(2025) 01 BOM CK 0012

Bombay High Court

Case No: Criminal Appeal No. 789 Of 2004

State Of Maharashtra		APPELLANT
	Vs	
Shivaji Jaisingrao Patil		RESPONDENT

Date of Decision: Jan. 2, 2025

Acts Referred:

- Code of Criminall Procedure, 1973 - Section 313, 378, 386
- Prevention of Corruption Act, 1988 - Section 7, 13(1)(d), 13(2), 19, 20(1)

Hon'ble Judges: Milind N. Jadhav, J

Bench: Single Bench

Advocate: Sangeeta E. Phad, Vijay Killedar, Sumedh Modak

Final Decision: Dismissed

Judgement

Milind N. Jadhav, J.

1. Heard Ms. Phad, learned APP for Appellant â€" State and Mr. Killedar, learned Advocate for Respondent â€" original Accused.

2. This Appeal arises out of judgement and order dated 08.03.2004 passed by the Special Judge, Solapur in Special (ACB) Case No.1 of 2002,

wherein Accused â€" Respondent was tried for offences punishable under Sections 7, 13 (1)(d) and 13 (2) of the Prevention of Corruption Act, 1988

(for short â€˜the said Actâ€™) and on conclusion of trial acquitted for the aforesaid offences. Being aggrieved, State of Maharashtra has filed

present Criminal Appeal against acquittal on 25.06.2004. On 16.06.2012, Appeal was admitted. It was heard for final hearing on 28.11.2024 and

12.12.2024.

3. Brief facts giving rise to the Appeal are as follows:-

3.1. Respondent-Accused was working as Extension Officer in the year 2000-2001 in the office of Panchayat Samiti Kurduwadi, Taluka Madha,

District â€" Solapur. Complainant Shri. Maruti Padule was working as Assistant Junior Engineer attached to Panchayat Samiti, Kurduwadi.

Complainant was transferred to Panchayat Samiti, Karmala. It is Complainantâ€™s case that he was sent on deputation back to Kurduwadi by order

dated 19.08.2000 to complete pending works which had remained incomplete. According to Complainant by letter dated 24.08.2000, he requested the

Block Development Officer, Kurduwadi (for short â€˜BDOâ€™) to furnish pending works papers for completing arrears of work. Thereafter, as per

complainant, he completed all pending works by 04.01.2001 and requested the Respondent â€" Accused to give Completion Certificate to him along

with relieving letter. He requested Respondent to forward his Leave Pay Certificate (for short â€˜LPCâ€™) and service record of completion of

works since he had not drawn his salary during that period, which would enable him to draw the same. As per Complainant BDO, Kurduwadi directed

him to approach Respondent and obtain Clearance of work Certificate from him after his verification. On 12.01.2001, he met Respondent and

requested him to submit report of completion of work when Respondent demanded Rs.25,000/- bribe from him for issuing his Completion Certificate.

As per Complainant, he met Respondent on 16.01.2001 and also on 18.01.2001 with the same request and demand for Rs.25,000/- was once again

made by Respondent on both dates.

3.2. As per Complainant, he expressed his inability to pay the said bribe amount, but after negotiation Respondent agreed on the amount of Rs.15,000/-

. Thereafter on 30.01.2001, Complainant met BDO, Mr. Shivaji Pawar and requested him to relieve him. BDO once again asked him to meet

Respondent and obtain Completion Certificate. Complainant immediately met Respondent on the same day, but Respondent demanded Rs.15,000/-

from him to issue his Completion Certificate. Thereafter Complainant met Respondent on 07.02.2001 and repeated his request when he was informed

to meet him on the next day i.e. on 08.02.2001 and pay Rs.5,000/- and was told to pay balance amount of Rs.10,000/- on the following Monday.

3.3. On 07.02.2001, Complainant filed complaint with the Anti Corruption Bureau (for short â€˜ACBâ€™) Office in Solapur. After completing legal

formalities, Complainant was called to ACB Office on 08.02.2001 and was asked to bring along with him currency notes of Rs.5,000/-denominations.

Independent panch witness was called to the ACB Office on 08.02.2001. Before meeting Respondent, pre-trap panchnama was recorded in the ACB

Office in the presence of panch witness. It recorded that Complainant carried alongwith him an amount of Rs.5,000/- (marked currency) comprising

of 50 notes in denomination of Rs.100/- and Rs.750/- in cash separately.

3.4. As per Complainant, he thereafter met Respondent in his Office on 08.02.2001 when Respondent inquired whether he had brought Rs.5,000/- and

asked him to meet him at the nearby canteen called â€˜Sachin Uphar Grihaâ€™. Complainant and Respondent met in the canteen after 5:30 pm

where the trap was set.

3.5. As per prosecution case, Respondent and Complainant met for tea, Complainant paid the bribe amount, Respondent accepted the same from

Complainant, thereafter Complainant paid Rs.10/- for tea consumed to the Canteen Cashier and thereafter alerted the ACB raiding party, who

immediately apprehended Respondent and conducted detailed post-trap panchanama. As per prosecution, Respondentâ€™s hands and fingers showed

traces of anthracene powder applied by the ACB on the currency notes of Rs.5,000/-denomination which were accepted by Respondent. However,

post-trap panchnama incidentally revealed that the separate amount recovered from Complainant was Rs.750/-

3.6. DCP lodged a complaint on behalf of the State at Kurduwadi Police Station and Crime No.04 of 2001 was registered against Respondent.

Statements of witnesses were recorded and investigation was carried out. On receipt of Sanction Order from Competent Authority, charge-sheet was

filed against Respondent.

3.7. Charge was framed for aforesaid offences that is appended below Exhibit-4. Respondent-Accused pleaded not guilty. Trial was conducted,

evidence was led, statement of Accused under Section 313 of Code of Criminal Procedure, 1973 (for short â€˜Cr.P.C.â€™) was recorded pursuant

to which by judgement dated 08.03.2004, Respondent was acquitted.

