

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.777 OF 2004

MADHAV BHALCHANDRA RAJURKAR)
Age : Adult, Occupation : Service,)
Residing at Prasad Building,)
Tukaram Nagar, Dombivali (East))...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)
Through Anti Corruption Bureau, Thane)...RESPONDENT

Mr.S.R.Chitnis, Senior Advocate, i/b. Mr.Ashish Sawant, Advocate
for the Appellant.

Mr.Deepak Thakre, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 9th JUNE 2015.

ORAL JUDGMENT :

1 This appeal is directed against the judgment and order dated 31st May 2004, delivered by the Special Judge, under the Prevention of Corruption Act, 1988, (hereinafter 'P.C.Act') in Special Case No.17 of 1999, convicting the appellant, who was the accused in the said case, of offences punishable under Sections 7

and 13(2) read with 13(1)(d) of the P.C.Act,. The learned Special Judge imposed a sentence of Rigorous Imprisonment for one year and of fine of Rs.500/- on each of the said two counts.

2 The prosecution case, as put forth before the trial court, in brief, be stated thus :

 The appellant, at the material time, was working as a Clerk in the Rationing Office at Thane. Ravindra Patil (PW1) was earlier residing at Ghodmal, Taluka – Wada, and was holding a ration card at Ghodmal. His wife Bhagyashri and his son were residing at Thane. They were having a separate ration card for their Thane address, in which, the name of Ravindra Patil was not included. Ravindra Patil wanted to include his name in the ration card held in the name of his wife at the Thane address. He, therefore, applied to the Tahsildar, Wada, to have his name deleted from the ration card held by him at the Ghodmal address. Accordingly, the name of Ravindra Patil was deleted from the said ration card and a certificate to that effect was issued to him. On 21st January 1999, Ravindra Patil along with the said certificate

went to the Rationing Office, Thane, where the appellant was working. Ravindra Patil met the appellant, when the appellant demanded an amount of Rs.300/- as bribe for entering the name of the appellant in the ration card held by the appellant's wife Bhagyashri. The appellant asked Ravindra Patil to come to the office again on 25th January 1999, along with the said amount. Ravindra Patil, then, reported the matter to the office of Anti Corruption Bureau, Thane. It was on 25th January 1999. The complaint of Ravindra Patil (Exhibit P-26) was got reduced to writing by Chandrakant Thorat, Inspector of Police, (PW4) attached to the Anti Corruption Bureau, at the material time. Two panchas – Ashok Tupe (PW2) and Ashok Deshmukh – were called. They were explained about the complaint of Ravindra Patil. A trap was laid. An amount of Rs.300/- consisting of three currency notes of Rs.100/- each was taken from Ravindra Patil and Anthracene powder was applied to those currency notes. After drawing the pre-trap panchnama, Ravindra Patil, the police party and panchas went to the Rationing Office, Thane. When the appellant demanded, the tainted amount was paid to him by

Ravindra Patil. When the appellant accepted the said amount, he was caught red handed.

3 In the course of investigation, sanction to prosecute the appellant as contemplated under Section 19 was obtained from the Controller of Rationing i.e. Harshawardhan Gajbhiye (PW3). On completion of investigation, a charge-sheet alleging commission of offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the P.C.Act, by the appellant, was filed.

4 During the trial, the prosecution examined four witnesses, all of whom, have been referred to above. The appellant examined one Hitesh Thakkar (DW1) as a witness in his defence. A number of documents were tendered in evidence, marked and exhibited.

5 After considering the evidence adduced during the trial, the learned Special Judge held the appellant guilty; and convicted and sentenced him, as aforesaid.

6 I have heard Mr.S.R.Chitnis, the learned senior advocate for the appellant. I have heard Mr.Deepak Thakre, the learned APP for the State. I have been taken through the entire evidence adduced during the trial. I have also carefully considered the impugned judgment.

