

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.474 OF 1997

The State of Maharashtra
(Through Dy. S.P. Chache,
Anti Corruption Department,
Kolhapur Police Station)

.... Appellant
(Ori. complainant)

Vs.

1. Suresh Pundalikrao Thakur
Age : 42 years,
Occ.: Round Officer, Umbara Round,
Donvat Khalapur Range, Dist. Raigad,
At present Gharapuri Park,
Panvel Range, Dist. Raigad.

2. Krishna Hasha Gadmale,
Age : 41 years, Occ.: Forest Guard,
Umbare Round, Having Head Quarter
at Donvat, Tal. Khalapur, Dist. Raigad,
At present Dhokshet Round,
Sudhagad, Pali Range, Dist. Raigad

.... Respondents
(Ori. accused)

Mr. S.R. Agarkar, APP for the Appellant
None for respondents.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 3rd June 2019

JUDGMENT :

1. Heard the learned A.P.P.
2. By this appeal, the State challenges the judgment and order dated 17th March 1997 passed by Special Judge, A.C. Act, Raigad in Special Case No. 3 of 1990 thereby acquitting both the respondents of the offences punishable under Sections 161 and 165(A) read with 34 of Indian Penal Code and Section 5(1)(d) read with 5(2) of Prevention of Corruption Act, 1947.
3. The case of the prosecution is that respondent no.1 Suresh Thakur was working as Round Officer, Umbara Round, Donvat Khalapur Range and respondent no.2 Krishna Gadmale was working as a Forest Guard under the original accused no.1, Suresh Thakur.
4. The facts of case in nutshell are as follows :

PW-2, the informant Shankar Tukaram Dabholkar was residing at village Kharavali, Khalapur in the house given by his maternal uncle, Ramu Dhage. That the informant had used forest wood for constructing his house in the year 1980. He was residing in one part of the house and was running flour mill in other part. The

informant had got planks of wood, which he had cut from the forest from Patel Saw Mill. He had also purchased some planks and wooden rafters by taking transit pass from Forest Department. In the year 1985, Ranger had checked his house. Six planks were found without pass or without valid receipts and therefore offence was registered against him and he had deposited Rs.200/- towards the same.

5. On 10th October 1987, respondent no.1 alongwith two Guards had been to the house of the informant and had demanded the receipts/passes, on the basis of which he had cut the forest wood for constructing his house. He had shown the passes to the respondent, they had seized the same and asked him to report to the office within 3-4 days.

6. It is alleged by the prosecution that respondent no.1 had opined that he would have to register offence against the informant as the receipts were not proper and there was demand of Rs.1,000/-. According to the informant, it was negotiated to Rs.700/-. It is alleged that on 15th October 1987, Forest Guard i.e. respondent no.2 had been to his house and had demanded the amount. At that juncture,

the complainant had paid him Rs.200/- and assured that he would pay remainder of Rs.500/- and in a short while. The informant had then been to the office of respondent no.2 on 27th October 1987 and at that time, there was a demand for Rs.500/-. The informant had then approached office of Anti Corruption Bureau. The ACB had called for shadow witnesses and were prepared to conduct a raid.

7. A pre-trap panchanama was recorded. Accordingly, on the next day, i.e. on 29th October 1987, the informant had been to the office alongwith the shadow witness. He had handed over an amount of Rs.500/- to respondent no.1. He had counted the amount, verified the same and found to be correct. Soon thereafter the pre-determined signal was given. The raiding party had entered into the office. The trap amount was seized and prosecution was set in motion. In the present case, all that needs to be seen is as to whether the prosecution has proved it's case beyond reasonable doubt. In fact, in the present case, the respondent has rebutted the presumption drawn under Section 4 of the Prevention of Corruption Act. There is ample material on record to indicate that in fact the demand notice was issued for depositing the fine amount, which was Rs.405/-.

8. The prosecution has examined PW-5, Ramu Dhondu Dhage, who happens to be the maternal uncle of the first informant and according to him, ten years back, wood was seized from his house and he was asked to deposit Rs.500/- towards fine. After 5-6 years, somebody had come to his house and informed him that he has to deposit Rs.405/- for the wood seized. There is clear admission by PW-5 Ramu Dhage that he had not deposited said amount till today i.e. till the date of giving of evidence and neither he had asked anybody to deposit the said amount. He has also stated that there was no talk between him and the informant in respect of the wood seized by Khatavkar i.e. the officer of Forest Department. He has denied his previous statement recorded by Mr. Chache, who happens to be the investigating officer. There are records to indicate that the notice was issued. A receipt dated 25th September 1996 would show that a receipt was issued in favour of the informant that he had deposited Rs.200/- with the office. The panchanama accompanied with the statement of the informant dated 25th September 1996 would show that he had no pass nor receipts for cutting wood and using the same for construction. The informant was the witness to

the panchanama. The said statement of the informant is at Exhibit 34(C). The certificate dated 25th September 1996, to which the first informant is the signatory. The document would show that he had admitted the offence and had agreed to compromise the same as contemplated under Section 68 of the Indian Forest Act and had also undertaken to deposit the amount of Rs.576.50 ps. within fifteen days from 25th August 1986. He had also undertaken that he would be liable to pay Rs.576.50 ps. towards fine as per Section 82 of the Indian Forest Act.

9. Accused no. 1 in his statement under Section 313 Cr.P.C. has also stated that the informant has falsely implicated him in order to save himself from paying the fine and also to see that there is no further demand notice by other officers of the Forest department.

10. In view of above discussion, it can be safely inferred that the accused has rebutted the presumption by placing on record the preponderance of probabilities. The evidence that should be adduced by the prosecution has to be beyond reasonable doubt. However, it is sufficient for the accused to only rebut the presumption drawn

against him under Section 20 of the Prevention of Corruption Act, 1988. In view of above discussion, no interference is called for in the judgment and order dated 17th March 1997 passed by the Special Judge. Hence, the appeal stands dismissed.

(*Smt. Sadhana S. Jadhav*, J)