IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 492 OF 1994

1. Suresh Nana Gotpawar	}	
(Since deceased through legal heirs)	}	
1 (A) Smt. Deepa Suresh Gotpawar	}	
1 (B) Sarang Suresh Gotpawar	}	
1 (C) Sagar Suresh Gotpawar	}	
1 (D) Miss Sheetal Suresh Gotpawar	}	Appellants
1 (E) Sumit Suresh Gotpawar	}	
	}	
2. Vasant Dagadu Jadhav	}	
(Since deceased through legal heirs)	}	
2 (A) Smt. Lata Vasant Jadhav	}	
2 (B) Sou. Sunita Shivaji Khandagale	}	
2 (C) Dnyaneshwar Vasant Jadhav	}	
2 (D) Anant Vasant Jadhav	}	
2 (E) Sou. Sangita Sambhaji Khadangale	}	

V/s.

The State of Maharashtra ....Respondent

Mr. Kartik Garg court appointed Advocate for Appellant
Mr. Arfan Sait APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : NOVEMBER 18, 2015.

JUDGMENT:

Heard learned APP. When the matter was called out, none appeared for the appellants. The appeal is of the year 1994. This Court in the interest of justice has requested Advocate Shri. Kartik Garg to espouse the cause of the appellants. He has graciously accepted to espouse the cause of the appellants who were being represented through their legal heirs. Learned Advocate has taken inspection of the records and has assisted the Court by reading the evidence on record. Hence, this Court has proceeded with the hearing of the appeal.

2) Appellants herein are convicted for offence punishable under section 7 and 13 (1) (d) r/w section 12 of the Prevention of Corruption Act, 1988. Accused/appellant no. 1 was sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 1000/- i.d. to suffer further rigorous imprisonment for nine months for offence punishable under section 7 of Prevention of Corruption Act, 1988. Appellant no. 1 was further sentenced to suffer rigorous imprisonment for four years and pay fine of Rs. 1000/- i.d. to suffer further rigorous imprisonment for one year. Accused/appellant no. 2 was sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 1000/- i.d. to suffer further rigorous imprisonment for 9 months for offence punishable under section 7 r/w section 12 of Prevention of Corruption

Act, 1988 by Special Judge, Solapur in Special Case No. 1 of 1991 vide Judgment and Order dated 14/09/1994. Accused no. i.e. Suresh Nana Gotpawar expired on 16/08/2012. The legal representatives of the original accused no. 1 filed criminal application no. 1701 of 2012 to prosecute the appeal. Original accused no. 2 Vasant Dagadu Jadhav expired on 10/12/1999. The legal representatives of Vasant Dagadu Jadhav filed criminal application no. 13 of 2012 to prosecute the appeal. Both the applications have been allowed. Hence, legal representatives are prosecuting the present appeal.

3) Such of the facts necessary for the decision of this case are as follows.

4) Accused no. 1 Suresh Nana Gotpawar was officiating as consolidation clerk in the Tahsil office, Pandharpur. Accused no. 2 was working as Awwal Karkoon in the same office. One Mahadeo Rajaram Kamble approached Anti Corruption Bureau Solapur on 04/08/1990. Mahadeo Kamble filed a report before Anti Corruption Bureau, Solapur contending therein that he is original resident of Taratgaon. His father is owner of Gat No. 256 admeasuring 2 Hectares and 37 Aar. Half of

