

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1401 OF 2003**

The State of Maharashtra	)	..Appellant
V/s.		
1 Shri Shirish Govind Sukhatme	)	
R/o C/313, Darpan, Veera Desai	)	
Road, Andheri (W), Bombay – 58	)	
2 Shri Ratan Bahubali Bhairwankar	)	
R/o 40/412, Manish Nagar,	)	
Four Bungalow, Andheri (W),	)	
Bombay 58	)	
3 Shri Mohan Khubchand Thakur	)	
R/o 10, Pali Market Road,	)	
Bandra (W), Bombay – 50	)	..Respondents
		(Ori Accused nos.1 to 3)

Ms. Anamika Malhotra, APP for State

**CORAM : K.R.SHRIRAM, J.
DATED : 18th DECEMBER 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 1-8-2003 passed by Learned Special Judge, Greater Bombay, acquitting all the accused of offence punishable under Sections 466 (*Forgery of record of court or of public register etc.*) , 467 (*Forgery of valuable security, will etc.*), 468 (*Forgery for purpose of cheating*), 471 (*Using as genuine a forged (document or electronic record)*), 477(A) (*falsification of accounts*), 420 (*Cheating and dishonestly inducing delivery of property*) of Indian Penal Code read with Section 120(B) of Indian Penal Code and offence punishable under Sections 5(2) r/w 5(1)(d) of Prevention of Corruption Act

1947 r/w Section 109 of IPC.

2 One Ardeshir Cawasji Patel (since deceased) and his wife Mrs. Khorshed Patel sold a plot of land to one Meherji Fali Palia under the sale deed dated 31-7-1956. The area of the said plot is shown as 656 sq.yds (547.7 sq.mtrs) in the sale deed. The area of this property as per the City Survey record is 510 sq.mtrs. After Meherji Palia expired, his wife Mrs. Roshan Palia filed Probate Petition No.470 of 1961 in the Bombay High Court. At that time, her sons were minors, therefore, letters of administration were issued in her favour showing area of the property as 656 sq.yds. Mrs. Palia sold this property to M/s Silver Sands Hotels and Investment Private Ltd. (M/s Silver Sands Hotels) for Rs.2,50,000/- Transaction was negotiated by Mr. Mohan Thakur (Accused No.3) who was one of the Directors of M/s Silver Sands Hotels. Agreement of sale was executed on 28-12-1979 between Mrs. Palia and accused no.3, who paid an earnest amount of Rs.25,000/-. Possession of the property was handed over to the purchasers in the last week of December 1979 or first week of January 1980. Mrs. Palia and her sons submitted an undated application to City Survey Officer (CTSO) for mutation in her favour and for verification of area of the property. On receipt of this application, M. S. Rane who was the maintenance surveyor and accused who died during the trial, prepared Vaslevar calculation (Vaslevar is a vernacular term used in Deccan/Konkan area for area book - Chapter 10 of Survey and Settlement Records) without visiting the site. M. S. Rane worked out the area of property as 628 sq.mtrs.

as against 510 sq.mtrs. Prescribed procedure for measurement was not followed. Based on these calculations prepared by M.S. Rane the then CTSO-IX Mr. Pradhan who was also accused and who died during the trial after recording statement of Mrs. Palia, passed an order dated 15-4-1980 for correction of record by showing area of property as 628 sq.mtrs. instead of 510 sq.mtrs. On the basis of this order, the area of the property was recorded in the records of CTSO on 15-4-1980 to show 628 sq.mtrs. Mutation was also effected.

