

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION
CRIMINAL APPEAL NO. 389 OF 1997**

The State of Maharashtra	)	..Appellant
Vs.		
Rekha Ramakant Rahalkar	)	
Age 50 yrs, Occupation -	)	
Social worker, P39/99,	)	
C.Q.A.E. Quarters, Aundh, Pune	)	..Respondent

Ms Anamika Malhotra, APP for State
Mr. Satyavrat Joshi for Respondent as Amicus Curiae

**CORAM : K.R.SHRIRAM, J.
DATE : 22nd NOVEMBER 2019**

ORAL JUDGMENT:

1 This is an appeal filed under Section 378(4) of Criminal Procedure Code impugning the judgment dated 21-3-1997 passed by the Additional Sessions Judge, Pune, by which the accused was acquitted of a charge under Section 420 of Indian Penal Code.

2 The appeal that was filed before the Additional Sessions Judge was to challenge an order of conviction against accused no.1. There were three accused and accused nos.2 and 3 were acquitted by the Trial Court.

3 In a nutshell, it is the case of complainant that accused no.1 (hereinafter referred to as accused) was a congress party worker based in Pune and accused used to promise jobs in Government offices for payment of a fee. The prosecution says accused made such promises to many others,

some of whom are P-W.-2 to PW.-11, took money from them with a promise of Government or bank job, but never got them any job or returned the money. Complainant- Nitin Bhosale has stated that he did not have a permanent employment and he was in search of a job. In June 1993, he came to know through one Ms Saitwadkar that accused was a congress party worker who had political contacts at high levels and helps people to get Government job for payment of some money. Accordingly, complainant in June 1993 went to meet accused at her residence. He was accompanied by Ms Saitwadkar and another person Balu, i.e., Vijay Phakatkar (PW.-2). Accused, it seems, informed the trio that she has contacts in Delhi and Mumbai with Ministry and that she was also going to open a Bank in Pune and some people are going to be employed. It seems, accused also informed that she has already given jobs to many people and if it is not possible to get jobs in the Government department or PCMC (Pimpri Chinchwad Municipal Corporation), she would get them job from Delhi quota (what it means is not explained). It seems complainant was told by accused that for a Government job as a clerk the cost will be Rs.7000/- and for a Government job as peon, it will be Rs.2000/-. It seems accused also assured, if the amount was paid within 2 or 3 days, he will get the employment immediately.

4 Thereafter, on 5-7-1993, complainant is supposed to have gone and met accused again and gave an application (Exhibit 37) to accused for a

job as clerk for himself and for the job as a peon for his younger brother Prashant Bhosale. Prashant Bhosale is not a witness. According to complainant, the amount that was payable to accused was Rs.9000/- and he paid accused Rs.2000/- on that day with a promise to pay the balance of Rs.7000/- in few days. It is not clear whether the balance Rs.7000/- was paid to accused. Exhibit 36, which is the job application, is rather strange in as much as the application is signed by complainant and addressed to accused. The application is in Marathi language, in which, it is stated that applicant wants a job as clerk and his younger brother be given a job as peon. Complainant had studied up to F. Y. B.Com and his younger brother was 10th fail and that complainant requested accused to get him a government job (sarkari naukri) as clerk and his younger brother to be given a job as peon and assured that both would work very honestly. The curious part of this is that, in the application he says he will work honestly, but the method of getting a Government job is far from being honest.

5 The prosecution has led evidence of P.W.-2, who is a friend of the complainant. P.W.-2 had accompanied complainant during the first visit of complainant to the house of accused. P.W.-2 is supposed to have later gone and have given a sum of Rs.2000/- for getting a job as peon. Likewise, P.W.-3 is another job applicant, who has given Rs.2000/- for getting a job as peon. P.W.-4 and P.W.-5 are supposed to have given Rs.15,000/- each for

getting a job in a bank, which accused was starting. PW-6 is the father and husband respectively of two applicants, who has given Rs.3000/- + Rs.3000/- = Rs.6000/- for getting a job as ward boy for his son and for getting a job as a peon for his wife. PW-7 is a maid, who was working in the house of accused at a salary of Rs.500/- p.m., who gave Rs.15,000/- for getting a job in the bank. PW-8, PW-9, PW-10 and PW-11 are all bank job applicants, who gave Rs.5000/-, 15,000/-, Rs.10,000/- and Rs.10,000/- respectively. Those applicants, who claim to have given money for getting job in the bank, all were issued cheques by accused for repayment of their amounts because accused was unable to get them the promised jobs, but those cheques have been dishonored. None of them have commenced action against the provisions of Section 138 of the Negotiable Instruments Act, 1881.