4. To bring home the guilt of Respondent â€" Accused, prosecution led evidence of four (4) witnesses whereas Respondent â€" Accused in his

defence led evidence of three (3) witnesses.

5. Prosecution examined PW-1 Shri. Bhimsen Naik, Sanctioning Authority below Exhibit-08, PW-2 i.e. Complainant Shri. Maruti Padule below

Exhibit-11, Shri. Dinesh Bukka â€" panch witness No.1 as PW-3 for proving pre-trap and post-trap panchanamas below Exhibits - 23 to 25 and PW-4

Mr. Dilip Panse - Investigating Officer (I.O.) below Exhibit-36.

6. Respondent-Accused examined DW-1, BDO, Mr. Shivaji Pawar below Exhibit-45 and Mr. Suresh Kumbhar and Mr. Laxman Galgunde,

employees working in the office of Respondent as DW-2 and DW-3 below Exhibit-52 and Exhibit-53 respectively.

7. Prosecution relied upon several documents in support of its case which are referred by the learned APP before me while maintaining challenge to

the impugned judgement of acquittal of Respondent. Learned APP has taken me through the Sanction Order below Exhibit-9, complaint dated

07.02.2001 filed by Complainant with ACB below Exhibit-17, pre-trap and post-trap panchanamas below Exhibits-24 and 25, additional panchanama of

relevant documents below Exhibit-26 and arrest panchanama below Exhibit-28 along with the depositions of PW-1 to PW-4 and DW-1 to DW-3.

Rather Mr. Killedar, learned Advocate for Respondent has also referred to the aforesaid documents exhibited by the Trial Court in evidence, but in

support of Respondentâ€™s defence.

8. Ms. Phad, learned APP would submit that Exhibit-9 is the Sanction Order issued by the Sanctioning Authority. She would submit that Sanctioning

Authority is examined as PW-1 and when his deposition is seen, he has stated that as the Statutory Officer he received papers from the ACB Office

to accord Sanction to prosecute Respondent, that he has gone through all papers and report submitted and thereafter came to the conclusion that there

was sufficient evidence to accord Sanction.

8.1. She would submit that accordingly sanction is accorded. She would submit that Sanction Order bears sign of Mr. Bhimsen Naik, C.E.O. Zilla

Parishad, Solapur at the then time. She would submit that though in cross-examination several questions are asked to Sanctioning Authority as to

whether he had received a typed draft copy of Sanction Order or whether he applied his mind before according sanction, he has answered these

questions by stating that he signed the Sanction Order after going through the same. She would submit that if Sanction Order is seen, it is a detailed

order running into six pages signed by PW-1, who is the appointing and removing Authority in accordance with law.

8.2. Next, she would submit that deposition of PW-2 Complainant is most crucial evidence in this case which proves case of prosecution and it

therefore needs to be appreciated in its proper perspective. She would submit that evidence of PW-2 is direct evidence as eye-witness to the

acceptance of graft from him which is recovered from Respondent. By drawing my attention to his examination-in-chief, she would submit that

Complainant has given a detailed account of his duties and work on deputation at Panchayat Samiti, Kurduwadi. That he has deposed that pursuant to

Sanction Order dated 19.08.2000 passed by BDO, Karmala, Complainant sought details of all incomplete works required to be completed by him by

addressing letter dated 24.08.2000 to BDO, Kurduwadi, which is marked in evidence below Exhibit-12. That after receiving all registers and files

pertaining to pending works, Complainant completed the same by 04.01.2001 and thereafter addressed letter dated 05.01.2001 to BDO Kurduwadi

seeking work Completion Certificate and relieving letter so that he could resume his duty at Panchayat Samiti, Karmala. That he also requested to

forward his LPC and service book along with details of travelling allowance and dearness allowance so that he could claim his salary and the entitled

expenses.

8.3. She would submit that since Complainant did not receive his salary nor relieving letter, he called upon the BDO, Kurduwadi who asked him to

meet Respondent since Respondent was to submit report about completion of pending works by him. She would submit that Complainant met

Respondent on 09.01.2001, 12.01.2001, 16.01.2001, 18.01.2001, 30.01.2001, 07.02.2001 and 08.02.2001 that BDO, Kurduwadi informed him that

unless report was received from Respondent it was not possible for him to issue works Completion Certificate to him.

8.4. She would submit that Respondent made initial demand of Rs.25,000/- from Complainant on 12.01.2001 for the first time. She would submit that

Complainant at that time expressed his inability to pay the said amount but when he met Respondent on 18.01.2001 subsequently he was told to pay

Rs. 15,000/-. She would submit that when Complainant expressed his inability to part with this amount also Respondent was unrelenting but on

30.01.2001, Respondent asked Complainant that he should pay Rs.5,000/- out of Rs.15,000 and balance amount of Rs.10,000/- can be paid later.

8.5. She would submit that when Complainant met Respondent on 07.02.2000, he asked him to pay Rs.5,000/- on the following day that is on

08.02.2001 and the balance amount of Rs.10,000/- later. Thus she would submit that Respondent made four demands for payment of bribe amount to

issue Completion Certificate to Complainant as delineated above. She would submit that aforesaid turn of events compelled Complainant to lodge

complaint on 07.02.2001.

8.6. Next she would submit that deposition of PW-2, Complainant himself, clearly establishes the pre-trap panchnama carried by the ACB by

following the due process of law and post-trap panchnama. She would submit that in the post-trap panchanama marked â€˜currency notesâ€™ of

Rs.5,000/- to which anthracene powder was applied at the pre-trap panchnama stage were recovered from Respondent after he had accepted the

same from Complainant.

8.7. SheÂ wouldÂ submitÂ thatÂ spotÂ ofÂ incidentÂ wasÂ 'SachinÂ Uphar Gruha' where Complainant; panch witness No.1 i.e. PW-3 and

Respondent â€" Accused sat face to face for having tea when Respondent asked Complainant in Marathi language to hand over amount of Rs.5,000/-

to him at which time Complainant handed over the same to him and he kept it in his watch pocket. She would submit that thereafter Complainant paid

the tea bill of Rs.10/- to the canteen Cashier and alerted the ACB team who was waiting outside the canteen and Respondent was apprehended with

the marked â€˜currency notesâ€™ and traces of anthracene powder from his hands and fingers. Post-trap panchanama was prepared and on the

following day complaint was filed against Respondent by ACB.