7 Mr.Chitnis, the learned senior advocate for the appellant, contended that the judgment of conviction delivered by the learned Special Judge, is not in accordance with law. According to him, the prosecution had clearly failed to establish it's case against the appellant as neither the demand of bribe nor the acceptance of the tainted amount was satisfactorily proved. He submitted that, as a matter of fact, even the sanction to prosecute the appellant, as contemplated under Section 19 of the P.C.Act, was bad in law, and that, the prosecution and conviction of the appellant stood vitiated on that ground itself. He submitted that, clearly, the appellant had been falsely implicated.

8 Mr. Deepak Thakre, the learned APP, on the other hand, submitted that the finding recorded by the learned Special Judge and the sentences imposed by him on the appellant were proper and legal. According to him, the prosecution had succeeded in establishing its case against the appellant. He also submitted that there was no fault or defect in the sanction order, and that, in any case, the findings recorded by the learned Special Judge could not be set aside on the ground of any defect in the sanction order.

9 Since the question of validity of the sanction has been raised as a basic and primary point, it would be proper to first discuss this aspect of the matter. The challenge to the validity of the sanction is based on the ground that the sanctioning authority Harshawardhan Gajbhiye (PW3) had not applied his mind before according sanction. It is also contended on behalf of the appellant that, *that Gajbhiye was competent to accord the sanction*, had also not been established. Reference was made to some authoritative pronouncements of the Supreme court of India in support of the contention that *the absence of a valid sanction would vitiate the entire prosecution*.

10 I have carefully considered the matter.

11 Indeed, the evidence of Harshawardhan Gajbhiye (PW3) who has accorded sanction, as contemplated under Section 19, in this case, is far from satisfactory. The evidence given by him in the examination-in-chief is brief, and as such, may be reproduced, in full, here :

“During the period December 1997 till June 2000 I was Controller of Rationing Mumbai. On 4.8.99 I had received the papers from Director of Anti-Corruption, seeking the sanction to prosecute the accused. After going through the entire record the statement of the witnesses, and the office file I accorded the sanction to prosecute the accused. Now the sanction order is shown to me. It is the same. Contents are correct. It bears my signature and seal of the office Exh.P/37.”

12 There is substance in the contention raised by Mr.Chitnis that, *it was expected of the sanctioning authority to state that he or she was competent to grant the sanction. The same has not been said by Gajbhiye.* It was, therefore, necessary for the

prosecution to have shown, or atleast claimed, *that Gajbhiye was competent to remove the appellant from the office, which the appellant was holding as a public servant.* Admittedly, no such evidence was adduced – and not even a claim to that effect was made – by the prosecution. When, in this background, Gajbhiye himself did not make an assertion that he was competent to remove the appellant from his office, or that he was competent to grant the sanction contemplated under Section 19 of the P.C.Act, it would be difficult to hold that the sanction had been validly granted *by an authority competent to grant it.*

13 Moreover, when Gajbhiye was cross-examined with reference to the material that was available to him before granting sanction, he gave following reply :

“The letter of P.I. Anti Corruption Thane dts. 26.1.99 referred in the sanction order was sufficient to take the decision for the action therefore the other correspondence letters were not referred in the sanction order.”

Gajbhiye further stated that he had made enquiries with one Mr.Babar working in the same office and some others before

granting sanction. This was obviously to show that he had applied his mind with respect to the question of grant of sanction (though according to him, the letter from the Anti Corruption Bureau was sufficient for taking a decision in the matter.) *Interestingly, however, he admitted that 'in the statement Babar and other witnesses, there was no reference that the accused demanded the amount from complainant and also accepted the same.'* Thus, it is difficult to accept that there was evidence or other material before the trial court to hold that the sanction under Section 19, as had been granted in this case, is valid and legal, and / or that, it had been granted after application of mind.

