

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1437 OF 2004

Shri.Ashok Siddhappa Burud	]
R/o. Date, Taluka-Chandgad,	]
District-Kolhapur.	]..Appellant
Vs.	
The State of Maharashtra	]
Through Chandgad Police Station	]
Taluka Chandgad, District-Kolhapur	]..Respondent

Mr.U.B. Nighot for the Appellant.
Mr.S.R. Agarkar, APP, for the Respondent-State.

CORAM : C.V. BHADANG, J.

DATE : 26 NOVEMBER 2021

JUDGMENT :

. By this Appeal the Appellant-Accused is challenging the judgment and order dated 6 November 2004 passed by the learned Special Judge at Gadhinglaj in Special Case No.3 of 2003. By the impugned judgment the Appellant has been convicted for the offence punishable under Section 7 and 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988 ('Act' for Short). For the offence punishable under Section 7 Appellant has been sentenced to suffer rigorous imprisonment for one year and fine while for the offence punishable under Section 13(1)(d) read with

section 13(2) of the Act the Appellant has been sentenced to suffer rigorous imprisonment for three years with fine.

2. The prosecution case may be briefly stated thus :-

That the complainant Mallappa Pituk (PW-1) is a resident of Mangaon, Taluka-Chandgad, District-Kolhapur. The complainant has one brother and nine sisters. There are agricultural lands which are the ancestral property of the complainant situated at Mangaon, Bassarge and Goulawadi which were recorded in the name of the father of the complainant. The father of the complainant died on 24 July 2001 and the complainant was desirous of recording the name of the legal heirs in the 7/12 extracts and the record of rights.

3. The Appellant at the relevant time was working as a Kamgar Talathi at Mangaon Sajja and was in charge of Goulawadi and Bassarge. According to the complainant when he approached the Appellant for effecting the mutation, the Appellant suggested that there has to be a deed of relinquishment from the sisters. The complainant thereafter obtained the relinquishment deed from the sisters which was registered before the Sub-Registrar Chandgad and again approached the Appellant for effecting the mutation. According to the complainant the Appellant did not accept the application/xerox copy of the relinquishment deed saying that the

same will be accepted after the receipt of the copy of Index-II register from the office of the Sub Registrar. In short according to the complainant inspite of his repeated visits and inquiry with the Appellant he did not effect the mutation and made an illegal demand of Rs.3,000/-. On October 2002 the complainant met the Appellant in his office and told the Appellant that he cannot afford to pay Rs.3,000/- and on negotiation the amount was reduced to Rs.2,000/-. The complainant again went to the office of the Appellant on 29 October 2002 when it was decided that the complainant was to initially pay an amount of Rs.1,000/- and the balance Rs.1,000/- later on. The complainant told the Appellant that he will bring the amount after Diwali festival on 7 November 2002. Thus according to the complainant the Appellant demanded and agreed to accept the illegal gratification on 7 November 2002 in his office at Mangaon for showing the favour of carrying out mutation in the 7/12 extract.

4. Feeling aggrieved the complainant approached the Anti Corruption Bureau (ACB), Kolhapur on 2 November 2002 and lodged a complainant Exhibit-17. PW-6 PI Nikam attached to the ACB asked the complainant to attend the Tambulwadi Rest House on 10.00 a.m. to 7.00 p.m. The raiding officer accordingly arranged for two panchas and after necessary formalities and explaining procedure to the complainant and panchas, the raiding party went to

the office of the Appellant where he allegedly accepted the illegal gratification of Rs.1,000/-. On a pre determined signal be given the other members of the raiding party came in. The Appellant was apprehended and the marked currency notes were recovered from the left side pocket of the shirt of the Appellant. The currency notes were examined in ultraviolet light and after completion of the formalities a panchnamma was drawn. Subsequently a complaint was lodged, the matter was investigated and charge-sheet filed.

5. The learned Special Judge framed charge against the Appellant-Accused for the offence under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The Appellant pleaded not guilty to the charge and claimed to be tried. The defence of the Appellant is one of total denial and false implication.

6. The prosecution examined in all six witnesses and produced the record of the investigation. The Appellant did not lead any evidence in defence.

7. The learned Special Court has found the Appellant guilty. Hence this Appeal.

8. I have heard Mr.Nighot the learned counsel for the Appellant and Mr.Agarkar the learned Additional Public Prosecutor. With the assistance of the learned counsel for the parties I have gone through the record.

