

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL No. 576 of 2001.**

Dattatraya Laxman Bagdi,	]	..Appellant.
Age 31 years, Occupation-Service	]	
Now residing at Mukkam Post	]	
Harli Khurd, Taluka Gadhinlaj,	]	
District Kolhapur.	]	

V/s

State of Maharashtra,	]	
(Inspector of Police	]	
Anti Corruption Bureau,	]	
Kolhapur.)	]	..Respondent.

Mr. B.R. Patil i/by Mr. Ganesh Gole for the appellant.

Mr. S.V. Gavand, APP for the State of Maharashtra.

CORAM :- SMT. BHARATI H.DANGRE J.**RESERVED ON :- 28th July, 2017.****PRONOUNCED ON:- 28th August, 2017.**

JUDGMENT

1) The present appeal is filed by the appellant being aggrieved by the judgment and order delivered by the Special Judge, Gadhinglaj, District Kolhapur, in Special Case No.3 of 2000 (State of Maharashtra Vs. Dattatraya Laxman and one Anr) thereby convicting the appellant/original accused no.1 for the offence punishable under Section 7 and 13 (2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the PC Act”) and sentencing him to suffer rigorous imprisonment for five years and six years respectively and directing that the substantive sentences to run concurrently.

2) The case of the prosecution in nut-shell is narrated in the subsequent paragraphs :-

(i) That the complaint was lodged by Shri Sudhir Bhimgonda Patil to the Anti Corruption Officer alleging that the appellant who

was working as Talathi Dundage had demanded an amount of Rs.1900/- from him for recording his name in the 7/12 extract register in respect of agriculture land Gat No.119 and 115 situated at village Mouje Dundage which the complainant had purchased from one Shiladevi Hiremath. It was alleged by him that he had submitted an application in the Talathi office Dundage for recording his name on 29th August, 1999 along with the necessary documents. It is alleged in the complaint that the appellant was working as Talathi in the said office and on 29th August, 1999 he demanded a sum of Rs.2,000 for recording the mutation entry and for giving its effect in the record of 7/12 extract and 8A Extract of the purchased land. It is further alleged in the complaint that since he did not pay the amount, after two months when the complainant met the Talathi and enquired about

his work, he was told that it is in progress and it would not be completed unless an amount of Rs.2000/- is paid and on his inability to pay such huge amount, the same was reduced to Rs.1900/-, as he was warned that if the amount is not paid the work would not be done. The complainant also alleged that the appellant had threatened to cancel the entry through the Circle Inspector, if he would not collect the money by on 3rd December, 1999. He was asked to bring the amount on 3rd December, 1999 after 11:00 a.m., in the Talathi office.

(ii) On the report being lodged, the Anti Corruption Officials arranged a trap at Talathi office Dundage on 3rd December, 1999. In the trap, two panchas accompanied the complainant in the office of Talathi and on demand of bribe amount by the appellant, the complainant handed

over the tainted cash amount to one Shri Satyappa Nayku Kokate who was present in the Talathi office as per instructions of the appellant. On receiving the signal from the complainant, both the accused persons were rounded by the Anti Corruption Officials and the amount of tainted currency was recovered from the inner pocket of the accused no.2. The remaining procedure in respect of drawing panchnama, comparison of the serial number of the currency notes mentioned in the pre-trap panchnama and another documents were seized from accused no.1 and map of the scene of offence was also obtained from the Taluka Inspector of Land Records (T.I.L.R.) office. For the purpose of grant of sanction copies of the relevant papers were submitted to the Sub-Divisional Officer Shri Sanjaysing Chavan (PW 2) who accorded sanction for prosecution and thereafter charge-sheet was

submitted against both the accused for the offences punishable under Section 7, 12, 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act. Charge was framed against both the accused who pleaded not guilty and claimed to be tried.

(iii) Defence of accused is of total denial. In his statement recorded under Section 313 of the Code of Criminal Procedure, the accused No.1 admitted visit of the complainant to his office on 3rd December, 1999 and supply of 7/12 extracts to him. According to him, he was falsely implicated since he belonged to opposite group in the village.

