IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL NO. 2119 of 2006

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE M. R. MENGDEY Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**No**
2	To be referred to the Reporter or not ?	**No**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**No**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**No**

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THE STATE OF GUJARAT
Versus
NAGJIBHAI GOVINDBHAI PARMAR

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Appearance:
MR CHINTAN DAVE, APP for the Appellant(s) No. 1
MR A. U. SAPHIYA(9891) for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE M. R. MENGDEY**
Date : 30/05/2024
ORAL 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 09.06.2006 passed by the learned Special Judge, Fast Track Court No.2, Amreli in Special Case No.39 of 2003, whereby the present respondent was acquitted of the charges for the offences punishable under Sections 7, 13(1)(D) and 13(2) of the Prevention of Corruption Act, 1988 (herein after referred to as the “Act”).

2. The facts and circumstances giving rise to filing of the present appeal are such that in the Year – 2003, while the first informant viz. Bharatbhai Dhirubhai Dubhat was working as Sarpanch of Trakuda Gram Panchayat, the respondent herein was working as a Supervisor in the said Taluka Panchayat. The first informant had purchased a submersible pump and motor for Rs.33,200/- to be utilized in the village, as there was a water crisis in the village. The said amount had been spent by the first informant from his own pocket and he wanted the said amount to be reimbursed to him from the funds earmarked for Gokul Gram Panchayat. He had submitted all the documents for the said purpose before the Taluka Panchayat. The bills tendered by the first informant had already been sanctioned, however, the payment was yet to be made, and therefore, the first informant had approached the present respondent in the Office of Taluka Panchayat and requested him to make the payment for the amount in question, at that time, the respondent had demanded sum of Rs.1500/- from the first informant towards illegal gratification out of which the amount of Rs.1000/- was meant for his own-self, whereas the remaining amount of Rs.500/- was for the benefit of Account Clerk Mr.Pandya. As the first informant did not want to give illegal gratification, he had gone to the Office of A.C.B. Police Station, Amreli and informed the concerned P.I. about the matter. The Police Inspector arranged the trap. 3 currency notes in the denomination of Rs.500/- were tested under Phinopthelin powder and the same were put in pocket of the shirt of the complainant. After completing the preliminary panchnama, they went to the office of the respondent. Since the respondent was present in the office, the first informant

had called him to the Panshop where he along with the panch witness was present. Since the respondent felt some doubt, he went away on the pretext of answering the natures call and was watching the first informant and panch witness talking to each other, and thereafter, since the respondent felt confident, he called the first informant and asked him as to what had happened to the money. Upon which, the first informant had handed over a sum of Rs.1500/- to the respondent, and thereafter, after handing over the money to the respondent, the first informant had asked him that the deal between them was over. He also told him not to harass him in future if he comes to the respondent with some work. Thereafter, the first informant gave a signal to the A.C.B. Staff, who, thereafter, came to the spot and nabbed the respondent and the amount of illegal gratification had been recovered from the pocket of the respondent.

3. After the investigation, the charge-sheet came to be filed against the present respondent before the Special Court and since the respondent pleaded not guilty, he was put to trial by framing charge vide Exh.5 for the aforesaid offences.

4. The prosecution had examined as many as 6 witnesses to bring home the charge levelled against the respondent and several documents were also relied upon. The Special Court, after considering the evidence adduced on record, was pleased to acquit the respondent of the charges levelled against him vide impugned judgment and order.

5. Being aggrieved and dissatisfied with the impugned

judgment and order, the appellant-State has preferred the present appeal.

6. Learned APP appearing for the appellant-State has submitted that the Special Court has not considered the evidence adduced on record in proper perspective. The evidence adduced on record made amply clear that the present respondent was guilty of the charges levelled against him, however, despite the aforesaid clinching evidence, the Special Court has recorded the finding to the effect that the respondent is not guilty of the charges levelled against him. The Special Court has committed an apparent error of law and facts in recording the order of acquittal in favour of present respondent.

6.1 Learned APP has submitted that the Special Court ought to have considered the aspect of demand and acceptance of illegal gratification by the respondent had been duly proved, and therefore, ought to have convicted the respondent for the charges levelled against him.

6.2 Learned APP has submitted that the Special Court has sought to rely upon the minor contradictions in the evidence adduced by the prosecution against the respondent. He, therefore, submitted to allow the present appeal and quash and set aside the impugned judgment and order by convicting the respondent for the offences in question.

7. Learned advocate appearing for the respondent is not present when the matter is taken up for hearing.

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.
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> 25. No doubt, an order of acquittal is open to appeal 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 two views 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. It is alleged against the present respondent that while he was working as a Supervisor in Taluka Panchayat, the first informant had purchased a submersible pump and motor for Rs.33,200/- to be utilized in the village, as there was a water crisis in the village. The said amount had been spent by the first informant from his own pocket and he wanted the said amount to be reimbursed to him from the funds earmarked for Gokul Gram Panchayat. He had submitted all the documents for the said purpose before the Taluka Panchayat. The bills tendered by the first informant had already been sanctioned, however, the payment was yet to be made, and therefore, the first informant had approached the present respondent in the Office of Taluka Panchayat and requested him to make the payment for the amount in question, at that time, the respondent had demanded a sum of Rs.1500/- from the first informant towards illegal gratification out of which the amount of Rs.1000/- was meant for his own-self, whereas the remaining amount of Rs.500/- was for the benefit of Account Clerk Mr.Pandya.

