

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.976 OF 2003**

The State of Maharashtra

)Appellant/Complainant

V/s.

1. Balu @ Balwant Dattu Susware

)

Age : 40 years, R/o. Nigawe Dumala,

)

Taluka – Karveer, District – Kolhapur

)

2. Anant Dinkarrao Salokhe

)

Age : 62 years, R/o. Nigawe Dumala,

)

Taluka – Karveer, District – Kolhapur

)

3. Suresh Rajaram Patil

)

Age : 24 years, R/o. Nigawe Dumala,

)

Taluka – Karveer, District – Kolhapur

)

4. Pandurang Gopal Kamble

)

Age : 51 years, R/o. Nigawe Dumala,

)

Taluka – Karveer, District – Kolhapur

)Respondents/Accused

Ms. Pallavi Dabholkar, APP for appellant.
None for respondents.

**CORAM : K.R.SHRIRAM, J.
DATE : 2nd JANUARY 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 16th April 2003 passed by the Judicial Magistrate First Class, Kurundwad by which the accused were acquitted of offence punishable under Section 420 (*Cheating and dishonestly inducing delivery of property*), 468 (*Forgery for purpose of cheating*), 471 (*Using as genuine a forged [document or electronic record]*) read with Section 34 (*Acts done by several persons in furtherance of common intention*) of the Indian Penal Code (IPC).

2 The brief facts are that one Balu Bhau Killedar (PW-2) claimed to be project affected person to whom a plot of land was allotted. Since

PW-2 was not given possession of the land despite the allotment, he lodged a representation. It was found that the land that was already allotted to PW-2 has been allotted to one Minakshi Susware and Saraswati Susware as PAP's, the wife and daughter, respectively of accused no.1. Therefore, on the complaint of PW-2 – Balu Killedar, the Collector, Kolhapur directed the District Rehabilitation Officer (DRO), who directed the Tahsildar of Shirol to file a complaint against the four accused. The charges levelled were that the accused cheated the Government by fabricating/forged orders. This is an incident which took place in the year 1997.

3 After registration of the written complaint, investigation was carried out. Charges were framed and all the accused denied the charge and claimed to be tried. The Trial Court, after considering the order as well as documentary evidence, was pleased to acquit the accused and that order of acquittal is impugned in this appeal.

4 I have also considered the evidence and records and proceedings and I find no reason to interfere with the impugned judgment. 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 to 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 Section 406. Punishment for criminal breach of trust.- Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both 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.

5 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 V/s. Sudha Seetharam & Anr.***¹ has laid down this preposition. To hold

1. 2019 SCC Online SC 208

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 as held in ***The State of Kerala Vs. A. Pareed Pillai & Anr.***²

6 Having considered the facts and circumstances of the case and evidence before me with the assistance of Ms. Dabholkar, Learned APP, none of the ingredients of Section 420 of IPC have been satisfied.

7 There are innumerable gaps also in the evidence. PW-8 – Shankar Ramchandra Kamble, who was the Talathi at the relevant time has stated that accused no.1 has filed an application (Exhibit 77) alongwith Vatappatrak no.41 of 1995 and 39 of 1995 alongwith the land allotment orders at Exhibits 50 and 51. Ms. Dabholkar states that Vatappatrak means allotment letter. PW-8 then gave mutation entries no.3004 and 3005, which are at Exhibit 83 and 84. But in the cross examination, PW-8 admits that he has not registered the documents in the inward register filed alongwith Exhibit 77. PW-8 also has admitted that the person giving wardi (application) is required to sign under the application and unless the signature of that person is not under the application, they were not taking entries on the basis of such wardi. PW-8 also admits that application (Exhibit 77) did not bear signature of the person giving the wardi. At the same time, PW-8 says that if the signature is missing, they would return that application. PW-8 also admits that the application (Exhibit 77) did not bear the signature of either Saraswati Susware or Minakshi

2. AIR 1973 Supreme Court 326

Susware though the application is filed in their name. PW-8 also says that he did not know Minakshi Susware and Saraswati Susware but because it was filed by a member of their family (accused no.1), which he came to know based on local enquiry, he accepted the application. The fact that he made local enquiry is not disclosed by PW-8 in the statement recorded by Police. PW-8 also admits that he has not informed the Police when his statement was recorded that accused no.1 submitted the application with him. These are fatal omissions because according to prosecution, accused no.1 filed application (Exhibit 77) alongwith the documents with PW-8. It does appear that proper procedure while certifying mutation entry has not been made. PW-8 has also admitted that he has not stated in his statement before the Police that alongwith Exhibit 77, accused no.1 produced the Vatappatrak and allotment orders. Most importantly PW-8 says that unless the original papers are submitted, they do not certify the mutation entry and the documents submitted were not originals but photocopies. PW-8 also admits that Exhibit 83 and 84, which are mutation entries no.3004 and 3005, does not mention that the wardi (application) was filed by accused no.1. Significantly PW-8 admits that neither Minakshi Susware nor Saraswati Susware knew that the land stood in their name. Therefore, considering the evidence of PW-8 and ofcourse the others, I will have to note that the prosecution has not proved beyond reasonable doubt that the application (Exhibit 77) was filed by accused no.1 alongwith Vatapatrak and allotment orders to enter the name of Saraswati Susware and Minakshi Susware.

