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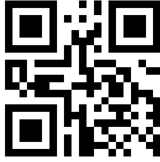

THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./182/2010

THE STATE OF ASSAM,
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM.

VERSUS

MAHENDRA DIHINGIA,
S/O LATE LILARAM DIHINGIA, R/O NIZAKUM, MAKUMTILLA, P.S. MARGHERITA, DIST. TINSUKIA

Advocate for the Petitioner : ADDL PP,ASSAM

Advocate for the Respondent : MISSG GOSWAMI

-B E F O R E-

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

For the Appellant	: Mr. M. P. Goswami, Addl.PP
For the Respondents	: Mr. P. M. Dastidar, Advocate.
Date of hearing	: 12.09.2023
Date of judgment	: 12.09.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State of Assam/appellant. Also heard Mr. P. M. Dastidar, learned counsel for the respondent/accused.

2. The present appeal under Section 378 of the Code of Criminal Procedure, 1973 is preferred by the State of Assam against the Judgment and Order dated 14.07.2009 passed by the learned Special Judge, Assam at Guwahati in Special Case No. 3/2005, whereby the respondent/accused was acquitted from the charge under Section 9 of the Prevention of Corruption Act, 1988.

3. The prosecution case was launched on the basis of an ejahar dated 15.10.1997 filed by the PW-1 (Dambaru Konwar) inter alia alleging that on 15.10.1997, the accused/respondent demanded bribe of Rs. 3000/- from him for converting his post from plan post to non-plan post.

Accordingly, the informant/PW-1 handed over Rs.3000/- containing signatures of the SDO, Civil, Margherita Sub-Division to the accused for that purpose. The accused person accepted the bribe.

4. On the basis of the said ejahar, the Margherita Police Station registered a case being Margherita P.S. Case No. 142/97 and took up the investigation. After completion of the investigation, the investigating officer laid the charge sheet under Section 5(1)(d) of the Prevention of corruption Act, 1988 against the respondent/accused.

5. On the appearance of the accused and so also hearing of the learned counsel of both the parties, the learned committal Court committed the matter to the Court of learned Special Judge, Assam, Guwahati. Charges were framed on 19.06.2006 against the respondent/accused and was read over and explained to the accused/respondent to which he pleaded not to be guilty and claimed to be tried. Accordingly, the trial was commenced.

6. To bring home the charges, the prosecution examined as many as 11 (eleven) witnesses and one defence witness has been adduced on behalf of the accused/respondent. Two persons were also examined as the Court Witnesses. The statement of the accused/respondent was recorded under Section 313 of Cr.P.C.

7. Thereafter, the learned trial Court below acquitted the present accused/respondent from the charge under Section 9 of the Prevention of Corruption Act, 1988 under its Judgment and Order dated 14.07.2009. Assailing such judgment and order, the present criminal appeal is filed by the State.

8. The learned trial Court below acquitted the present

respondent/accused basically on two counts, firstly, that the sanction order granted by the employer was defective and secondly, that the prosecution has failed to prove beyond reasonable doubt that the accused/respondent demanded bribe and same was given as per demand by the informant i.e. PW-1.

9. The learned trial Court below has came to a conclusion that the recovery of tainted money from the possession of the accused/respondent was not proved. It was further findings of the learned trial Court below that the tainted money which had allegedly been signed by PW-11, even was not exhibited nor the alleged signature put by the PW-11 in the tainted money, were proved. Therefore, according to the learned Court below the prosecution has failed to establish beyond reasonable doubt that there was demand of bribe and the same demand was made through the trap and recovery was made.

10. Law is by now well settled that more particularly the Hon'ble Apex Court in the case of ***Umedbhai Jadavbhai –Vs- State of Gujrat reported in 1978 1 SCC 288*** held that once an appeal against acquittal is entertained, the High Court is entitled to re-appreciate the entire evidence independently and come to its own conclusion.

11. Law is equally well settled that while doing so, the appellate Court is to give due importance to the decision arrived at by the learned trial Court below after proper appreciation of evidence.

12. In the case of ***Guru Dutta Pathak –Vs- State of Uttar Pradesh*** reported in ***2021 6 SCC 166***, the Hon'ble Apex Court after elaborately discussing different earlier decisions of the Hon'ble Apex Court laid down the following propositions and principles of law to be

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followed while dealing with an appeal against acquittal. Such determination and discussions were made at paragraphs 15 to 20 which are quoted herein below:-

15. In Chandrappa v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under: (SCC p. 432, para 42) "(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded. (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him 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, the accused

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having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

16. In Ghurey Lal v. State of U.P (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20) "20. … an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In State of U.P. v. Banne (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28) "(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

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(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal." A similar view has been reiterated by this Court in Dhanapal v. State (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference." (emphasis supplied) 7.2.1 When the findings of fact recorded by a court can be held to be perverse has been dealt

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with and considered in paragraph 20 of the aforesaid decision, which reads as under:

"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn (1984) 4 SCC 635, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v. CCE 1994 Supp. (3) SCC 665, Gaya Din v. Hanuman Prasad (2001) 1 SCC 501, Aruvelu v.