14 Mr.Chitnis relied upon the observations made in Mansukhlal Vithaldas Chauhan vs. State of Gujarat¹ and contended that the appellant is entitled to be acquitted only on the ground of the invalidity of the sanction under Section 19, and that, it was not necessary for the court in such a case, to consider the other evidence on record. He also referred to the decision of the Supreme court of India in Mohd. Iqbal Ahmed vs. State of

1 (1997) 7 Supreme Court Cases 622

Andhra Pradesh² to which a reference was made in the aforesaid case of **Mansukhlal supra**. He emphasized the following observations made by Their Lordships in paragraph 3 of the reported judgment in the case of **Mohd.Iqbal (supra)** :

“It is well settled that any case instituted without a proper sanction must fail because this being a manifest difficult in the prosecution the entire proceedings are rendered *void ab initio*.”

(Emphasis supplied)

15 Mr.Chitnis also relied upon a decision rendered by this court in Criminal Appeal No.449 of 2009 decided on 30th November 2010 in which after referring to a number of authoritative pronouncements of the Supreme Court of India, including that in the case of **Mohd.Iqbal (supra)**, a learned Single Judge of this court had allowed the appeal and set aside the conviction by observing that :

“Since prosecution has not established that valid sanction was granted, the entire prosecution was failed and, therefore, in my view, it is not necessary to referred other evidence which is brought on record by the prosecution.”

2 1979 Cri.L.J. 633

Thus, according to Mr.Chitnis, once the court is satisfied about the sanction for prosecution being bad, there would be no necessity to examine the matter any further, and that, the order of conviction ought to be set aside on that ground itself.

16 Mr.Deepak Thakre, the learned APP, placed reliance on the decision of the Supreme court of India in the case of **State of Bihar and Others vs. Rajmangal Ram**³ in support of his contention that the error, omission or irregularity in sanction order will not affect the validity of the proceedings, *unless the court records a satisfaction that such error, omission or irregularity has resulted in failure of justice*. In my opinion, the proposition put forth by Mr.Thakre by relying on the observations made in the **Rajmangal Ram (supra)**, represents the correct legal position. As a matter of fact, this legal position has been recognized by a number of decisions delivered by the Supreme court of India (see **State of Madhya Pradesh vs. Jiyalal**,⁴ **State of Madhya Pradesh vs. Virender Kumar Tripathi**,⁵ and **State vs. T. Venkatesh Murthy**.⁶

3 (2014) 11 Supreme Court Cases 388

4 2009 ALL MR (Cri) 2846 (S.C.)

5 (2009) 15 Supreme Court Cases 533

6 (2004) 7 SCC 763

17 The proposition of law, as put forth by Mr.Chitnis, namely, *that once it appears to this court that the sanction under Section 19 had not been properly granted or that there was no valid sanction under the said provision for the prosecution of the appellant, then the prosecution of the appellant would be bad in law and the appellant would be entitled to be acquitted on that ground itself*, does not appear to be sound or tenable. Such a view would be contrary to the express provisions of sub-section (3) of Section 19 of the P.C.Act, which has been referred to in the aforesaid cases.

18 Undoubtedly, the decision in the case of **Mohd.Iqbal (supra)** which has been referred to in **Mansukhlal's case (supra)** does state that the proceedings would be rendered 'void ab initio' for want of a proper sanction. But, what cannot be overlooked in this context is that in those cases, Their Lordships of the Supreme Court of India were dealing with the cases under the Prevention of Corruption Act, 1947 ('Old Act'). The said Act also contained a provision making previous sanction necessary for the prosecution,

but the terms of the said section were not identical or similar to that of Section 19 of the present P.C.Act. It would be convenient to reproduce the relevant provisions in the 'Old Act' and the present P.C.Act here. Section 6 of the 'Old Act' read as under :

“6. Previous sanction necessary for prosecution. - (1) No Court shall take cognizance of an offence punishable under Sec. 161 or Sec. 164 or Sec. 165 of the Indian Penal Code (45 of 1860) or under sub-section (2) or sub-section (3-A) of Sec. 5 of this Act, alleged to have been committed by a public servant except with the previous sanction,

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government of the Central;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government of the State Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises whether the previous sanction as required

under sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.”

