2026 INSC 568

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 3383-3385 OF 2025

STATE OF UTTAR PRADESH .....APPELLANT(s)

VERSUS

A.K.GABA ETC. ....RESPONDENT(s)

J U D G M E N T

PRASANNA B VARALE, J.

1. The present appeals arise from the impugned order dated 27.05.2019 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Criminal Appeal Nos. 967, 964 and 963 of 2014, wherein the High Court allowed all the three appeals of the accused respondents and acquitted the respondents of the charges levelled

against them. Aggrieved by the same, the State has preferred the present appeals.

BRIEF FACTS

2. The factual matrix of the case is that on 05.01.1995, R.K. Srivastava, Superintendent, Central Excise, A.K. Gaba, Inspector, Central Excise and Alok Gupta, Inspector, Central Excise had visited M/s Prime Products, Kursi Road, Barabanki and also inspected the adjoining factory, namely, M/s Amoli Ceraplast Ltd. R.K. Srivastava along with other co-accused persons had seized all the available records of M/s Amoli Ceraplast Ltd. without giving any acknowledgement. Thereafter, the complainant Kuldeep Tiwari, Retainer Consultant, visited the office of R.K. Srivastava on 10.01.1995 at about 10.00 P.M. and asked him to return all the documents which they have taken away with them from the factory but R.K. Srivastava had said to the complainant that unless he made the payment of Rs.80,000/- as an illegal gratification, the documents will not be returned to him. Feeling aggrieved, complainant Kuldeep Tiwari lodged a First Information Report (hereinafter referred to as 'F.I.R') with Superintendent of Police, C.B.I., Lucknow.

3. Thereafter, on 10.01.1995, at about 7.00 pm., complainant alongwith shadow witness visited the office of R.K. Srivastava, where accused, namely, A. K. Gaba and Alok Gupta were also present at that time, R.K. Srivastava had demanded Rs.80,000/- as an illegal gratification. On 14.01.1995, complainant alongwith the shadow witnesses again visited the residence of Shri R.K. Srivastava with Rs. 80,000/- where the brother of the accused P.K. Srivastava was allegedly also found sitting there. The team of the C.B.I. raided the house of the accused, namely, R.K. Srivastava and Rs.60,000/- were recovered from the bedroom and Rs. 20,000/- were also recovered from the pocket of jacket of P. K. Srivastava. Both hands of R.K. Srivastava. P.K. Srivastava and Dushyant Kumar were dipped in the solution, on this solution turned pink. As such, R.K. Srivastava and other accused persons were allegedly caught red-handed. After completing the process of investigation, charge-sheet came to be filed on 11.11.1997 by the investigating agency i.e. CBI against the accused persons for the offences under Section 120-B Indian Penal Code, 1860 (hereinafter referred to as 'IPC') r/w Section 7, Section 13(2) r/w13(1)(d) of Prevention of Corruption Act, 1988 (hereinafter referred to as 'P.C. Act') and Section 114 and 201 IPC read with

Section 7 & 13(2) P.C. Act in the Court of Special Judge, Lucknow. Criminal Case No. 05/1997 was registered against all accused.

4. The Special Judge, Lucknow vide order dated 26.07.2014, convicted the accused persons Shri R.K. Srivastav, Shri A.K. Gaba, Shri Dushyant Kumar, Shri Alok Gupta U/s 120B of IPC R/W Section 7 and 13 (1)(d) R/w Section 13(2) P.C. Act and acquitted P.K. Srivastava by giving benefit of doubt.

5. Aggrieved by the order, the respondents herein filed Criminal Appeal Nos. 976, 963 and 964 of 2014 before the High Court of Judicature at Allahabad, Lucknow Bench challenging the order passed by the Special Judge, Lucknow. On appreciation of evidence in record, the High Court vide order dated 27.05.2019 allowed all the three criminal appeals and acquitted the respondents herein.

