

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

CRIMINAL APPEAL NO.1173 OF 2007

Baburao Ganpati Bhoi	 Appellant
Versus	
The State of Maharashtra	 Respondent

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Mr. Satyavrat Joshi, Advocate a/w Nitesh Mohite, for the Appellant.

Mr. S.R. Agarkar, APP, for the Respondent-State.

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CORAM : SARANG V. KOTWAL, J.

DATE : 10th NOVEMBER, 2022

ORAL JUDGMENT :

1. The appellant has challenged the judgment and order dated 10.10.2007 passed by the Special Judge, Kolhapur in Special Case No.11/2002. By the impugned judgment and order, the appellant was convicted for commission of offence punishable under Section 7 of the Prevention of Corruption Act, 1988 ('P.C. Act') and was sentenced to suffer RI for one year and to pay fine

of Rs.500/- and in default to suffer RI for three months. The appellant was also convicted for commission of offences punishable under Sections 13(1)(d) read with Section 13(2) of the P.C. Act and was sentenced to suffer RI for two years and to pay fine of Rs.1,500/- and in default to suffer RI for six months. The substantive sentences were directed to run concurrently. He was given set-off under Section 428 of Cr.P.C. for the period he had spent in detention during investigation and trial.

2. The prosecution case is that the appellant was working as a Talathi at Sake-Sajja, Taluka-Kagal, District-Kolhapur from 13.8.1997 to 8.4.2002. The complainant-Mahipati Patil's family was having an ancestral land. They were shown as licensees of the Government. The lands in the area were acquired for construction of a canal. The other land owners were given compensation, but, the complainant's family could not get compensation as they were not shown as owners of the land i.e. Gat No.1507/B situated in that village. The complainant had approached the appellant for making correction in the revenue

record so that they could be shown as owners of the land and not as mere licensees. It was alleged that the appellant demanded Rs.2,000/- for doing their work. On 19.1.2002, the complainant Mahipat Patil and his cousin Dattatraya Patil met the appellant in a village Belawade (khurd), where the appellant demanded Rs.2,000/-. On 21.1.2002, again they met the appellant and requested him to bring down the amount. The appellant asked to pay Rs.1,000/- on 23.1.2002. The complainant approached the Anti-Corruption Bureau on 22.1.2002 and gave his complaint. API Sanjay Nikam reduced his complaint into writing and arranged to lay a trap on 23.1.2002 by calling two panchas. The raiding party went to the office of the appellant on 23.1.2002 at about 2.30 p.m.. One of the panchas accompanied the complainant inside the office of the appellant. As per the prosecution case, the appellant accepted Rs.1,000/- which were given by the complainant. Those notes were having anthracene powder. The complainant gave a pre-arranged signal. API Nikam and others rushed inside the office and caught the appellant. His pant-pocket and fingers

showed presence of anthracene powder. The money was recovered from his pant-pocket. Post-trap panchanam was conducted. API Nikam then lodged his FIR at Kagal police station. The investigation was carried out. Charge-sheet was filed and the appellant faced the trial as the sole-accused.

3. During trial, the prosecution examined PW-1 the Deputy Collector Kadam as the Sanctioning Authority, PW-2 Mahipati Patil as the complainant, PW-3 Nandkumar Gawali as a Pancha who accompanied the complainant when the bribe amount was allegedly accepted by the appellant, and PW-4 API Nikam who was the investigating officer.

4. The appellant took a specific defence. In the context of the case, his defence is very important. He has given his written statement in answer to the questions put to him under Section 313 of Cr.P.C. According to the appellant, the lands belonging to the people in the village were acquired by the State Government for construction of a canal. The complainant's father and Dattatraya Patil had some portion of these lands which were

acquired, but, they were not given the compensation for acquisition because their lands were of Patil Watan Inam. The Government was shown as the owner and they were shown as licesnsees. They had not taken steps to get these lands transferred in their names by requesting for re-grant. Since they did not get the compensation amount, they were blaming the appellant and were holding grudge against him. The appellant himself made efforts so that those lands were re-granted to them. He himself had prepared various applications and treasury challen and had helped them. It was not case of the complainant that the appellant had demanded money for doing that work. Because of his efforts, the lands were re-granted to them. The appellant had not received a copy of the order passed by the Tahsildar. The complainant and Dattatraya showed him copies of the orders. The appellant took entries of their names in the diary but since those entries were not certified by the Circle Officer or the Tahsildar by then, they could not be entered into the 7/12 extract register. Till the time of raid, the entries were not certified by those superior