Section 19 of the present P.C.Act reads as under :

“19. Previous sanction necessary for prosecution.—

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this

Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

19 A comparison of the new section with the old section shows that sub-sections (3) and (4) as well as the *Explanation* in the new Section 19 of the Act of 1988 have been added newly. These provisions did not have any counterparts in the old section.

20 Thus, by introduction of this new provision, a change in law has been brought about and the previous judgments taking a view 'that want of a valid sanction would, **by itself**, be sufficient to set aside an order of conviction recorded by the trial court', no longer represent the correct legal position.

21 Thus, no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court in appeal, on the ground of any error, omission or irregularity in the sanction required under sub-section (1) of Section 19, unless in the opinion of the appellate or revisional court, a failure of justice has infact been occasioned thereby.

22 It would be, therefore, necessary to examine the other evidence on record, as, whether a failure of justice has infact been occasioned by the shortcomings in the sanction, cannot be determined without reference to the facts of the case.

23 It is not the case of the prosecution that *before laying the trap* a verification of the demand of bribe allegedly made by the appellant was done. Usually, the investigation agencies seek to verify the allegation with respect to the demand of bribe *before taking steps to lay a trap*. In this case, it was not done.

24 According to Ravindra Patil, the initial demand was made to him on 21st January 1999 when he visited the Rationing office and had met the appellant. Obviously, the version of such a demand is based only on the evidence of Ravindra Patil, without any corroboration. This aspect of the matter, therefore, needs to be judged carefully in the light of other evidence on record.

25 So far as the subsequent demand, i.e. - just before the acceptance of bribe – is concerned, the same is corroborated by the evidence of Ashok Tupe (PW2). However, the version of Ravindra Patil and Ashok Tupe is not uniform. The testimonies of Ravindra Patil, Ashok Tupe and Investigating Officer do not agree on certain details, such as, the spot where the trap was arranged;

and this has been observed and accepted by the learned Special Judge himself.

26 For properly appreciating the evidence adduced by the prosecution, it would be necessary to make a reference to the stand taken by the appellant. The appellant had filed a written statement of his defence and the same was considered by the learned Special Judge.

According to the appellant, Ravindra Patil did come to him on 21st January 1999, while he was in his office and did demand a form for having his name included in the ration card held by his wife. That, such applications are to be made in **Form No.8**, which forms were not available in the office. The appellant, therefore, told Ravindra Patil that the forms were not available, and that, since the name of Ravindra Patil was to be included in the ration card held by his wife, her signature also would be required on the form; and that, therefore, Ravindra Patil should come after two days. That, Ravindra Patil still kept on insisting that his name should be included in the ration card and started

arguing and quarreling with the appellant. That, Ravindra Patil then went to the officer, superior to the appellant, and complained against the appellant, when the superior officer advised the appellant to use the Form No.9, which is meant to be used while applying for deletion of names from ration card. The appellant was reluctant to do so, but, at the instance of of his superiors, he used the Form No.9 itself, by striking some portion therefrom and for bringing it, as far as possible, in conformity with Form No.8. That, the appellant then asked Ravindra Patil to bring the signature of his wife on the form and also to bring the ration card held by her. That, since Ravindra Patil had expressed his inability to bring the same on the next date i.e. on 22nd January 1999, and as 23rd January and 24th January were holidays, Ravindra Patil was asked to come on 25th January 1999, by the appellant. *According to the appellant, the tainted amount was inserted in the ration card, concealed, and was handed over to the appellant. That, the appellant was not conscious of the fact that any money had been kept in the ration card.*

27 In my opinion, there certainly exists a reasonable doubt about the truth of the prosecution case that arises from the evidence adduced during the trial.

