

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.149 OF 2005

The State of Maharashtra
Through A.C.B., Jalgaon

... APPELLANT

VERSUS

1) Prakash Kisan Wankhede,
Age 27 years, Occu. record keeper,
T.I.L.R. Office, Pachora,
District Jalgaon

2) Bapu Nathu Patil,
Age 41 years, Occu. Cadastral Surveyor,
T.I.L.R. Office, Pachora,
District Jalgaon

... RESPONDENTS

.....
Mr. K.N. Lokhande, A.P.P. for appellant
Mr. Ujwal S. Patil, Advocate for respondentss
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CORAM : R.G. AVACHAT, J.

DATE : 26th APRIL, 2023

J U D G M E N T :

This is an appeal from acquittal. The respondents herein were prosecuted for offences punishable under Sections 7, 12, 13(1)(d) read with 13(2) of the Prevention of Corruption Act. They have been acquitted vide impugned judgment and order dated 20/8/2004, passed by Special Judge and Additional Sessions Judge, Jalgaon in Special Case No.9/2002. As such, it

is a State's appeal.

2. Facts giving rise to the present appeal are as follows:-

Respondent No.1 Prakash Wankhede (original accused No.1) was serving as Record Keeper and respondent No.2 Bapu Patil (original accused No.2) was Cadastral Surveyor in the office of Taluka Inspector of Land Records (T.I.L.R.), Pachora, District Jalgaon. The complainant Prakash Hari Patil (P.W.1) was resident of village Mhasas, Taluka Pachora, District Jalgaon. Land Survey No.113 was in the name of the complainant's father and his cousin Vijay. The land was measured by Cadastral Surveyor. The map drawn pursuant to the said measurement was required. The complainant, therefore, went to the T.I.L.R. Office on 7/7/2001 and met the respondent No.2 Bapu Patil, and requested for the measurement map. He (Bapu Patil) referred the complainant to the respondent No.2, since the work was no longer with him. The complainant, therefore, approached the respondent No.1 and requested for the measurement map. He (respondent No.1) asked the complainant to pay Rs.500/- for giving him the map. Respondent No.2 Bapu Patil also made a demand of Rs.200/-. The complainant reluctantly agreed to pay them the

money. The complainant, however, approached the office of Anti-Corruption Bureau (A.C.B.), Jalgaon on 9/7/2001 and lodged the complaint (Exh.27). P.W.5 Mukund recorded the same. He secured presence of two State Government employees to act as panch witnesses.

A pre-trap panchanama (Exh.29) was drawn. Necessary instructions were given to the complainant and the panchas. Accordingly, the complainant along with shadow witness (P.W.2 Ashok) went to the office of T.I.L.R., Pachora. Respondent No.1 Prakash Wankhede was not in the office. He came after a while. Thereafter, he asked the complainant as to whether money was brought. He also told the complainant if he had money with him, the same be paid to him. He would then pay to his superior officer, obtain his signature and then give him the map. The complainant paid the respondent No.1 a sum of Rs.500/- (5 currency notes smeared with anthracine powder). The respondent No.1 went to his superior (Shri Bagul) and came after a while. The complainant paid Rs.200/- to respondent No.2 on his demand. Respondent No.1 then returned from the room of his officer and handed over the map and necessary papers to the complainant. The complainant gave a pre-determined signal. P.W.5 Mukund accompanied by

the members of raiding party arrived. Tainted currency notes came to be seized from both the respondents besides three others. Trap panchanama (Exh.30) was drawn then and there. Thereafter post trap panchanama (Exh.32) was also drawn. The respondent No.2 told P.W.5 Mukund to have shared some bribe money with his superior and two other employees (not prosecuted) of the T.I.L.R. Office. On completion of investigation, all the papers of investigation were submitted to the respective appointing authorities of the respondents and those three others. The State Government did not accord sanction for prosecution of T.I.L.R. Shri Bagul and those two others. The sanction for prosecution of the respondents was accorded by Deputy Inspector of Land Records, Nasik (P.W.3 Narayan). Thereafter the charge sheet came to be laid against the respondents herein.

3. The learned Judge framed the charge against the respondents. They pleaded not guilty. Prosecution examined 5 witnesses and produced in evidence certain documents in proof of the charge. On appreciation of the evidence in the case, the learned Judge acquitted both the respondents. In view of the learned Judge, non-granting of sanction for prosecution of T.I.L.R. Shri Bagul proved fatal to the case against the

respondents. According to the learned Judge, the sanction accorded by P.W.3 Narayan was not valid one since he was not competent authority to accord sanction for prosecution of the respondents. The learned Judge also found glaring inconsistency inter-se the evidence of the prosecution witnesses.

4. Heard. The learned A.P.P. representing the appellant- State would submit that, the State Government had rightly not accorded sanction for prosecution of the T.I.L.R. The explanation offered by two others who were found in possession of some of the bribe money was found acceptable. As per the evidence of the complainant, the demand was made by the respondents herein. Pursuant to the demand of illegal gratification, the complainant paid the respondents bribe. Soon after receipt of bribe money, the raid was effected. The respondents were found in possession of bribe money. The learned A.P.P. took this Court through the entire evidence on record to ultimately urge for allowing the appeal.