6. Aggrieved by the said judgement of the High Court, the appellant i.e. State of Uttar Pradesh is before us.

CONTENTIONS

7. The counsel for the appellant has contended that the High Court has not correctly appreciated the oral and documentary evidence produced by the prosecution. The counsel submitted that the respondents A.K. Gaba and Alok Gupta were present on

10.01.1995 at the time when the initial demand of bribe of Rs. 80,000/- was made by R.K. Srivastava, and that they were also present on 07.01.1995 when the records were seized from the factory premises of M/s. Amoli Ceraplast Ltd. without issue of any seizure receipt. It is submitted that accused Dushyant Kumar was also present on 14.01.1995 when R.K. Srivastava accepted the bribe in cash in the presence of the independent witness, and was the one who counted the bribe money after its acceptance. The counsel further submitted that the accused failed to explain the recovery of the bribe money and the seized records of M/s Amoli Ceraplast Ltd. Based on the above, the counsel contended that there is enough evidence to establish that the respondents were party to the criminal conspiracy, and that the respondents cannot be acquitted merely because the independent witnesses have turned hostile when the demand and acceptance of bribe in the present case has been adequately proved. It is the submission of the counsel for appellant that as the respondents were charged for the offences under Section 120-B IPC read with Section 7 and 13(2) read with 13(1)(d) P.C. Act, and have not been charged under Section 7 and 13(2) read with 13(1)(d) P.C. Act, thus there is no legal requirement to prove the

ingredients of Section 7 and 13(2) read with 13(1)(d) of P.C. Act as substantive offences against them.

8. *Per Contra,* the counsel for the respondent No. 2 contended that respondent was convicted by Trial Court along with other accused merely on the basis of presumption that he was part of conspiracy of demand made by accused No. 1 and also because he was present on 14.01.1995 on the spot. The counsel submitted that the Ld. Trial Court had failed to appreciate that respondent was subordinate to the main accused No. 1 and being a junior officer, he was required to follow the protocol by accompanying his senior officer i.e. accused No. 1. Learned counsel further submitted that as per the case of prosecution, the accused no. 5 was also present at the spot, when the recovery was affected and certain recovery was also made from him. Learned counsel further submits that though this was an allegation against accused no. 5, the Trial Court on appreciation of the evidence acquitted accused no. 5. Learned counsel further submits that respondent no. 2 was on a better footing than accused no. 5 as there was neither recovery of the trapped money nor there was any evidence to show that record was seized at the instance of respondent no. 2. It is further submitted by learned counsel that

there is absolutely no legal evidence against the accused persons. It is also submitted that though a submission was made on behalf of learned counsel for the appellant that accused failed to explain the recovery of seizure record of M/s Amoli Ceraplast Ltd., the record is contrary to this submission. Learned counsel submits that in the statement under Section 313 of the Criminal Procedure Code, 1973 (hereinafter referred to as the 'Cr.P.C.'), the accused persons specifically denied this question in respect of seizure of the record. Learned counsel further submits that the High Court had reappreciated and scrutinized the entire evidence in proper perspective and arrived at a conclusion that the learned Trial Court committed an error in holding the accused persons guilty and awarding the sentence. As such, the High Court allowed appeals and set aside the judgment and order of the Trial Court. It is further submitted by the counsel that the lack of independent witness was fatal to the case of prosecution as under the circumstances, prosecution witnesses were scrutinized with greater care. Learned counsel in support of his submissions placed reliance on the judgment of ***Shyamal Saha & Anr. vs. State of West Bengal***[1]. It

[1] (2014) 12 SCC 321

was further submitted that the ingredient of abuse of position as a public servant is *sine-qua-non* to prove an offence punishable under Section 13(1)(d) of the P.C. Act as has been held in ***State of Gujarat vs. Manshankar Prabhashankar Dwivedi***[2] and ***State by Special Police Establishment vs. D. Krishnamurthy***[3]. The counsel submitted that as the accused no. 1 had been charged under Section 7 of the P.C. Act whereas other officers were charged under Section 7 read with 120B of IPC. Learned counsel submitted that as per the prosecution, the main accused was accused no. 1 but accused no. 1 was not charged with Section 120B of IPC. In this fact situation, the theory of conspiracy alleged by the prosecution utterly fails.

ANALYSIS

9. Heard learned Counsel for the appellant as well as learned Counsel for the respondent. We have also perused relevant documents on record and the judgment passed by the High Court.

