

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 684 OF 2002

The State of Maharashtra	...	Appellant
Vs.		(Orig. Complainant)
Mahamadali Hidayat Rafai,	)	
Junior Clerk, Tehsil Office,	)	
Hatkanangale	)	
R/o. 1869, B Ward, Mangalwar Peth,	)	
Kolhapur.	) ...	Respondent

Mr. S.R.Agarkar,APP, for the State/Appellant.
None for the respondent.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 17th May, 2017.

ORAL JUDGMENT ;

The State of Maharashtra, being aggrieved by the judgment and order dated 16.1.2002 passed by the Special Judge, Kolhapur, in Special Case No.11 of 1995, thereby acquitting the accused of the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 has filed the present appeal.

2. Such of the facts necessary for the decision of this appeal are as under :-

One Bhimrao Kundale had approached the Office of the Anti-Corruption Bureau and had lodged a report alleging therein that he was in possession of 3 Hectares and 44 Ares of his ancestral agricultural land at Village Hingangaon. That he had two brothers, who did not agree for partition and hence he was constrained to file Regular Civil Suit No.158 of 1995 against two brothers and a sister which was decreed in his favour on 13.6.1988. As a decree-holder, he had filed Execution proceedings which were registered as 15/1988 in the Court at Vadgaon and had prayed for execution of the decree. That since the suit property was an agricultural land, the matter was referred to the Collector. The Collector had then referred the matter to the Tehsil Office as the suit lands were situated at Village Hatkanangale. For the purpose of effecting partition, the lands had to be measured and a draft partition had to be prepared by the District Inspector of Land Records (DILR). The DILR had prepared a proposed partition in 1993 and had sent it to the Office of Tehsil. The complainant had learnt about the same in the year 1994.

3. The accused i.e. the present respondent was working as Junior Clerk in the Tehsil office at Village Hatkanangale. In February, 1994, the complainant had been to the Tehsil office along with his friends. He met the accused-respondent who was working as Junior Clerk. That the accused

had allegedly informed the complainant that he would have to pay some amount for receiving the records. The complainant had immediately handed over Rs.100/- to the accused which he promptly refused to accept. The complainant had then revisited the office of Tehsil after a fortnight along with his friend Tukaram and according to the complainant, the accused had demanded an amount of Rs.1200/- and after negotiation, it was agreed that the complainant shall pay an amount of Rs.1100/-. The complainant had therefore agreed to give the alleged gratification. That on 31.3.1994, the complainant had again visited the office of Tehsildar and had offered to pay Rs.500/- which the accused refused to accept and had insisted upon a demand for Rs.1100/- in order to finalise the partition.

4. At that stage, the accused had informed the complainant that he has issued notices to judgment debtors i.e. all the brothers and sisters of the complainant and those notices were made returnable on 15.4.1994. Hence, the complainant had approached the office of the ACB and lodged a report.

5. Accordingly, two public servants were called to act as panchas. A pre-trap panchnama was prepared on 16.4.1994. The trap was arranged. The complainant and his friend Tukaram had been to the office of the accused. The accused had asked them to see him later on. The accused proceeded to the hotel with his tiffin and at the relevant time, the accused

had asked the complainant to bring the amount in an envelope. The complainant had placed the envelope into the bag of the accused and had given the predetermined signal. The tainted notes were recovered from the bag of the accused. The post-trap panchnama was prepared. Dy. S.P. Patil lodged an FIR on behalf of the State on the basis of which Crime No.51 of 1994 was registered against the accused-respondent.

6. The defence of the accused was that the complainant had made persistent efforts to bribe the accused as he was insisting upon the accused to finalise the partition without issuing notices to the brothers and sister. The accused had followed the procedure and had issued the notices to the judgment debtors and, therefore, he is falsely implicated by the complainant by keeping the envelope in his bag without his knowledge when the accused had left the table for washing his hands after lunch.

7. The case was registered as Special Case No.11 of 1995. The prosecution has examined five witnesses to bring home the guilt of the accused. The complainant has been examined as PW-1. There are inherent inconsistencies in his substantive evidence. First and foremost, the demand has not been proved. It simply appears that the complainant had learnt from the accused that notices are issued to his brothers and sister. The complainant has specifically admitted that he was quite sure that his

brothers and sister would cause their appearance in the execution proceedings and would file objections to execution and therefore, the complainant was of the opinion that no notices be issued to his brothers and sister. He had been informed by the accused that the notices are made returnable on 15.4.1994 and therefore being annoyed with the same, he had approached the office of the Anti-Corruption Bureau. It is a matter of record that the accused was only working as Junior Clerk in the office of Tehsildar. He was bound to follow the procedure. The accused has admitted in his statement under Section 313 of Cr.P.C. that the partition proceedings had been entrusted to him and therefore he had issued notices to the judgment debtors. The accused had no authority to pass effective order in the execution proceedings. The learned Special Judge has rightly held that the accused has demonstrated the preponderance of probabilities and had rebutted the presumption drawn under Section 20 of the Prevention of Corruption Act, 1988. The learned Special Judge has assigned justifiable reasons for acquitting the accused by appreciating the substantive evidence of the witnesses in its proper perspective. The tainted notes were found in the bag. It is pertinent to note that there is no cogent evidence to even remotely indicate that the accused had directed the complainant to put the tainted notes in his bag. It is a material omission in the evidence of the

complainant as well as the panch witnesses.

8. Taking into consideration all the above aspects, the appeal being sans merits, deserves to be dismissed.

(SMT. SADHANA S.JADHAV, J.)