

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.31 OF 2007**

The State of Maharashtra	)	..Appellant
V/s.		
Arun Mahadeo Hadke	)	
Age-34 years, Occu:- Service,	)	
R/o – Nasrapur, Tehsil- Bhor,	)	
District - Pune	)	..Respondent (Orig. Accused)

Ms Anamika Malhotra, APP for State
None for Respondent

**CORAM : K.R.SHRIRAM, J.
DATED : 11th JUNE 2021**

ORAL JUDGMENT:-

1 This is an appeal impugning an order and judgment dated 21st April 2005, passed by Special Judge, Pune, acquitting respondent of the offence punishable under Section 7 and 13(1)(d) read with Section 13(1)(2) of Prevention of Corruption Act, 1988.

2 Though learned APP tried to convince the court on the merits of the appeal, had to agree when the court pointed out that there was nothing to assail the order of the Trial Court.

The allegation was complainant (P.W.-1) when he wanted an entry in the revenue record in respect of the well that he had made in his land the accused demanded bribe. But the complainant himself has admitted that there was no application in writing for making such entry, in the complaint

to ACB. Complainant says he made such application but no such application has been produced. In the cross-examination, complainant has admitted that he had not filed any written application for making entry in the 7/12 extract. Complainant has also admitted that before making entry, the Tahsildar and Gramsevak visit the spot and prepare panchnama but in this case no such visit for preparing the panchnama was even made. Therefore, the motive alleged for the demand and acceptance of bribe itself has to fail.

3 Another glaring error is that the demand was made on 16th July 2001 and the amount was to be paid on 21st July 2001 and complaint was filed on 21st July 2001, i.e., on the date of trap. But the pre-trap panchnama Exhibit 14 mentions that panch witness has visited the office of ACB on 19th July 2001 and they were asked to come to ACB office on 21st July 2001. If complaint itself has been filed only on 21st July 2001, I wonder how the panch witnesses were called on 19th July 2001, even before the receipt of the complaint.

4 Panch witness (PW.-2), who had accompanied complainant, admits in his cross-examination that accused did not make any demand or reiterate the demand of bribe before issuing any 7/12 extract. In his cross-examination, panch witness (PW.-2) admits that till issuance of 7/12 extract and additional copy thereof, there was no demand of bribe. Apart from complainant and panch witness, the only other witness examined was the sanctioning authority (PW.-3).

5 Interestingly and which is a main dent in the case of prosecution is

that the Investigating Officer was never examined. Illustration (g) of Section 114 of the Indian Evidence Act, 1872 provides the Court may presume that evidence which could be and is not produced would, if produced be, unfavourable to the person who withholds it. The fact that the Investigating Officer also has not been examined would show that if examined, his evidence would have been unfavourable to complainant. Non examining the Investigating Officer as a witness in the circumstances of the case would have caused grave prejudice to the accused. The Apex Court in ***Habeeb Mohammad V/s. The State of Hyderabad***¹ observed that it was the bounden duty of the prosecution to examine the Investigating Officer, who is a material witness in the case particularly when no allegation was made that if produced, he would not speak the truth and in any case, the Court would have been well advised to exercise its discretionary powers to examine the witness.

6 Therefore, adverse inference arises against the prosecution's case from its non production of the Investigating Officer as a witness in view of illustration (g) to Section 114 of the Indian Evidence Act. The Investigating Officer is the principal architect and executor of the entire investigation. He is a crucial witness for purposes of establishing that there are omissions and contradictions but more importantly, it is always open to the defence to question the honesty and caliber of the entire process of investigation. It is well settled law that where an investigation is defective, insufficient or

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dishonest, those factors prove fatal to the prosecution. In the given instance, the accused was totally precluded from an opportunity of being able to establish the further infirmities in the prosecution's case and on this ground alone, the order of acquittal will have to be confirmed.

7 I have perused the impugned judgment, considered the evidence and also heard Ms Malhotra. I do not find anything palpably 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 accused.

8 There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless they are proved guilty by a competent court of law. Secondly, accused having secured his acquittal, the presumption of his 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.

9 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.

10 Appeal dismissed.

11 The Government/Appropriate Authority shall pay over to respondents, within a period of 30 days from the date of receiving a copy of this order, all

pensionary or other benefits/dues stalled, in view of pendency of this appeal. If during the service, in view of this matter, the promotions or increments of the accused have been affected, the concerned Authority/Department will pay, proceed and calculate on the basis that there was no such matter ever on record against the accused and will factor in all promotions and increments that accused would have been entitled to and all the amounts shall be accordingly paid within 30 days.

After 30 days interest at 12% p.a. will have to be paid by Government/Appropriate Authority to respondent.

No authority shall demand certified copy for reimbursing the benefits/dues as directed above. All to act on authenticated copy of this order. Certified copy expedited.

(K.R. SHRIRAM, J.)