

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION (ALS) NO. 58 OF 2017**

The State of Maharashtra ... Applicant
V/s.
Vallabh Sadanand Masake ... Respondent

Mr. S.S. Pednekar-APP for the Applicant
Mr. Rajaram V. Bansode a/w. Mr. Ramji T. Kotali for the Respondent.

**CORAM : SMT. SADHANA S. JADHAV, J
DATED : 16th SEPTEMBER 2019.**

P.C. :

1. Being aggrieved by the judgment and order dated 8th February 2017 passed by the Special Judge (ACB), Raigad Alibag and Sessions Judge, Raigad Alibag in Special Case (ACB) No. 3 of 2012, thereby acquitting the respondent for the offence punishable under Sections 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988. The State has filed the present application.
2. Such of the facts are necessary for the decision of this application are as follows:-
3. The respondent herein was officiating as a Talathi of the Village Koleti wadi. It is the case of the complainant-Jagannath Khandu Thakur and his sister had given no objection in respect of land Survey No. 46/3, admeasuring 43 Are situated at village Khar Koleti in favour of the complainant. He had placed the said document before the accused and requested him to issue 7/12 extracts to that effect. It is

alleged that the accused had demanded an illegal gratification of Rs.1,000 from the complainant. That, the complainant had allegedly handed over of Rs.500/- to the accused. It is further alleged that the accused had failed to give the 7/12 extracts of the mutation entries effected on the basis of the surrender deed. Therefore, on 8th August 2011, the son of the complainant who happens to be an advocate had approached accused and demanded the 7/12 extracts. He had learnt that extracts were not ready. Accordingly, Vinod the son of complainant had informed his father the complainant about the same. The complainant son Vinod paid Rs.50 as the charges towards 7/12 extracts. The accused had, allegedly, reiterated his demand of Rs.500 in order to issue the said extracts. It was in these circumstances, that the complainant approached the office of Anti Corruption Bureau on 16th August 2011.

4. After recording the statement of the complainant the Anti Corruption Bureau had decided to conduct verification Panchnama. Accordingly, on 23rd August 2011 the complainant was sent along with the Shadow witness (Panch) Mr. Gurav. The complainant was armed with Digital Voice Recorder. On 25th August 2011 a trap was laid and it had transpired that one of the extract had, already been obtained on 23rd August 2011.

5. It is the case of the prosecution that the complainant had initiated the talk on demand upon which the accused had not mentioned the amount of Rs. 500 but had demanded the same by gestures. He had accepted the said amount and the said amount was found on the table.

6. The complainant had made a pre-determined signal to the

raiding party an amount of Rs.500 was found on the table. At the trial the complainant had deposed in consonance with the earlier report. It is pertinent to note that the amount was accepted and the 7/12 extracts were given to the complainant on 23rd August 2011. At the time of verification Panchnama itself, the prosecution has placed implicit reliance on the Digital Voice Recorder.

7. It is pertinent to note that even according to the complainant the accused informed the complainant that he would demand the amount by way of bribe upon installation of Computers. He had handed over the extracts. Most relevant witness would be the shadow witness in the present case i.e. PW-2 Mr. Subhash Gurav. He has stated in the Examination-in-Chief that on 23rd August 2011 the accused demanded Rs.500 by gesture. The complainant said that he would pay the amount on 25th August 2011 i.e. on Thursday. The accused prepared 4 to 5 extracts and gave it to the complainant. The complainant paid Rs.50 and came out. The trap was laid on 25th August 2011.

8. According to PW-2 the complainant in response to the gesture of the accused had handed over a currency note of Rs. 500/- which the accused accepted and kept it on the table. Soon thereafter, the complainant had given a signal and the amount of gratification was found on the table itself.

9. It is pertinent to note that in the cross-examination the witness has stated that the complainant had not asked the accused the exact amount that was to be paid. The accused had given all the extracts to the complainant. That, the tainted currency note was found on the table. It is admitted that on 25th August 2011 the accused had

asked the complainant as to how many times he would seek the extracts. It appears that the complainant had blown the incident out of proportion by stating that the accused had told the complainant that his son has not paid the amount. It is further pertinent to note that it had transpired from the register maintained by the accused that the entry of release deed had already been made and that the complainant had already taken the copies of all the 7/12 extracts.

10. The learned APP has vehemently submitted that in fact the demand was made by the accused and the complainant had responded to the same by parting with the amount. The learned APP has placed reliance on the judgment of this Court in the case of *Ghalappa Sardar Nadgeri Occu Service; Gurunath Keshav Rathod Occu Vs. State of Maharashtra* decided on 18th January 2016 wherein, this Court has observed that “Gestures as defined in Black’s Law Dictionary is a motion of the body calculated to express a thought or emphasize a certain point”.

11. The learned APP has submitted that the learned Special Judge has acquitted mainly on the ground that there was no demand since the demand was made by gestures and not in words and therefore according to the learned APP the learned Judge has misconstrued the provision and has acquitted the accused. It is also urged that irrespective of the facts on record it was for the accused who rebut the presumption which was to be withdrawn under section 20 of the Prevention of Corruption Act, 1988. That, the accused could have rebutted the allegations either by cross-examining the witness or by adducing reliable evidence.

12. In the present case, it can be safely said that the accused has rebutted the said presumption by demonstrating the probability in the form of register which indicated that even prior to 23rd August 2011 the 7/12 extracts were handed over to the complainant. That, there is no cogent evidence to indicate that the accused had accepted the amount and retained the same. The tainted notes were found on the table on the same place where the complainant had left.

13. Considering the factual matrix of the whole case and the evidence led by the prosecution it can be safely inferred that the learned Special Judge has assigned satisfactory reasons to acquit the accused of all the charges levelled against him, no interference is warranted and hence the application seeking leave to appeal stands dismissed.

(SMT. SADHANA S. JADHAV, J)