the land belongs to Ambadas Tukaram Naiknaware. Ambadas had expired. Legal heirs of Ambadas were to be taken on record. Initially, the name of the widow of Ambadas was taken on record as guardian of legal heirs. Ambadas was the maternal uncle of the complainant Mahadeo. That his father desired that the portion belonging to his father should be mutated in the name of the complainant. Hence, his father had given an application to the Tahsildar sometime in June 1990. Complainant and his father had approached the consolidation officer and had requested him to fragment the land and mutate the respective names. Accused no. 1 had informed the complainant that he would have to record the statements of the legal heirs of Ambadas Naiknaware and his wife and only thereafter, positive steps can be taken pursuant to the application filed by his father. On 31/07/1990, complainant had approached the consolidation officer and asked him as to whether work was done. Consolidation officer i.e. accused no. 1 had demanded Rs. 500/-. There was negotiation and demand was reduced to Rs. 300/-. Complainant had informed accused no. 1 that he would make efforts to arrange for the money. On 03/08/1990, he had again approached the consolidation officer who had reiterated the demand for Rs. 300/- Complainant had assured him that he would arrange for the same within 2 weeks. Since the complainant did not wish to pay the gratification, he had approached the office of Anti Corruption Bureau, Solapur on 03/08/1990. On 03/08/1990, panchas were not available and therefore he was summoned on 04/08/1990. On 04/08/1990, Dy.S.P. of Anti Corruption Bureau had considered the application and had taken steps in accordance with law by summoning two public servants to act as panchas.

5) On 04/08/1990, after conducting pre-trap panchanama, complainant, two panchas and Dy.S.P. along with his staff had been to Tahsil Office, Pandharpur.

6) It is the case of prosecution that complainant met accused no. 1 who informed him that since senior officer has come, he has no time. Thereafter, complainant was waiting in the Tahsil office. Accused no. 2 approached him and had asked him as to why he had come to the office. Complainant had informed the accused no. 2 about his work. Complainant had informed accused no. 2 that he had brought money.

Thereafter, accused no. 2, complainant and panch Bharat Salve went to the canteen. They had coffee. Thereafter, accused no. 2 had taken complainant to accused no. 1. Accused no. 2 Jadhav had allegedly informed accused no. 1 that complainant has brought the amount. Accused no. 2 had then taken the complainant to tenancy section. There accused no. 2 asked the complainant to give the amount. Complainant gave the trap money to accused no. 2 who accepted the amount. Thereafter, accused no. 2 had written the name of the complainant on a piece of paper and mentioned the figure of Rs. 300/-. Soon the complainant had given signal to raiding party. Dy.S.P. had then called upon original accused no. 1 Suresh Gotpawar and had disclosed his identity to accused no. 1. At that time, accused no. 2 had informed the Dy.S.P. that he had accepted the amount and retained it. The hands of accused no. 2, complainant and other were examined under the ultra violet lamp. Traces of anthracene powder were found. The Dy.S.P. then lodged a report at Pandharpur City Police Station against accused. On the basis of the said report, crime no. 102 of 1990 was registered at Pandharpur City Police Station against the accused for offence punishable under section 7, 12, 13 (2) 13 (1) (d) of Prevention of Corruption Act, 1988. After completion of investigation, charge-sheet was filed and the case was registered as Special Case No. 1 of 1991. Prosecution examined as many as 8 witnesses to bring home the guilt of the accused.

7) P. W. 3 Mahadeo Rajaram Kamble is the original complainant who had initiated prosecution against the accused under the provisions of P.C. Act. P. W. 3 has deposed before the Court that his father had given an application to accused no. 1 for division of Gat no. 256. He had accompanied his father when the application was given. Since the complainant and his father were illiterate, the said application was scribed by Dharurkar. He had approached accused no. 1 who had informed that he had received the application through proper channel and that the statements of his father and the legal representatives of Ambadas still have to be recorded. Father of P.W. 3 has received the notice. His father along with legal heirs of Ambadas had been to the Tahsil office. Their statements were recorded. After about 4 – 5 days, P. W. 3 had again approached the Tahsil office and inquired about his

work. Accused no. 1 had assured that the work would be done in the near future. Complainant had again approached the office and at that time, it is alleged that accused no. 1 had demanded Rs. 500/- towards legal gratification. P. W. 3 had informed accused no. 1 that he is a poor person and cannot arrange for the same and therefore, there was negotiation. He had again visited the office on 31/07/1990, where the amount was negotiated to Rs. 300/-. P. W. 3 has stated that thereafter he approached the office of Anti Corruption Bureau and initiated prosecution against accused persons. He has proved the contents of his complaint which is at Exhibit 33.