8.8. She would thus submit that this is an open and shut case proved by prosecution beyond all reasonable doubts of Respondent having received

Rs.5,000/- demanded by him out of Rs.15,000/- from Complainant and liable for being prosecuted under the said Act.

8.9. She would submit that Respondent challenged grant of sanction by Sanctioning Authority and even on merits by taking a defense that the amount

of Rs.5,000/- handed over by Complainant to him was the amount of tickets sold of a Marathi show called 'Natrangi Nar'' held on 07.01.2001, in

respect of which Respondent had given ticket booklets to Complainant for sale of tickets to public and the amount of Rs.5,000/- was the amount of

tickets sold which Complainant handed over to him.

8.10. She would submit that case of prosecution deserved to be believed because it was an admitted position that Complainant completed all pending

works for which reason he was transferred on deputation to Kurduwadi and it only thereafter that he demanded Completion Certificate. She would

fairly submit that these facts are undisputed though on the aspect of completion of work, defense has through its witnesses have attempted to prove

that Complainant did not join and complete the pending works and it is only out of revenge to trap Respondent and BDO, Kurduwadi that he made out

a false case. She would submit that evidence of PW-2 stands corroborated by PW-3, who is an independent witness to the actual incident of

accepting bribe amount of Rs.5,000/-. She would submit that pre-trap and post-trap panchanama below Exhibit-24 and Exhibit-25, virtually prove the

prosecution case of demand and acceptance and defense argument that pre-trap panchanama and post-trap panchanama amount carried and

recovered from Complainant was the same (Rs.758/-) when it was PW-2â€™s case that he paid Rs.10/- out of the said amount after having tea with

Respondent to the canteen Cashier cannot disprove the fact that Respondent - Accused accepted the bribe amount. She would submit that learned

Trial Court has not correctly appreciated the prosecution case and therefore the impugned judgement requires a revisit on the basis of re-appreciation

of the aforesaid evidence by this Court in the present Appeal.

8.11. In support of prosecution case she has referred to and relied upon the following decisions of the Supreme Court:-

(i) C.S. Krishnamurthy Vs. State of Karnataka AIR 2005 SUPREME COURT 2790;

(ii) Neeraj Dutta Vs. State (Govt. Of NCT Delhi) AIR OnLine 2022 SC 1160; and

(iii) The State of Karnataka Vs. Chandrasha 2024 INSC 899.

8.12. She would contend that Sanction Order in the present case in an expressive order. She would submit that it is eloquent enough and clearly shows

that Sanctioning Authority has considered the case against Respondent which is stated in detail therein. She would submit that Supreme Court in the

case of C.S. Krishnamurthy (1st supra) held that only formal evidence has to be seen by Sanctioning Authority with due application of mind. She

would submit that it is not possible to take a pedantic approach as argued by defence that Sanction Order was a mere draft order given to the

Authority and there was no application of his mind before signing it. She would submit that Sanction Order considers all aspects as stated therein and

is therefore valid for prosecuting Respondent - Government Servant. She would submit that Sanctioning Authority PW-1 has himself deposed that he

has signed the Sanction Order after being acquainted with the detailed facts which would render the sanction as valid.

8.13. She would further submit that as held by the Supreme Court in the case of Neeraj Dutta (2nd supra), proof of demand of acceptance of illegal

gratification by a public servant is a sine qua non in order to establish guilt of Accused â€" public servant for offence of bribery. She would submit that

this proposition stands fully established by direct evidence of PW-2 and PW-3 in the present case and once it is proved commission of offence is

established.

8.14. She would submit that defence case of relying upon an alibi relating to the amount being the ticket proceeds received by Respondent cannot be

accepted because it is a complete afterthought by defence to challenge the direct evidence proved by prosecution witnesses. She would submit that

oral evidence proved by prosecution in the present case through PW-2 and PW-3 is direct or original evidence whereas the defence evidence through

its witnesses is hearsay evidence or derivative evidence. Hence she would submit that applying the principles laid in in the case of Neeraj Dutta (2nd

supra) by the Supreme Court, the impugned judgement of acquittal deserves to be interfered with.

8.15. She would next invoke the presumption under Section 20 (1) of the said Act and would submit that when fact of receipt of payment stands

proven then a clear case of nexus is established and therefore presumption under Section 20 (1) of the said Act is irrelevant. She would submit that in

the present case recovery of bribe amount from Respondent is fully proved and therefore defence explanation offered by him is fragile, a clear

afterthought and made to merely oppose the proven case of prosecution.

8.16. SheÂ wouldÂ heavilyÂ relyÂ uponÂ theÂ ratioÂ inÂ decisionÂ of The State of Karnataka (3rd supra) in support of prosecution case

and urge the Court to consider the overall circumstances and evidence on record to set aside the judgment of acquittal passed by the Trial Court.

9. PER CONTRA, Mr. Killedar, learned Advocate for the Respondent â€" Accused would vehemently oppose the submissions made by the learned

Public Prosecutor and would support the impugned judgment. At the outset, he would vehemently attack the Sanction Order taken on record below

Exhibit-9 and contend that on a plain reading of the said Sanction Order it is an admitted position that PW-1 received it as a draft sanction having three

blank spaces therein for filling in the name of the Authority, the designation, date and place and thereafter to append his signature thereto. He would

submit that it is an admitted position by the prosecution witnesses i.e. PW-1 himself that he merely filled in the aforesaid three blank spaces and signed

on the already transcribed Sanction Order to drive home the point that such signature made on an already transcribed Sanction Order by merely filing

in blanks of name, designation, place and date would amount to issuing the Order with complete non-application of mind. In this context, he would

draw my attention towards cross-examination of PW-1 â€" Sanctioning Authority and would submit that in paragraph No.3 thereof, he has admitted

that before according sanction he did not prepare any notes or made any attempt to find out if any official work was pending to be completed by

Complainant and most importantly he did not receive the 'B' file which is the office file of Complainant before ascertaining and verifying the contents

of the draft Sanction Order.