officers. It was his case that the appellant had nothing to do with Belawade (khurd) village. He was not a resident of that village. He had no relatives or friends in that village. He had never demanded any bribe, but, he had demanded the arrears of the revenue. According to the complainant, they were not liable to pay any arrears. At that time the appellant had given them calculation of the arrears. On the day of the incident, the complainant had come to his office. At that time, Sarpanch Chandrakant Niungare and another person Tanaji Aagale were present in the office. The appellant did not see anybody else except the complainant. He kept Rs.1,000/- in front of the appellant. The appellant took that amount and passed a receipt for flag-fund. He was about to prepare the receipt for payment of the arrears of the land revenue. At that time, suddenly officers of the ACB came there and caught him. They alleged that the appellant had taken the bribe. He was forcibly kept in a vehicle and was confined in a room in the Rest House. According to him, false documents were prepared against him.

5. PW-2 was the main witness for the prosecution. He was the complainant Mahipati Patil. He has deposed that Dashrath Krishna Patil and Shankar Krishna Patil were his uncles. His father Bapu Krishna Patil was staying at Sake and was looking after their agricultural lands. The land bearing Gat No.1507/B admeasuring 0H-21R situated at Sake was owned by his father and two uncles jointly. The land was acquired by the Government for a canal. It was a *Watan* land and after abolition of Watans, as per the provisions of the Bombay Police Patil Watan Abolition Act, 1955, the names of PW-2's father and two uncles had been entered in the Record of Rights of that land as licensee. The land of many agriculturists was acquired by the Government for the same project. PW-2 and his family had not received the compensation amount though the other land owners from the village had received the compensation amount. The complainant's father, aforesaid two uncles and the complainant's cousin Dattatraya Ambaji Patil together had gone to the Talathi office at Sake to make enquiry regarding the compensation amount. The

appellant was the Talathi at Sake village during that relevant period. He was asked why the compensation amount was not paid to them. The appellant told them that they were shown as licensees in their 7/12 extracts and unless the acquired area was re-granted by the order of the Tahsildar, Kagal the compensation amount could not be paid. The appellant told them to get the remark of Government licensee deleted from the 7/12 extract. After that, they went to Tahsildar office at Kagal. They deposited Rs.526/- by challan in the Government Treasury at Kagal for getting the acquired area re-granted. The Tahsildar, Kagal allowed their application and the land was re-granted in the names of the complainant's father, two uncles and one land in the name of Ambaji Ganu Patil. The order from the Tahsildar was collected by them and was handed over to the appellant. However, the appellant told them that he had not received any order from the Tahsildar. He told them that the matter like this could not be expedited. He further told them that they would be required to spend some amount for that purpose. The complainant's father

and uncles told the complainant about this.

On 19.1.2002, the complainant i.e. PW-2 and his cousin Dattatraya met the appellant in his office. They requested him to delete the entry as 'Government Licensee' from the 7/12 extract and to issue fresh 7/12 extract. PW-2 has further deposed that the appellant demanded Rs.2,000/- for the said purpose. PW-2 expressed his inability to pay Rs.2,000/-, but, the appellant was firm on his demand. On 20.1.2002 again, PW-2 and Dattatraya went to Talathi office and requested him to reduce the amount. Again he did not agree to accept lesser amount.

On 22.1.2002 between 12.00 p.m. to 1.00 p.m., PW-2 and Dattatraya went to Anti-Corruption Bureau at Kolhapur and narrated their grievance before PW-4. The complaint was typed. It is produced on record at Exhibit-24. PW-4 asked PW-2 to attend the Bureau's office on the next day between 10.00 a.m. to 11.00 a.m.

On 23.1.2002, at 10.00 a.m., PW-2 and Dattatraya went to the ACB office. At that time, PW-3 Nandkumar Gawali

and another pancha Bhusare were present. They were introduced to each other. PW-2 gave ten notes of Rs.100/- denomination to PW-4 for using them in the trap. Demonstration of anthracene powder was given. It was applied to the notes. They were kept in the left shirt pocket of PW-2. PW-3 was asked to accompany PW-2 inside the office of the appellant. After money was paid and accepted, PW-2 was asked to give signal by moving his left hand on his head.