(iv) The Special Judge proceeded with the trial and examined five prosecution witnesses in support of the charge framed against the accused persons. The Special Judge by the impugned judgment, recorded a finding that the prosecution has proved beyond doubt that the accused No.1

demanded gratification other than legal remuneration from the complainant as motive for giving effect to mutation entry in record of right and supply of 7/12 and 8A to him and on 3.12.1999 he accepted bribe through accused No.2 of an amount of Rs. 1900/-.

(v) That the prosecution had established the guilt of accused No.1 on the testimony of Investigating Officer Shri Sudhir Ramchandra Chougule (PW No.5) and the prosecution had proved beyond reasonable doubt that there was a demand made by accused No.1 for gratification other than legal remuneration from the complainant, as motive or reward for effecting mutation entry and for giving effect to the mutation entry in the record of right and for supply of extract of 7/12 to the complainant, while discharging his official duties. The learned Special Judge also concluded that the prosecution

has also proved beyond reasonable doubt that on 3rd December, 1999 the accused no.1 accepted bribe through accused no.2 as gratification and being public servant by corrupt and illegal means obtained bribe of Rs.1900 and thus the charge under section 7, 13 (1) (d) (i) read with section 13 (2) of the Prevention of Corruption Act, 1988 stands proved. For offence under Section 7 the appellant was sentenced to suffer RI for five years and fine of Rs.5000/- in default S.I. for three months. For conviction under Section 13 (2) the appellant was sentenced to undergo R.I. for six years and fine of Rs.10,000/- in default of fine amount simple imprisonment for six months. The accused No.2 was acquitted of the offence punishable under Section 12 of the P.C.Act. Being aggrieved by the said judgment and order the present appeal has been filed by the appellant.

3) The appeal was admitted on 7th August, 2001 and bail was granted to the appellant on the same terms and conditions as imposed by the Trial Court and the substantive sentence was suspended. The appellant was directed to pay the amount of fine and it is informed that the said fine amount has been paid by him.

4) I have heard the Counsel for the appellant Shri B.R. Patil and Shri S.V. Gavand, Additional Public Prosecutor representing the State of Maharashtra. The Counsel for the appellant assailed the judgment on the following grounds which were not duly appreciated by the Special Judge.

(a) That the sanction granted by prosecution witness No.2 (PW No.2) was not proper since he was not competent to grant the said sanction since he was not the Authority Competent to remove the appellant from the office as required under section 19 (1) (c) of the Prevention of Corruption Act;

(b) The Sanctioning Authority had mechanically approved the draft sanction order which clearly

exhibited non-application of mind;

(c) That the prosecution story was fallacious since the work of mutation entries was already completed on 3rd December, 1999 and hence there was no need for making any demand of bribe since the work of mutation entry was completed by the appellant in the course of discharge of his duty as Talathi; and

(d) That no amount was found with the appellant and it was accused No.2 who was found with the money but he was acquitted by the learned trial Judge.

4(A) In the light of the case of the prosecution, defence of the accused, findings of the Trial Court and contentions advanced in the appeal the following points arise for my consideration:-

(a) Whether the prosecution of accused No.1 (appellant) is lacked by a valid sanction at the hands of PW 2 SDO?

(b) Whether the prosecution has proved that that amount of illegal gratification was paid by complainant in pursuance of a demand raised?

(c) Whether the acceptance of amount of

illegal gratification by accused No.2, which amount was recovered from him was accepted by Accused No.2 on the directions of Accused No.1?

(d) Whether the sentence imposed by the Special Judge, on conviction of Accused No.1 is proportionate to the nature of crime?

5) The Counsel for the appellant has vehemently argued that the appellant was working as Talathi and his appointment was made on recommendation from the Regional Staff Selection Board, Pune who had selected him. The Counsel argued that in view of Section 19 (1) (c) there is a bar on the Court taking cognizance of an offence punishable under Section 7 by a public servant, except with the previous sanction, in case of any other person, of the authority competent to remove him from his office.

