

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

CRIMINAL APPEAL NO.43 OF 2004

The State of Maharashtra	]..Appellant
Vs.	
1. Shri.Bapuso Satyappa Kamble	]
R/o. Alte, Tal. Hatkangle,	]
District-Kolhapur.	]
2. Shri.Bhikaji pundlik Belekar	]
R/o. Daulatwadi Post, Murgad	]
District-Kolhapur.	]..Respondents

Mr.S.H. Yadav, APP for the Appellant-State.
None for Respondent No.1.
Mr.Ganesh Bhujbal for Respondent No.2.

CORAM : C.V. BHADANG, J.

DATE : 2 DECEMBER 2021

JUDGMENT :

1. By this Appeal the Appellant-State is challenging the acquittal of the Respondents from the offence punishable under Section 7,12, 13(1)(d) read with under Section 13(2) of Prevention of the Corruption Act, 1988.

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

The father of PW-1 Sattappa D. Mane had purchased a portion of land Gut No.38 of Village-Daulatwadi under Registered

Sale Deeds dated 18 June 1991 and 17 December 1996. The land purchased are from Village-Murgad, District-Kolhapur ad-measuring 3R and 2.5R respectively. An application for mutation in the record of rights and 7/12 extracts was made vide Application Exhibit-11 on 19 May 1997 to the concerned Talathi. It appears that the then Talathi one Mr.Gongane, Chimagon Saja, Taluka-Kagal, District-Kolhapur had recorded Mutation entry (ME) Nos.212 and 214 and these entries were sent for certification to the Circle Officer. The Circle Officer by endorsement 15 April 1997 cancelled both these Mutation Entries on the ground that the Sale Deeds of the year 1991 and 1996 are hit by the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act. It appears that after this the Talathi Mr.Gongane was transferred and the Respondent No.1 Bapuso Kamble assumed office as a successor. Respondent No.2 is a private person. It is the material case that the Respondent No.1 (Accused No.1) had demanded an illegal gratification of Rs.800/- (Rs.400/- for each entry) and the amount was negotiated to Rs.600/- for showing the favour of effecting the mutation. It is claimed that the Respondent No.1 agreed to accept Rs.200/- and the balance in installments.

3. The complainant PW-1 feeling aggrieved, approached the Anti Corruption Bureau ('ACB') and lodged a complaint. PW-4 PI Sudhir Chougule who is the Riding Officer called two pancahs

including PW-2 Subhash Kate and after explaining them the formalities a pre-trap panchnamma was drawn and the trap was laid at the Office of the Respondent No.1 on 10 March 1999. According to PW-1 when he accompanied by PW-2 went to the office of the Respondent No.1 there were 4 to 5 persons sitting in the office and the Respondent No.1 after finishing his works with those persons, demanded the amount of Rs.200/- and asked PW-1 to pay that amount to Respondent No.2 who was present there. Accordingly the amount of Rs.200/- was paid to the Respondent No.2 after which the pre-determined signal was given and other members of the riding party came in. The tainted currency notes were recovered from the Respondent No.2 and after completion of the formalities a post trap panchnamma was drawn. The matter was sent to the PW-3 Mr.Sanjay Radkar who at the relevant time working as a Sub Divisional Officer at Kolhapur for sanction. After grant of sanction a charge-sheet came to be filed before the learned Special Judge.

4. The learned Special Judge framed charge for the offence punishable under Section 7, 12, 13(1)(d) read with Section 13(2) of the said act. The respondents pleaded not guilty and claimed to be tried. The defence of respondents is of total denial and false implication.

5. At the trial the prosecution examined four witnesses including PW-1 Satyappa Mane, PW-2 Subhash Kate, PW-3 Sanjay Radkar and PW-4 PI Sudhir Chougule and produced the record of the investigation. The respondent did not lead any evidence in defence.

6. The learned Special Judge by the impugned judgment and order dated 18 July 2003 in Special Case No.4 of 2000 has acquitted the respondents *inter alia* on the ground that the complainant was aware of the cancellation of the entries earlier made by the Circle Officer and the Respondent No.1 in his capacity as a Talathi was not Competent to correct those entries or to effect the mutation.

7. I have heard Mr.Yadav, the learned Additional Public Prosecutor and Mr.Ganesh Bhujbal, the learned counsel for the Respondent No.2. There is no appearance on behalf of the Respondent No.1. With the assistance of the learned counsel for the parties, I have gone through the record.

8. It is submitted by the learned Additional Public Prosecutor that the evidence of PW-1 and PW-2 is sufficient to show that the Respondent No.2 had accepted the amount of Rs.200/- on the direction of the Respondent No.1 by way of illegal gratification.

