IN THE HIGH COURT OF ORISSA, CUTTACK

CRLLP No. 26 of 2015

From the judgment and order dated 30.10.2014 passed by the learned Special Judge (Vigilance), Bhubaneswar in T.R. Case No.11 of 2011.

State of Odisha (Vig.) …… Petitioner

-Versus-

Debasis Dixit …… Opposite Party

For Petitioner: - Mr. Sangram Das
Standing Counsel (Vig.)

For Opp. Party: - Mr.J. K. Panda

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Order:13.01.2023

S.K. SAHOO, J. Heard Mr. Sangram Das, learned Standing Counsel for the Vigilance Department for the petitioner. Mr. J.K. Panda, learned counsel for the Opp. Party is present.

2. This leave petition under section 378 of Cr.P.C. has been filed by the State of Odisha (Vigilance) seeking for leave to prefer an appeal against the impugned judgment and order

dated 30.10.2014 passed by the learned Special Judge (Vigilance), Bhubaneswar in T.R. Case No.11 of 2011 in acquitting the Opp. Party of the charges under section 7 and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act (hereafter 'P.C. Act') for demanding and accepting Rs.10,000/- (rupees ten thousand) from the complainant as bribe for passing the bill relating to execution of work.

3. The prosecution case, in short, is that the complainant (P.W.2) had undertaken a work from OUAT, Bhubaneswar for construction of staff quarters at Krushi Vigyan Kendra, Angul and he had completed the work and he had received about Rs.8,00,000/- (rupees eight lakhs), but he was to get further amount of Rs.3,90,000/- (rupees three lakhs ninety thousand) for which he was repeatedly approaching the Opp. Party who was the Asst. Engineer, but he did not pay any heed to it. On 03.05.2010, when the complainant met the Opp. Party and requested him to pass his bill, the Opp. Party demanded an amount of Rs.15,000/- (rupees fifteen thousand) and on the request of the complainant, he asked the complainant to pay at least Rs.10,000/- (rupees ten thousand) to pass the bill.

The complainant lodged an F.I.R. before the Superintendent of Police, Vigilance basing on which Bhubaneswar

Vigilance P.S. Case No.22 of 2011 was registered. A trap party was formed and during preparation at Vigilance Office, the complainant narrated the above facts, produced ten numbers of 1000 rupee G.C. notes which were treated with phenolphthalein powder and given to him to hand over the same to the Opp. Party on demand. The trap party went to the office of the Opp. Party where the complainant paid the tainted money to the respondent on demand and immediately the trap party rushed to the office of the Opp. Party, recovered the tainted money from his table, seized the same along with the connected work file. After obtaining the chemical examination report and sanction from the competent authority and on completion of investigation, chargesheet under the aforesaid offences was submitted against the Opp. Party.

4. The defence plea of the Opp. Party is that he had never demanded any money from the complainant for passing the bill nor received any bribe from him. On 05.05.2010 the complainant approached him and he asked the complainant to complete the PHD and electrical work and to deliver the possession of the house whereafter the final bill would be prepared. His further plea is that his higher authority in connivance with the complainant had filed a false case.

5. During course of trial, the prosecution examined eleven witnesses.

P.W.1 Prasant Kumar Pradhan was the Director, Physical Plant, P.W.2 Sushanta Sundaray is the complainant in the case, P.W.3 Debendranath Rout, P.W.4 Surendra Pradhan was the Section Officer of S.F.S.L., P.W.5 Rama Chandra Nayak, the then Junior Engineer in-charge of the construction work, P.W.6 Debi Prasad Ray, the then V.C. of O.U.A.T., Bhubaneswar, P.W.7 Pradip Kumar Mohanty, the then Labour Officer acted as overhearing witness, P.W.8 Rabindra Kumar Panda is the Trap Laying Officer, P.W.9 Siba Sankar Patra was the then C.T.O., P.W.10 Trinath Patel was the then Deputy Superintendent of Police, Vigilance and P.W.11 Harapriya Nayak is the Investigating Officer of the case.

