

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1258 OF 2002

The State of Maharashtra)....Appellant

V/s.

Bhimrao Mahadeo Kadam)
Age about 32 years, R/o. Gude, Tal.Panhala)
Dist. Kolhapur)....Respondent

Ms.Pallavi Dabholkar APP for appellant/State.
Mr.Dheeraj Patil a/w Ms.Tanuja Parashave i/by Mr.Drupad S.Patil for
respondent no.1.

CORAM : K.R.SHRIRAM,J

DATE : 14.1.2020

ORAL JUDGMENT :-

1. This is an appeal impugning an order of acquittal passed by the Special Judge & Addl. Sessions Judge, Kolhapur acquitting accused of offences punishable under sections 7 (*Offence relating to public servant being bribed*), section 13(1)(d) (*Criminal misconduct by a public servant*), read with section 13(2) of the Prevention of Corruption Act 1988 (the said Act).

2. The facts in brief are that accused was working as a candidate in record section in the office of Tahasildar, Panhala,

Kolhapur. I am told, the candidate's role in the office of Tahasildar is to work as an Assistant to the Record Keeper. One Sambhaji Rajaram Jadhav-complainant (PW-1) had applied for certified copies of mutation entries on 22.9.1997. Photocopying charge etc. was actually coming to Rs.36.45/- but when complainant approached accused on 25.9.1997, accused demanded a sum of Rs.100/- which included Rs.36.45/- as copying fee and the balance as bribe/illegal gratification. Accused therefore, filed complaint to Anti Corruption Bureau (ACB) for taking necessary action. After obtaining sanction, a trap was decided to be laid. Two panchas were called and necessary instructions and formalities were completed. The raiding party thereafter went to the office of accused on 29.9.1997 and caught accused red handed with the marked currency note of Rs.100/-. The post trap panchanama was also drawn and the crime was registered against accused. On completion of investigation, charge-sheet was lodged, charges were framed, to which accused pleaded not guilty and claimed to be tried.

3. The stand of accused in his statement recorded under Section 313 of Cr.P.C. was that when complainant had come to apply for certified copy, he did not have money with him so accused helped him by borrowing Rs.100/- from somebody else and on 29.9.1997 complainant came to return that money of Rs.100/-. I have to be

candid that I find this stand rather strange because it is not the case of accused that complainant was known to him very well or is a close friend. At the same time, I am not discarding that stand as imaginary because one never knows there could be some good people who help others.

4. To drive home the charge, prosecution relied on evidence of 5 witnesses viz. Sambhaji Rajaram Jadhav (PW-1), Complainant ; Dastagir Babasaheb Mulla (PW-2) who was the Stenographer in the office of Tahasildar ; Jaywant Vasantryao Kothawale (PW-3) Clerk/Record keeper in the office of Tahasildar ; Shivajirao Satyappa Kambale (PW-4) Nayab Tahasildar at Panhala ; and Vinayak Shivram Tilekar (PW-5), Police Inspector in ACB.

5. The trial Court after considering the evidence and the documents that were filed, by giving a very detailed order and judgment dated 9.8.2002 acquitted accused and this order of acquittal is impugned in this appeal.

6. For the sake of brevity, I am not going into all those details which the trial Court has gone into, because I feel certain facts as stated by Complainant and the prosecution witnesses itself are

enough to dismiss this appeal.

7. PW-1 who is complainant, in his examination-in-chief states that accused went through the contents of his application and asked him to attend the office on 25.9.1997 and when complainant went back on 25.9.1997 and asked accused, accused informed complainant (PW-1) that he will have to deposit a sum of Rs.36.45/- by way of legal charges against 3 mutation entries. PW-1 also says that accused asked him to deposit Rs.100/- so that the balance amount after paying Rs.36.45/- to the Government will be his bribe which is a condition precedent to issue the mutation extracts. As per PW-1 he did not have that much money with him and accused asked complainant to attend the office again on 27.9.1997 with money. In his cross-examination PW-1 says that it is not correct to say that accused demanded sum of Rs.36.45/- by way of copying fees and the remaining amount by way of bribe. This itself goes to the root of the matter and this contradiction itself is enough to knock the matter down.

PW-3 is a Record Keeper in the office of Tahasildar. In his cross-examination he says that he received all the papers from accused on 25.9.1997 and thereafter no work remained with accused after 25.9.1997. He also says that employee candidates/accused used to sit outside the record room. The employee candidates were not

empowered by him to collect money or copying fees and the employee candidates used to direct clients to contact PW-3 for paying the fees. Therefore, PW-3 who is the prosecution witness says that accused was never empowered to collect any money and all the applicants are directed to him for paying the necessary fees.

PW-4 who is Nayab Tahasildar says that copying candidates like accused are not paid by Government and they do not receive salary or remuneration from Government and he was also not a Government employee or Government servant. Therefore, the applicability of section 7 of the said Act itself is in question. Prosecution has not led any evidence to prove PW-4 wrong.

8. Exh.14 is copy of the application made by complainant and Exh.15, 16 & 17 are the extract of mutation entries. PW-4 says that extract was ready on 25.9.1997 and all compliance was done. He also says that he has endorsed papers and sent them to record section for delivering copies. PW-4 says that general record book is maintained by record keeper and record keeper used to deliver copies to applicant. PW-4 also endorsed what PW-3 says that it is the responsibility of record keeper to receive fees from applicant, issue receipt and receive amount. He says that Exh.15, 16 & 17 are the copies that were ready and prepared on 25.9.1997 under his signature. PW-4 also says it is

not the responsibility of the employee candidate to receive fees, prepare copies and deliver the copies. If one looks at Exh.15, 16 & 17 it says the application was received on 22.9.1997 [नक्कल अर्ज आला तारीख], the copies were ready on 23.9.1997 [नक्कल तयार तारीख] and the copies were given on 25.9.1997 [नक्कल दिली तारीख].

9. Therefore, Exh.15, 16 & 17 state that those extracts were given to applicant on 25.9.1997. This means that on 22.9.1997 itself or latest by 25.9.1997 itself the photo copying charges have been paid, because Exh.15,16 & 17 also indicate the photo copying charges paid. It is therefore, difficult to believe the case of the prosecution that on 25.9.1997, complainant did not have money with him and accused asked him to bring money on 29.9.1997.

10. The onus is on the prosecution to prove beyond reasonable doubt that accused committed the offence as prescribed under Section 13(1) (d) read with section 13(d) of the said Act. Prosecution has failed in discharging this burden.

11. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to 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 his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Trial Court observed that prosecution had failed to prove its case.

12. 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.

13. Appeal dismissed.

(K.R.SHRIRAM,J)