9.1. He would submit that grant of sanction is a serious exercise of power by the exercising authority and he is expected to take a conscious decision

on the basis of cogent material placed before him. He would vehemently argue that in the present case once the Court is acceded upon to take

cognizance of the bar under Section 19 of the said Act, it was inquired whether there was a valid sanction to prosecute a Pubic Servant. He would

submit that in the present case, Sanctioning Authority PW-1 has himself admitted that he has filled three blanks i.e. his name, designation / Authority,

date and place which would amount to a mere formality by him. He would submit that as held by Supreme Court in the case of C.S. Krishnamurthy

(1st supra), Sanctioning Officer is the best person to judge as to whether the public servant should receive protection under the said Act by refusing to

accord sanction or otherwise. He would submit that in that regard application of mind on the part of Sanctioning Authority is therefore imperative and,

the order granting sanction must be demonstrative of the fact that there is proper application of mind which in the present case is clearly absent.

10. He would submit that sanction is accorded in the present case by PW-1 without calling for the 'B' file of Complainant, in not ascertaining and

verifying the contents of the draft Sanction Order presented and merely appending signature on the transcribed draft copy of sanction received from

the ACB.

11. Next on the merits of the matter, Mr. Killedar would submit that prosecution has argued that initial demand was made by Respondent on

12.01.2001, 16.01.2001, 18.01.2001 and 07.02.2001 and it is his case that on all above dates, Complainant visited the office of BDO Kurduwadi and

met BDO and Respondent in his office when the demand was made / reiterated. He would submit that defence witnesses have placed on record

documentary evidence in the form of Log book of the Government vehicle of BDO, Kurduwadi and also examined BDO, Kurduwadi as DW-1 to

prove that on all aforementioned dates BDO was never present in his office during the day and he was away on field duty. He would submit that the

Log book of Government vehicle has been taken on record on Exhibit-49 and each of the entries on the above dates show that BDO was not

physically present in his office during office hours throughout the day. Further he would submit that admittedly Respondent was on sanctioned leave

from 19.01.2001 to 07.02.2001 which is also proved by Investigating Officer. He would therefore submit that the allegation of Complainant of having

met Respondent and BDO on all / some of the aforesaid dates is therefore clearly false.

12. He would submit that Log book entries on all aforesaid dates clearly show the time of departure of the BDO for his office, place of work visited

for carrying out his official duties on all aforesaid dates and his return time to Solapur / Office and would contend that Complainant has made out a

false case of having met the BDO / Respondent on all above dates pertaining to initial demand by Respondent. He would submit that entries in the

Government Log book cannot be disbelieved and therefore learned Trial Court has considered the same in its proper perspective as an important

ground to exonerate the Respondent.

13. Next on the issue of motive behind the demand and acceptance of bribe, he would submit that in this case it is Complainant's case that he required

the relieving letter from BDO, Kurduwadi but BDO asked him to meet the Respondent â€" accused repeatedly for getting the completion of pending

works certificate. He would submit that in evidence it is proved that Complainant did not join Kurduwadi Panchayat Samiti Office in the first place

that there is no joining report produced, that he never completed any of the pending works, that he was issued Show Cause Notice for not completing

the pending works, that he replied to the said notices in writing, that Departmental action was initiated against him. He would submit that in PW - 2 i.e.

Complainant's cross-examination when asked to produce his joining report, he could not produce it and most importantly he admitted that he never

signed any muster roll or tour register in Kurduwadi Panchayat Samiti Office which he claimed to have joined on deputation for completion of the

incomplete works. He would submit that Complainant failed to prove and place on record any documentary evidence of he having even attempted to

complete any of the incomplete works on his alleged joining Kurduwadi Office.

14. In support of his above submissions, he would invite my attention to Exhibit-27 which is the â€˜Bâ€™ file that is the office file of Complainant and

contend that perusal of the said office file shows that Complainant did not complete any of the pending works that the BDO therefore issued Show

Cause Notice to him and Complainant replied to those Show Cause Notices in writing. He would argue that Exhibit-27 shows that due to such

dereliction of duty by Complainant BDO, Kurduwadi submitted adverse report about Complainant - CEO Zilla Parishhad, Solapur. Thereafter

Departmental Inquiry was initiated against Complainant on the ground that even though he was relieved as far back as on 19.08.2000 from by BDO,

Karmala and directed to join Kurduwadi Panchyat Samiti Office for completion of pending works he did not join Kurduwadi Office and falsely

claimed to have completed the pending works and claimed to be reimbursed.

15. He would draw my attention to Show Cause Notice dated 05.08.2000; letters dated 18.12.2000 and 12.01.2001 which are taken on record below

Exhibit-18, Exhibit-46 and Exhibit-47 in evidence and proceedings book dated 15.01.2001 which is taken on record below Exhibit-48 in support of his

above submissions to prove that Complainant never joined Kurduwadi Panchyat Samiti Office. He would submit that implication of Respondent by

Complainant is on account of a completely false and malafide case due to his Departmental proceedings and Complainant was merely waiting for an

opportunity to frame the Respondent and BDO, Kurduwadi for which he deliberately waited until beyond 07.02.2001.

16. He would submit that the Charity Show for which ticket booklets were given by Respondent to Complainant and many other staff members that

were to be accounted for on 08.02.2001 since the show was held on 07.02.2001. Complainant met Respondent on 08.02.2001 at 05:30 p.m. after

office hours for handing over amount of tickets sold, which finds mention in the post-trap panchanama below Exhibit-25. He would submit that the

delay in the aforesaid case from the date of initial demand i.e. 12.01.2001 upto 07.02.2001 is clearly evitable on the face of record and therefore

learned Trial Court has correctly examined and appreciated the evidence on record in determining the motive and defence of Respondent before

coming to the conclusion that defense evidence is more probable and acceptable and it has been proved beyond all reasonable doubts resulting in

Respondent being acquitted.