10. We find considerable merit in the submission of learned counsel for the respondents. In our opinion, the High Court thoroughly reappreciated the evidence in its proper perspective. The High Court

[2] (1972) 2 SCC 392
[3] (1995) Suppl. (3) SCC 702

was also justified in observing that the prosecution miserably failed to establish its case against the accused persons. The evidence was wholly insufficient to establish even the basic requirements such as demand and acceptance. It will be useful for all purposes to refer to the observations of the High Court in its judgment dated 27.05.2019 to that effect and it reads thus:

> "...All the prosecution witnesses did not support the prosecution case except P.W.5. who had stated in his testimony that accused appellants were involved in taking illegal gratification....
> ......it is summarized that **the necessary and essential ingredients of "demand" and "acceptance" of the bribe money is absolutely lacking in this case, so far as the accused appellants are concerned.** The explanation of the accused-appellants regarding their presence in the home or outside the house of R.K. Srivastava for discharging the protocol duty of R.K. Pandey is found consistent with the evidence of D.W.4 (Sri Chandra Bhan Dubey) who booked the Guest House for R.K. Pandey and the statement of PW-10 Driver Suresh Chandra Misra, who told in his testimony that he was directed by Dr. R.K. Shrivastava in evening of 13.01.1995 that as Assistant Collector R.K. Pandey was coming from Allahabad so, he, alongwith Dushyant Kumar would be receiving Pandey, so he should come to them on 14.01.1995, the learned Trial Court has totally discarded this piece of the witnesses on the ground unknown to the law....
> ....while all the three Inspectors, including both the appellants, were charged under Section 120 B (Criminal Conspiracy) of the IPC but **main accused and alleged chief conspirator R.K. Srivastava was not charged under Section 120-B of IPC. Thus, the appellants were subjected to trial without linkage with prime accused who alone is allegedly involved in demand, acceptance and recovery of bribe amount in whole case.** Both the appellants, namely, A.K. Gaba and Alok Gupta were not present in the official chamber of R.K. Srivastava on 10.01.1995 which is evident from the

statements/ cross examinations of many prosecution witnesses.....

....**Kuldeep Tewari, complainant has stated in his testimony that he had a tape recorder to record the conversation that took place in the evening of 10.01.1995 and this recording was never adduced as evidence which could pin point the participants of the alleged meeting on 10.01.1995. Tape Recorder has been concealed by the prosecution in order to implicate A.K. Gaba and Alok Gupta falsely. The Learned Trial Court has also ignored concealment of vital evidence i.e. Tape Recorder, concealed by the prosecution in the judgment causing grave injustice to appellants, namely, A.K. Gaba and Alok Gupta.**

.....The judgment dated 26.07.2014 reveals that while passing the judgment, **learned Trial Judge has not discussed the details of Cross examination of the Prosecution witnesses. Thus, the appellants were denied natural justice as evidence emerging out from cross examination conducted by defense on prosecution witnesses. This omission has resulted in to erroneous judgment**...

....**The Learned trial Court's order is based on presumption, as the Judge has used the words "Sambhavtah" and "Prateet hota hai" many times before presuming as to why the complainant Kuldeep Tewari did not implicate appellants.** This is against the entire spirit of law as no person can be inculpated and exculpated at the same stake. The very uses of these words shake the confidence in the justice system and unless and until the guilt of the accused is proved up to hilt by cogent & corroborative evidence, every accused is liable to be discharged.

....It is well settled position of law that **the demand for the bribe money is sine qua non to convict the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act.** ....**The proof of demand, thus, has been held to be an indispensable essentiality and offence under of permeating mandate for an Sections 7 and 13 of the Act.**

[Emphasis Supplied]

11. It is a well settled position of law that the demand for the bribe money is *sine qua non* to convict the accused for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C. Act. The High Court made reference to certain cases in support of the legal position i.e. ***B. Jayaraj v. State of A.P***[4]; ***P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and Anr***[5], ***Krishan Chander v. State of Delhi***[6]**,**; and ***Rakesh Kapoor v. State of Himachal Pradesh***[7]**,** as such, the High Court was justified in observing that mere recovery of tainted money divorced from the other circumstances under which it was allegedly paid would not by itself be sufficient to sustain conviction.