The prosecution exhibited twenty six numbers of documents. Ext.1 is the report of P.W.2, Ext.2 is the preparation report, Ext.3 is the detection report, Ext.4 is the 164 Cr.P.C. statement of P.W.2, Exts.5 and 8 are the seizure lists, Ext.6 is the four fold paper, Ext.7 is one file K.U.K. Angul, office of D.P.P., OUAT, Exts.9 and 22 are the zimanama, Ext.10 is the C.E. report of P.W.4, Ext.11 is the M.B. book, Ext.12 is the sanction order, Exts.13, 14 and 15 are the seized glass bottles,

Ext.16 is the seizure list of one sealed glass bottle, Ext.17 is the seizure list relating to seizure of tainted money, Ext.18 is the seizure list relating to seizure of one sealed glass bottle, Ext.19 is the seizure list relating to the file cover, Ext.20 is the statement recorded under section 164 of Cr.P.C., Ext.21 is the spot map, Ext.23 is the specimen brass seal on a paper, Ext.24 is the copy of the preparation report seized by P.W.8 on production by P.W.9, Ext.25 is the file containing drawing, work order, F-2 agreement etc. (containing twenty eight sheets) and Ext.26 is the copy of the forwarding report.

No witness was examined on behalf of the defence.

6. The learned trial Court after analyzing the evidence on record has observed as follows:-

> "32. As discussed hereinbefore the complainant (P.W.2) and the accompanying witness (P.W.7) have not supported the prosecution case about the demand and acceptance of the bribe money by the accused at the spot. So, the defence plea that the accused had never demanded and accepted the bribe money from the complainant cannot be said to be wholly unfounded. The evidence regarding prior demand is shaky and not acceptable. Want of signature of the accused in the detection report without any explanation and

suppression of report dt.04.05.2010 lodged by the complainant before the S.P., Vigilance without any explanation are other circumstances which go against the prosecution. The evidence on record relating to recovery of the tainted money i.e. who brought out the same from the table is inconsistent. Likewise, the evidence of the witnesses is contradictory as to whether the bill pending with the accused was a final bill and if all the work of civil, electric, PHD in respect of the building was completed or not, so also whether the possession of the building was handed over or not prior to 05.05.2010. Cumulative effect all these infirmities create some doubt about the bonafide of prosecution case. On a conjoint reading of the evidence on record as discussed above and particularly in the light of statements of the hostile witnesses (P.Ws.2 and 7) who have not supported the prosecution case as regards the vital ingredients of demand and acceptance, so also keeping in view the position of law as cited above, I am of the view that prosecution has not been able to prove its case as regards the demand and acceptance of bribe of Rs.10,000/- by the accused for passing the bill of the complainant beyond all reasonable doubt and the benefit of such doubt should be extended in favour of the accused."

7. Mr. Sangram Das, learned Standing Counsel for the Vigilance Department contended that even though the complainant (P.W.2) and the accompanying witness (P.W.7) have not supported the prosecution case about the demand and acceptance of the bribe money by the Opp. Party at the spot, but when the Trap Laying Officer (P.W.8) has stated that when he challenged the Opp. Party about the receipt of tainted money, he fumbled and though he thereafter denied to have received any money from P.W.2, but his both hand wash was taken separately and its colour changed to pink and on being asked, the Opp. Party brought out the tainted money of Rs.10,000/- which was kept under a file and P.W.9 compared the numbers of the tainted noted with the numbers earlier noted which tallied and all these evidence substantiates about the acceptance of the tainted money and its recovery. He argued that the Opp. Party has not offered any satisfactory explanation in his 313 Cr.P.C. statement as to how the tainted money came under the official file and in view of such acceptance and recovery, presumption under section 20 of the P.C. Act would be attracted and therefore, it is a fit case where leave should be granted to prefer an appeal against the judgment and order of acquittal.

8. The right of appeal against acquittal vested in the State Government should be used sparingly and with circumspection and it is to be made only in case of public importance or where there has been a miscarriage of justice of a very grave nature.

Law is well settled as held in case of **Babu -Vrs.- State of Uttar Pradesh reported in A.I.R. 1983 Supreme Court 308** that in appeal against acquittal, if two views are possible, the appellate Court should not interfere with the conclusions arrived at by the trial Court unless the conclusions are not possible. If the finding reached by the trial Judge cannot be said to be unreasonable, the appellate Court should not disturb it even if it were possible to reach a different conclusion on the basis of the material on the record because the trial Judge has the advantage of seeing and hearing the witnesses and the initial presumption of innocence in favour of the accused is not weakened by his acquittal. The appellate Court, therefore, should be slow in disturbing the finding of fact of the trial Court and if two views are reasonably possible on the evidence on the record, it is not expected to interfere simply because it feels that it would have taken a different view if the case had been tried by it.

