

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

CRIMINAL APPEAL NO.309 OF 2003

The State of Maharashtra
Through Sk.Hakkani Mohammad Hussain,
Dy. Supdt., of Police,
Anti Corruption Bureau, Beed
At present Aurangabad.

.. APPELLANT
(Orig. Complainant)

VERSUS

Nanasaheb S/o Tolaji Ausarmal
Age 38 yrs., Occu. Service (Talathi)
R/o Dhanora, Tq. Gevrai,
Dist. Beed.

.. RESPONDENTS
(Orig. Accused)

Mr. M.A. Deshpande, APP for State;
Mr. M.K. Deshpande, Advocate for Respondent.

**CORAM : R.M.BORDE &
P.R.BORA,JJ.**

DATE OF ORDER : 30th June, 2015.

PER COURT:

1) The State has filed the present appeal challenging the order of acquittal passed by the Special Judge, Beed on 31.12.2002 in Special Case No.43/1996.

2) Respondent-accused was tried in the aforesaid Special Case for the offence punishable under section 13(1)(d) read with section 13(2) of the Prevention of Corruption Act and under sections 467, 468, 471 and 409 of Indian Penal Code. The charge

against the Respondent-accused was that, he accepted bribe of Rs. 4,000/- from one Digamber Shamrao Lande for carrying out some mutation entries on the 7/12 extract of the land belonging to said Digamber and further that, he misappropriated an amount of Rs. 1,625/- by preparing false rent receipts. In order to prove the charge against the Respondent-accused, total nine witnesses were examined by the prosecution. The defence of the Respondent-accused was of total denial. The learned Special Judge, after assessing the oral and documentary evidence brought before him, recorded the acquittal of the accused.

3) In the present appeal, it is the contention of the Appellant-State that, the learned Special Judge failed in appreciating the evidence placed before him and wrongly recorded the order of acquittal. As has been argued by the learned APP, the prosecution has brought on record cogent and sufficient evidence to prove the guilt of the Respondent-accused. The learned APP further submitted that, witness Digamber Lande (PW 4), on whose complaint the prosecution was initiated against the Respondent-accused, has unequivocally deposed the fact of paying Rs.4,000/- to the Respondent-accused and the said fact was duly corroborated by Devrao Malhure (PW 2). The learned APP further submitted that,

the 7/12 extract falsely prepared by the Respondent-accused has also been duly proved by the prosecution and as such according to the learned APP, the prosecution has, beyond reasonable doubt, proved the evidence against the Respondent-accused under section 13(1)(d) read with section 13(2) of the Prevention of Corruption Act. The learned APP further submitted that, the rent receipts and the 7/12 extract were forwarded to the hand-writing-expert and the hand writing expert Shri Bhalchandra Biradar (PW 8) has also been examined by the prosecution in whose evidence it has been undoubtedly proved that the contents of the rent receipt and signature on it were in the hand writing of Respondent-accused. The learned APP submitted that, ignoring such evidence, brought on record by the prosecution, on some trifle ground, the learned trial court has wrongly acquitted the Respondent-accused. The learned APP therefore prayed for allowing the present appeal by setting aside the order of acquittal and to hold the Respondent-accused guilty for the offences charged against him and consequently to punish him adequately.

4) Shri M.K. Deshpande learned counsel appearing for the Respondent-accused supported the order passed by the learned Special Judge and prayed for dismissal of the appeal.

5) We have carefully considered the submissions advanced by the learned APP and the learned counsel for the Respondent-accused. We have gone through the impugned judgment and the evidence on record. Undisputedly, Digamber Lande (PW 4), on whose complaint the prosecution was initiated against the Respondent-accused, is the most important witness. On perusal of the evidence of the said witness before the trial Court, it is apparently revealed that, no conviction could have been based on such evidence. Though it was the case of the prosecution that, an amount of Rs.4,000/- was demanded and subsequently accepted by the Respondent-accused, from said Digamber Lande (PW 4), the evidence of Digamber Lande (PW 4) falls short for proving the said fact. Said Digamber Lande (PW 4) has nowhere, in clear terms, stated as to when and where he gave the amount of Rs.4,000/- to Respondent-accused and in whose presence. The evidence of Digamber is blissfully vague on these crucial aspects, though he might have stated in his evidence several other facts.

6) Similarly, evidence of Devrao Malhure (PW 2) also, does not appear to be trustworthy, who is stated to have corroborated the evidence of Digamber Lande (PW 4). The story which has been put forth by Digamber Lande (PW 4) does not

inspire confidence. It was the contention of Digamber Lande (PW 4) that on 30.04.1993, he gave Rs.4,000/- to Respondent-accused as were demanded by him to mutate certain entries on the 7/12 extract of the land belonging to him. It is his further case that, the Respondent-accused did not keep the promise and did not do the work, as was assured by him and the said fact was revealed to him, when the another Talathi by name Funde took over the charge and handed over him the 7/12 extract of the land in question, not having noted the change as was promised by Respondent-accused. However, in his entire evidence, Digamber (PW 4) has not provided any explanation or any further information as to what made him to apply and ask for the 7/12 extract from the new Talathi, when 7/12 extract carrying the desired Mutation Entry was already given to him by the Respondent-accused, as per his own case.

7) Further, the 7/12 extract stated to have been handed over by the Respondent-accused to Digambar (PW 4), and which was alleged to have been forged by Respondent-accused was not shown to Digambar during the Course of his evidence before the Court. The same has also not been proved by any admissible evidence. Despite it being a prosecution case that, Digambar (PW 4) showed to Funde, the Talathi who took over the charge from

Respondent-accused on his transfer, the 7/12 extract issued by Respondent-accused and said Funde opined the said extract to be not genuine and forged one, the prosecution has not examined said Funde as its witness. Thus, the evidence which has come on record, does not appear us, to be sufficient to hold the Respondent-accused guilty for the offences charged against him.

8) Similar is about the allegation of preparation of false receipts and misappropriation of the amount of Rs.1,625/-. It is the case of the prosecution that, though at the relevant time, Respondent-accused did not use the premises belonging to one Bhaskar Rohidas Kamble , he prepared false rent receipts of the said premises and misappropriated the amount of Rs.1,625/-. Looking to the allegations as above, the best witness would have been said Bhaskar Rohidas Kamble, whose premises were shown to have been used by the Respondent-accused and to whom the payment of Rs. 1,625/- was shown to have been made by the Respondent-accused. Surprisingly, the said witness has not been examined by the prosecution, though an attempt has been made to prove the hand writing on the alleged rent receipts to be of the Respondent-accused. Since the best available evidence has not been brought on record by the prosecution, the reasonable doubts are certainly

created about the case of the prosecution.

9) In his Judgment, the learned Special Judge has adequately assigned reasons for not believing the prosecution evidence and not finding it sufficient, to hold the Respondent-accused guilty of the offences charged against him. On careful perusal of the impugned judgment, we do not see any reason to interfere in the said Judgment. In the result appeal fails and is accordingly dismissed.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

S.P. Rane