17. In support of his aforesaid submissions and propositions, he has referred to and relied upon the following decisions of the Supreme Court:- (i)

Dudh Nath Pandey Vs. State of Uttar Pradesh (1981) 2 Supreme Court Cases 166;(ii) State (Anti Corruption Branch) Vs. R.C. Anand (Dr.)

(2004) 4 SCC 615; (iii) State of Karnataka Vs. Ameer Jain 2007 (9) SCR 1105; (iv) Ghurey Lal Vs. State of U.P. (2008) 10 SCC 450; (v) Motilal

Jalsingh Pawar Vs. The State of Maharashtra 1985 (1) Bom. C.R. 669; (vi) Sashikant Piraji Sonawane Vs. The State of Maharashtra 2015

SCC ONLINEÂ BOMÂ 4751; (viSi)a shikant Sitaram Masdekar and Anr. Vs. The State of Maharashtra 2015 SCC OnLine Bom 6561; (viii)

Nishant Bhaskarrao Kulkarni since deceased through his Legal Heirs and Others Vs. State of Maharashtra 2019 (2) Bom.C.R.(Cri) 18; and

(ix) Sait Tarajee Khimchand and Others Vs. Yelamarti Satyam alias Satteyya and Ors. (1972) 4 Supreme Court Cases 562.

18. I have heard the submissions made by Ms. Phad, learned APP for State and Mr. Killedar, learned Advocate for Respondent and with their able

assistance perused the entire record of the case.

19. At the outset, challenge to grant of Sanction Order which has been vehemently argued by defence needs to be addressed before I advert to the

submissions on merits. The valid sanction granted, being the bone of contention between parties is objected to by the defense as not a valid sanction in

the first place. Trial Court has however rejected this contention but acquitted the Respondent on merits of the case. Admittedly Respondent has not

filed an Appeal to challenge the acceptance of the Sanction Order as valid. However the issue of valid sanction goes to the root of the matter. It is the

sine qua non of the prosecution case. It is a statutory requirement. If the sanction order is invalid, all further proceedings have to fail.

20. I have heard Ms. Phad and Mr. Killedar on the above issue of grant of sanction extensively as both learned Advocates have chosen to address me

and also perused the authoritative pronouncements on the same. Admittedly, Respondent is a public servant. It is seen that PW-1 i.e. Sanctioning

Authority is the appointing and removing authority for Respondent who is appointed as Extension Officer in the Kurduwadi Panchyat Samiti Office.

The Sanction Order is appended at page Nos.52 to 59 and is taken on record in evidence as Exhibit-9. Both learned Advocates have taken me through

the said Sanction Order in the course of their submissions.

21. It is seen that Respondent was working as Extension Officer. Perusal of Exhibit-9 shows that it is a detailed Sanction Order in Marathi language

which delineates all facts of the case which are alluded to hereinabove and concludes that Respondent is guilty of committing offence under the said

Act and therefore sanction is accorded to prosecute him.

22. The Sanction Order is running into 8 pages from page Nos.52 to 59 of the paperbook. On internal page No.7, it is stated that the Sanctioning

Authority has scrutinised the entire record of the case. The Sanctioning Authority has deposed in evidence as PW-1. In his cross-examination

Sanctioning Authority has categorically admitted that he has not received and seen the 'B' file of Complainant before according sanction, that he has

not made any notes to ascertain the noting from the record, that he received draft Sanction Order with three (3) blanks to be filled in by him namely

his name, authority / designation and date, that he filled in the above by putting his name, place, date and signature in his handwriting in the blank space

provided, that according to him it was not necessary to find out if any official work remained incomplete by Complainant, that it was duty of BDO to

ascertain whether Complainant had completed the incomplete works before relieving him and he admitted that no file was put up before him for

relieving the Complainant.

23. In the backdrop of the above deposition of Sanctioning Authority, Mr. Killedar vehemently submitted that there is complete non-application of mind

by Sanctioning Authority while granting sanction without ascertaining the motive, without ascertaining the initial demand made on atleast four

occasions, without ascertaining the final demand, without studying the 'B' file i.e. office file of Complainant to ascertain whether he indeed completed

the pending work and without doing so he has mechanically signed on the draft Sanction Order and hence the Sanction Order lacks on its validity at

the inception stage itself. In view of these submissions it would be worthwhile to reproduce certain paragraphs of the authoritarian pronouncements on

the above issue of â€œapplication of mindâ€ by the Sanctioning Authority so as to consider and accept the prosecution case.

24. Paragraph Nos.13 to 20 of the decision of the learned Single Judge of this Bench (Coram Ms. Bharti Dangre J.) in the case oSf agar

encapsulates all guiding principles etched out from previous pronouncements of Courts required to be adhered by the Sanctioning Authority before

according sanction for prosecution under the said Act. The said paragraphs are reproduced herein below for reference:-

â€œ13. Grant of sanction is a sacrosanct act and it is intended to provide safeguard to a public servant against the frivolous and vexatious litigation. It is only an

administrative function and the Sanctioning Authority is required to, prima facie, reach the satisfaction that relevant facts would constitute the offence. The

satisfaction of the Sanctioning Authority is essential to validate an order granting sanction. It is incumbent upon the prosecution to prove the existence of a valid

sanction, which connote that the sanction must be granted by the Sanctioning Authority after being satisfied, that a case is made out for sanction. The Sanction

Order must expressly show that the Sanctioning Authority has perused the material and, on consideration of the circumstances, granted the sanction for

prosecution. It is open for the prosecution to prove by adducing evidence that the material was placed before the Sanctioning Authority and its satisfaction was

arrived at upon perusal of the said material and if some of those material is not placed, that would not necessarily vitiate the order of sanction. Grant of sanction

is a serious exercise of power by the competent authority, which is expected to take conscious decision on the basis of the relevant material. The decision making,

on the basis of relevant material, should be reflected in the Sanction Order and, if not, it should be capable of proving it before the court. The existence of a valid

sanction is a prerequisite for taking cognizance of offence alleged to have been committed by a public servant, however, the bar for taking of congnizance by the

court is raised, as contemplated under Section 19 of the PC Act. Therefore, when the court is called upon to take cognizance, it must enquire whether there is a

valid sanction to prosecute a Public Servant. A trial without valid sanction is a trial without jurisdiction by the court.