6 PW-12 is the Investigating Officer and PW-13 is the Panch Witness. This Panch Witness is the signatory to panchnamas, viz., Exhibits 88 and 89. Exhibit 88 is to record that accused informed the I.O. that all the job applications are kept at her residence and she used the money received from applicants to buy washing machine, computer and vacuum cleaner (home appliances). Exhibit 89 is the panchnama prepared at the time when the job applications including Exhibits 36 and 37 and the home appliances were seized.

7 Before we proceed further, it will be useful to reproduce Section 420 and the same reads as under:

*“Section 420. **Cheating and dishonestly inducing delivery of property**.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”*

 What is cheating, can be found in Section 415 and the same reads as under:

*“Section 415. **Cheating**.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.”*

 Reading these provisions together, the essential ingredients of Section 420 of IPC are (a) cheating; a person must commit the offence of cheating under Section 415; (b) the person cheated must be dishonestly induced to; (i) deliver property to any person; or (ii) make, alter or destroy a valuable security or anything signed or sealed and capable of being converted into a valuable security; and (iii) *mens rea* of the accused at the time of making the inducement.

8 Therefore, it is clear that at the time a person is induced to part with any property, accused should have an intention to cheat the person

who parts with the property. Accused by deceiving any person fraudulently or dishonestly should induce the person to part with any property. Therefore the mens rea relates to the time accused makes the inducement. The Apex Court in its most recent judgment in the matter of **Prof. R. K. Vijayasarthey & Anr Vs. Sudha Seetharam & Anr.**¹ has laid down this preposition. To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. **The State of Kerala Vs. A. Pareed Pillai & Anr.**²

9 Having considered the facts and circumstances of the case and evidence before me with the assistance of Ms Malhotra, the APP and Mr. Joshi, who is appointed as Amicus by this court because the accused had informed the court she was unable to engage the services of lawyer, I do not see any reason to interfere with the impugned order of acquittal. I must also mention that the Apex Court in **Chandrappa & Ors. V/s. State of Karnataka**³ in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under :

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate

1 2019 SCC online SC 208

2 AIR 1973 Supreme Court 326

3 (2007) 4 SCC 415

Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

10 Complainant is PW.-1. The other witnesses, i.e., PW.-2 to PW.-11, have been brought only to corroborate or to support the case of the prosecution, that it is not just in one case, but there are many cases, in which accused has applied the same modus-oprandi and induced people to part with money with a promise of job, but with no intention to get them an employment. There are innumerable omissions in the evidence of each of the witnesses including complainant and all that have been reproduced in the impugned judgment. For the sake of brevity, I do not wish to reproduce all of that. What impressed me to sustain the acquittal are not just those inconsistencies but the entire basis of the complaint. It is the case of the prosecution that complainant and each of the witnesses (PW.-2 – PW.-11)

were introduced to accused by one Ms Saitwadkar. Ms Saitwadkar has not been made an accused. It was Ms Saitwadkar, who took all applicants to accused. It is Ms Saitwadkar, who told complainant and the witnesses that accused is influential and accused will get them a job. Accused did not go to complainant or PW.-2-PW-11 with a promise to get them a job in exchange for payment. It is complainant and PW.-2-PW.-11, who went to accused with a request and at the behest of Ms Saitwadkar. Still the prosecution does not consider it necessary to make Ms Saitwadkar an accused. Even if, we gloss over this omission, still Ms Saitwadkar is not brought as a witness to corroborate the statements of complainant and the other witnesses. In my opinion, it would be Ms Saitwadkar's evidence, which would have actually crucified accused, but the prosecution for some reason did not consider it necessary to bring Ms Saitwadkar. At this point, we need to note the stand of the defence. The defence's case is that accused being a social worker was active in politics and working for congress party and it was political rivalry, which was the reason to foist this false case. It is the case of the defence that Ms Saitwadkar was also an ambitious political worker who wanted to trip the political carrier of accused. It has also come in the evidence of PW.-2 that 7 or 8 days prior to filing the complaint, all of them got together and decided to file a complaint and PW.-2 admits that it was so decided in the house of Ms Saitwadkar. The defence of appellant is that Ms Saitwadkar is behind the whole thing. PW.-2 also admits that it was also decided during

that meeting to give the statements to the police. No wonder, the statements appeared to be stereo type. P.W.-2 has also stated that the information about the incident was given to the I.O. (PW-12) by Ms Saitwadkar and it was Ms Saitwadkar, who had contacted the police.

