

## **Punjabrao vs State Of Maharashtra on 14 February, 2001**

**Equivalent citations: AIR2002SC486, JT2001(5)SC532, (2002)10SCC371, AIR 2002 SUPREME COURT 486, 2002 (10) SCC 371, 2002 AIR SCW 16, 2004 SCC(CRI) 1130, (2001) 5 JT 532 (SC), (2001) 2 ALLCRIR 1591, (2001) 43 ALLCRIC 372, (2001) 3 ALLCRILR 776, (2003) 25 OCR 824, (2002) 1 RECCRIR 231, (2001) 5 SUPREME 231, (2001) SC CR R 822, (2002) 2 MAHLR 261**

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**Bench: U.C. Banerjee**

### **ORDER**

1. This appeal is directed against the Judgment of Bombay High Court at Nagpur Bench. By the impugned judgment, State of Maharashtra having approached the High Court against an order of acquittal passed by the learned Special Judge, the High Court has set aside the acquittal and convicted the appellant under Section 161 of the Indian Penal Code and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947. The prosecution alleged that on 25-9-1986 the accused, who was the Patwari demanded and accepted illegal gratification to the tune of Rs. 100/-, and he being a public servant, such acceptance tantamounts to offence under Sections 161 and 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act. The accused in his 313 statement candidly admitted about the recovery of sum of Rs. 100/- from him and the acceptance of money by him from the complainant PW-1, But he took the plea that the aforesaid amount was not in pursuance to any demand by him as any Illegal gratification but was a loan amount which the accused was collecting in those days from different Rayats and, therefore, he has not committed any offence either under Section 161 or under the provisions of Prevention of Corruption Act. The learned Special Judge in view of the stand of the accused elaborately discussed the evidence on record, and came to hold that the explanation offered by the accused must be held to be probable, reasonable and acceptable, and therefore, accepting the same acquitted the accused of the charges leveled against him. In appeal against the acquittal, the High Court by the impugned judgment, instead of examining the reasons advanced by the learned Special Judge, came to hold that the explanation of the accused offered cannot be accepted. Relying upon the evidence of P.Ws. 1 and 2 came to hold that the prosecution has been able to establish the charges against the accused, and as such the order of acquittal was interfered with and the accused-appellant has been convicted under Section 161 and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act.

2. It is contended by the learned counsel for the appellant that the High Court in exercise of its power against an order of acquittal was duty-bound to examine the reasons, which persuaded the trial Judge to come to a conclusion that the explanation offered by the accused was probable and reasonable, and having not done so the order of acquittal could not have been interfered. The learned counsel further urged that even on examining the evidence of P.Ws. 1 and 2, it is not possible to hold that the explanation offered is not reasonable or probable. The learned counsel

appearing for the State, on the other hand, contended that on the materials on record, the High Court was fully Justified in interfering with an order of acquittal since the power of the High Court while entertaining an appeal against an order of acquittal is the same as that when It entertains an appeal against a conviction and the Court having re-appreciated the entire evidence, the order of conviction remains unassailable.

3. We have examined the judgment of the learned Special Judge as well as that of the High Court. It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability. It is undisputed that from 24th to 26th the Patwari was collecting loans in a collection campaign. It is, of course, true as observed by the High Court that when the Investigating Officer seized the amount from the Patwari-accused, he did not offer the explanation that it was in relation to a collection of loan, but that by itself would not be sufficient to throw away the explanation offered by the accused in his statement under Section 313 when such explanation could be held to be reasonable under the facts and circumstances of the case, as indicated by the learned Special Judge while acquitting the accused. It also transpires that the High Court, while setting aside an order of acquittal recorded by the Special Judge, has not focussed its attention to the reasoning advanced by the Special Judge, and by mere re-appreciation has come to the conclusion, and in our view the conclusion is based upon a mis-reading of the relevant evidence Including the evidence of PW-2. In the aforesaid circumstances, we have no hesitation to come to the conclusion that the High Court erred in interfering with the well reasoned judgment of the Special Judge in an order of acquittal. We, therefore, set aside the impugned conviction and sentence passed by the High Court. The appeal is allowed. The accused-appellant is acquitted of the charges leveled against him. The bail bond stands discharged.