In case of **Ghurey Lal -Vrs.- State of Uttar Pradesh reported in (2008) 10 Supreme Court Cases 450**, it is held as follows:-

> "75….The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable."

In case of **Bannareddy -Vrs.- State of Karnataka reported in (2018) 5 Supreme Court Cases 790**, it is held as follows:-

> "10….It is well settled principle of law that the High Court should not interfere in the well reasoned order of the trial court which has been arrived at after proper appreciation of the evidence. The High Court should give due regard to the findings and the conclusions reached by the trial court unless strong and compelling reasons exist in the evidence itself which can dislodge the findings itself."

Thus, an order of acquittal should not be disturbed in appeal under section 378 of Cr.P.C. unless it is perverse or unreasonable. There must exist very strong and compelling reasons in order to interfere with the same. Findings of fact

recorded by a Court can be held to be perverse, if the same have been arrived at by ignoring or excluding relevant materials on record or by taking into consideration irrelevant/inadmissible materials or if they are against the weight of evidence or if they suffer from the vice of irrationality.

9. Law is well settled that mere receipt of the amount by the accused is not sufficient to fasten his guilt in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. The prosecution has to successfully prove the foundational facts i.e. the demand, acceptance of bribe money and recovery of the same from the accused and then only the statutory presumption under section 20 of the P.C. Act against the guilt of the accused would arise and the accused has to adduce evidence relating to the rebuttal of such presumption. The burden rests on the accused to displace the statutory presumption raised under section 20 of the P.C. 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 P.C. Act. In a case where the accused offers an explanation for receipt of the alleged amount, while invoking the provisions of section 20 of 1988 Act, the Court

is required to consider such explanation on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. Therefore, whether all the ingredients of the offences i.e. demand, acceptance and recovery of illegal gratification have been satisfied or not, the Court must take into consideration the facts and circumstances brought on the record in its entirety and the standard of burden of proof on the accused vis-à-vis the standard of burden of proof on the prosecution would differ. It is only when this initial burden regarding demand and acceptance of illegal gratification is successfully discharged by the prosecution, then burden of proving the defence shifts upon the accused. The proof of demand of illegal gratification is the gravamen of the offences under sections 7 and 13(1)(d) of the P.C. Act and in absence thereof, the charge would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, de hors the proof of demand, ipso facto, would not be sufficient to bring home the charge under these two sections of the P.C. Act. (**Ref:- State of Punjab -Vrs.- Madan Mohan Lal Verma reported in A.I.R. 2013 S.C. 3368**, **State of Maharashtra -Vrs.- Dnyaneshwar reported in (2009) 44 Orissa Criminal Reports 425**, **Punjabrao -Vrs.- State of Maharashtra reported in A.I.R. 2002 S.C. 486**, **V. Sejappa -Vrs.- State**

reported in A.I.R. 2016 S.C. 2045, **Panalal Damodar Rathi -Vrs.- State of Maharashtra reported in A.I.R. 1979 S.C. 1191**, **Mukhitar Singh -Vrs.- State of Punjab reported in (2016) 64 Orissa Criminal Reports (S.C.) 1016**).

10. In view of the evidence available on record and in absence of any material produced by the prosecution to prove and demand and acceptance of the tainted money by the Opp. Party and since the decoy (P.W.2) and overhearing witness (P.W.7) have not supported the prosecution case and as rightly observed by the learned trial Court that there is significant discrepancy relating to recovery of tainted money from the Opp. Party, I find no illegality or impropriety in the impugned judgment. In my humble view, the learned trial Court has come to a just conclusion and acquitted the respondent of all the charges.

Therefore, I am not inclined to grant leave to the State of Odisha (Vigilance) to prefer any appeal against the impugned judgment and order of acquittal.

Accordingly, the CRLLP petition stands dismissed.

.....
S.K. Sahoo, J.

Orissa High Court, Cuttack
The 13th January 2023/PKSahoo