12. In ***Banarsi Dass v. State of Haryana***[8]**,** this Court observed that mere recovery of tainted money is not sufficient unless there is substantive evidence regarding demand and acceptance of illegal gratification. The Court held:

> **25.** Reliance on behalf of the appellant was placed upon the judgment of this Court in *C.M. Girish Babu* [(2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] **where in the facts of the case the Court took the view that mere recovery of money from the accused by itself is not enough in absence of substantive**

[4] .2014) 13 SCC 55
[5] (2015) 10 SCC 152
[6] (2016) 3 SCC 108
[7] (2012) 13 SCC 552
[8] (2010) 4 SCC 450

> **evidence for demand and acceptance.** The Court held that there was no voluntary acceptance of the money knowing it to be a bribe and giving advantage to the accused of the evidence on record, the Court in paras 18 and 20 of the judgment held as under: (SCC pp. 784 & 785-86)....."
>
> (emphasis supplied)

13. The aforesaid principle squarely applies to the facts of the present case where the prosecution has failed to establish the foundational fact of demand beyond reasonable doubt.

14. Likewise, in ***C.M. Sharma v. State of Andhra Pradesh***[9]**,** this Court reiterated that recovery of tainted money divorced from proof of demand cannot by itself establish guilt and hold that:

> **21.** Mr.
> Rai, lastly submits that from the evidence of the prosecution witnesses the worst which can be said against the appellant is that currency notes were recovered from him. That itself, in his submission, does not constitute the offence. He submits that to bring home the charge the prosecution is required to prove beyond reasonable doubt that the accused had demanded the illegal gratification and accepted the same voluntarily. In support of the submission reliance has been placed on a decision of this Court in *C.M. Girish Babu* v. *CBI* [(2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] and our attention has been drawn to SCC para 18 of the judgment which reads as follows: (SCC p. 784)
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> "*18.* In *Suraj Mal* v. *State (Delhi Admn.)* [(1979) 4 SCC 725 : 1980 SCC (Cri) 159] this Court took the view that (at SCC p. 727, para 2) **mere recovery of tainted money divorced from the circumstances under which it is paid is not**

[9] **(2010) 15 SCC 1**

sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe."

23. We do not have the slightest hesitation in accepting the broad submission of Mr Rai that **demand of illegal gratification is a sine qua non to constitute the offence under the Act. Further mere recovery of currency notes itself does not constitute the offence under the Act, unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be bribe.** In the facts of the present case, we are of the opinion that both the ingredients to bring the Act within the mischief of Sections 7 and 13(1)(*d*)(*ii*) of the Act are satisfied.

(emphasis supplied)

15. In ***Mukhtiar Singh (Since Deceased) through LRs v. State of Punjab***[10], this Court held that:

14. In *P. Satyanarayana Murthy* [*P. Satyanarayana Murthy* v. *State of A.P.*, (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11] , this Court took note of its verdict in *B. Jayaraj* v. *State of A.P.* [*B. Jayaraj* v. *State of A.P.*, (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543] underlining that **mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as**

[10] (2017) 8 SCC 136

Sections 13(1)(*d*)(*i*) and (*ii*) of the Act. It was recounted as well that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. Not only the proof of demand thus was held to be an indispensable essentiality and an inflexible statutory mandate for an offence under Sections 7 and 13 of the Act, it was held as well qua Section 20 of the Act, that any presumption thereunder would arise only on such proof of demand. This Court thus in *P. Satyanarayana Murthy* [*P. Satyanarayana Murthy* v. *State of A.P.*, (2015) 10 SCC 152 : (2016) 1 SCC (Cri) 11] on a survey of its earlier decisions on the pre-requisites of Sections 7 and 13 and the proof thereof summed up its conclusions as hereunder: (SCC p. 159, para 23)

> "*23*. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(*d*)(*i*) and (*ii*) of the Act and in absence thereof, unmistakably the charge therefor, would fail. *Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder.*"
>
> (emphasis supplied)

16. The proof of demand of illegal gratification is the gravamen of the offence and in absence thereof, the presumption under Section 20 of the P.C. Act would not arise. Where prosecution evidence is

inconsistent and material witnesses turn hostile, benefit of doubt must necessarily endure to the accused.

17. The High Court, in the present case, rightly noticed that the prosecution evidence regarding demand itself was doubtful and unreliable, particularly when the complainant and several material witnesses failed to support the prosecution version. Therefore, the statutory presumption under Section 20 of the P.C. Act could not have been invoked against the respondents.

18. In the present case, the complainant, independent witnesses and other material witnesses having not supported the prosecution case in material particulars, the High Court was justified in extending benefit of doubt to the respondents.