3 As per the agreement of sale, Mrs. Palia was to execute power of attorney in favour of accused no.3. Further such power of attorney was not executed by Mrs. Palia. Accused no.3 had proposed to construct a three star hotel in the said plot and, therefore, accused no.3 engaged accused no.1 and accused no.2 as Architects for development of the property. Accused no.2 filed an application with CTSO-IX for extract of PR card and plan of the property extract was issued on 9-5-1980. Accused no.1, who was a partner of accused no.2 in the firm of M/s Bhalvankar and Sukhatme, Architects, submitted an application dated 9-5-1980 to Additional Collector and Competent Authority (ULC) on behalf of Mrs. Palia for letter of intent as required under Section 22 of ULC Act, alongwith authorisation signed by Mrs. Palia alongwith application, plan and extract of property card showing its area as 628 sq.mtrs., were enclosed. NOC was issued on 15-5-1980 in favour of Mrs. Palia. On 19-5-1980, accused no.2 submitted proposal on behalf of Mrs. Palia to BMC for construction of building consisting of ground

plus 4 floor for Three Star Hotel on the plot of 628 sq.mtrs. Proposal was signed by Mrs. Palia and accused no.2. Other documents required in accordance with law was also filed with the application. Accused no.2 also issued a certificate that he has measured the property and checked the statements and found that all the statements are correct. Accused no.2 also certified in one of the plan submitted to BMC that area of plot was 628 sq.mtrs. Amended plans were submitted to BMC from time to time. The plans were approved by BMC on 26-9-1981 and IOD was issued on the same day.

4 At this stage, accused no.3 sold entire share holding of the company Silver Sands Hotel to one Mr. Anil Hingorani, but accused nos.1 and 2 continued their services as Architects. First CC was issued on 3-6-1982 and was revalidated up to 1-6-1984 and from time to time amended plans were submitted showing the area of property as 628 sq.mtrs. The set back benefit on the basis of area being 628 sq.mtrs. were also availed of. Who complained ? How it happened ? Nobody knows. Complaint was made by Investigating Officer when it came to light that the actual area would not be 628 sq.mtrs.. An inquiry was conducted by Investigating Officer (P.W.-8), who then filed an FIR against M. S. Rane, Mr. S. R. Pradhan, Mr. R. B. Bhalvankar, Mr. S. G. Sukhatme, Mr. Mohan Thakur and Mr. Anil Hingorani. Complaint was registered against the accused for the offence as mentioned earlier. Statements of witnesses were recorded and evidence was collected during the course of investigation and all papers were submitted to

Competent Authority. After the sanction was obtained, prosecution was commenced. As stated earlier, M. S. Rane and Mr. Pradhan expired during the pendency of the trial. One Mr. G. B. Vani and Mr. Magade who were also named in the FIR, were discharged. The name of Mr. Hingorani was not mentioned in the charge sheet. The trial then proceeded against remaining accused and all pleaded not guilty.

5 Defence of P.W.-1 and P.W.-2 was that they were only Architects and they relied upon the documents which were already available namely; extract of PR card and plan of property that was received from CTSO. According to P.W.-1 and P.W.-2, when they later realised that the area shown in the PR card was not correct, they advised their client Mr. Hingorani to stop work and stop work notice was also served on several occasions for other reasons as well. As their advised was disregarded, accused nos.1 and 2 resigned from the project on 31-10-1984 and when the construction was completed only upto ground plus 3 floors and FSI consumed till that time was only 360 sq.mtrs which is less than the plot area of 510 sq.mtrs., as originally shown in the city survey record. Defence of accused no.3 is that Mrs. Palia did not give him power of attorney but submitted that all applications are in her name and he only relied upon the extract of the PR card, which was given to him through Mrs. Palia. According to accused no.3, though area shown in the PR card is 628 sq.mtrs. but in the agreement between him and Mrs. Palia the area is shown as only 547.6 sq.mtrs. All three accused denied that they have entered into a

conspiracy or committed any offence.

6 Mrs. Palia took a stand that she had signed on blank papers and gave it to accused no.3. But evidence indicates that it was not so.

