

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 104 OF 2008

State of Maharashtra, through
Anti Corruption Bureau, Wardha.

.... **APPELLANT**

// **VERSUS** //

Dilip Raghunath Pawade,
Aged 40 years, Occ. Talathi,
R/o Kawathi, P.S. Navegaon More,
Tah. Pobhuni, Distt. Chandrapur.

.... **RESPONDENT**

Shri H.N. Jaipurkar, A.P.P. for appellant.
Shri K.P. Mahalle, Advocate holding for Shri S.G. Loney, Advocate for
respondent-sole.

CORAM : VINAY JOSHI, J.
DATED : 09/12/2020.

JUDGMENT :

Heard finally by consent of both the learned Counsel appearing
for the parties.

2] The challenge in this appeal is to the order of acquittal passed
by the Special Judge, Wardha in Special Case No. 14 of 2002 on 07.05.2007
for the offence punishable under Section 7, 13(1)(d) read with 13(2) of the
Prevention of Corruption Act, 1988 (for short “the P.C. Act”). The

respondent-accused was serving as a Patwari of Mauza Chikhali, Tq. Deoli, Distt. Wardha. He was facing charge for demand and acceptance of bribe of Rs.200/- for issuance of revenue extract i.e. 7/12 extract of land bearing survey no. 266. The prosecution laid evidence of in all 7 witnesses to establish the guilt of accused. The defence is of total denial. The accused offered an explanation towards receipt of amount of Rs.200/- in the form that the complainant was in arrears of land revenue which he paid, however before issuance of receipt the currency notes were seized by the trap party.

3. It is the prosecution case that the complainant P.W.2-Gangadhar K. Zade had purchased agricultural land bearing Gat No. 266 in the name of his minor son. Thereafter, he had approached to the respondent-accused (Patwari) with a request to effect mutation entry to the revenue record and issuance of fresh extract. Time and again, the complainant made such a request to the respondent-accused, but each time the respondent-accused demanded amount of Rs.200/- for issuance of revenue extract. Finally on 10.07.2002, the complainant again went to the house of the respondent-accused on which the latter repeated the demand of bribe of Rs.200/- for issuance of revenue extract. Since, complainant was not willing to pay for bribe, on 12.07.2002 he went to the office of Anti Corruption of Bureau, Wardha and lodged report. After receipt of report, P.W.7 Dy. Superintendent of Police Anti Corruption Bureau, Wardha Suresh Mahalle arranged for trap. He has called two panch witnesses, gave demonstration of phenolphthalein

powder. On his request, the complainant produced two currency notes of Rs.100/- denomination each on which phenolphthalein powder was smeared. Necessary pre-trap Panchanama was prepared. In the afternoon, all of them went to the house of the respondent-accused. In presence of shadow panch witness, the respondent-accused demanded bribe of Rs.200/- from the complainant. No sooner the bribe amount was handed over to the accused, the trap party arrived and seized tainted currency notes from the pocket of accused.

4. Learned A.P.P. would submit that the prosecution has duly establish demand of bribe as well as seizure of tainted currency notes from the possession of accused. Moreover, there is presumption under Section 20 of the PC. Act which would assist to draw the conclusion of guilt. In short, it is submitted that despite sufficient evidence, the Trial Court erred in acquitting the respondent-accused. Per contra, learned Counsel for the respondent-accused would submit that the accused has offered a probable and plausible explanation about the receipt of tainted currency notes. According to him, the complainant was in arrears of land revenue charges, which the respondent-accused accepted and was about to issue receipt, however, before that he was trapped. Moreover, by placing reliance on the decision in case of ***State of Punjab vs. Madan Mohan Lal Verma reported in 2013 DGL(SC) 633*** he has reminded the settled legal position about appreciation of evidence in the appeal against acquittal.

5. With the assistance of both learned Counsel, the entire evidence and impugned judgment was gone into. Though the prosecution has examined all 7 witnesses, the evidence of PW.2 Gangadhar K. Zade i.e. complainant and PW.3 Babarao N. Dhone who is shadow panch witness carries importance. The complainant has stated the entire incident as per the initial complaint. On the point of demand, it is his evidence that when he demanded revenue extract after carrying mutation entry, the accused had demanded bribe of Rs.200/-. However, his evidence is silent as to when there was initial demand. On the other hand, he made a general statement that always accused had demanded Rs.200/- for issuance of revenue extract. According to the complainant on 10.07.2002, the demand was repeated, hence he has lodged the report. So far as, the prior demand is concerned there was a general statement about the persistent demand, but it is not specify when there was first demand. Admittedly, prior demand was not verified by the Investigating Officer.

6. It is the complainant's evidence that on the date of trap he went to the house of Patwari and asked for issuance of revenue extract. At that time, respondent-accused demanded Rs.200/- which he paid. The shadow panch witness has supported the complainant's evidence about on the spot demand and seizure of tainted currency notes. The defence has strongly criticized the evidence of demand by stating that it was quite improbable that accused had demanded bribe in presence of several persons. In this regard, the accused has pointed towards certain admissions given by the complainant

and shadow panch witness that at the time of occurrence, some other persons were present on the spot. Admittedly, statement of those persons were not recorded by the Investigating Officer.

7. It is the defence that the accused has accepted an amount of Rs.200/- towards arrears of land revenue. It is settled law in trap cases, that if the accused is able to offer a probable explanation for receipt of amount then guilt can not be fastened. The explanation of accused is to be tested on the basis of preponderance of probability as it is not high as like the burden on prosecution. It has come in the evidence of P.W.5-Sub Divisional Officer at Wardha- Ajay Gulhane that on perusal of statement of Tahsildar, he found that the complainant was in due of Rs.210/-towards arrears of land revenue. Pertinent to note that, no sooner the complainant paid Rs.200/-, the trap party has immediately raided on the spot. According to the accused, he was about to issue receipt, however, before that he was trapped. Since there were arrears of land revenue, the defence is quite probable and plausible.

8. The Trial Court has expressed improbability about raising demand in presence of several persons. The conclusion arrived by the Trial Court is based on the evidence and is one of the probable view. The reasoning supporting to acquittal cannot be said to be patently illegal, leading to miscarriage of justice or perverse. The order of acquittal by Trial Court has strengthened the presumption of innocence running in favour of accused. It is not permissible for Appellate Court to substitute it's own view

even if, it is a possible view. On re-appreciation of entire evidence in the light of the settled position of Law, no case is made out to interfere into the judgment of acquittal.

9. In view of above, appeal carries no merit. Hence the Criminal Appeal stands dismissed.

JUDGE

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