

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1232 OF 2012**

The State of Maharashtra	)	
(through Wavi Police Station	)	
Taluka Sinnar, District Nashik	)	..Appellant

V/s.

1 Vitthal Baburao Kolpe	)	
Age-43 years, Occ Service	)	
Police Head Constable	)	
Nashik Rural	)	
2 Krushnaji Kacharu Dokhe	)	
Age-42 years, Occ Service	)	
Police Head Constable	)	
B. Bo.1857, Nashik Rural,	)	
District Nashik	)	..Respondents (Orig. Accused Nos.1 and 2)

Ms Pallavi Dabholkar, APP for State
Mr. Prashant D. Patil for Respondents

**CORAM : K.R.SHRIRAM, J.
DATED : 3rd MAY 2021**

ORAL JUDGMENT:-

1 This is an appeal impugning an order and judgment dated 30th September 2011 passed by Special Judge and Additional Sessions Judge-4, Nashik, acquitting respondents of the offence punishable under Section 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988.

2 The Learned APP in fairness submitted that it will be an uphill task for the prosecution to pick holes in the impugned judgment because the evidence itself says that the alleged work for which the illegal demand was made, was completed even before the first demand itself is alleged to have been made. The Learned APP also in fairness agreed that the court's observation that complainant's father is alleged to have given the first installment of bribe of Rs.500/- but he was not examined as a witness. Even one Sukhadeo Ghumre, who is supposed to have accompanied complainant with the father of complainant, when the first installment of Rs.500/- was paid, also has not been examined. Even Ashok Ghumre, who is supposed to have informed P.W.-1 that P.W.-1 was called to report in the police station with his father and surety, also has not been examined.

3 Learned APP Ms Dabholkar, therefore, in fairness agreed that the motive for making the demand and the acceptance of bribe of the first installment, also has not been proved.

4 I have to also note that complainant did not inform the ACB that he had already obtained bail on 19th May 2007. Therefore, the testimony of such a witness cannot be relied on. There are also material contradictions and the testimonies of prosecution witnesses are not inconsistent with each other. The object of demand of gratification is stated to be releasing complainant and his father on bail. But in the examination of P.W.-1, it is stated that it was in respect of compromising the case with his neighbor. According to P.W.-1, pant of accused no.1 was dark blue and black in colour

but post trap panchnama says it is greenish black in colour. P.W.-1 says that P.W.-4 handed over the currency notes of Rs.500/- and asked him to keep the same in his shirt pocket and accordingly P.W.-4 kept the currency notes after applying anthracene powder. Panch witness Mr. Gavli (P.W.-2) states the constable Satodkar folded the currency notes and put in the pocket of shirt of P.W.-1, which is what P.W.-4 also states. P.W.-1 says accused no.2 kept the bribe amount in his right side pant pocket, whereas, P.W.-2 says it is kept in his left side pant pocket.

5 Even panch witnesses P.W.-2 and P.W.-1 admittedly read the plaint and panchnama for refreshing their memory before entering into the witness box. Learned Single Judge of this court in ***Sharad Namdeorao Shirbhate Vs. State of Maharashtra***¹ has held that there would be nothing wrong in witness refreshing his memory by reading his statement before deposing about the incident giving minute details but that ought to be done before the court and not outside the court. Court also held that it would not be permissible for such a witness to stealthily refresh his memory before entering the court and deposing about the entire evidence giving minute details as if he was reeling them out from his memory. Therefore, evidence of such witness is questionable.

6 Mr. Patil also raised objection regarding the sanction for prosecution. However, I would agree with the conclusions of the Trial Court that the sanction was valid.

¹ 2007 (Supp.) Bom.C.R. 593

7 I have perused the impugned judgment, considered the evidence and also heard Ms Malhotra, learned APP and Mr. Patil for respondents. 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 the accused. Firstly, the presumption of innocence available to the 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, the accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting the 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.)