It is argued by the learned Counsel that the Sub-Divisional Officer (for short, the SDO) is not the appointing Authority of the appellant and it was a Regional Selection Committee who had selected and appointed the appellant and therefore the SDO was not competent to remove him and in

view of the said factual position PW No.2 who was working as Sub-Divisional Officer, who had granted sanction for the prosecution of the appellant, was not a sanction in the eyes of law. The Counsel placed reliance on the recommendation by the Regional Selection Board dated 5th May, 1997 addressed to the S.D.O. Ichalkaranji forwarding the list of the selected candidates to be appointed as Talathi. He also placed reliance on the order dated 30th May, 1997 appointing several persons as Talathi issued by the Sub-Divisional Officer which included the name of the appellant at Serial No.3. He also relied upon the posting orders of the appellant issued on 17th July, 1998 issued by the SDO Gadhinglaj.

6) I do not find much force in the contention raised by the Counsel for the appellant for the reason elucidated.

Section 19 of the P.C. Act reads as below:-

Section 19 : - 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.

7) Perusal of Section 19 (1) (a) & (b) reveals that in the case of a person who is employed in connection with the affairs of the Union and who is not removable from his office, except by or with the sanction of the Central Government, the sanction, to prosecute is required to be obtained of the Union Government and 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, the previous sanction of the State Government is required to prosecute a public servant. However, perusal of clause (c) reveals that in the case of any other person not covered by clause (a) or (b)

the previous sanction is to be obtained of the authority competent to remove him from his office.

8) At this stage, it is necessary to understand as to who is the authority “competent to remove” a public servant from his office. A public servant is governed by the rules framed in relation to his conditions of service including appointment and dismissal. The service rules governing terms and conditions of service are framed in exercise of the powers flowing from Article 309 and 311 of the Constitution of India. Article 311 of the Constitution of India grants protection to holder of a civil post under the Union or State that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed. Thus, in terms of service jurisprudence the appointing authority is the authority to remove a civil service.

9) Bearing this principle of service jurisprudence in mind, I proceed to apply the same to the facts in hand. The appellant was working as Tahsildar and he was appointed by an

order of appointment signed by the Sub-Divisional Officer. His order of appointment dated 30th May, 1997 mentions that on recommendation of his name from the Regional Selection Board, Pune, he is issued with the order of appointment. His posting order is also signed by the SDO. Mere mentioning in the order of appointment that the regional selection board has recommended his name for appointment to the post of Talathi, do not make the Regional Selection Board the appointing authority. The contention of the Counsel for the appellant therefore deserves to be rejected on the face of it. More so, however, if the Sub-Divisional Officer is the appointing authority, then, as a necessary corollary has the powers to terminate as a public servant enjoys a protection flowing from Article 311 (1) of the Constitution of India. The use of words “authority competent to remove” in Section 19 (1) (c) thus extends to an “authority competent to appoint”.

The S.D.O. who has been examined as PW No.2 has clearly stated that the SDO is empowered to appoint Talathi or

to remove from service any Talathi. Further the Revenue and Forest Department (Recruitment Rules of 1984) also reveal that the SDO is the appointing authority for Talathi. Before the Trial Court, the counsel for accused No.1 did not raise any objection in respect of the proposition that the SDO has power to appoint the Talathi. His objection was as to the relevant powers of SDO to remove the Talathi. The Apex Court in the case of P.L. Tatwal Vs. State of Madhya Pradesh, 2014 (II) SCC 431 dealing with the Section 19 (1) (c) has observed as under :-

7. “The appellant comes under [Section 19\(1\)\(c\)](#). The competent authority to give previous sanction is the authority competent to remove one from service. No doubt the appointing authority is the authority competent to remove him from service. Under Section 58 of the Municipal Corporation Act, 1956, the Standing Committee is the competent authority for appointment in any post in the municipality having a salary for more than Rs.400/- per month. For easy reference, we may extract the relevant portion from the statement made on behalf of the State Government on a specific query from the court:-

“The Respondent most respectfully submits that (sic) Section 45 and 48 of the Municipal Corporation Act 1956

empowers the Municipal Corporation to establish the committees and through Gazette Notification 1977 dated 21.03.1977 whereby Section 58 of the Municipal Corporation Act was amended, power was vested in the Standing committee to appoint any persons on the post of any such municipal post, which has maximum salary of more than Rs.400/-. ... xxx xxx xxx xxx The Respondent most respectfully submits that the above mentioned amendment was made in 1977 and the Petitioner was initially appointed in the Municipal Corporation on 17.12.79 by the Standing committee..."