We have to also note that Ms Saitwadkar was one of the witness listed by the police. In the charge sheet in the column of name and address of witnesses, at Sr. No.32 is Smt. Lalita B Saitwadkar. There is no explanation as to why Ms Saitwadkar was not called as witness. Non production of a material witness will result in miscarriage of justice. **S. Harnam Singh Vs. The State (Delhi Admn.)**⁴

11 The next part, which makes me not to interfere with the impugned judgment is those who are promised jobs in the bank were given cheques returning those amounts. The cheques were, however, dishonoured but we are not considering a case under Section 138 of the Negotiable Instruments Act 1881. If accused had all intentions to cheat, accused would not have issued those cheques, particularly when payments were made to accused in cash and no receipts have been issued. The prosecution's onus is to prove when accused induced the complainant or the other witnesses to part with money, accused was not in a position to give those bank jobs and accused, knowing fully well that she was not in a position to give those jobs or had no intention to give those jobs promised, still induced complainant

4 (1976) 2 Supreme Court Cases 819

and the other witnesses to part with money. I see no evidence to indicate such an intention because it is settled law that *mens rea* of accused at the time of making an inducement is a very vital ingredient of Section 420 of IPC.

12 Let us see whether the prosecution's case can be sustained on the complaint lodged. The defence has taken a stand that they never took any money from complainant or made any promise of job. The prosecution's case is based on Exhibit 36, which is the job application made by complainant for himself and his brother and which application (Exhibit 36) is supposed to have been found in the house of accused. First of all, even if one assumes the applications were found in the house of accused, that does not mean that accused has taken any money from complainant. It could be just a request from a person to another person, who appeared to that job applicant to be influential, to get him a government job. This Exhibit 36 itself does not mean that any money was given.

13 Was Exhibit 36 really found in the house of accused or whether I should accept the case of the defence that it was a got up document by the police. For this, we need to consider Exhibits 88 and 89, which are the two panchnamas and also consider the evidence of the panch witness PW-13. PW-13 in his cross-examination has stated that Exhibit 88 which records that the accused deposed to the police at the police station the fact that the applications are at her residence and she bought home appliances with the

money collected from people, has not been signed in the police station. In the cross-examination, P.W.-13 says that “..... I have not put my signature on panchnama Exhibit 88..... in the police station.” He also states he was present in the police station only for five minutes. How could someone record Exhibit 88 in 5 minutes? Therefore, the panchnama cannot be relied upon in the evidence. Moreover, most importantly the panch witness has not identified the accused. The examination-in-chief is totally silent about that. Then how could P.W.-13 state that accused deposed to the police as recorded in the panchnama.

14 In Exhibit 89, which is the panchnama prepared at the time when Exhibits 36 and 37 and the home appliances were seized with other documents, there is nothing to show that the documents that were allegedly seized were kept in a cover and sealed by the police when they seized those documents, the packet was suitably labelled and signature, on the cover, of Panch Witness taken. I say this because there is every possibility that the alleged recovery of Exhibits 36 or 37 could be tampered or could have been a got up document. Police should have placed all the seized documents in an envelope, sealed that envelope, affix appropriate label and obtain on the envelope a signature of the panch witness. The panch does not say any of these things in panchnama or in his witness statement. I find support for this view of mine in the judgment of **Kiran Ashok Jadhav Vs. The State of**

Maharashtra.⁵

15 There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, accused having secured her acquittal, the presumption of her innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Sessions Court in Appeal rightly observed that the prosecution had failed to prove its case.

16 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, need not be interfered with.

17 Appeal dismissed.

18 I must record my appreciation for the assistance of Mr. Joshi, as Amicus Curaie and of course that of the APP

(K.R. SHRIRAM, J.)

5 2014 ALL MR (Cri) 3850