19. This Court also finds substance in the reasoning adopted by the High Court that the prosecution failed to establish the charge of conspiracy under Section 120-B IPC. On a well-settled principle that for establishing the charge of conspiracy, the pre-requisite is satisfactory evidence to show that there was meeting of mind of the accused so as to hatch up the conspiracy and then to act so as to give effect to the hatched conspiracy. On this aspect also, the prosecution miserably failed. It may not be out of place to refer to

judgment of this Court in ***State (NCT of Delhi) v. Navjot Sandhu***[11]**,** this Court held:

> **90.** In *Nalini case* [(1999) 5 SCC 253 : 1999 SCC (Cri) 691] S.S.M. Quadri, J., pointed out that the **meeting of the minds of two or more persons for doing an illegal act or an act by illegal means is a *sine qua non* of the criminal conspiracy.** Judge Learned Hand, in *Van Riper* v. *United States* [13 F 2d 961 (2nd Cir, 1926)] said of conspiracy:
>
> > "When men enter into an agreement for an unlawful end, they become ad hoc agents for one another and have made a partnership in crime."
>
> **97.** Mostly, conspiracies are proved by circumstantial evidence, as the conspiracy is seldom an open affair. **Usually both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused** (*per* Wadhwa, J. in *Nalini case* [(1999) 5 SCC 253 : 1999 SCC (Cri) 691] at p. 516). The well-known rule governing circumstantial evidence is that each and every incriminating circumstance must be clearly established by reliable evidence and "the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible" (*Tanviben Pankajkumar case* [*Tanviben Pankajkumar Divetia* v. *State of Gujarat*, (1997) 7 SCC 156 : 1997 SCC (Cri) 1004] , SCC p. 185, para 45). G.N. Ray, J. in *Tanviben Pankajkumar* [*Tanviben Pankajkumar Divetia* v. *State of Gujarat*, (1997) 7 SCC 156 : 1997 SCC (Cri) 1004] observed **that this Court should not allow suspicion to take the place of legal proof.**
>
> (emphasis supplied)

[11] (2005) 11 SCC 600

20. Similarly, in ***Esher Singh v. State of A.P.***[12]**,** this Court observed:

> **38.** .....We are aware of the fact that direct independent evidence of criminal conspiracy may not ordinarily and is generally not available and its existence invariably is a matter of inference except as rare exceptions. The inferences are normally deduced from acts of parties in pursuance of a purpose in common between the conspirators. This Court in *V.C. Shukla* v. *State (Delhi Admn.)* [(1980) 2 SCC 665 : 1980 SCC (Cri) 561] held that to prove criminal conspiracy there must be evidence, direct or circumstantial, to show that there was an agreement between two or more persons to commit an offence. **There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means.** A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied on for the purposes of drawing an inference should be prior in point of time than the actual commission of the offence in furtherance of the alleged conspiracy.

[12] (2004) 11 SCC 585

(emphasis supplied)

21. The conspiracy cannot be inferred merely on the basis of suspicion or association and that there must be cogent material indicating meeting of minds between the accused persons. To establish a charge of conspiracy, knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. The offence is complete when there is meeting of minds.

22. In the case at hand, except alleging presence of the respondents at certain places during the relevant period, the prosecution has failed to produce any substantive evidence indicating prior agreement or concert between the respondents and the principal accused R.K. Srivastava.

23. The High Court has rightly noted that even according to the prosecution story, the principal allegation of demand was against R.K. Srivastava alone. No independent material has been brought on record to show that the respondents actively participated in the alleged demand or shared the criminal intent necessary to constitute conspiracy.

24. Another significant aspect which cannot be ignored is the withholding of best evidence by the prosecution.

25. The High Court also noticed a very interesting facet which led to withholding the best evidence. It was the case of the prosecution reflected through the complainant that a tape recorder was used for recording of the conversation of demand being made by the accused to the complainant. For the reasons best known to the investigating agency, this very material piece of evidence was not at all seized by the investigating agency and there is no explanation whatsoever which would be offered by prosecution.