8) As far as the trap is concerned, P. W. 3 has categorically stated that at the time of pre-trap panchanama, he was specifically instructed by Dy.S.P. that the amount is to be given to accused no. 1 only after he demands the amount and then he should give a signal.

9) On the date of the trap, complainant approached accused no. 1. Complainant was accompanied by shadow witness i.e. P.W. 1. He had inquired with accused no. 1 about the work. Accused no. 1 told him that his superior had come on that day. Soon thereafter, accused no. 1

left the table and went to meet his superior along with some file. P. W. 3 has further deposed that he then went to accused no. 2 Jadhav. Accused no. 2 had asked him the reason for visiting the Tahsil office. He had further asked whether the work is done or not. P. W. 3 informed him that the work is not done. P. W. 3 had then taken original accused no. 2 & P. W. 1 to tea stall outside Tahsil office. They had taken coffee. Before proceeding towards the canteen, P. W. 3 had voluntarily informed accused no. 2 that he had brought Rs. 300/- for his work. P. W. 3 has corrected himself and had said that before going for taking tea, accused Jadhav had asked him whether the amount as settled was brought. P. W. 3 had informed accused no. 2 that accused no. 1 has asked him to wait for 4 days although he had brought the amount settled with accused no. 1. Accused no. 2 inquired with him about the details of his work. After having coffee, they returned to the table of accused no. 2. Accused no. 1 was not on his seat. Accused no. 2 had then asked the complainant to give the amount brought by him. Initially, P. W. 3 had refused to oblige as he had work with original accused no. 1. Accused no. 2 had then assured him that in the eventuality that the work is not done, he would be at liberty to take away the amount. P. W.3 has further stated that accused no. 1 had not asked him to contact accused no. 2 as he was busy due to visit of his superior officer. At that stage, learned APP had requested the Court to declare the witness as hostile witness.

10) Hence, it is clear that prosecution has filed to establish the element of demand for illegal gratification at the threshold. It is a matter of record that according to prosecution, the demand was directly made to P. W. 3 and he has deposed before the Court as follows:

> "It is true that on my own accord I kept the amount with accused no. 2. The demand was made by accused no. 1."

11) P. W. 1 Bharat Salave happens to be shadow witness at the time of raid. P. W. 1 has deposed before the court that on 04/08/1990, he was summoned by Anti Corruption Bureau to act as a panch for trap. He along with raiding party had reached the Tahsil office at about 3.15 p.m.. He was directed to act as a shadow witness. That the complainant had pointed out one person sitting facing to North side. He was accused no. 1 Suresh Gotpawar. According to P. W. 1 complainant