5. The learned Advocate for the respondents would, on the other hand, submit that, it being an appeal against acquittal, there is very little scope for interference with the impugned judgment and order. According to learned counsel,

the Government Resolution (G.R.) dated 3/4/2000 has rightly been interpreted by the learned Judge for acquitting the respondents herein. The learned Advocate reiterated the reasons given by the learned Judge in support of the impugned judgment and order.

6. Considered the submissions advanced. Perused the evidence relied on.

In case of Ghurey Lal Vs. State of Uttar Pradesh
[(2008) 10 SCC 450], the Hon'ble Supreme Court held :-

“It is a well-established principle of criminal jurisprudence that when two possible and plausible explanations co-exist, the explanation favourable to the accused should be adopted.

If the trial court's view is possible and plausible, the High Court should not substitute the same by its own possible views.

An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable. The trial court has the advantage of watching the demeanour of the witnesses who have been given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. The appellate court undoubtedly has wide powers of reappreciating and re-evaluating the entire evidence but it would be justified in interfering

with the judgment of acquittal only when the judgment of the trial court is palpably wrong, totally ill-founded or wholly misconceived, based on erroneous analysis of evidence and non-existent material, demonstrably unsustainable or perverse.”

7. On reappraisal of the evidence in the case, it does appear that, pursuant to the demand of illegal gratification made by the respondents herein, the complainant lodged the complaint (Exh.27). A pre-trap panchanama was drawn. On the given date, the complainant paid both the respondents Rs.700/- as illegal gratification. After a while, the raiding party arrived. Bribe money came to be recovered from the respondents and three others. One of them was a Class II officer in the cadre of T.I.L.R. For his prosecution for the offences under the Prevention of Corruption Act, sanction of the State Government was a condition precedent. Admittedly, the State Government did not accord sanction for his prosecution. The respondents, therefore, relied on the G.R. dated 3/4/2000. For better appreciation, the relevant clause of the said G.R. is reproduced hereinbelow :-

“(ड) (1) जेंव्हा एखाद्या प्रकरणामध्ये एकापेक्षा अधिक दर्जाचे अधिकारी व कर्मचारी गुंतले असल्याचा निष्कर्ष लाचलुचपत प्रतिबंध विभागाने काढलेला असतो त्यावेळी त्या प्रकरणात गुंतलेल्या सर्व अधिकारी/कर्मचारी यांना समान न्यायाचे तत्व लागू करावे. म्हणजेच वरिष्ठतम

अधिका—यावर खटला भरण्यास मंजूरी देणा—या सक्षम प्राधिकार—याने तशी मंजूरी दिल्याशिवाय कनिष्ठ अधिकारी/ कर्मचारी यांच्यावर कोणतीही कारवाई करण्यात येऊ नये आणि जर वरिष्ठतम अधिका—यावर खटला भरण्यास सक्षम प्राधिका—याने अनुमती नाकारली तर त्या प्रकरणातील इतर कनिष्ठ अधिकारी/ कर्मचारी यांच्यावर कोणतीही कारवाई करण्यात येऊ नये.”

8. It is not in dispute that the aforesaid G.R. was in vogue at the relevant time. As per the aforesaid clause, when the A.C.B. comes to a conclusion that there is involvement of the public servant of more than one class/ cadre, then the principle of equality before law be made applicable to all of them. Unless and until a competent authority accords sanction for prosecution of the officer of the highest cadre, then and then only action shall be taken against other subordinate officials involved in the crime. The G.R. further reads that, if the competent authority refuses to grant sanction for prosecution of the officer of the higher rank, then no action shall be initiated against the other subordinate officers involved in the crime. The G.R. in no uncertain terms directs the A.C.B. that in such a case the subordinate public servant shall not be prosecuted.

9. In the present case, admittedly, the A.C.B. had come to the conclusion that the T.I.L.R. - Shri Bagul and two others namely Shri Kulkarni and Shri Tirange were also

involved in accepting illegal gratification. The investigating officer (P.W.5 Mukund) had, therefore, approached the competent authority for grant of sanction for prosecution of T.I.L.R. and four others including the present respondents. Undisputedly, the State Government refused to accord sanction for prosecution of the T.I.L.R. Shri Bagul. In this factual backdrop, the aforesaid G.R. has rightly been relied on by the learned Judge for acquitting the respondents herein.

10. Moreover, the learned Judge, on appreciation of the oral evidence of the complainant and the shadow witness, found glaring inconsistency inter-se their evidence. The learned Judge, therefore, granted the benefit thereof to the respondents herein.

11. On reappraisal of the evidence in the case and the reasons given by the learned Judge, this Court finds no reason to take a different view. Admittedly, the bribe money was recovered from all the five public servants, one of whom was a Class II officer. He was T.I.L.R. For his prosecution, sanction was required to be accorded by the State Government. The Government refused to accord such sanction. On the ground of principle of parity and equality before law and equal

protection of law in terms of the aforesaid G.R., this Court has to affirm the impugned judgment and order of acquittal, even though a different view may be possible on reappraisal of the entire factual matrix. Over 22 years have passed post the respondents were found to have made a demand of illegal gratification and accepted the same. One of them has already retired on superannuation. The other one is in the line. Considering all these facts and circumstances, the Court finds the appeal being without merit. The appeal, therefore, stands dismissed.

(R.G. AVACHAT, J.)

fmp/-