6. The raiding party reached the village Sake at 1.30 p.m.. PW-2 and PW-3 went inside the Talathi's office. The appellant was present there. He asked PW-2 whether he had brought Rs.2,000/-. PW-2 told him that he had brought Rs.1,000/-. The appellant told him that he should pay him the entire amount. He demanded that amount. PW-2 paid him those notes by the right hand. The appellant accepted that amount in his right hand and counted those notes by both hands. He kept that amount in the pocket of his pant. PW-2 came out and gave the pre-arranged signal. The raiding party along with pancha

No.2 entered the office. PW-2 was asked to wait outside. After some time the appellant's hands and clothes were checked under ultra-violet lamp in dark. They showed anthracene powder shining on his right hand and left side pocket of the shirt.

7. In the cross-examination, he deposed that he and Dattatraya had common grievance against the appellant. He accepted that PW-2 himself, his father and Dattatraya were entertaining the feeling that the appellant had played some mischief to deprive them from getting the compensation. PW-2 accepted that the appellant had helped his father and uncle in getting the application prepared for being submitted before the Tahsildar. The appellant had given them a form and the draft of such application. The appellant had given them certificates of residence and the certificate that there were no outstanding revenue dues and that the owners had not alienated their lands in the meantime. PW-2 also accepted that the appellant had calculated the outstanding dues of the land revenue and the other cess which was in the name of PW-2's father and cousin

Dattatraya. The appellant had prepared the challan and had asked PW-2's father and cousin to deposit that amount in Sub-Tresurer's office at Kagal. The Tahsildar, Kagal had passed the order dated 15/17th November, 2001 in favour of PW-2's family. PW-2 also accepted that the appellant had prepared his mutation entry No.1806 dated 3.1.2002. It was his case that the appellant was avoiding to furnish 7/12 extract. PW-2 then accepted that the appellant was not prepared to listen and that he was trying to convince them that unless the mutation entry was certified either by the Circle Officer or the Tahsildar, Kagal, he could not furnish the 7/12 extract. It is his specific case that PW-2 and his family members had got annoyed because of this. After that they all thought about the problem and came to the conclusion that unless the appellant is implicated in a trap they would not get the cheque for compensation amount and they began to think on those lines. This particular admission is extremely important which goes a long way to show how there is a strong possibility that the appellant is implicated falsely.

8. PW-2 had answered further questions in the cross-examination regarding the actual trap after he had approached the Anti-Corruption Bureau.

In the cross-examination, in paragraph-15, PW-2 accepted that the land assessment for the land of his uncle and his father was Rs.10.42/- as per the revenue record. Khata No.30 of Sake village stands in the name of Ambaji Patil, who was father of Dattatraya Patil and its land assessment was Rs.22.38/-. PW-2 further admitted that the appellant was telling them that since the Khata was not divided, the land assessment was exceeding Rs.5/- and they had to pay the assessment from the year 1957 to 2002. PW-2 and others disputed that.

He was given suggestion that the land assessment in the name of Ambaji Patil was for Rs.643.25 and the appellant was telling them that the dues of the land assessment in the name of his father and two uncles from 1997 to 2000 was Rs.469/- and that he was asking them to pay that amount. PW-2 and others were not prepared to pay the amount and they had not paid it.

PW-2 has deposed that the appellant was asking PW-2 and Dattatraya to deposit the outstanding amount as the land assessment amounting to Rs.929/- first. Both of them were telling the appellant that they were not liable to pay. This admission again is of extreme importance in the background of the defence taken by the appellant.

9. In the further cross-examination, he deposed that at the time of trap, Sarpanch Chandrakant Niunugare and Tanaji Aagale were present inside the office. There were 4-5 others also in the office. The appellant had asked PW-2 to pay Rs.25/- towards flag fund. The appellant had shown the printed ticket of Rs.25/- of the flag fund. Though, finally he denied that the appellant had accepted the amount towards the dues of assessment and for flag fund.

Though, PW-2 has made no reference to the appellant meeting at Belawade (khurd), his complaint dated 22.1.2002 which is produced on record at Exhibit-24 mentions that on 19.1.2002 they had met the appellant at Belawade (khurd) and

there the appellant had demanded Rs.2,000/-. This particular part appearing in the complaint was not deposed by PW-2 in his deposition.