inquired with Gotpawar about the fragmentation of Gat no. 256 situated at village Ave. Gotpawar told that the commissioner was in the office on that day and hence asked complainant to contact Jadhav. Complainant contacted Jadhav. Accused no. 2 Jadhav inquired as to whether he had brought money. Accused no. 2 had accompanied the complainant and P. W. 1 to the canteen. Accused no. 2 had then taken complainant to accused no. 1 who had assured that the work would be done. While they were in the tenancy section, accused no. 2 had asked the complainant to give the amount. Accused no. 2 had accepted the amount from the complainant and had kept it in his pocket. Complainant had then given a signal. P. W. 1 had disclosed to Dy.S.P. that the amount has been accepted by accused Jadhav. Accused no. 2 Jadhav had admitted that he had accepted the amount. Thereafter, panch no. 2 had removed the money from his pocket. P.I. Shaikh had then called upon accused no. 1 Gotpawar in record section and inquired with him about Kamble and his work. Immediately Gotpawar had told P. I. Shaikh that he does not know Kamble that he never demanded from any amount Kamble and neither asked Jadhav to accept the amount. In the course of investigation, C.R. register was seized. Entry no. 38 pertained to name of the complainant's father. C.R. register is marked as article '5'. At article '6' is the application made by the complainant's father. P. W. 1 had admitted in the cross-examination that it is true that Revenue Commissioner was present in the office on that day. It is true that statement of accused no. 1 was recorded by P.I. Shaikh on the very day after the raid and so also of accused no. 2. It is also admitted that just before recording of substantive evidence, panchanama was read over to him. The witness has categorically stated that he has deposed certain facts which are not included in the panchanama at Exhibit 24. According to the witness, it is his bounden duty to depose in accordance with the panchanama. It is further admitted by P. W. 1 in the cross-examination that the contents of the panchanama at exhibit 24 were not read over to him. The witness has categorically admitted in the cross-examination that it is true that P.I. Shaikh inquired with accused no. 2 about the acceptance of the amount and that accused no. 2 stated that he accepted Rs. 300/- at the instance of complainant and that he does not know for what purpose they were given and that complainant had given it to him for keeping it with him. This would lead this Court to draw an inference that there was no demand made by original accused no. 2. He did not know the reason for which the amount was paid.

12) Prosecution has also examined second panch. He has deposed before the court about pre-trap panchanama. In the examination-in-chief itself, P. W. 5 has categorically stated that P. I. Shaikh asked Gotpawar about the money. Gotpawar told P. I. Shaikh that he does know Kamble and he did not ask Kamble to give money to Jadhav.

13) P. W. 6 P. I. Shaikh had arranged the trap at the request of P.W. 3. As far as the trap is concerned, P.W. 6 has deposed before the Court that after complainant P. W. 3 gave a signal, he went in the office. They went in record section. Panch no. 1 i.e. P. W. 1 had pointed out the person who had accepted the bribe amount from Kamble. Thereafter, P. W. 6 called upon Got Pawar in record section. There were four four employees of Tahsil office. P. I. Shaikh had introduced himself to Got Pawar and the third person as P. I. Anti Corruption. There, on that, third person got frightened and exclaimed "३००/- रु. कांबळेचे का? ते

माझ्याकडे आहेत." Third person was identified as accused no. 2. It is clear that accused no. 2 had voluntarily disclosed to P.I. that he had accepted the amount.

14) Perused the records. Exhibit 51 is the statement of accused no. 1 which was recorded on 04/08/1990 i.e. soon after the raid. Accused no. 1 had disclosed to P. I. Shaikh that he is working in Tahsil Office, Pandharpur since 1989. He is working as consolidation and fragmentation clerk since 1990. He has specifically disclosed that since morning no person named Kamble had approached him. Similarly Awwal Karkoon Jadhav had also not approached him. That he had no conversation either with Kamble or with Jadhav. That he does not know Kamble. He has also disclosed that no notice was issued to the applicant. Statements of father of the complainant and others does not show that it was recorded by Tahsildar.

15) Prosecution has examined P. W. 8 Sudhakar Kulkarni who had accorded sanction for prosecuting the accused. It is at exhibit 56. He has deposed before the Court that he had applied his mind to the facts of the case and had accorded sanction. Draft sanction is at exhibit 60

and the sanction letter is at Exhibit 58. Although the witness has denied that he had not simply accorded sanction on the draft sanction without application of mind, it is apparent on the face of record that there has been non application of mind by the Sanctioning Authority.