28 The testimonies of Ravindra Patil, Ashok Tupe and the Investigating Officer Chandrakant Thorat, did not agree with one another in the matter of the details regarding the happenings, and more particularly, about the place / spot where the trap was laid, which as aforesaid, has also been observed and accepted by the learned Special Judge himself.

29 When the demand was made on 21st January 1999, why Ravindra Patil reported the matter to the Anti Corruption Bureau only on 25th January 1999, is not very clear. Ravindra Patil was to meet the appellant on 25th January 1999, and ordinarily, he was expected to report the matter to the Anti Corruption Bureau immediately i.e. on 21st January 1999, or 22nd January 1999. Though this by itself would not be decisive or even significant in itself, the same needs to be appreciated in the light

of the other facts, revealed from the evidence and in the background of the defence of the appellant. The other facts, which need to be viewed in this context, include the admitted fact that *no verification of the alleged demand of bribe was made before laying down a trap.*

30 The narration of Ravindra Patil shows that on 21st January 1999, he had gone to the Rationing Office for the first time. There was no question of getting his name added on the same day, as the process had not started at all, and more particularly, there was no application or writing from the wife of Ravindra Patil, indicating her consent to have Ravindra Patil's name included in the ration card held by her. Ravindra Patil himself had expressed his inability to visit the Rationing Office on the next day. He was called on the next working day. Under these circumstances, ordinarily, a person was expected to wait till 25th January 1999, and see what happens, and ordinarily would not rush to the Anti Corruption Bureau.

31 In the light of the theory put forth by the appellant as and by way of his defence, I have examined the evidence of Ravindra Patil and Ashok Tupe carefully. Though there are some variations between the version of Ravindra Patil and Ashok Tupe about the sequence of the events that allegedly took place, *there is no doubt that the ration card and the tainted amount both were handed over to the appellant.* Ravindra Patil does not speak about the sequence in which they were handed over, or whether they were handed over together. Ashok Tupe, who was examined later, said that Ravindra Patil handed over the ration card to the appellant first, and that, thereafter, the appellant demanded the amount, whereafter, the complainant took out the amount and held the same by his right hand. According to Tupe, the appellant then accepted the same by his right hand. The sequence, namely, *that first the ration card was handed over, and that, then there was a demand for the amount, and that, thereafter, the amount was given to the appellant, having been introduced to defeat the defence of the accused 'that the tainted amount was kept concealed in the ration card, and that, he was handed over the ration card, which he*

took without being aware of the fact of the tainted amount being kept inside it,' cannot be ruled out.

32 Even otherwise, Tupe appears to be a tutored witness, in as much as, he had given the most minute details without referring to any documents for refreshing his memory. For instance, he has given the ration card number of Ravindra Patil issued from Wada office as 0325086. The learned Special Judge has taken a specific note that, the number of the said ration card was given by the witness, without referring to any document for refreshing his memory, and, only on the basis of his memory. Tupe has also given the serial number of the relevant entry in the register as '773' from his memory. Tupe had also given the number of the ration card held by the wife of Ravindra Patil as 952143 – this also, from his memory of the incident. *As if, this was not sufficient, he has also given the numbers of the tainted currency notes, from his memory.* This is remarkable and extraordinary in itself, but considering that the trap had been laid on 25th January 1999, and Tupe was deposing about it on 30th

April 2004 i.e. after about five years, it is all the more extraordinary and makes it quite obvious that Tupe had learnt the entire case of the prosecution by heart and was deposing on the basis of the record. *Interestingly, Tupe was not able to state the serial number of his own ration card or the serial number of his Election Identity card.* It would be a different matter, had he sought permission to refresh his memory in accordance with law, but posing as if he remembered these details inspite of the fact that the incident had taken place more than five years before he gave evidence, certainly makes him a person, who is highly interested in the success of the prosecution case, and therefore, certainly, not a reliable witness. Moreover, this also shows that the relevant record was unofficially made available to Tupe by the prosecution, and obviously, the object thereof was to tutor him. Anyway, in the context of the defence of the appellant, what needs to be highlighted is that, the theory of 'the appellant – first having accepted the ration card and then the amount', as put forth by Tupe, *though such a sequence was not stated by Ravindra Patil in his evidence*, is certainly open to a reasonable doubt.