14. In Ashok Kumar Aggarwal (supra), in paragraphs 13 and 14, the Apex Court held as under:

13. The prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such

grant was made available to the said authority. This may also be evident from the Sanction Order, in case it is extremely comprehensive, as all the facts and

circumstances of the case may be spelt out in the Sanction Order. However, in every individual case, the court has to find out whether there has been an

application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation

on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction

is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the Sagar Ramchandra

Vatkar vs The State Of Maharashtra on 9 April, 2021 public interest and the protection available to the accused against whom the sanction is sought.

14. It is to be kept in mind that sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords

protection to the government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the

innocent, though not a shield for the guilty.

15. The application of mind of the Sanctioning Authority, can be discerned from the order of sanction, which must, ex-facie, disclose consideration of the material

in the form of evidence and other material placed before it. It is imperative for the prosecution to establish and satisfy the court by leading evidence that those

facts were placed before the Sanctioning Authority and the Sanctioning Authority has applied its mind on the same. It is only on completion of the aforesaid

formalities and, the evidence to that effect being placed on record by the prosecution and further from the recital of the Sanction Order, an inference may be

drawn that the sanction, which is granted is in accordance with law.

16. It becomes necessary, in every case, to examine the validity of the Sanction Order, inter alia, on the ground that the order suffers from vice of non-application

of mind. The principles having summarized by the Apex Court in paragraph

16 of the said judgment, in the following words:

16. In view of the above, the legal propositions can be summarised as under:

16.1 The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery

memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in

favour of the accused and on the basis of which, the competent authority may refuse sanction.

16.2 The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and

taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

16.3 The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the

sanction is sought.

16.4 The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant

material.

16.5 In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the

sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

17. What flows from the aforesaid authoritative pronouncement is the authority which has been conferred with the power to grant sanction for prosecution of a

public servant has to do complete and conscious scrutiny of the record produced by the prosecution and what is implied is that this exercise is undertaken by the

authority itself by applying its mind independently and, by taking into consideration, all the relevant facts placed before it when it is discharging its duties either

to grant or to withhold the sanction.

18. In the case of P. L. Tatwal v. State of Madhya Pradesh5 , the Apex Court held that the grant of sanction is a serious exercise of power by the competent

authority and it also held that the trial court should conduct a through enquiry as to whether all the relevant material is placed before the competent authority

and the competent authority has referred to the same, so as to form an 5 (2014) 11 SCC 431 opinion whether the same constitutes an offence requiring sanction

for prosecution. Dealing with the case of an appellant, who appealed before the court on the ground that in view of his appointment by the Administrator, the

sanction must also be given by the Administrator and in absentia by the State Government, which appoints the Administrator and to claim that there is no proper

and valid sanction by the competent authority, after referring its earlier decisions in the case of State of Maharashtra v. Mahesh G. Jain, the court held as under:

13. In a recent decision in State of Maharashtra through Central Bureau of Investigation v. Mahesh G. Gain, the court has referred to the various decisions on

this aspect from paragraph 8 onwards. It has been held at paragraph 8 as follows:

8. In Mohd. Iqbal Ahmed v. State of A.P., this Court lucidly registered the view that (SCC p. 174, para 3) it is incumbent on the prosecution to prove that a valid

sanction has been granted by the sanctioning authority afterÂ beingÂ satisfiedÂ thatÂ aÂ caseÂ forÂ sanction has been made out constituting an offence and

the same should be done in two ways; either (i) by producing the original sanction which itself contains the facts constituting the offence and the grounds of

satisfaction, and (ii) by adducing evidence aliunde to show the factsÂ placedÂ beforeÂ theÂ sanctioningÂ authority and the satisfaction arrived at by it. It is

well settled that any case instituted without a proper sanction must fail because this being a manifestÂ defectÂ inÂ theÂ prosecution,Â theÂ entire proceedings

are rendered void ab initio.

In the peculiar facts, it was held as under:

16. In such circumstances, we are of the view that the trial court should conduct a proper inquiry as to whether all the relevant materials were placed before the

competent authority and whether the competent authority has referred to the same so as to form an opinion as to whether the same constituted an offence

requiring sanction for prosecution. In that view of the matter, we set aside the impugned order passed by the High Court and also order dated 27.12.2004 passed

in Special Case No. 12 of 2004 by the trial court and remit the matter to the Special Judge (P.C. Act, 1988), Ujjain, Madhya Pradesh.

19. The aforesaid authoritative pronouncements undisputedly contemplate ""application of mind"" by the Sanctioning Authority ""upon consideration of the

material placed before it "". Consideration implies application of independent mind. The order of sanction must, ex facie, disclose that the Sanctioning Authority,

on consideration of the evidence and other material placed before it, has applied its mind and arrived at a decision either way. In case of Mansukhlal Vithaldas

Chauhan v. State of Gujarat 7, the Apex Court has observed as under:

19. Since the validity of ""Sanction"" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence

collected during investigation, it necessarily follows, that the sanctioning authority has to apply its own independent mind for the generation of genuie

satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any

external force be acting upon it to take decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning

authority, its discretion should be shown to have not been affected by any extraneous consideration. If is shown that the sanctioning authority was unable to

apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be had for the

reason that the discretion of the authority ""not to sanction"" was taken away and it was compelled to act mechanically to sanction the prosecution"".