10) In the said case, the contention of the appellant before the Court was that he was appointed by an Administrator and it was only the Administrator who could be competent to take decision on the sanction for prosecution. However, the Apex Court concluded that the Administrator was only an *ad hoc* arrangement made by the Government, when an elected committee was superseded or dissolved and from the Statute it was clear that the authority competent to remove an officer from service is the authority to give sanction for prosecution and when the Standing Committee which gave

the sanction for the prosecution. In the case of the appellant, the Apex Court held that the trial Court and the High Court cannot be faulted in taking the view that the order of sanction for prosecution was by the competent authority.

11) Advocate for the appellant placed reliance on the two judgments delivered by learned Single Judge of this Court. In the case of **Sakharam Trymbak Patil vs. State of Maharashtra** reported in **1993 Mh.L.J. 276** (Coram : Shri B.V. Chavan,J) the Court was dealing with Section 6 (1) (c) of the Prevention of Corruption Act, 1947. The learned Single Judge held that the accused, a Patwari, was appointed by the Collector but the sanction was accorded by the SDO who is subordinate to the Collector. The Court held that the SDO being subordinate to the Collector could not remove an Officer from service who was appointed by the Collector as it would cause violence to Article 311 (1) of the Constitution of India and in this background sanction for prosecution granted by the SDO was found bad in law.

12) In the case of **Maruti Shinde Vs. State of**

Maharashtra reported in **2011 (1) Bom.C.R.(Cri) 751**, the learned Single Judge of this Court (V.M.Kanade,J) was dealing with a case where the accused was working as Talathi and the proposal for sanction to prosecute him was submitted to the SDO who granted sanction. In the said case, the Appointing Authority of the accused was the Assistant Collector. Relying upon the judgment of Sakharam Trymbak Patil, the learned Single Judge has held that in a case where the Collector appoints the Talathi, the sanction given by the SDO to prosecute is not valid. The learned APP relied upon a judgment in case of **Vikas Baburao Marathe Vs. State of Maharashtra** reported in **2015 (2) Bom.C.R. (Cri.) 439**; wherein the learned Single Judge after referring to all three judgments mentioned supra had analyzed the provision of Section 19 (1) (c) in the Act of 1988 and recorded a finding that the SDO who accorded the sanction, had the power to remove the appellant from service and therefore it cannot be said that the sanction was not by a Competent Authority. The case with which the Court was dealing was of a Talathi and the

sanction to prosecute him was accorded by the SDO of the Revenue Division where he was working.

13) In the light of the law referred to above, an irresistible conclusion can be drawn that the power to remove a person flows from the power to appoint and in order to ascertain as to who has the power to remove Talathi to be seen as to who has the power to appoint. In the present case, the appellant was appointed by the SDO and it is the SDO or any officer higher in rank than the SDO who has power to remove him and therefore no fault can be found with the sanction order granted by PW No.2.

14) The Counsel for the appellant argued that the sanctioning officer has not applied his mind while granting the sanction and he has not referred to the relevant material. It is settled position that the grant of sanction is an administrative function and it intended a protection to public servants against frivolous and vexatious litigation. At the same time grant of

sanction also ensures that the dishonest officer indulging himself into an act of corruption by accepting an illegal gratification is brought before law and is tried in accordance with law. This authority granting sanction has to be appraised of all the relevant materials and after applying his mind to the material placed before him he has to take conscious decision as to whether fact would reveal commission of an offence under the relevant provisions. It is not necessary that an elaborate discussion in that regard in the order is needed but the decision making the relevant material should be reflected in the order to arrive at a conclusion that the sanctioning authority has examined the relevant material placed before him. In the present case, the perusal of the evidence of PW 2 who accorded sanction, in the capacity as a SDO, and perusal of the sanction order reflects that the sanctioning authority has applied his mind to the material placed before him and arrived at a conscious decision to prosecute the appellant and it also cannot be said that the draft sanction order was mechanically accepted by the Sanctioning Authority, as has been attempted to be

canvassed before me. The PW No.2 is a Law Graduate and in the cross-examination he was extensively cross-examined to reflect his non-application of mind but it is an attempt in vain. The order granting sanction clearly reflects the material considered by the sanctioning authority and his application of mind. I therefore do not find substance in the said point raised by the Counsel for the Appellant.

