5 SCC 412*, *Bhagwan Singh (2002) 4 SCC 85*, *Harijana Thirupala (2002) 6 SCC 470*, *C. Antony (2003) 1 SCC 1*, *K. Gopalakrishna (2005) 9 SCC 291*, *Sanjay Thakran (2007) 3 SCC 755* and *Chandrappa (2007) 4 SCC 415*. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:
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> (*i*) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;
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> (*ii*) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;
>
> (*iii*) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are 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, the reluctance on the part of the appellate court in interfering with such conclusions is

fully justified; and

(*iv*) Merely because the appellate court on reappreciation 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. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

23. In the present case, trial court recorded an order of acquittal on the evidence and circumstances:-(i) delay in lodging the complaint; (ii) even though the appellant is alleged to have made the demand on 09.12.1997 at Chitradurga, absence of the appellant in Chitradurga from 07.12.1997 to 10.12.1997 and absence of proof of demand; (iii) doubts raised regarding the submission of the documents Ex. P6 to P15 by PW-1 for processing the pension papers and settling the retiral benefits and (iv) inconsistency in the evidence of prosecution witnesses in establishing the acceptance of the amount by the appellant.

24. Absence of proof of demand on 09.12.1997, coupled with PW-2's evidence that the amount was paid by PW-1 to the appellant towards purchase of diesel raises serious doubts about the amount being paid by PW-1 as illegal gratification. High Court neither considered the defence plea of *alibi* nor it held that the decision of the trial court was erroneous or perverse. In our view, evaluation of the evidence made by the trial court while recording an order of acquittal does not suffer from any infirmity or illegality or manifest error and

the grounds on which the order of acquittal is based cannot be said to be unreasonable. While so, High Court was not justified in interfering with the order of acquittal and the impugned judgment cannot be sustained.

25. In the result, appeal is allowed and the impugned judgment of the High Court is set aside and the order of trial court acquitting the appellant of the charges is restored. The appellant is on bail, his bail bonds stand discharged.

.....J.
(DIPAK MISRA)

.....J.
(R. BANUMATHI)

New Delhi;
April 12, 2016