

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.132 OF 2003**

The State of MaharashtraAppellant
Vs.
Lalchand Premchand GajareRespondent

Ms. Anamika Malhotra, APP for State.

Mr. Chandrakant K. Chaudhari, Police Inspector, Anti Corruption Bureau,
Pune, Central Building, Pune Station, C. Barrack present.

**CORAM : K.R.SHRIRAM, J.
DATE : 11th NOVEMBER 2019**

P.C.:

1 This appeal has been pending since 2003. This is an appeal against acquittal of an accused who was charged under the provisions of the Prevention of Corruption Act, 1988. On 7th February 2019 on the statement of the learned Additional Public Prosecutor that appellant will effect service on respondent/acquitted accused through the Anti Corruption Bureau, (ACB) which was the prosecution department, the Court directed issuance of fresh notice to respondent to be served upon him through ACB, Pune, returnable on 7th March 2019.

2 The notice was sent by the Registry vide its letter dated 13th February 2019. As nothing was heard from the ACB, Pune, on 4th November 2019, almost 9 months after the order of 7th February 2019 was passed, the Court passed the following order :

1. On 7-2-2019 the court directed to issue fresh notice to respondent to be served upon him through Anti Corruption Bureau (ACB) Pune. Registry by its letter dated 13-2-2019 has forwarded the notice to the Senior Inspector of Police, ACB, Pune, with a caution that failure to serve the notice promptly

will amount to causing delay in judicial proceedings and it may even result in action for contempt of court. The remarks of the registry says “..... not yet received back – report is awaited.”

2. The report do not indicate it has really been delivered to the Senior Inspector of Police, ACB, Pune. The Court Shirestedar informs me that when she inquired with the department, it was informed that all these notices are sent by Speed Post. Ms Malhotra requests the matter be stood over to 11-11-2019, to enable her to take instructions. If the notice has been delivered to the Senior Inspector of Police, ACB, Pune, in that case, the Senior Inspector of Police, ACB, Pune shall file an affidavit explaining why he has not filed a report to this court despite a caution that inaction will cause delay in judicial proceedings and it may even result in action of contempt of court. The Senior Inspector of Police, ACB, Pune, shall also remain present in court on the next date.

3. Stand over to 11-11-2019.

3 Today one Chandrakant Chaudhary, Police Inspector of ACB, Pune is present in Court. He states that there is no Senior Inspector in ACB and he is the senior most person and above him is only Deputy Superintendent of Police. He produces a photocopy of a report/letter dated 5th March 2019 allegedly sent by him to the Assistant Registrar, High Court, Bombay. He has not been able to produce any evidence to show that this report/letter was really dispatched to High Court or received by High Court. The Court Sheristedar also states that there is no proof that this has been received. He has also not filed any affidavit to that effect with proof of dispatch. In fact, on 7th March 2019, the matter was directed to be put up after service.

4 Mr. Chaudhary states in this report/letter dated 5th March 2019 addressed to Assistant Registrar, High Court, that he personally went to the area within Alephata Police Station's jurisdiction looking for Lalchand

Premchand Gajare and he searched at Alephata, Taluka – Junnar, Jilha – Pune at the address given in the notice but the address given was incomplete and therefore, he was unable to serve the notice and only after he receives the full address from the registry, it will be possible to serve the notice. Therefore, he requested Assistant Registrar, High Court, Bombay to provide complete address. The contents of this report/letter are rather strange. This is because, this appeal is filed by the State of Maharashtra through the Anti Corruption Department, Pune. Therefore, Mr. Chaudhary's office is appellant. The address of respondent/acquitted accused given in the cause title of the appeal is provided by appellant. So also the address given in the charge is the same address which is mentioned by him in his report/letter dated 5th March 2019. Therefore, the Assistant Registrar, High Court, Bombay cannot provide any better address of respondent/acquitted accused. Mr. Chaudhary also does not provide the date and time he went to make enquiries. He does not say what further steps he took to locate respondent/acquitted accused. This is despite a note of caution in the letter dated 13th February 2019 forwarded by the registry that failure to serve the notice promptly will amount to causing delay in judicial proceedings and it may even result in action for contempt of Court. It was for Mr. Chaudhary to investigate or enquire and trace the whereabouts of respondent/acquitted accused and serve upon him the fresh notice. He could have gone through the appeal papers or Trial Court papers or approached the then employers of

respondent/acquitted accused MSEB or taken such further steps as required. He, however, does not do that but uses an easy route by asking the High Court registry to do his work. The High Court registry cannot do the investigation or enquiries for Mr. Chaudhary or for an appellant. It is appellant's responsibility. Notings in the Court records show that warrant of arrest under Section 390 of the Code of Criminal Procedure was executed and respondent/acquitted accused is released on bail. There is also a report dated 30th May 2017 received from Alephata Police Station stating therein that Court notice issued to respondent/acquitted accused is returned unserved as respondent/acquitted accused was not found at the given address. So even after 30th May 2017 appellant has not taken any steps to trace the whereabouts of respondent/acquitted accused.

5 It is, therefore, quite clear that appellant is just not interested in prosecuting this appeal. Though it is settled law that the Court shall not dismiss an appeal for default and it shall dispose an appeal after considering a case on merits, here is an appellant who is present but does not wish to sincerely and diligently prosecute the appeal but only delay the judicial proceedings. The Assistant Public Prosecutor is also helpless and handicapped because of lack of co-operation from the concerned department. They are embarrassed in having to seek repeated adjournments. The Court cannot keep adjourning the appeal hoping that appellant will, one day, wake up from its slumber and prosecute the matter.

6 Therefore, appeal dismissed for want of prosecution.

7 A copy of this order be placed before the Director General of
Police for information.

(K.R. SHRIRAM, J.)