It is submitted that this was inconsideration of the respondent No.1 showing the favour of effecting/correcting Mutation Entry in respect of the two Sale Deeds. It is submitted that the recovery of the tainted currency notes as well as the demand has been established which is sufficient to raise a presumption under Section 20 of the Prevention of Corruption Act, which has not been displaced by the respondents.

9. It is submitted that the learned Special Judge was in error in acquitting the respondents on the ground of certain discrepancies in the evidence of PW-1 and PW-2. It is submitted that some minor discrepancies are bound to occur particularly when the witnesses are called to give evidence after a considerable time. In the submission of the learned Additional Public Prosecutor, the discrepancies as noticed by the learned Special Judge are not sufficient to discard the evidence of PW-1 and PW-2 on the point of the demand and acceptance of illegal gratification.

10. The learned counsel for Respondent No.2 has submitted that the Respondent No.2 is not a public servant and has no concern with the Office of the Respondent No.1. It is submitted that the learned Special Judge has rightly found that the relation between the Respondent No.1 and Respondent No.2 were cordial and the Respondent No.2 had no reason to accept the amount of the illegal

gratification for and on behalf of the Respondent No.1. It is submitted that in any event, the view taken by the learned Special Judge is probable and no interference is called for.

11. I have carefully considered the rival circumstances and the submissions made. It is not disputed that the two Sale Deeds were in respect of a portion of land ad-measuring 3R and 2.5 R and in the year 1997 an application for Mutation was made for mutation of the name of the father of the complainant PW-1. It is also a matter of record that the then Talathi Mr.Gogane had effected Mutation Entry Nos.212 and 214 which are referred to as diary entries and they were sent to the Circle Officer for certification. It is further a matter of record that as per Exhibit-27 both these entries were cancelled by the Circle Officer Mr.Bhosale on 15 April 1997. The evidence of PW-1 clearly indicates that he was well aware of the cancellation of the Mutation Entries. It appears that subsequently again an attempt was made to effect the mutation in March 1999 after the transfer of Mr.Gogane and when the Respondent No.1 took over the charge as a Talathi as a successor of Mr.Gogane.

12. The material allegation is that the Respondent No.1 had demanded an amount of Rs.800/- for carrying out Mutation in respect of the two Sale Deeds and the amount was reduced to Rs.600/-. It is the material allegation that the Respondent No.1

agreed to accept the amount of Rs.200/- and the remaining in installments. On the day of the trap it was the Respondent No.1 who demanded the amount and directed it to be paid to Respondent No.2. It is necessary to note that PW-1 was all along aware that the two entries were cancelled by the Superior Officer (Circle Officer) and therefore had no reason to believe that the Respondent No.1 is in his capacity as a Talathi would be able to carry out Mutation again in supersession of the cancellation made by the Circle Officer. It has clearly come on record that the Respondent No.2 who is a private person was well acquainted with the complainant and they were residing in the same locality and were on visiting terms with each other. It has also come in the evidence of PW-1 that he had discussed the matter with the Respondent No.2 sometime before the trap. The learned counsel for Respondent No.2 is right in contending that the Respondent No.2 is in capacity of a private person had no concern with the Office of the Respondent No.1. It is now well settled that mere recovery of the tainted currency notes is not sufficient, unless and until the demand and acceptance by and/or, on behalf of the Public servant concerned is established on record. In the present case the tainted currency notes have been allegedly recovered from the Respondent No.2 and not from Respondent No.1. The evidence of demand and acceptance in such cases has to be appreciated in the context of the power and the

authority of the public servant concerned to do or to get done the act and to show the favour which is promised.

13. In the present case as noticed earlier the Respondent No.2 as a Talathi was not Competent to supersede the entries of cancellation earlier made by the Circle Officer of which PW-1 was aware. PW-1 has also admitted that he was annoyed by the cancellation of entries earlier made. This is one of the reasons why the learned Special Judge has found that the complainant had animus to implicate the Respondent No.1.

14. Be that as it may after having gone through the impugned judgment I find that the view taken by the learned Special Judge on the basis of the evidence led is a plausible view. It is well settled that in an appeal of the present nature this Court shall not interfere when the view taken by the trial Court is either perverse or is an impossible view. (See the decision of the Supreme Court in *Chandrappa & Ors. V/s. State of Karnataka*¹). Applying the principles, I do not find that the impugned judgment needs interference. The appeal is without any merit and is accordingly dismissed.

C.V. BHADANG, J.

NILAM
SANTOSH
KAMBLE

Digitally signed
by NILAM
SANTOSH
KAMBLE
Date: 2021.12.02
17:09:06 +0530

1 (2007) 4 SCC 415