State (2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P (2009) 10 SCC 636)." (emphasis supplied) 7.2.2 It is further observed, after following the decision of this Court in the case of Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with".

13. It is also by now well settled that proof of demand for bribe by a public servant and its acceptance by the official is an essential

ingredients for establishing an offence under Section 9 of the Prevention of Corruption Act, 1988. Thus, proof of demand of bribe by a public servant and its acceptance by him is a *sine qua non* for establishing the offence under Section 9 of the prevention of Corruption of Act, 1988.

14. In the backdrop of the aforesaid settlement propositions of law, now let this Court examined the present case.

I. PW-1, Sri Dambaru Konwar was the informant who deposed that at that relevant point of time, the accused was working as Secretary of Nizmakum Primary Teacher Centre and as per norms he was to collect the salary of the teachers from the bank and to distribute it to the respective teachers of the concerned circle. It was also deposed by him that the accused demanded Rs. 4,000/- from him for converting his post from plan to non-plan scheme. Accordingly, he informed the matter to the SDO (Civil), Margherita (PW-11) who put her signature on the currency notes of Rs. 3,000/- consisting of 10 Rupee currency notes of 300 Nos. and asked him to discuss the matter with the Sub Divisional Police Officer (SDPO). Accordingly, he reported the matter to the SDPO, who asked to hand over the said Rs. 3,000/- to the accused. According to him, he was accompanied by one Purna Barua, L.D.Assistant of Nizmakum High School (PW-7) and one Lakhya Konwar (PW-6). According to him, he handed over the money to the accused in his residence and after handing over the money, he immediately informed the matter to the SDPO over phone and thereafter the SDPO along with other police officials rushed to the house of the accused made search of the house and

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premises and recovered the amount of Rs. 3,000/- from the possession of the accused and thereafter, the FIR was lodged. He exhibited the FIR as Exhibit-1 and Exhibit-1(1) was his signature. He also testified that in the FIR, PW-6 and PW-7 were shown as witness to the occurrence.

During cross-examination, he deposed that he could not recall who put the signature in the name of witness Purna Barua (PW-7). He also deposed that there was an election to the post of Centre Secretary in the year 1997 wherein the informant as well as the accused contested the said election and the informant was defeated, however, he denied the suggestion that due to such defeat, he had lodged the FIR.

II. PW-2, Indreswar Dihingia who was seizure witness of the seizure of the tainted currency notes. In his examination-in-chief, deposed that Exhibit-2 was the seizure list and Exhibit-2(1) was his signature in the seizure list as witness. He further testified that one Purna Barua (PW-7) and Mohi Phukan (PW-3) were present along with him at the relevant time when police had done the search of the house of the accused. He proved the Exhibit-2(2) and Exhibit-2(3) as the signatures of Purna Barua and Mohi Phukan. The said witness was declared hostile and thereafter the prosecution side as well as the defence side cross-examined him.

During cross-examination by the defence, he stated that at the time of putting signature in the seizure list it was a blank paper and nothing was written thereon by the police. He did not see the police recovering three boundles of 10 rupee currency notes from

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the house and premises of the accused. Thus, this witness during cross examination testified that he has not seen the seizure of the signed and tainted notes and his signature was taken by police in a blank paper.

III. PW-3 Mohiram Phukan was another seizure witness of the seizure list who proved the seizure list as Exhibit-2. He was also declared hostile.

During cross-examination, he deposed that his signature was taken in a blank paper and he has not seen the recovery and seizure of the tainted notes from the house of the accused.

IV. PW-4. Anupam Baruah was another seizure witness. During examination-in-chief deposed that vide Exhibit-2, police had seized Rs. 3,000/- from the house and premises of the accused and he also put his signature in the seizure list which was exhibited as Exhibit-2.

During cross-examination by the defence, he deposed that at the time of putting his signature, nothing was written in the Exhibit-2 and it was a blank paper and he had no personal knowledge pertaining to demand of money by the accused from the informant. It was further testified that the on the date of occurrence, the SDPO, Margherita, came to the place of occurrence. He also deposed during cross-examination that the accused used to keep the salaries of teachers for distribution of payment and interestingly, this prosecution witness during cross-examination deposed that on the day of occurrence, he went to the house of the accused to collect the salary of his father and at the time, the

informant came to the residence of the accused and he gave three boundles of 10 rupees currency notes to the accused and in lieu of that he took 30 nos. of 100 rupee currency notes from the accused by way of exchange.