10. PW-3 Nandakumar Gawali was a pancha witness. He has deposed that he was called to the ACB office at Kagal on 22.1.2002 at 5.00 p.m.. He and the co-pancha were asked to attend that office on the next day. Accordingly, on 23.1.2002, both of them went to the ACB office at 11.00 a.m.. There they were introduced to the complainant (PW-2) by PW-4. PW-3 thereafter has deposed about pre-trap procedure and execution of the pre-trap panchnama. It is produced on record at Exhibit-28 which includes demonstration of anthracene powder, application of that powder on the currency notes which were to be given as the bribe amount, the instructions given to PW-2 and the procedure which was to be followed. At 2.50 p.m., PW-3 along with PW-2 entered the office of the appellant. The other pancha remained with the other raiding party members. PW-3 has deposed that PW-2 asked the appellant as to whether his name

was entered in the record and whether 7/12 extract was kept ready by him. The appellant then asked PW-2 as to whether he had brought the amount as told by him previously. PW-2 told the appellant that he had arranged for Rs.500/- and requested the appellant to accept that amount. The appellant told him that he would not attend to his work without getting amount of Rs.1,000/- from him. After that PW-2 removed Rs.1000/- from his left side shirt pocket and gave those notes to the appellant. He took them with his right hand and counted by both hands. The appellant kept those notes by his right hand in the right side pocket of his pant. The appellant told PW-2 that he would prepare and give 7/12 extract to him. PW-2 came out and gave the pre-arranged signal. The raiding party, including PW-4, entered the office. PW-3 then told him that the appellant had accepted the amount. The appellant's hands were caught. He was subjected to examination under ultra-violet lamp. His right hand and right pocket of his pant showed the presence of anthracene powder. Apart from the notes, one blank flag fund receipt was

found with the appellant. PW-4 then asked the appellant about PW-2's work. The appellant produced two copies of the orders issued by the Tahsildar at Kagal dated 17.11.2001. The appellant produced the register of mutation entries. It was seized. The appellant gave his written say and this was recorded in the post-trap panchnama. It is produced on record at Exhibit-30. The appellant produced 7/12 extracts. They were brought on record of the trial at Exhibits-31 to 34. After that, PW-4 lodged his FIR. They returned to the ACB office. The panchnama was prepared about the safe keeping of the anthracene powder.

11. In the cross-examination, PW-3 deposed that on 23.1.2002 he had seen PW-4, PW-2 and four other staff members. Except PW-2, no one else was present in the ACB office. He further deposed that neither PW-2's father, two uncles nor one Patil were who were owning the adjoining lands and whose names were to be entered in the record were present in the ACB office. PW-3 accepted that PW-2 was saying that the appellant had assured that he would get the mutation entry certified from the

Circle Officer and thereafter would enter the names of those four persons in the record of rights as owners and then would issue 7/12 extract. He further accepted that PW-4 had told PW-2 that he was to pay the amount to the appellant and then collect 7/12 extract and then to give the pre-arranged signal. He also admitted that there were 2-3 persons sitting in the appellant's office. There was some talk in respect of the dues of his land revenue. But there was no talk about flag-fund. He further deposed that PW-2 told the appellant that he had brought the amount and that he was going to pay that amount and on hearing that the appellant told PW-2 to come after some time so that he could prepare 7/12 extract. Thereafter the appellant started preparing 7/12 extract. First the amount of Rs.1,000/- was paid and then the appellant began to write 7/12 extract. After that PW-2 went out and gave the pre-arranged signal.

12. The statement given in writing by the appellant at that time was produced on record at Exhibit-29. In that statement, the case of the appellant was that PW-2's cousin Dattatraya came to

him and asked for 7/12 extract. The appellant told him that it would be given after the Circle Officer signed it. At that time the appellant demanded back Rs.1,000/- which was given by him as handloan. The appellant took Rs.1,000/-. Thus at that time, according to that reply, the money was accepted as it was given by the appellant by way of hand loan which was purportedly repaid by Dattatraya. However, this particular statement of the appellant is not properly proved by the prosecution. The contents of this document are not established through admissible evidence. Moreover, no specific question in that behalf was put to the appellant. In question No.108 put to him under 313 statement, the appellant denied the contents of Exhibit-29.

13. PW-4 API Sanjay Nikam had conducted the raid. He has deposed that PW-2 approached his office on 22.1.2002 and had narrated the grievance against the appellant which was reduced into writing. He arranged for two panchas and made further arrangements for conducting raid on 23.1.2002. Thereafter he has described the procedure of raid; which is similar

to the deposition of PW-3. After the pre-arranged signal, the raiding party went inside the office of the appellant and caught him. The procedure for checking the appellant's person under ultra-violet lamp was described. He gave report to PSO to register the crime against the appellant. The FIR was lodged which is produced on record at Exhibit-43. C.R. No.3011/2002 was registered at Kagal police station. The investigation was carried out. Sanction was received in July, 2002. After that the charge-sheet was filed by this witness on 20.7.2002.