33 The form filled in by Ravindra Patil (Exhibit D-2) indeed shows that it is Form No.9 and **not** Form No.8. Indeed, it appears to be a form meant to be used for deleting the name of a person from ration card. Thus, this lends support to what the appellant claimed as having had happened.

34 The learned Judge has disbelieved the defence of the appellant. He was of the view that since the application made by Ravindra Patil was being processed, there was no reason for Ravindra Patil to have implicated the appellant. The learned Judge considered the possibility of some bickering having taken place between Ravindra Patil and appellant, but opined that had there been such bickering, the appellant would have delayed the work of complainant, which was not actually done, in as much as, a Rationing Officer had visited the premises during the period from 21st January 1999 to 25th January 1999, and had made the necessary entry in the record. The learned Judge then reasoned that since the theory of bickering having taken place between the

appellant and Ravindra Patil could not be accepted, there would be no reason for Ravindra Patil to falsely implicate the appellant.

35 It is not possible to approve the reasoning of the learned Special Judge. In the first place, the learned Judge did not consider the fact that the stand taken by the appellant stood corroborated by the fact that a wrong form (Form No.9), namely, a form meant for deleting the name from the ration card, was used in this case, instead of the usual form, i.e. Form No.8. Secondly, the learned Special Judge overlooked the legal principle that an accused need not prove his assertions, and that, it is sufficient if the assertions make out a reasonable explanation, which appears plausible, and therefore, creates a doubt about the truth of the prosecution version. The accused would be entitled to have the benefit of such doubt, and to be acquitted of the charges. Of course, if the assertions appear to be positively false, they cannot be accepted. Rather, if they are indicated to be false, this factor might add strength to the prosecution case. However, while judging this aspect, the court has to view the entire evidence

adduced before it, and consider it by keeping the probabilities in mind. In this case, the tainted amount was allegedly given in the office of the appellant, where other persons were also present. Ravindra Patil does not state in what manner it was given and speaks about *giving the ration card as well as the amount*. This is improved over by Tupe, who says that, *first* the ration card was given and *then* the tainted amount. According to the appellant, the tainted amount was kept concealed in the ration card and the ration card was handed over to him. In the light of various factors discussed earlier, it is more probable than not, that the bribe giver would give the bribe by concealing it in the ration card, and in any case, it is more likely than not that bribe taker would require the bribe to be given in that manner, rather than risking to take it openly in the presence of others, who were sitting in the same office.

36 When this is considered in the light of the fact that there had been no verification of the initial demand, that the panch was tutored and overzealous, and that the assertion of the

appellant about a quarrel having taken place between him and Ravindra Patil, because of the non-availability of the prescribed form gets some support from the record, indeed, a doubt reasonably arises about the truth of the prosecution case.

37 Even otherwise, the validity of the sanction under Section 19, as aforesaid, is extremely doubtful; and in the light of the admissions given by Gajbhiye that he ignored the fact that in the inquiries made by him with Mr.Babar and some others, they did not state about the appellant having demanded the amount from Ravindra Patil and having accepted the same, a finding that a failure of justice has been occasioned by an improper sanction can undoubtedly be reached.

38 The order of conviction of the appellant, as recorded by the learned Special Judge, is not in accordance with law. This was a case where the appellant ought to have been acquitted.

39 The Appeal is allowed.

The impugned judgment of conviction is set aside.

The appellant is acquitted.

His bail bonds are discharged.

40 Fine, if paid, be refunded.

41 The appeal is disposed of in the aforesaid terms.

(ABHAY M. THIPSAY, J.)