7 In FIR the allegations are that maintenance surveyor M. S. Rane, CTSO Mr. Pradhan, Architects accused nos.1 and 2 and previous owner and the present builder Mr. Hingorani entered into conspiracy to cheat BMC for getting the higher FSI by using forged PR card extract and for obtaining pecuniary gain for the builder. In the FIR it is mentioned that conspiracy starts from 19-5-1980 and was continued up to 26-3-1984. These dates are very relevant and goes to the root of the matter expressing the fallacy in approach of the prosecution. On 19-5-1980, the proposal was submitted by accused no.2 to BMC showing plot area as 628 sq.mtrs. on the basis of certified extract of PR card of 510/7 situated at Juhu. If this is the beginning of conspiracy, it is not quite clear why according to prosecution Mrs. Palia is not a co-conspirator. Further, if conspiracy started from 19-5-1980, then the transaction relating to increase of area by CTSO is also excluded because application of Mrs. Palia was received by CTSO on 2-4-1980 and order of correction of area is passed by CTSO Mr. Pradhan (since deceased) on 15-5-1980. The entire transaction has taken place prior to 19-5-1980. If the conspiracy did not begin prior to 19-5-1980 neither M. S. Rane nor Mr. Pradhan can be joined as co-conspirators. The name of Mr. Anil Hingorani is also deleted at the time of filing of charge sheet and the dates are chosen only to exclude Mr. Hingorani and Mrs. Palia.

8 Prosecution examined Mrs. Palia as P.W.-7 and she testified that she has signed various applications in blank papers at the instance of accused no.3 whom she trusted. But this evidence of Mrs. Palia is falsified by the applications which are on record and the Trial Court has rightly disbelieved Mrs. Palia. It is not prosecution's case either that accused no.3 was concerned with the proceedings taken up with the CTSO by Mrs. Palia who filed application for fresh survey. Mrs. Palia has also not testified that accused no.3 was involved in this proceeding. Though error in the PR card would have gone to the benefit of accused no.3, there is no evidence on record to indicate that accused no.3 was involved in the proceeding relating to the application by Mrs. Palia for obtaining PR card and the area certificate and mutation entry. Accused nos.1 and 2 were appointed subsequently and, therefore, it is obvious that they were not concerned with the proceeding with CTSO. In fact, there is no evidence on record to show that conspiracy started from December 1979. If these facts are considered, it is quite clear that there is no evidence on record to show that the accused were concerned with the manipulation of CTS record. It is prosecution's case that the object of conspiracy is to forge CTSO records for increasing area of CTS No.510/7 situated at Juhu to 628 sq.mtrs. for obtaining additional FSI for the benefit of the builder. The soul of the matter is forgery of CTS record. As participation of the accused in this proceeding before the CTSO is not established, the Trial Court has correctly come to the conclusion that the prosecution theory cannot be sustained. If the accused

had no concern with the increase in area, it cannot be said that they entered into conspiracy to forge city survey record. Prosecution alleges that by increase in area additional FSI is obtained and building is constructed by the accused. This also is not acceptable because the conspiracy period is restricted upto June 1982. Whereas, admittedly, the constructions did not begin till June 1982.

9 It is true that Mr. Bhalwankar has issued a certificate regarding the area when he applied to BMC. He has clarified in his statement recorded under Section 313 of CrPC that the boundaries of the property were not defined and it was not possible for him to get the property correctly measured and he has given the certificate in prescribed proforma as a matter of routine without conducting actual survey. The fact that the old area was changed even before accused no.2 came into picture and he relied on the PR card to be showing correct area will come to his rescue. It also appears that there are mistakes committed in showing the area of subdivisions in the city survey record and calculation on the basis of block of plan also does not tally with the total area of C. S. No.510 and, therefore, the architect could not have worked out correct area on the basis of certified copy of the plan issued to him by CTSO. There is no iota of evidence on record to establish fraudulent or dishonest intention on the part of any accused in manipulation of CTS record and in showing increased area at the time of submitting proposal to BMC.

10 There are many other such points raised in the impugned judgment

which, for the sake of brevity, I am not delving into. I would hasten to add that I agree with the conclusions of the Trial Court.

11 The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***¹ 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 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 I have perused the impugned judgment, considered the evidence and also heard Ms Malhotra, learned APP. I do not find anything palpably

1. (2007) 4 SCC 415

wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the evidence available on record, there is nothing to substantiate the charge leveled against the accused.

13 There is an acquittal and therefore, there is double presumption in favour of 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 their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court rightly observed that the prosecution had failed to prove its case.

14 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.

15 Appeal dismissed.

Meera
M.
Jadhav

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Jadhav
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(K.R. SHRIRAM, J.)