In the cross-examination, he deposed that the grievance against the appellant was that he was demanding illegal gratification for entering the name of two persons in the record of rights. One of them was PW-2's father. He had recorded the statement of the Dattatraya Patil. It was not the grievance of PW-2 that he was not paid any compensation by the Government. He accepted in his cross-examination that the land revenue of the land of PW-2 was in arrears for a long period and its calculation was made by the appellant to be paid by PW-2. He himself had

instructed PW-2 to get his name entered in the record of rights and thereafter on collecting it to pay the tainted money to the appellant only on demand. He denied that there were 5-6 persons, including the Sarpancha, present in the Talathi office. He also denied that Tanaji was present in the Talathi office. He further accepted that one blank flag fund receipt was found with the appellant.

14. PW-1 Prakash Kadam was the Deputy Collector. He was examined as the Sanctioning Authority. He deposed that the SDO was the appointing and removing authority of Talathi from service and, therefore, SDO was competent to issue the sanction order. On 7.6.2002, he received a file pertaining to C.R. No.3011/2002 of Kagal police station. After going through the file he gave dictation to his Stenographer and thus the sanction order was prepared. It is produced on record at Exhibit-17. It was dated 11.6.2002.

In the cross-examination, he deposed that every Talathi is instructed to recover the outstanding dues of the land

revenue or any other Government dues from the party, before attending to his work. He also accepted that Talathis were given instructions to collect the flag funds also. He further admitted that as per the order passed by the Tahsildar, Kagal on 17.11.2001 the mutation entries were taken by the appellant in the mutation register.

15. Learned counsel for the appellant did not challenge the sanction order or competence of PW-1 in granting sanction. He further submitted that acceptance of the amount of Rs.1,000/- by the appellant is not disputed. The main thrust of argument of Shri Joshi was that the amount was taken for the specific legal purpose which consisted of accepting the arrears of land revenue and also included the amount of Rs.25/- for flag fund.

16. Shri Joshi further submitted that Dattatraya Patil was a very important witness in this case. He was present on all occasions, including the first alleged demand when even PW-2 was not present. Dattatraya was present on all subsequent occasions including at the time of raid and yet he is not

examined by the prosecution. He was also an interested person who wanted his father's name to be entered in the record of rights. His non-examination is very important in this case and an adverse inference needs to be drawn against the prosecution case.

17. He further submitted that there is important discrepancy between the evidence of PW-2 and PW-3. According to PW-2, the demanded amount was of Rs.1,000/-. PW-3, however, has deposed that PW-2 offered to pay Rs.500/- and then actually paid Rs.1,000/- as allegedly demanded by the appellant. PW-2 has not spoken about offering Rs.500/-. PW-2 has not specifically deposed that the bribe was demanded for giving 7/12 extract. The other important persons like Sarpanch and Tanaji who were present in the office of the Talathi are not examined and, therefore, further adverse inference needs to be drawn.

18. Shri Joshi relied on the admission given by PW-2 that PW-2's family had decided to implicate the appellant in a trap case and that they were holding grudge against the appellant under the belief that they could not get the compensation because of some

mischievous played by the appellant.

19. Most importantly, according to Shri Joshi, the prosecution evidence itself shows that arrears of land revenue in respect of both the lands belonging to PW-2's family and Dattatrya Patil's family came to around Rs.929/-. Above that the flag fund of Rs.25/- was also collected and hence the amount of Rs.1,000/- which was accepted by the appellant was this particular amount and it was not a bribe amount or an amount towards illegal gratification.

20. Learned APP, on the other hand, submitted that the evidence shows that the complainant's family had already paid the money through challan in the Treasury before the order was passed by the Tahsildar, Kagal and, therefore, there was no occasion to demand payment of land revenue because the order was passed by the Tahsildar after accepting the challan. He submitted that the stand taken by the appellant in his say at the time of trap was contrary to the stand taken by the appellant in his statement under Section 313 of Cr.PC.

21. According to Shri Agarkar since the appellant has admitted acceptance of the amount then there was presumption under Section 20 of the P.C. Act which the appellant has not rebutted. He, therefore, sought dismissal of the appeal.