He further deposed during cross-examination that the informant told the accused that he was getting inconvenience to carry the boundles of 10 rupee currency notes for which he required 100 rupee currency notes.

This witness was neither declared hostile by the prosecution nor he was cross-examined.

V. The SDPO cum Investigating Officer, has in the meantime expired and the investigation was continued by PW-5 and PW-6. Their evidences are not very vital for the purpose of determination of the present appeal preferred by the State.

VI. PW-11 Smt. L. S. Changsan the then SDO, Civil, Margherita. According to her, the informant approached her and informed that the accused had demanded bribe for conversion of his post from plan to non-plan so she had informed the matter to the SDPO and accordingly, the SDPO had prepared one scheme to trap the accused along with bribe money. She put her signature on the tainted money and the accused was caught red-handed along with the bribe money and also the police had prepared one seizure list.

During cross-examination, she deposed that she had no personal knowledge regarding demand of money by the accused and also stated before the Court that she did not find the seized currency

notes.

VII. After the examination of prosecution witnesses were over, the accused was examined under Section 313 of Cr.P.C and he denied the allegation and the incriminating materials put against him and examined one witness namely Purneswar Gogoi, as DW-1. The said DW-1 is the Block Elementary Education Officer of Margherita. He exhibited one document to prove that the post held by the informant was a permanent post and he further deposed that in the year 01.03.1997, the post of the informant was converted from plan to non-plan.

During cross-examination, he deposed that his immediate superior is District Elementary Education Officer and while coming for deposition, he has not taken written permission from his superior officer. His examination is not relevant for determination of an offence under Section 9 of the Prevention of Corruption Act, 1988.

VIII. Another witness was examined as CW-1 namely Sri Shiba Prasad Maran, ASI of Police. He deposed that his duty was to look after the police station malkhana and also to perform law and order duty as and when entrusted by the superior officer. He took over the charge of the Malkhana on 28.04.2005 and he did not receive the MR No. 62/97 related to the Margherita P.S. Case No. 142/97 from his predecessor Mr. Prafulla Kr. Saikia, ASI. He further deposed that he had received only 2 items from the year 1997 namely, MR No. 30/97 and MR No. 37/97, which relate to the other cases. MR No. 62/97 relates to 3 (three) boundles of 10 rupees notes consisting of one thousand rupees in each totaling of Rs. 3,000/-

only which were not found available in the Police Station Malkhana. He proved the Exhibit-6 as the list of pending MRs of Margherita Police Station which has been certified to be a true copy by the Sub Divisional Police Officer, Margherita.

15. Thus from the aforesaid, it is seen that though the informant had specifically stated that demand of bribe by the accused for converting his post from plan to non-plan and accordingly, he satisfied such demand and a trap was laid and the money paid by the informant as bribe money/tainted money was recovered from the possession of the accused, however, the prosecution witnesses, according to the prosecution, in presence of whom such tainted money was recovered failed to prove such recovery inasmuch as all the witnesses of such seizure has deposed that they had not seen the seizure and their signatures were taken by police in blank paper. One seizure witness, as discussed herein above, though admitted that the informant handed over the money to the accused, however, the accused returned him 100 rupees notes in exchange and the informant requested for such exchanges as it difficult to carry 10 rupees notes. Such witness was not even declared hostile by the prosecution or was cross-examined.

16. In view of the aforesaid, the acceptance of bribe money was not proved. Further, the tainted cash, allegedly recovered were not even exhibited rather according to the CW-1, such seized tainted money were not even available in Malkhana. Therefore, the findings of the learned Sessions Court cannot be said to be perverse finding inasmuch as this Court is in total agreement with the findings of the learned Sessions Judge that the prosecution has failed to establish beyond reasonable

doubt that there was demand of bribe by the accused and the same was met by the informant.

17. Therefore, this Court finds no substantial and compelling reasons, and/ good or sufficient grounds or any circumstances, not to say any circumstances to interfere with the decision rendered by the learned Sessions Judge below.

18. Accordingly, the criminal appeal preferred by the State against the Judgment and Order dated 14.07.2009 passed by the learned Special Judge, Assam at Guwahati in Special Case No. 3/2005, whereby the respondent/accused was acquitted from the charge under Section 9 of the Prevention of Corruption Act, 1988 stands dismissed and the judgment impugned is upheld.

19. LCR be returned back.

J U D G E

Comparing Assistant

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