15) The Counsel for the appellant further argued that the prosecution has grossly failed to establish the demand and acceptance, the key ingredients for establishing an offence under Section 7, 13 (2) of the P.C. Act. The Counsel argued that the case of the prosecution that there was a demand on 28th September, 1999 and again on 1st December, 1999 which was the basis for lodging a complaint by the complainant with the Anti Corruption Department, resulting into laying of a trap to intercept the accused on 3rd December, 1999, is without any substance since on 3rd December, 1999, the mutation entries were already effected in respect of the complainant's property

and therefore the theory of demand for effecting the mutation entry is highly improbable. It was also argued on behalf of the Counsel for the appellant that the evidence of PW 3 panch witness was also found to be totally unreliable by the learned trial Court and in the judgment the Trial Court had declared PW 3 as “untruthful” and has discarded his testimony in view of the self-contradictory statements made by him. According to the learned counsel, the panch witness was a key witness and if his testimony suffers from any contradiction, the benefit must go to the accused and the evidence cannot be analysed by putting his testimony aside on the ground that it is untruthful. The Counsel therefore argued that the prosecution has failed to prove the demand and acceptance and moreover the amount was found in the inside pocket of Bandi of accused No.2 and not with his client and hence he could not have been convicted by the trial Court, whereas the accused No.2 secured a clean acquittal in spite of the smeared notes recovered on his body.

16) The learned APP, on the other hand, argued that on

the basis of the complaint filed by the complainant, a trap was laid by a team headed by PW 5 and the accused person was clearly intercepted on 3rd December, 1999 and the ingredients of the offence for acceptance of illegal gratification have been completely satisfied by the prosecution by leading cogent and reliable evidence.

17) From the evidence on record, it is seen that the complainant, an agriculturist, had purchased a piece of land at Mauje Dundage and submitted the application to the Talathi office for recording mutation entry and for recording his name in 7-12 extract and 8A record. According to the complainant, when he approached the office with the said application on 28th September, 1999 the appellant demanded an amount of Rs.2000/- towards the expenditure required for taking mutation entry. The appellant is a public servant and being a Talathi it was his duty to maintain record of mutation entry and after its certification by proper authority gave its effect in the record of rights and to supply a certified copy of 7/12

extract and 8A extract. The said demand was reiterated by the appellant when the complainant had reached his office and enquired about progress of his work. There was some negotiation on the amount and the appellant reduced the amount by Rs.100/- and told the complainant to bring an amount of Rs.1900/-. The complainant was given an impression that his work would not be done without payment of money. The complainant has also stated that on 1st December, 1999 when he was proceeding towards his field, the appellant Talathi was standing outside his office and he called him and asked about what he had done about the work which he was supposed to do and he should tell him whether the amount can be arranged by him, else he would tell the Circle Officer to cancel the mutation entry. The complainant being an agriculturist who had purchased land in his name was desperate to get the record of rights corrected in his name along with the mutation entries, he left with no other option, assured the appellant that he would make arrangement of money and a date was given by the appellant to visit the office along with money i.e. 3rd

December, 1999 at 11:00 a.m. Having understood, that work cannot be done without the amount being offered as per demand of the Talathi, the complainant approached the Anti Corruption Department. After recording the statement of the complainant, the Anti Corruption Department took preparatory steps to lay a trap to intercept the accused and a trap was set up with the assistance of the team constituting PW 5 Shri Choughule and two shadow witnesses PW 3 and one Shri Todkar. The currency notes handed over by the complainant to PW 5 were smeared with anthracene powder and handed over to the complainant to be delivered to the accused on demand. Panchanama was drawn and on 03.12.1999. The complainant along with the shadow witness i.e. PW-3 Gath went to office of the Talathi.

As per the evidence adduced by PW-1, the complainant, after entering in the office, specifically enquired from the appellant as to what had happened to his work and he was told by the appellant to bring Form of 7/12 extract and Form 8-A from the shop situated opposite Talathi's office and

accordingly he brought the said Forms. Evidence of PW-1 reveal that the appellant thereafter asked him (complainant) whether he had brought the full amount and he was told that he had brought the full amount. At that time, two other persons. Shri. Kamble and Shri. Badakar were sitting in the office of the appellant. The appellant asked the complainant to execute the necessary formalities for paying the revenue amount and he also paid flag fund for which he received receipts. According to the evidence of PW-1, after Shri Kamble and Badakar went outside the office of the Talathi, one Shri Kokate was present in the office and the appellant directed the complainant to pay the amount to Shri Kokate. At that time, Shri Kokate proceeded to move outside Talathi's office and the complainant followed. As per the directions of the Appellant, the amount demanded by the appellant was handed over to Shri Kokate, who accepted the same.