16) Upon perusal of the records, it is clear that prosecution has failed to establish the demand of illegal gratification by both the accused persons. In the facts of the case, it is seen that on the day of the trap, there was no conversation between accused no. 1 and the complainant. After exchanging the greetings, accused no. 1 had only informed the complainant that Commissioner is in the office and had left. There is no evidence to show that accused no. 1 had directed the complainant to approach accused no. 2 and given the amount. In fact, evidence on record clearly indicates that accused no. 2 had voluntarily approached the complainant and inquired about the nature of work. He had accompanied the complainant to the canteen. He had insisted upon the complainant to give the amount without knowing the purpose for which it was brought. Evidence on record also shows that when P.I. Shaikh had called upon accused no. 1 to inquire about the matter,

original accused no. 2 had voluntarily informed P. I. Shaikh that amount of Rs. 300/- is with him. At the threshold accused no. 1 had also given a written statement to the police which is at Exhibit 51. Accused no. 1 had disclosed that he had not demanded any gratification from Kamble and that he had not even met him on that day.

17) Learned counsel appointed for the appellant has placed reliance upon Judgment of Hon'ble Apex Court in the case of **Dinesh Kumar Vs. State (2015 (2) S.C.C. 359)** wherein Hon'ble Apex Court has held that:

> "Immediate explanation offered by Appellant was absolutely crucial."

18) Learned counsel for the appellant has also placed reliance upon the Judgment of Hon'ble Apex Court in the case of **B. Jayaraj Vs. State of A.P. (2014 Cri.L.J. 2433)** wherein Hon'ble Apex Court has held as follows:

> "Mere possession and recovery of currency notes from accused without proof of demand--Not constitute offence under Section

> 7--Proof of acceptance of illegal gratification can follow only if there is proof of demand--As same is lacking in present case, primary facts on basis of which legal presumption under Section 20 can be drawn are wholly absent."

19) In the case of **P. Satyanarayana Murthy V. Dist. Inspector of Police and another (2015 AIR SCW 5263)** Hon'ble Apex Court has held as follows:

> "The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1) (d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefore, 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."

20) Since the prosecution has failed to prove unequivocal demand of illegal gratification, it would be wholly unsafe to sustain the conviction

of the appellants. In the present case, this Court has already observed herein above that the prosecution has miserably failed to establish that there was a demand of illegal gratification by any of the accused and moreover, the complainant had not supported the prosecution, it would be wholly unsafe to uphold the Judgment of the conviction of the appellants for offence with which they were charged. It is a sorry state of affairs that both the accused persons are not alive to see that they have been acquitted of the charges which were levelled against them. It is unfortunate that appellants had to die with a stigma on their conscience. Appeal has been pending since 1994. The legal representatives of accused persons were wholly sure that the appellants had not committed any offence, hence they have stepped into shoes of the appellants and have prosecuted the appeal. The appeal deserves to be allowed.

21) Hon'ble Apex Court in the case of **K. S. Pandurang Vs. State of Karnataka [(2013) 3 Supreme Court Cases 721]** has observed that:

> "It is not obligatory on the part of the appellate court in all circumstances to engage amicus curiae in a criminal appeal to

> argue on behalf of the accused failing which the judgment rendered by the High Court would be absolutely unsustainable. The High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits. The court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent. The court may, as a matter of procedure or indulgence, adjourn the matter but it is not bound to do so, and it can dispose of the appeal after perusing the record and judgment of the trial court. If the accused is in jail and cannot, on his own, come to court, though it would be advisable to adjourn the case and fix another date to facilitate appearance of the appellant-accused if his lawyer is not present, however if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so. Lastly, if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

22) This Court has requested Advocate Shri. Kartik Garg to assist the Court and espouse the cause of the appellants. He has assisted the Court very well and has put in best of efforts to espouse the cause of the appellants and Judgment cannot be parted with without recording

appreciation for the Advocate appointed for the appellants. His professional fees are quantified to the tune of Rs. 5000/- to be paid to him within 3 months from today.

O R D E R

(i) Appeal is allowed.

(ii) The Judgment and Order passed by Special Judge, Solapur in Special Case No. 1 of 1991 vide Judgment and Order dated 14/09/1994 is hereby quashed and set aside.

(iii) Appellants are acquitted of all the charges levelled against them.

(iv) Office is directed to send the copy of this Judgment to the legal representatives of the appellants.

(v) Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J.)