20. The aforesaid observation came to be made in the conspectus of the fact where the High Court in a writ petition issued a writ in the nature of mandamus

directing to accord sanction under the relevant provisions of the PC Act to prosecute the appellant therein, who was working as Divisional Accountant in the

Medium 7 Decided on 03/09/1997 in Irrigation Project. The Sanctioning Authority was directed to accord sanction within one month from the date of receipt of

the order of the court and it is in the backdrop of this fact that the aforesaid observations were made and Their Lordships have held as under:

32. By issuing a direction to the Secretary to grant sanction, the High Court closed all other alternatives to the Secretary and compelled him to proceed only in

one direction and to act only in one way, namely, to sanction the prosecution of the appellant. The Secretary was not allowed to consider whether it would be

feasible to prosecute the appellant; whether the complaint of Harshadraj of illegal gratification which was sought to be supported by ""trip"" was false and

whether the prosecution would be vexatious particularly as it was in the knowledge of the Govt. that the firm had been black-listed once and there was demand

for some amount to be paid to Govt, by the firm in connection with this contract. The discretion not to sanction the prosecution was thus taken away by the High

Court.

33. The High Court put the Secretary in a piquant situation. While that Act gave him the discretion to sanction or not to sanction the prosecution of the appellant,

the judgment gave him no choice except to sanction the prosecution as any other decision would have exposed him to action in contempt for not obeying the

mandamus issued by the High Court. The High Court assumed that role of the sanctioning authority, considered the whole matter, formed an opinion that it was a

fit case in which sanction should be granted and because it itself could not grant sanction under Section 6 of the Act, it directed the Secretary to sanction the

prosecution so that the Sanction Order may be created to be an order passed by the Secretary and not that of the High Court. This is a classic case where a Brand

name is changed to give a new colour to the package without changing the contents thereof. In these circumstances the sanctions order cannot but be held to be

wholly erroneous having been passed mechanically at the instance of the High Court.

25. The above principles, if applied to the facts of the present case would show that if the Sanctioning Authority would have applied its mind and seen

the record of the case with respect to the dispute about incomplete works leading to the graft case in question, the result may have been diametrically

the opposite.

26. In the first instance, both prosecution and defense have heavily relied upon the Relieving Order 19.08.2000 placed in evidence below Exhibit-12

whereby Complainant was relieved by BDO, Karmala and directed to join BDO, Kurduwadi. However the relieving order does not prove that

Complainant joined the office of BDO Kurduwadi as directed.

27. Evidence of DW-1, BDO, Kurduwadi clearly shows that Complainant never joined his office at Kurduwadi during his tenure. He deposed and

placed on record Show Cause Notices dated 05.08.2000 below Exhibit-18 and 12.01.2001 below Exhibit-47 issued to Complainant for not joining his

office and completing the incomplete works which he was required to complete. DW-1 has also produced on record the original proceedings book

below Exhibit-48 which clearly shows that Complainant never attended Kurduwadi Office and never signed the Muster Rolls in his office. Most

importantly, the Office file of Complainant has also been placed on record by DW-1 below Exhibit-27 and it shows that Complainant has indeed not

completed any of the pending works for which he was relieved and asked to join because of which BDO, Kurduwadi issued Show Cause Notice to

him. This does not stop here. The said â€˜Bâ€™ file i.e. office file below Exhibit-27 also reveals that Complainant filed his written replies to both

Show Cause Notices issued to him giving his explanation regarding joining BDO, Kurduwadiâ€™s Office from 19.08.2000 with respect to the

incomplete pending works. If the aforesaid evidence had been considered in the first place, the Sanctioning Authority could never had accorded

sanction to prosecute the Respondent as the motive of Complainant would have been in question. What is crucial is the fact that PW-1 i.e. Sanctioning

Authority has himself admitted in his cross-examination that he did not see the 'B' file i.e. office file of the Complainant before according sanction.

28. From the above, it is clearly derivated that Complainant had a dubious motive rather perverse motive to falsely implicate the Respondent and

BDO, Kurduwadi, who had proceeded against him and he was waiting for the opportune moment. The evidence on record clearly shows that

Complainant was relived from BDO Office, Karmala on 19.08.2000 but he falsely claimed to have completed the pending works in BDO Office,

Kurduwadi without joining the said office. Once the Complainant had not joined BDO Office, Kurduwadi at any point of time, there was no question

of him claiming to have completed the pending works. Without joining BDO Office, Kurduwadi, Complainant could never have sought his relieving

letter or claim documents. Thus, conduct of Complainant in this case is prima facie malicious and illegal on the face of above evidence placed before

the Court.

29. Hence in this context Sanctioning Authority should have applied its mind to the inordinate delay by Complainant in approaching the ACB Office for

lodging his complaint for demand of graft. If it was Complainant's case that initial demand of bribe was made on 12.01.2001 for the first time and the

last demand was made on 07.02.2001, there was no reason for him to wait during the entire tenure from 12.01.2001 up to 07.02.2001.

30. According to Complainant, four specific demands were made during the above period. Therefore, waiting for almost one month despite four

demands being made is fatal to the prosecution case. This is so because there was an apparent reason for Complainant to wait until 07.02.2001. The

defense has proved this reasons through the evidence of DW-2 and DW-3. It has come on record that Complainant had given five ticket booklets of

the Charity show called â€œNatrangi Narâ€ to Complainant for sale and he was required to collect the money of the sold tickets from Complainant.

The Charity Show was held on 07.02.2001 and on the following day Respondent visited the office after office hours to collect the amount of sold

tickets.