26. We may refer to the judgment of this Court in ***Tomaso Bruno v. State of Uttar Pradesh***[13]**,** this Court held that:

> **28.** The High Court held that even though the appellants alleged that the footage of CCTV is being concealed by the prosecution for the reasons best known to the prosecution, the accused did not invoke Section 233 CrPC and they did not make any application for production of CCTV camera footage. **The High Court further observed that the accused were not able to discredit the testimony of PW 1, PW 12 and PW 13 qua there being no relevant material in the CCTV camera footage. *Notwithstanding the fact that the burden* lies upon the accused to establish the defence plea of alibi in the facts and circumstances of the case, in our view, the prosecution in possession of the best evidence, CCTV footage ought to have produced the same. In our considered view, it is a fit case to draw an adverse inference against the prosecution under Section 114 Illustration (*g*) of the Evidence Act that the prosecution**

[13] (2015) 7 SCC 178

> **withheld the same as it would be unfavourable to them had it been produced.**
>
> (emphasis supplied)

27. The adverse inference may be drawn against the prosecution where material electronic evidence is withheld without justification. The failure of the prosecution to produce the alleged tape-recorded conversation assumes greater significance because the same could have conclusively established the persons present at the time of alleged demand and the exact nature of the conversation.

28. For all the reasons stated above, High Court has rightly found fault with the reasoning adopted by the learned Trial Court, observing that the conviction was substantially based on presumptions and conjectures rather than legally admissible evidence.

29. It is equally important to bear in mind the settled principles governing interference against acquittal.

30. In ***Chandrappa v. State of Karnataka***[14]**,** this Court summarized the principles governing appeals against acquittal and held that:

> **42.** From the above decisions, in our considered view, the following general principles regarding powers of the appellate

[14] (2007) 4 SCC 415

court while dealing with an appeal against an order of acquittal emerge:

(*1*) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(*2*) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

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

(*4*) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

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

(emphasis supplied)

31. In the ***State of Rajasthan v. Abdul Mannan***[15]**,** this court discussed the scope of interference by this Court in an order of acquittal and held that:

> "*13.* In coming to this conclusion, we are reminded of the well-settled principle that **when the court has to exercise its discretion in an appeal arising against an order of acquittal, the court must remember that the innocence of the accused is further re-established by the judgment of acquittal rendered by the High Court**. Against such decision of the High Court, the scope of interference by this Court in an order of acquittal has been very succinctly laid down by a three-Judge Bench of this Court in *Sanwat Singh* v. *State of Rajasthan* [AIR 1961 SC 715 : (1961) 3 SCR 120 : (1961) 1 Cri LJ 766] . At SCR p. 129, Subba Rao, J. (as His Lordship then was) culled out the principles as follows : (AIR pp. 719-20, para 9)
>
> (emphasis supplied)

32. Similarly, in ***Hakeem Khan v.*** State ***of M.P.***[16]**,** it was held that:

> *34.* It will be necessary for us to emphasise that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. **A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view.** The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand,

[15] (2011) 8 SCC 65
[16] (2017) 5 SCC 719

> denotes a conclusion which can reasonably be arrived at regardless of the fact whether it is agreed upon or not by the higher court. The fundamental distinction between the two situations has to be kept in mind. **So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court.**
>
> (emphasis supplied)

33. The presumption of innocence gets strengthened by an order of acquittal and unless the findings recorded by the High Court are perverse or wholly unreasonable, interference under Article 136 of the Constitution of India is unwarranted.

34. In the case on hand, the High Court has meticulously re-appreciated the entire evidence on record and assigned cogent reasons while extending benefit of doubt to the respondents. The view taken by the High Court is certainly a plausible and possible view arising from the evidence available on record.

35. This court, while exercising jurisdiction under Article 136 of the Constitution, does not ordinarily interfere with an order of acquittal unless the findings are manifestly illegal, perverse or result in miscarriage of justice. No such exceptional circumstance is made out in the present case.

36. The prosecution has failed to establish beyond reasonable doubt the essential ingredients of demand, acceptance and criminal conspiracy. The findings recorded by the High Court neither suffer from perversity nor can they be termed contrary to law.

37. Accordingly, this Court is of the considered opinion that the impugned judgment and order passed by the High Court acquitting the respondents does not warrant interference.

38. The criminal appeals, being devoid of merit, are accordingly dismissed. Pending applications, if any, shall also stand disposed of.

.....J.

[PANKAJ MITHAL]

.....J.

[PRASANNA B. VARALE]

NEW DELHI;

MAY 27, 2026.