9. It is submitted by the learned counsel for the Appellant that the sanction for prosecution is invalid as the evidence of PW-5 does not show that there was application of mind. It is submitted that the PW-1 has not supported the prosecution and has admitted that the amount was accepted for being paid to the Circle Officer. It is submitted that the Appellant has done all that was within his powers, even before the alleged acceptance of the amount and therefore the demand and acceptance of the alleged illegal gratification is not established. The learned counsel in this regard has referred to the copy of the mutation register Exhibit-41 and 42, In order to show that the mutation was already taken on 12 June 2002 and was certified by the Circle Officer and was finally recorded on 29 October 2002. He therefore, submitted that the prosecution has failed to establish that the amount was demanded for showing any favor to the complainant as the mutation was already taken. It is submitted that mere recovery of the tainted currency notes even if proved is not sufficient and cannot raise the presumption under Section 20 of the Act, unless and until the demand is proved. It is submitted that the demand cannot be said to be established on the

basis of the evidence of PW-2 Ravindra Wadkar who is a panch witness.

10. Reliance is placed on the decision of the Supreme Court in case of *B. Jayaraj V/s. State of A.P.*¹ and *State of Punjab V/s. Madan Mohanlal Verma*². He therefore, submitted that the learned Special Court was in error in finding the Appellant guilt of the offence.

11. The learned Additional Public Prosecutor has supported the impugned judgment. It is submitted that the demand and acceptance is established on the basis of the evidence of PW-2, notwithstanding the fact that complainant has failed to support the prosecution. It is submitted that by virtue of an order passed below Exhibit-20 permission was granted to APP to recall PW-1 and to put questions in the nature of the cross-examination and accordingly PW-1 has been recalled and his reexamination was recorded. It is submitted that the contention on behalf of the Appellant that it was the Circle Officer who demanded the amount is improbable and in any event cannot be accepted, in view of the specific demand and acceptance of the amount by the Appellant.

1 2014 Cri. L.J. 2433

2 (2013) 14 Supreme Court Cases 153

12. The learned APP also pointed out that PW-5 the Sub Divisional Officer is a Competent Authority being both appointing as well as the authority competent to remove a Kamgar Talathi from his service, to grant sanction. It is submitted that the evidence of PW-5 is sufficient to show that the sanction was granted on consideration of the material circumstances, and it clearly shows application of mind.

13. I have considered the rival circumstances and the submissions made. At the outset it is necessary to examine the contention on the validity of the sanction order. Indisputably the Appellant was working as a '*Kamagar Talathi*' within the jurisdiction of the Sub Divisional Officer, Gadhinglaj. PW-5 who is the Sub Divisional Officer and the Sanctioning Authority has produced a copy of the appointment order dated 07 November 1994 by which the then Sub Divisional Officer had appointed the Appellant as a Talathi on compassionate ground. A copy of the Recruitment Rules of 1984 for recruitment to the post of Talathi dated 30 May 1984 have also been produced on record. As per rule 2 of the said Rules a Sub Divisional Officer or the Assistant Collector of the respective Sub Division is the appointing authority of a Talathi. Not only that the Talathi is also under the disciplinary control of the Sub Divisional Officer. Thus the PW-5 was clearly the Competent Authority to grant sanction. PW-5 has stated that after perusing the

investigation papers which were classified as A,B,C. he found *prima facie* case to be made out. According he had granted sanction for prosecution of the Appellant. Nothing significant has been brought on record, in the cross-examination of the said witness. Thus, in my considered view, the contention based on the invalidity of the sanction order cannot be accepted.

14. This takes me to the material allegation about demand and acceptance of an illegal gratification of Rs.1,000/- by the Appellant. It has come on record that the complainant had a brother and nine sisters. The father of the complainant expired on 24 July 2001 after which the complainant had approached the Appellant for carrying out the mutation in his name and in the name of his brother, in respect of 12 lands at Mangaon and one agricultural land each at village Basarge and Gaoulwadi. PW-1 claims that the Appellant had asked the complainant to bring the relinquishment deed of the sisters and on this count the application for mutation was returned. There is nothing unusual for the Appellant to have asked for relinquishment deed, as the sisters of the complainant were the legal heirs of the father. The relinquishment deed was accordingly executed on 11 March 2002 after which the complainant again approached the Appellant some where in May 2002 when he was informed by the Appellant to wait for the extract of the Index-II register being received in the office of the Circle Inspector from the

Office of the Sub Registrar. Thereafter, the Complainant is alleged to have approached the Appellant in June 2002 when according to the complainant a demand of Rs.3,000/- was made. The complainant made an application dated 27 September 2002 Exhibit-18 annexing the relinquishment deed. However, he claims that thereafter he could not approach the Appellant for two to three months. On 2 October 2002, the complainant again went to the Appellant when the demand was negotiated to Rs.2,000/-.

