

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

CRIMINAL APPEAL NO. 51 OF 2007

The State of Maharashtra

...Appellant

vs.

Gautam Gunda Jadhav

Assistant to Junior Engineer

Panchayat Samiti Mahad,

Dist : Raigad,

R/o. Panchayat Samiti Quarters,

Originally R/o. Vategaon,

Taluka Valva, District:- Sangli

...Respondent

Mr. Y. Y. Dabke - APP for the Appellant-State

None for the Respondent

CORAM : S. M. MODAK, J.

DATE : 22nd FEBRUARY, 2023

JUDGMENT :-

1. This is an appeal against acquittal for the offence punishable under Section 7, 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act.

2. In fact on behalf of the Respondent-accused, no one has appeared. Learned APP apprised me about the matter. It reveals that in fact there is no merit in the appeal. In view of that even though no one has appeared on behalf of the Respondent, I have heard learned

APP Shri Dabke. There is no point in keeping the appeal pending.

3. He has taken me through the deposition of the various witnesses in as much as 11 witnesses. The Respondent-accused at the material time was working as overseer in Panchayat Samiti, Mahad. There is a Gram Panchayat at village Sawane Taluka Mahad. They have decided to construct a cemetery at village Khaire Birwadi Baudhawadi Mahad. The tender was called and it was allotted to the Complainant Ramakant Bhise. He completed it and he was expecting the payment. He has also submitted a bill. As per the procedure, overseer of the Panchayat Samiti is expected to visit the site and do the measurements and then only bill can be sanctioned.

4. The Respondent-Accused visited the site on 09/11/2000. The Complainant met him on 13/11/2000. The Respondent assured to prepare the report and submit it. For some reason or other, the Respondent has not submitted a report. On 17/11/2000 he demanded Rs. 3,000/-. Somehow the Complainant paid Rs. 1,000/- to him.

5. The Complainant met his colleague other contractor Shri Baban More and sought his help. The said More even assured the Respondent about payment of Rs. 2,000/- by the Complainant once

his cheque will be cleared. The Gram Sevak issued a cheque of Rs. 32,842/- as against the work of Rs. 40,000/-. The Respondent again demanded from the Complainant remaining amount of Rs. 2,000/-. Considering this harassment, the Complainant approached the Anti Corruption Bureau office at Raigad. On 20/11/2000 his complaint is recorded.

6. Deputy Superintendent Bhosale recorded his complaint and arranged a trap on 20/11/2000 in the office of the Panchayat Samiti, Mahad. The Respondent was arrested while accepting illegal gratification of Rs. 2,000/-. After completing the procedure, Deputy Superintendent Bhosale lodged the complaint. The Respondent was charge-sheeted. He has denied commission of any offence.

7. As said above, the prosecution examined 11 witnesses. To the misfortune of the prosecution, the Complainant and another contractor Shri Baban More-PW. No. 10 has not supported the prosecution case. On the point of following office procedure about preparing and sanctioning the bill and on the point of presence in the office at the time of trap, the prosecution in all examined following witnesses. They are as follows :

P. W. No. 3	Sudhakar Krishanarao Madkode	Block Development Officer
P.W. No. 4	Uday Jagannath Bagade	Junior Engineer
P.W. No. 5	Anil Govind Utekar	Sarpanch of Village Sawane
P. W. No. 6	Chandrakant Namdeo Dhage	Branch Sectional Engineer
P. W. No. 8	Ramchandra Moreshwar Ture	Gramsevak

8. With the assistance of the learned APP, I have gone through their evidence. However the Complainant has not supported the prosecution case. Even he admits that he has received the cheque towards the part payment. Even P.W. No. 10- Baban More who assured the Respondent-accused has not supported the prosecution case. It is true that on the point of the demand there are material witnesses. However they have not supported the prosecution. The Complainant P.W. No. 1 – Ramakant Bhise has not supported the case of demand by the Respondent. Except undertaking the contract, visit by the overseer that is Respondent and handing over cheque by Gramsevak, he has not supported the prosecution case. So also P.W. No. 10-Baban More who have tried to convince the Respondent at the instance of the Complainant has also not supported the case of the prosecution. They were cross-examined by learned APP but

nothing has turned out. The demand has to be established. Unfortunately, it has not happened and the trial court rightly given findings.

9. So far as the witnesses on the point of the procedure are concerned, it is matter of the record and no one can deny that the Respondent-accused was overseer and he was supposed to visit the site and give a valuation report. Even though some of the witnesses are examined on the point of the happening in the office on the date of trap, they have not actually seen accepting the bribe by the Respondent. They were simply told by the Police officials that they have to examine the Respondent and accordingly, those witnesses went out of office. Their evidence is not any used to the prosecution. The trap took place outside the office of the Panchayat Samiti near a chawl and these witnesses were present inside the office.

10. The trial Court has also pointed out certain lacunae in the evidence of the panch witness PW. No. 9-Govinda Pralhad Kotambe. As per his version, even though three persons were there in the office of the Block Development Office, when Deputy Superintendent Bhosale caught hold the hands of the Respondent-accused at that time they were not present. In the canteen the

Respondent-accused has not uttered the words 'Have you brought the money?'. There has to be reiteration of the demand for money. These facts were absent in the evidence of the panch witness-Kotambe. That is why the trial court has not believed him. (para no. 20)

11. The trial court has not believed the evidence on the point of the demand. So also there are lacunae in the evidence of the panch witness-Shri Kotambe. Sanction was proved. Trial court has left with no other alternative but to acquit the accused.

12. So I find no error in the judgment of the trial court. There is no merit in the appeal. Hence appeal is dismissed.

[S. M. MODAK, J.]