18) Evidence of PW-3 is un-impeached to the effect of the demand of money by the appellant when he asked the complainant, whether he had brought money as per his

instructions and the complainant replied in the positive. The evidence is corroborated by PW-3, who accompanied the complainant in the office of the Talathi on the date on which the amount was paid in pursuance of the demand. PW-3 categorically stated in his evidence that the appellant told the complainant to pay the amount brought by him to the person who was present there. The said witness also corroborated the complainant on the point that he took the currency note from his pocket and handed over to the person outside the office of Talathi. The minor variation in the testimony of this witness is of no consequence and do not alter the case of the prosecution as regards demand made by the complainant and acceptance of the amount in pursuance of the said demand. The evidence adduced by the prosecution of demand and acceptance of the amount is cogent and convincing to meet essential ingredients of offence under section 7 and 13(2) of the P.C. Act.

19) Counsel for the Appellant has vehemently argued

that on the date on which the demand is alleged to have been made and the amount is accepted, the mutation entries have already been effected. The trial Court has rightly dealt with the said issue and has observed that the complainant had no knowledge about the mutation entry being effected in the record of rights. The trial Court referred to section 150 of the Maharashtra Land Revenue Code which casts a duty on Talathi to take entry in the mutation register on every report made to him under section 149 or any intimation of acquisition or transfer under section 154 of the Act from any Collector and after effecting such entry in the register of mutation. It is his duty to post the complete copy of the entry on the conspicuous place of Chowdy and give written intimation to the interested persons. The entry in the register of mutation is not to be transferred to the record of the rights until it has been duly certified by the Circle Inspector. The trial Court is perfectly justified in observing that merely because on 29.08.1999 intimation was given to the complainant, the process of recording name in the record of rights was not complete. It

can be seen from the complaint of the complainant that the appellant also threatened that if the amount is not paid, he will ask the Circle Inspector to withdraw the said entry. It can thus be seen from the record which reveals that on 03.12.1999 copy of the 7/12 extract was not supplied to the complainant and he was totally unaware of the certification of the mutation entry of his purchased land for which the appellant had demanded the money. Hence, I do not find substance in the contention of the learned counsel for the appellant that since the work of mutation was already done, there was no occasion for the complainant to raise demand. On the other hand it can be clearly seen that the appellant was duty bound to effect mutation entry and record name of the appellant in the record of rights. However, he attempted to accept the amount for discharge of his duty, which is in the form of illegal gratification and the complainant who was left with no option and not in position to know the progress of his application, requesting for mutation entry, was compelled to meet illegal demand by the complainant. The prosecution has

adduced sufficient evidence to prove demand and acceptance of the amount by way of an illegal gratification in discharge of his duty by the appellant who is a public servant and clearly falls within the purview of section 7 of the P.C. Act. The said argument of the counsel of the appellant, therefore, needs to be rejected.

20) Section 20 of the PC Act creates a presumption that the accused person has accepted gratification other than the legal remuneration and once the act of acceptance of currency notes is established by the prosecution, it is incumbent upon the Court to draw a presumption and the onus is upon the accused to rebut the said presumption or to demonstrate the preponderance of probabilities to seek discharge / exoneration from the charges levelled against him. The appellant has not placed any material before the trial Court to rebut the presumption except stating that the currency notes were not recovered from him and there was no reason why he had raised the demand when the work of the complainant was already

done on the date of acceptance of money as alleged. It is the case of the prosecution that the accused no.2 is the retired Kotwal and there is no reason why he was present in the office of the appellant on the given time and went out of the office of Talathi on the instructions of the appellant. No explanation has been offered by the appellant about his presence or as to how the exact amount which was demanded by him, as alleged by the complainant to effect the mutation entry was recovered from the accused No.2. In the absence of rebuttal of presumption by the appellant it can safely be inferred that the prosecution has proved its case beyond reasonable doubt.

