

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 472 OF 2017

The State of Maharashtra
Through Nanalpeth Police Station,
Tq. & Dist. Parbhani

.. Applicant

Versus

Deepika Tukaram Gore

.. Respondent

Mr. P. K. Lakhotiya, APP for Applicant.
Mr. Sudarshan J. Salunke, Advocate for Respondent.

CORAM : ANIL L. PANSARE, J.

DATED : 22nd JULY, 2022.

PER COURT:-

1. Leave to amend application and the prayer clause (E) is granted.
Amendment be carried out forthwith.
2. Heard.
3. The learned APP contends that the basic allegation is that the respondent/accused made a demand of Rs. 200/- for carrying out mutation entry and providing certain documents to the original complainant.
4. Though it is not clear in the judgment, but the evidence of PW-1 - complainant and the PW-2 - Panch witness, which has been read out by

the learned APP in the Court indicates that on 30.06.2015 the respondent/accused made demand of Rs. 200/-. The complainant was not willing to pay the amount and therefore, approached the A.C.B. office and lodged complaint. It appears that the investigating officer wanted to ascertain as to whether there is indeed a demand. He had instructed complainant and PW-2 to go to the office of respondent - accused, who was working as Talathi, Panhera and to verify the demand as alleged by the complainant.

5. In that context, on 01.07.2015, the complainant and the Panch witness visited the office of accused at about 1.30 p.m. The evidence, prima facie, show that the complainant and PW-2 met the respondent-accused, but the respondent asked them to come back after half an hour. The said story was narrated by the complainant and by PW-2 to the A.C.B. officer. Therefore, the second visit was arranged. Accordingly at about 3.00 p.m. the complainant and PW-2 again visited the office of respondent. At that time, the respondent made a demand of Rs. 200/- for doing the work of the complainant. The complainant said that he will come back after half an hour. Accordingly, the complainant and PW-2 went back to the office of the A.C.B. and narrated this story. Thereafter, the trap was laid at about 5.00 p.m. The complainant and Panch witness approached the accused in her

office at about 5.00 p.m. The accused handed over papers to the complainant and asked him whether he has brought Rs. 200/-. The complainant paid Rs. 200/- to the accused. The accused accepted it and kept it in drawer. Thereafter signal was given. The trap is allegedly held to be successful. The evidence in the form of anthracene powder supports the case of prosecution.

6. The learned Special Judge appears to have carried the impression that the admission given by PW-2 Panch witness in cross examination that there was no demand at 1.30 p.m. would affect the prosecution version. However, it was nobody's case that at 1.30 p.m. accused made a demand. There were three visits on that day. The learned Special Court appears to have mistakenly read only two visits and accordingly got confused in the time of demand and acceptance while appreciating the evidence of the prosecution witnesses. Accordingly, the learned Special Court has held that the prosecution failed to make out a demand and therefore, mere acceptance of amount or recovery of amount will be of no use to convict the accused. This finding of the learned Special Judge in view of the evidence read by the learned APP in the Court appears to be an arguable point in favour of the prosecution.

7. The learned advocate for the respondent submits that the

prosecution not only failed to prove the demand, but also failed to prove that the sanction order to prosecute the accused was valid.

8. In the present case, sanction has been accorded by the Sub Divisional Officer. However, the learned Special Judge has held that appointment letter of the respondent/accused has not been placed before the sanctioning authority (PW-5 Mr. Subhash Shinde, the then SDO). The PW-5 before the Court has deposed that he has issued appointment letter to the respondent. The learned Special Judge has relied upon the judgment in a case of **Bhaurao Marotrao Manekar Vs. State of Maharashtra, 1980 Mh.L.J. 445** wherein, the High Court has held that the sanction to prosecute the public servant should be accorded by an authority who is competent to remove the authority from the public office. In the said case, the accused Patwari was appointed by the Collector and therefore, it was held that sanction could not have been granted by the Sub Divisional Officer. It is further held in the said judgment, by referring to Section 7(4) and (13)4 of the Maharashtra Land Revenue Code (for short 'the Code') read with Article 311 (1) of the Constitution of India, that the Sub Divisional Officer purporting to act under Section 13 (4) of the Code, is empowered to appoint Talathi in the sub division and by virtue of section 16 of the Bombay General Clauses Act, he has power to suspend

or dismiss the Talathi so appointed, may be ingrained and included in it, but all the same he being subordinate in Rank to the Collector in-charge of the District Administration, he cannot in the teeth of the Constitutional provision of Article 311 (1) dismissed Talathi appointed by the Collector. The distinguishing factor in the case of **Bhaurao Marotrao Manekar** (supra) as relied upon by the learned Special Judge and in the present case is that in the case of **Bhaurao Marotrao Manekar** (supra), the appointment of Talathi was made by the Collector, but in the case before the learned Special Judge, the appointment was made by the Sub Divisional Officer.

9. The learned A.P.P. has relied upon the judgment in case of **Dattatray Laxman Bagdi Vs. State of Maharashtra in Criminal Appeal No. 576 of 2001** dated 28.08.2017 wherein, the Bombay High Court has held that the Sub Divisional Officer, who has appointed Talathi has power to dismiss the said officer. The Court further held that the Sub Divisional Officer was competent to accord sanction.

10. Thus, in a case where appointment is made by the Sub Divisional Officer, he has power to remove the appointed Government servant and also to grant sanction to prosecute him. The prosecution has made out a case for granting leave to file an appeal.

11. The leave as sought is granted. Appeal be registered and admitted. The learned advocate for respondent accused waives service for respondent.
12. Record and proceeding be called.
13. The application is allowed in above terms.

(ANIL L. PANSARE)
JUDGE

PS.B.