22. I have considered these submissions. Learned Judge has relied on the prosecution evidence and has disbelieved the defence of the appellant. The defence has admitted acceptance of Rs.1,000/-. Therefore, pre-trap procedure of applying anthracene powder and finding of those notes with the appellant at the time of trap is not seriously disputed by the defence. Therefore, no further discussion is required about the pre-trap procedure or about the next procedure which is mentioned in the post-trap panchnama.

23. The crucial question in this case is whether the appellant had accepted that amount in normal course as a part of his duty or whether he had accepted it by way of illegal gratification to make entry and give extracts to PW-2 and Dattatraya Patil.

24. As far as the demand is concerned, in the complaint there is a reference to the demand made at village Belawade (khurd). But, there is no reference to this village Belawade (khurd) in the deposition of the witnesses. Therefore, this demand on 19.1.2002 at village Belawade (khurd) is doubtful. There is no explanation as to why the complainant and Dattatraya had gone to that village. The prosecution has not brought on record anything to show as to how and why even the appellant would go to that village on that particular day. As far as the demand before that is concerned, PW-2 was not present and the demand was allegedly made before PW-2's father, two uncles and Dattatraya. Neither of these persons is examined. Therefore, even that demand is not proved.

25. As mentioned earlier, there is some serious contradiction about the demand on 19.1.2002. PW-2 in his deposition has deposed that said demand was made by the appellant in his office. He has not made reference to the village Belawade (khurd) in his deposition though in the complaint he

has stated that the appellant made that demand in village Belawade (khurd) on 19.1.2002. The third alleged demand was on 20.1.2002. It was made in the presence of Dattatraya who is not examined, as deposed by PW-2 during his deposition. However, there is no such reference in his complaint regarding demand on 20.1.2002. There is reference to the demand made on 21.1.2002 in the complaint. However, in the deposition there is no reference to such demand on 21.1.2002. Thus, the evidence led by the prosecution in respect of the demands on all these occasions is extremely doubtful and contradictory.

26. In this background, the admission given by PW-2 regarding their plan assumes importance. After admitting that the appellant had helped PW-2 and his other family members in making proper applications for re-grant, since the work was not expeditiously done, PW-2 has further deposed that after thinking about the problem they came to the conclusion that unless the appellant is implicated in a trap they would not get the cheque for the compensation amount and they started thinking on those

lines. This clear admission indicated that PW-2 and his family members decided to trap and implicate the appellant for the purpose of getting the compensation amount. This is a very serious admission which goes to the root of the matter showing as to why the appellant is falsely implicated.

27. Besides this, there is another important admission by PW-2 whereby he has accepted that the appellant was asking him and his cousin Dattatraya to deposit the outstanding dues of land assessment amounting to Rs.929/- and that they were not ready to pay that amount. This figure of Rs.929/- together with flag fund comes very near to the amount of Rs.1,000/-, which is involved in this case. PW-1 has accepted that the Talathis were given duty to collect the arrears of land revenue and also to collect the flag funds. Therefore, the defence of the appellant has become reasonably probable. The conversation mentioned by PW-3 can be interpreted either way. It does not specifically refer to the amount mentioned by the appellant as the bribe amount. There is a possibility that it was with reference to the arrears of

land revenue.

28. The investigating officer has also deposed that the land revenue of the complainant was in arrears for a long period and its calculation was made by the appellant which was to be paid by the complainant. All these factors are in consonance with the specific defence taken by the appellant.

29. Dattatraya Patil could have thrown some light on all those aspects but he was not examined. Even the Sarpanch Chandrakant Niungare and Tanaji Aagale who were admittedly present in the Talathi office at the time of trap are not examined. In the context of these facts, their non-examination assumes importance.

30. In conclusion, it is held that the prosecution has not established its case beyond reasonable doubt. On the other hand, the appellant has offered acceptable explanation which is supported by the record of the case and has thus rebutted the presumption against him. The appellant, therefore, deserves to be acquitted. Hence, the following order :

:: O R D E R ::

- i. The appeal is allowed.
- ii. The impugned judgment and order dated 10.10.2007 passed by the Special Judge, Kolhapur in Special Case No.11/2002 is set aside.
- iii. The appellant is acquitted of all the charges levelled against him.
- iv. The appellant is on bail. His bail bonds stand cancelled.
- v. Criminal Appeal is disposed of accordingly.

(SARANG V. KOTWAL, J.)