15. On 29 October 2002 the complainant claims that the Appellant had agreed to accept Rs.1,000/- initially and the balance amount thereafter and had asked the complainant to attend his office at Mangaon on 7 November 2002 at 3.00 p.m. It is after this that the complainant went to the ACB Office and lodged a complaint on 2 November 2002 and the trap was laid on 7 November 2002 at about 1 p.m. in the office of the Appellant at Mangaon which is said to be situated in a rented premises of Mr.Mahadev Patil. The material evidence to be considered is of PW-1 the complainant and the panch witness PW-2. In the cross-examination the complainant has practically given up his case of a demand by the Appellant as such. He states that for inquiry his application was sent to the Circle Officer, where it was pending for three to four months. He met the Circle Officer after about a month of submitting the application for mutation and it is the Circle

Officer who had demanded Rs.3,000/-. He states that it was the Circle Officer who kept the matter pending for three to four months for non-payment of the amount. He states that it was the Circle Officer who finally negotiated and agreed to accept the amount of Rs.1,000/- on account of the financial condition of the complainant. Insofar as the demand on 29 October 2002 is concerned i.e. immediately before the trap dated 7 November 2002, PW-1 states that he met the Circle Officer in the Talathi Officer at Mangaon on 29 October 2002 when even the village-Kotwal attached to the Talathi Officer was present. He claimed that at that time the Appellant was standing outside. He states that it was the Circle Officer who stated that the work could not be done unless the amount of Rs.1,000/- is paid and he agreed to make the payment to the Circle Officer. He also stated that the Circle Officer had instructed to hand over the amount to the Appellant in his absence. The complainant has also stated that there was no writing of panchnamma done both pre trap and the post trap. It may be mentioned that according to the prosecution pre trap panchnamma was drawn in the rest house at Tambulwadi which is at a distance of about 7 k.m. from Mangaon. PW-1 also stated that the amount was hand over to the Appellant behind a partition in his office when PW-2 was sitting in a chair in front of the table of the Appellant. There is a map produced on record at Exhibit-72 which shows that there is a partition by the side of the table of the Appellant in his

office. In any event PW-1 does not claim that the amount was paid in the presence of PW-2. It is necessary to note that the prosecution filed an application Exhibit-20 for recall of PW-1 with permission to put questions to PW-1 in the nature of the cross-examination which application was granted and accordingly PW-1 was recalled and has been re-examined and cross-examined by the parties. However, nothing significant has come on record. It can thus be seen that the evidence of PW-1 is not sufficient to hold that there was a demand or an acceptance by the Appellant.

16. The Supreme Court in the case of *B. Jayaraj (Supra)* has held that the demand of gratification cannot be held to be proved only on the basis of the complaint filed and the evidence of the panch witness. It has further been held that in the absence of the proof of demand, mere recovery of the tainted currency notes is not sufficient to base a conviction. The Supreme Court in *Madam Mohanlal Varma (Supra)* has taken a similar view.

17. It is trite that the presumption under Section 20 can be raised only when the demand and acceptance of the illegal gratification is established. The said statutory presumption can be displaced by the accused on the basis of the preponderance of probability on the basis of the available material on record.

18. Apart from the oral evidence of PW-1 it is also necessary to examine the attending circumstances and the record of the mutation case.

19. The prosecution has produced the extract of the mutation entry at Exhibit 41 and 42 which shows that the mutation was effected on 12 June 2002 and the Circle Officer had recorded it on 18 September 2002 and finally certified on 29 October 2002. Thus the allegation about the damned also appears to be improbable in the context of the fact that the mutation was already effected and certified. On 29 October 2002 itself, that is prior to the trap on 7 November 2002. In my considered view therefore the Appellant is entitled to benefit of doubt.

20. In the result the following order is passed.

ORDER

1. The Appeal is allowed.
2. The impugned conviction and sentence is hereby set aside.
3. The Appellant is acquitted of the offences as charged.
4. The bail bonds of the accused stand cancelled.
5. Fine, if paid be refunded.

6. The cash amount be credited to the Government and the muddemal property which is worthless, be destroyed after a period of six months.

C.V. BHADANG, J.