31. Admittedly on the day of trap i.e. 08.02.2001 Respondent was on sanctioned leave and he came to his office in the evening after office hours to

meet his colleagues for collection of money of sold tickets of the Charity Show held on the previous day. It has come on record that Respondent was

on sanctioned leave from 19.01.2001 to 07.02.2001. The defence of Respondent has been duly corroborated by the oral evidence of DW-2 and DW-

3. DW-2 and DW-3 are office colleagues of Complainant in BDO Office, Kurduwadi who were also given ticket booklets for sale of tickets and who

met the Respondent on 08.02.2001 to hand over the amount of sold tickets and unused ticket booklets to him. Further in so far as the trap event is

concerned, it is seen that the amount of cash carried separately by Complainant apart from the trap amount during pre-trap panchnama and post-trap

panchnama was the same amount i.e. Rs.758/- as recorded in both Panchnamas. This is strange as it could not have been the same. The post-trap

panchnama ought to have reflected a lesser amount.

32. If the relevant panchnama below Exhibit-24 and Exhibit-25 are seen then in view of the above prosecution case that Complainant paid Rs.10 to the

canteen Cashier from the amount he was carrying with him cannot be countenanced. Rather it falsifies the prosecution case altogether. Further

evidence of PW-3 i.e. panch witness reveals that the raiding party was outside the canteen along with him and only after receiving signal from

Complainant they rushed inside to the incident spot. This is so because PW-3 has answered that it is true that after the signal, the raiding party which

was outside, they as well as myself and Mr. Metkari rushed to the spot. This evidence is clinching as it shows that the pancha witness and the raiding

party were both present outside the canteen.

33. This raises serious discrepancies and questions on the post-trap panchanama below Exhibit-25. Finally the most important piece of evidence which

militates against the Prosecution case is the Certified Copy of the Log Book placed in evidence below Exhibit-49. This Log Book maintains the

movement of the Government vehicles in the BDO, Kurduwadi office alongwith the details of visit, time, etc.. BDO, Kurduwadi i.e. DW-1 has himself

placed the original Log Book on record in evidence. This Log book shows that on 12.01.2001 BDO, Kurduwadi along with Respondent left for Solapur

in the morning for work at 07:00 a.m. and returned to Kurduwadi on 13.01.2001 at 02:00 p.m. by the official jeep of the said office. Thereafter on

16.01.2001 Log Book entry shows that BDO, Kurduwadi and Respondent left for Solapur for work at 07:00 a.m. in the morning and returned back at

10:00 p.m. in the night. Thereafter entry dated 23.01.2001 in the Log Book shows that once again they left Kurduwadi at 08:00 a.m. and returned

back at 11:00 p.m. after completing their work. Similar is the Log Book entry for 30.01.2001. Every entry in the Log Book bears the signature of

BDO. Thus it is crystal clear that on all dates of initial demand alleged by Complainant, both the BDO, Kurduwadi and Respondent were never

present in their office in Kurduwadi Panchayat Samiti and this raises a grave doubt about the truthfulness of the Complainant's case. The story alleged

by Complainant regarding Exhibit-16 i.e. the handwritten chit of paper by Respondent given to BDO about the initial demand on 23.01.2001 therefore

fails. Ironically prosecution did not confront DW-1 i.e. BDO, Kurduwadi the defense witness with respect to Exhibit-16.

34. In view of the above observations and findings it is clear that in such graft cases, there has to be a minute scrutiny of each fact with absolute

degree of caution exercised by the Statutory Officers. In a given case if the Accused is able to show that there is a serious prejudice on account of

available evidence placed on record, it calls for a much greater degree of care and caution. Such is the case herein.

35. In the present case, it is clearly seen that if the aforementioned discussed evidence which is part of the 'B' file of Complainant would had been

seen by the Sanctioning Authority, the result would have been different. Facts in the present case clearly point out non-application of mind by the

Sanctioning Authority since what is therefore stated in the Sanction Order is not a true reflection of the actual facts placed on record and proved by

the Defence in the present case.

36. Respondent â€" Accused has therefore suffered an ignominious situation of having to face a trial and the prolonged wait for determination of this

Appeal, but by virtue of the judgement of the Trial Court, he has been acquitted on both counts i.e. the issue of sanction and merits of the matter. On

the basis of the above discussions on facts and evidence on record, issue of initial demand, rather demands, issue of motive, admitted delay in

approaching the Law Enforcement Agency (ACB), the trap event, the pre-trap and post-trap panchnamas leave several questions unanswered for the

prosecution, which are answered by the impugned judgment of acquittal. The judgement dated 08.03.2004 is a well reasoned and cogent judgement

which highlights serious lacunae on the part of the prosecution case. The said judgement therefore deserves to be upheld. It is so upheld

37. I would also like to quote paragraphs Nos.20 to 21 of the decision of this Court (Coram : K.R. Sriram J.) in the case The State of Maharashtra

Vs. Ramesh Khandu Salve Criminal Appeal No.372 of 2006 decided on 05.03.2021; wherein decisions of the Supreme Court which are directly

relevant to the facts of the case in hand are quoted with approval. paragraphs Nos.20 to 21 read thus:-

â€œ20. The Apex Court in Ghurey Lal Vs. State of U.P. has culled out the factors to be kept in mind by the Appellate Court while hearing an appeal against

acquittal. Paragraph Nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of

reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both

facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal

bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough

for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to

overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has ""very substantial and compelling reasons"" for doing so.

A number of instances arise in which the appellate court would have ""very substantial and compelling reasons"" to discard the trial court's decision. ""Very

substantial and compelling reasons"" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in ""grave miscarriage of justice"";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic

expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the

accused.

The Apex Court in many other judgments including Murlidhar and Ors. Vs. State of Karnataka has held that unless, the conclusions reached by the trial court are

found to be 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.

Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that 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.

We must also keep in mind that there is a presumption of innocence in favour of Respondent and such presumption is strengthened by the order of acquittal passed

in his favour by the Trial Court.

The Apex Court in Ramesh Babulal Doshi Vs. State of Gujarat has held that if the Appellate Court holds, for reasons to be recorded that the order of acquittal

cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court

can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with

the order of the Trial Court, the Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

21. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the evidence available on

record, there is nothing to substantiate the charge leveled against accused.

22. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused 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, accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For

acquitting accused, the Trial Court rightly observed that the prosecution had failed to prove its case.â€

38. Resultantly the Criminal Appeal fails and stands dismissed.