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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.478 OF 2000

The State of Maharashtra] .. Appellant
vs.
Bhimrao Nagrajrao Balajirao & Ors.] ... Respondents

Ms.P.P. Shinde, APP for State/Appellant.
Mr.M.S. Patankar, for Respondent No.2.
Mr.Siddhesh Pilankar i/b Dr.Uday Warunjikar, for Respondent No.3.

**CORAM : SMT.SADHANA S. JADHAV &
N.R.BORKAR, JJ.**

RESERVED ON : 20th JANUARY,2021.
PRONOUNCED ON : 28th JANUARY,2021.

JUDGMENT : (PER : N.R.BORKAR, J)

1] This appeal, at the instance of State, challenges the Judgment and order dated 23rd March, 2000 passed by the learned Special Judge, Ratnagiri in Special Case No.9 of 1992.

2] By the impugned Judgment and order, the Respondent Nos.1 to 3 who were accused Nos.1 to 3 before the trial Court have been acquitted for the offences punishable under Section 420, 467,

468, 471 r/w 34 of the Indian Penal Code and Section 5(1)(c)(d) r/w 5(2) of the Prevention of Corruption Act, 1947.

3] The accused No.1 died during the pendency of present Appeal. The Appeal, thus, stands abated against the accused No.1.

4] It is the case of the prosecution that on 5th August, 1981, one Dharma Padyal, resident of Village Tavsal, made an application to Tahsildar, Guhagar stating that his house is located at the sea shore and due to soil erosion during high tide, his house is getting damaged. He, therefore, requested in his application either to provide him financial assistance as he is poor to construct retaining wall to avoid soil erosion, or the concerned authorities be directed to construct retaining wall.

5] Application of the said Dharma Padyal was forwarded to the office of Harbour Engineer, Ratnagiri by the Office of Tahsildar, for necessary action. That application was favourably considered by the Harbour Engineer and permission was accorded to construct retaining wall. The Assistant Engineer, Harbour Sub-Division, Dapoli, was then instructed to float a tender and to invite bids for construction of the retaining wall. The Assistant Harbour Engineer, accordingly, floated

tender on 21th September, 1983. After usual tender process, the bid of Accused No.3 was accepted and work order was issued on 26th October, 1983 .

6] It is alleged that accused No.3 in collusion with accused nos.1 and 2, who at the relevant time were working as Assistant Harbour Engineer and Junior Engineer respectively, submitted false documents to the office of the Harbour Engineer about the completion of retaining wall though in fact it was not at all constructed. It is alleged that on the basis of said false documents, amount of Rs.15,960/- was paid to the accused No.3.

7] On transpiring of the said fact the matter was reported to the office of Anti Corruption Bureau, Ratnagiri, who after conducting open enquiry lodged the report against the accused Nos.1 to 3 with the concerned Police Station, which registered crime against them for the offences punishable under Section 120B, 420, 467, 468, 471 r/w 34 of the Indian Penal Code and under Section 5(1)(c)(d) r/w 5(2) of the Prevention of Corruption Act.

8] On completion of investigation and after obtaining necessary sanction to prosecute accused No.2 who was only then in

service, charge-sheet was filed against accused Nos.1 to 3 before the learned trial court.

9] The charges were framed by the learned trial Court against accused Nos.1 to 3 for the offences punishable under Section 420, 467, 468, 471 r/w 34 of the Indian Penal Code and under Section 5(1)(c)(d) r/w 5(2) of the Prevention of Corruption Act, 1947. By the impugned Judgment and order, the learned trial Court acquitted all the accused

10] We have heard the learned APP for the State and the learned counsel for accused Nos.2 and 3.

11] The fact that work of construction of retaining wall in question was allotted to the accused No.3 is not in dispute. The allegations against accused Nos.1 to 3 are that, they submitted false documents to the office of Harbour Engineer about completion of the retaining wall though in fact the work of the retaining wall was not at all done.

12] It is submitted on behalf of the Appellant/State that the learned trial Court acquitted the accused persons in spite of there being

evidence to show that accused Nos.1 to 3 had submitted false documents in relation to completion of retaining wall. It is submitted that on the basis of the said false documents submitted by accused Nos.1 to 3, an amount of Rs.15,960/- was paid to the accused No.3. It is submitted that the impugned Judgment and order of the learned trial court needs to be set aside and accused Nos.1 to 3 need to be convicted.

13] On the other hand, it is submitted on behalf of accused Nos.2 and 3 that the learned trial Court has rightly acquitted all the accused. It is submitted that view taken by the trial Court is possible view and thus interference in the Judgment of acquittal is not permissible just because the other view is possible.

14] PW 1 Appasaheb Pawar, who has been examined to prove the allegations against the accused, has deposed that in March, 1986 he took over charge of Dapoli Sub Division and Harbour Engineer directed him to inquire into the complaint of one Dharma Padyal as according to him, the work of retaining wall was not done. In the month of November, 1986 he inspected the site and at that time he was accompanied by Junior Engineer Darwaskar. He deposed that in the inspection he found that the retaining wall was not built at the site and

only construction material was stored about 1 km. away from the site. He, therefore, recorded the statements of local residents including Dharma Padyal and submitted report to Harbour Engineer.

15] PW 1 has further deposed that after few months, Padyal again made a complaint that the accused No.3 has commenced the work of retaining wall, but the said work is not being done properly. The said complaint was again referred to him by Harbour Engineer. Thereafter, he alongwith Junior Engineer Shinde again inspected the site and it was revealed that the retaining wall was under construction and it was constructed to the extent of 70 meters.

16] The defence of the accused is that retaining wall was constructed. PW 1 in his cross-examination has admitted that till March, 1986 there was no complaint about the disputed retaining wall. He further admitted that at the site, percentage of sinkage was above the usual percentage. He further admitted that when he visited the site four monsoon seasons were already over. He further admitted that the Harbour Engineer supervises all the work in his division and in the present case bill of accused No.3 was certified by Harbour Engineer to the effect that the work was completed on 15th March, 1984.

17] The Hon'ble Supreme Court in the case of **Harijana Thirupala and others v. Public Prosecutor, High Court of A.P., Hyderabad**, reported in AIR 2002 SC 2821, has observed :

“ 12. Doubtless the High Court in appeal either against an order of acquittal or conviction as a Court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of innocence in favour of the accused gets reinforced and strengthened. The High Court would not be justified to interfere with order of acquittal merely because it feels that sitting as a trial Court would have proceeded to record a conviction. A duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial Court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity.”

18] In the present matter, the learned trial Court has held that in view of admission given by the PW 1 in his cross-examination, it would not be safe to hold that prosecution has proved it's case against the accused Nos.1 to 3 beyond reasonable doubt. We do not see any perversity in the finding recorded by the trial Court. Apart from it in the facts and circumstances of the present case, in our view Dharma Padyal was material witness. However, he has not been examined. PW 1 has admitted in his evidence that no Panchanama of the site inspected by him was prepared. In absence of such evidence, no case is made out to interfere with the judgment and order of acquittal. In the

result, following order is passed :

ORDER

- i] Appeal is dismissed.
- ii] The Judgment and order dated 23rd March, 2000, in Special Case No.9 of 1992 passed by the learned Special Judge, Ratnaigiri, is confirmed.

[N.R.BORKAR, J]

[SMT.SADHANA S. JADHAV, J]