10. As emerges from the record that before the trap was organized, the cheques for the amount in question had already been handed over by the present respondent to the first informant and it was only after the said cheques had been handed over to the first informant, the trap in question had taken place. The deposition of the first informant viz. Bharatbhai Dhirubhai requires consideration, at this stage. He, in his examination in chief, has narrated the story, as stated by him in the FIR. He further states that on the day of trap, he along with panch witness had gone to the office of the

respondent in a car. The car had stopped near a Panshop in front of office of the respondent. The first informant had first gone to the office to inquire as to whether the present respondent was present in the office and since the respondent was present in the office, he had called him to the Panshop where he along with the panch witness was present. Since the respondent felt some doubt, he went away on the pretext of answering the natures call and was watching the first informant and panch witness talking to each other, and thereafter, since the respondent felt confident, he called the first informant and asked him as to what had happened to the money. Upon which, the first informant had handed over a sum of Rs.1500/- to the respondent, and thereafter, after handing over the money to the respondent, the first informant had asked him that the deal between them was over. He also told him not to harass him in future if he comes to the respondent with some work. Thereafter, the first informant gave a signal to the A.C.B. Staff, who, thereafter, came to the spot and nabbed the respondent and the amount of illegal gratification had been recovered from the pocket of the respondent. In his cross-examination, he states that he had not stated in his statement before the Investigating Officer that he had gone to the respondent in Taluka Panchayat Office for collecting a cheque. He has also not stated in his statement that the respondent told him that he was getting late and what has happened to the money. Therefore, the first informant informed him that he had come only to give money to the respondent. This is the money. Thereafter, he had asked the respondent that our deal was over. In reply, the respondent has stated that Yes, the deal was over. He further asked the respondent not to harass him in

future, if he come with some work. Upon considering what is stated by the first informant in his cross-examination, the narration made by him in his examination in chief gets completely negatived. This also indicates that the present respondent had not raised any demand about any illegal gratification in the presence of the panch witness.

11. The deposition of the panch witness viz. Rashmikant Hasmukhrai Trivedi, who has been examined vide Exh.17 also requires consideration.

12. So far as the aspect of demand and acceptance of illegal gratification by the respondent is concerned, this witness states in his examination in chief that after they reached to the spot, the first informant told him that he was going inside and would inquire as to whether respondent was present in the office or not and he was made to sit in the car itself. After 10 minutes, the first informant came out from the office with some other person and they were standing near the Panshop. He had also gone to the place where they were standing. After seeing the panch witness with the first informant, the person who came out with the first informant went inside the office under the guise of answering the natures call. Thereafter, the panch witness as well as first informant went inside the office. The person, who went inside on the ground of answering the natures call, was standing in the Lobby. The first informant took out money from his pocket and gave it to the said person, who accepted the said money with his right hand and put it in the right side pocket of his pant. Thereafter, the first informant told him that the deal was over. Thereafter, the first informant

went out of the office and gave a signal. Upon perusal of this part of deposition of panch witness, it becomes clear that there was no demand whatsoever by the respondent during the trap. Upon perusal of the aforesaid part of deposition of the panch witness, it appears that there is also a doubt about the place at which the trap had taken place because the first informant in his deposition has stated that the incident had taken place near the Panshop outside the office of the respondent, whereas, as per the deposition of the panch witness, the incident had taken place inside the office of the respondent.

13. Upon considering the depositions of the first informant as well as panch witness, it can be said that on the basis of the aforesaid two depositions, no demand whatsoever had been raised by the present respondent for any illegal gratification. Though the panch witness supports the aspect of acceptance of the amount by the respondent from the first informant, in the absence of any demand having been raised by the respondent for any illegal gratification, it cannot be said that the said acceptance was towards illegal gratification.

14. The cross-examination of the panch witness also makes an interesting pleading. As per the cross-examination, all through the trap, the panch witness was sitting in the car and he had not gone to the place where the trap had taken place. This also raises a serious doubt about the case of prosecution.

15. I am, therefore, 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. I am in complete agreement with the reasonings given and the findings arrived at by the Trial Court. No interference is warranted with the judgment and order of the Trial Court.

16. In view of the above discussions, I am 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.

17. In the result, the appeal fails and is ***dismissed***. The judgment and order of the Trial Court dated 09.06.2006 stands confirmed. Bail and bail bonds of the accused, if any, stands discharged. R & P be sent back to the concerned trial Court, forthwith.

Sd/-
(M. R. MENGDEY,J)

GIRISH