8 The prosecution examined one Sadashiv Babu Kore as PW-6 and he was working as Circle Officer. This witness states that the application was filed by Minakshi Susware and Saraswati Susware alongwith Vatappatrak and allotment orders passed by the Collector and the Talathi after mutation, vide mutation entry no.3004 and 3005, forwarded the same to him for certifying the same. PW-6 says he went through the land allotment orders (Exhibit 50 and 51) and certified the mutation entry no.3004 and 3005, which are at Exhibit 83 and 84. PW-6 says, in his cross examination, that he received the papers from Talathi for certifying the mutation entries on 11th December 1996, though he states he has not made enquiry with the Talathi when he received those papers. Further PW-6 has stated initially rough mutation entry was certified and after giving 15 days notice to the concerned person, the mutation entry was confirmed. PW-6 has admitted that he never gave such notice to the concerned person and that he certified the mutation entry on the date on which he received the papers and that also relied on photocopies and not originals. PW-6 admits that for certifying the mutation entry, the order must be a true copy of the original and unless it is a true copy, they do not certify the mutation entry. PW-6 also admits that there was no difficulty for him to inform the Talathi that mutation entry cannot be based on photocopies. PW-6 also admits that the application is required from the concerned person only. PW-6 also admits that there are overwriting in Exhibit 84 (mutation entry no.3005) and in the book where mutation entries are made, there is lot of overwriting and erasing.

Therefore, the evidence of PW-6 cannot be accepted.

9 The prosecution examined one Maruti Govind Kamble as PW-1 to prove the complaint. This witness, in his cross examination, has admitted that he has not produced the order by DRO directing him to lodge the complaint and he also has no personal knowledge in respect of the incident. PW-1 has, in the cross examination, admitted that the role of Tahsildar is only to sign on the papers prepared by the concerned Clerk or Circle Officer and in the office there were 5 Peons with no specific work allotted to them. PW-1 also admitted that the rubber stamp and original record is in the custody of the concerned Clerk. PW-1 further admits that after going through the documents at the time of filing of complaint, he did not suspect accused no.4 was connected in this matter. Accused no.4 was working as a Peon in the office of the Tahsildar. Just because accused no.4 was working as a Peon in the office of the Tahsildar with no specific work allotted to him, merely proving the complaint is not sufficient to prove the case of prosecution of cheating by fabricating false documents by accused nos.1 to 4 in furtherance of their common intention. Even the evidence of PW-2 does not indicate any case of cheating by fabricating false documents. PW-3 – Ayub Balchand Pattekari, who was the panch witness for arrest panchnama, fingerprint panchnama, specimen signature and thumb impression of accused no.3, in his cross examination has admitted that it is not mentioned in the panchnama that they have taken right hand thumb impression of

accused on papers. PW-3 further admitted that before him no identification mark was put either to the right hand thumb impression or to the left hand thumb impression. PW-3 has stated that the thumb impression of accused no.3 was taken on 1st November 1998, whereas the panchnama says it was taken on 3rd November 1998. PW-3 also admits in his cross examination that he has appeared as a panch witness in the Kolhapur Court about five to six times in complaints filed by the Kurundwad Police. Therefore, the evidence of this witness also is not reliable.

10 The Investigating Officer – Sudam Vitthal Darekar (PW-9) has in his cross examination stated that he had taken ten fingerprints of each finger of accused no.1. The records, however, do not reveal the same. In his cross examination, PW-9 says during the investigation he found that accused no.2 signed on the orders of land allotment as true copy and therefore, he added him as accused. Apart from that, he did not find any other evidence against accused no.2. PW-9 also admits that in the complaint (Exhibit 49) it is not specifically mentioned what was the offence committed by accused no.3. There is also no delivery of property or kabjepatti in the name of the accused. Prosecution has also failed to prove that the thumb impression on Exhibit 77 was that of accused no.1 and he has filed application with the Talathi (PW-8).

11 The Apex Court in *Chandrappa & Ors. V/s. State of Karnataka*³ in paragraph 42 has laid down the general principles regarding powers of

3. (2007) 4 SCC 415

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, reappreciate 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 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.”

12 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, the accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court

observed that the prosecution had failed to prove its case.

13 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, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

14 Appeal dismissed.

(K.R. SHRIRAM, J.)