21) In view of the above, I hold that PW 2 was competent to grant sanction to prosecute the appellant and according to him, there is no infirmity in the sanction order passed by him in the capacity as SDO. I also conclude that the appellant has accepted the amount through accused No.2 as illegal gratification from the complainant who was interested in getting the mutation entries effected, though the appellant was duty bound as a Talathi to effect such entries in due course of

discharge of his duties. Coming to the point (d) which I have formulated in the above paragraphs as to whether the sentence imposed on the appellant is proportionate to the crime with which the appellant is charged. It is settled proposition that the punishment imposed should be fit the crime and this is one of the main object of the sentencing policy. The sentence should be adequately reasonable and proportionate to the nature of the culpability involved. It is no doubt true that sentencing is a matter of discretion of Trial Court and the High Court in an appellate jurisdiction will only deal with the aspect whether the said sentence imposed was proportionate or not. The act of the appellant clearly amounts to corruption which is an evil which paralyses the economical growth of the country and causes impediment in its progress. The need of the day is to strengthen the fight against corruption so that the progress of the nation is accelerated. In this backdrop, it is necessary to deal with the offences of acceptance of illegal gratification by public servant with stern hands and punish the offenders if they are found guilty of such offence. Though in the present scenario the

amount of Rs.1900/- which was demanded by the appellant appears to be a meagre amount, considering the scenario in the year 1999 when the offences committed, it was a substantial amount, some 18 years back and looking it from the point of the complainant who is agriculturist, the said amount undisputably was the substantial one. In such circumstances, the penalty imposed by the trial Court for conviction under section 7 of the PC Act to suffer RI for five years and fine of Rs.5000/-, in default SI for three months appears to be the proportionate penalty. Further the imposition of penalty for conviction for the offence under section 13 (2) for six years RI and fine of Rs.10,000/- is according to me proportionate penalty since the said amount was accepted for prosecuting a business which was required to be discharged by the appellant in connection with his official functions. The sentence imposed by the trial Court under Section 7 and Section 13 (2) have been ordered to run concurrently.

In my considered view, the sentence imposed by the Trial Court takes into consideration the gravity of the offences and

falls in line with the object of sentencing policy to create deterrent on public servant who intend to indulge in such acts of corruption to discharge their official duties.

22) The prosecution has proved the case against accused No.1 (appellant) by cogent and reliable evidence and the guilt of the accused No.1 is established beyond doubt and sentenced him by the trial Court is proportionate to the nature of offence committed by the appellant. The Trial Court has taken the entire evidence on record and on consideration of the factual and legal scenario in the said matter has recorded that the appellant is guilty of the offences with which he is charged and imposed penalty by the impugned judgment dated 30th July, 2001 in special Case No.3 of 2000 which needs to be upheld and the appeal filed by the present appellant deserves to be rejected. Hence the following order:-

:ORDER:

- (i) The appeal filed by the appellant/original accused No.1 Dattatraya Laxman Bagdi is hereby dismissed and the judgment and order dated 30th

July, 2001 passed by the Special Judge, Gadhinglaj, District Kolhapur in Special Case No.3 of 2000 is upheld as it is;

(ii) The appellant Dattatraya Laxman Bagdi to surrender before the Special Judge within 15 days from the date of this judgment and order;

(iii) The bail bonds/surety bonds furnished pending this appeal by the appellant, shall stand cancelled on expiry of the period of surrender;

(iv) Registry is directed to forward copy of this judgment and order to the Special Judge, Gadhinglaj, District Kolhapur and to the Police Station, Gadhinglaj for necessary compliance; and

(v) An authenticated copy of this judgment be supplied by the Facilitation Centre, High Court, Appellate Side, Bombay to the appellant, Free of Costs, forthwith.

(BHARATI H.DANGRE, J)

As per order dated 21st August, 2017 passed by this Court, the appellant is present before the Court. The judgment is pronounced in the open Court. A copy of Judgment be supplied to the appellant by the Facilitation Centre, High Court, Appellate Side, Bombay to the appellant Free of Costs forthwith.

Certified copy expedited.

(Smt. Bharati H.Dangre,J)

Dated:- 28th August, 2017.

Mumbai.