

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

CRIMINAL APPEAL NO. 396 OF 2009

The State of Maharashtra ...Appellant

vs.

Dhansing Shankar Korpade
R/a – Pandare, Taluka – Baramati
District – Pune

...Respondent

Mr. Y. Y. Dabke - APP for the Appellant-State
Adv. Kedar Patil, Gargi Joshi, Jitesh Mundhwa, Sakshi Kadam, Pratik
- Advocate for the Respondent

CORAM : S. M. MODAK, J.

DATE : 02nd FEBRUARY, 2023

JUDGMENT :-

1. The issue arisen in this appeal is whether the trial Court has appreciated the evidence properly. The trial court passed judgment of acquittal for the reason that there are inconsistencies in between the evidence of complainant P.W.-1 and panch witness – PW No. 2. It is also for the reason that sanction was given by the Sub-Divisional Officer and not by the Collector. Whereas the Respondent is a Talathi. It is also for the reason that the work of mutation was already done prior to lodging of the complaint to the Anti Corruption Bureau. This Court has to ascertain whether all these findings are

correct or not.

2. I have heard learned APP Shri Dabke for the Appellant and learned Advocate Shri Kedar Patil for the Respondent-accused.

3. There were four witnesses examined. They are as follows:-

P.W. No. 1	Complainant	Keshav Jadhav
P.W. No. 2	Panch Witness	Chandrashekar Solge
P.W. No. 3	Sub-Divisional Officer Sanctioning authority	Gajanan Patil
P. W. No. 4	Investigating Officer	Sau. Radhika Phadke

Prosecution case and evidence

4. The complainant is a member of the joint family and there was a partition in between his father Bhikaji and uncle Shankar. It was registered partition deed dated 23/12/2005. After that it was the job of the Revenue officers to make necessary mutation and the complainant was expecting name of his father to be mutated on the land. The land is situated at village Ranjani, Taluka Ambegaon, District Pune. The Respondent is Talathi. The complainant, his father were following up the matter with the Respondent. He demanded an amount of Rs. 10,000 for taking

necessary entries. The demand was made with father as well as the Complainant. The Complainant disliked it and hence he approached Anti Corruption Bureau on 22/05/2006. Even he visited the office on 21/05/2006. However there is no record. He was accompanied by his relative one Nivrutti who is working in Port Trust, Mumbai. His another relative is serving in Bombay Police. In cross-examination he has said that the details of the complaint were narrated by his brother Nivrutti and Mrs. Phadke-PI noted it.

5. The officials after completing the pre-trap formalities tried to lay trap on 23/05/2006. However it was not successful. Hence the trap was again arranged on 25/05/2006. At that time, it was successful. Initially, raiding party members went to the office of the Talathi. Respondent took them to nearby hotel. There is a Ganesh Sweet Home. On there way to that hotel, there was some interaction in between the complainant and the Respondent. P.W.2-Solge also accompanied them. Unfortunately he was silent in that interaction.

6. During that journey, the Respondent justified with the complainant about his claim for Rs. 10,000/-. In fact according to

him the work is of Rs. 18,000/- and he is doing it for Rs. 10,000/-. This interaction is challenged by the Respondent for two reasons. One is this is not there in the trap panchnama and the statement recorded of the complainant after the trap. This was put to him during cross-examination and he could not assigned any reason for those improvements. However learned APP brought to my notice about the reference of that particular in the trap panchnama (page no. 56).

7. Other reason is this fact was not stated by the panch witness. On this aspect, the Respondent is correct. I have read the evidence of the panch witness.(The relevant para no. 8). From the Talathi office all they went to Ganesh Sweet Home. While narrating those events, PW No. 2 has not said about those utterances. This fact is taken note by the learned trial Judge. It finds place in para no. 33 of the judgment.

8. On the point of reiterating the demand of money at Ganesh Sweet Home, there is variance in between testimonies of PW No. 1 and P.W. No. 2. By sitting in that hotel, the Respondent asked P.W. No. 1 *“as to whether amount is brought and I gave reply in the*

affirmative". Whereas when it is turn on P.W. No. 2, he has said "*after consuming tea, Talathi demanded amount*" (para no. 34). When it is tested during cross examination P.W. No. 2 replied "*even in Ganesh Sweet Home, he has not heard any conversation in respect of work as well as reason for bribe amount*". This was taken note by the trial Court in para no. 33 of the judgment.

9. There is one more variance noted down by the trial court. After the money was offered, the Complainant gave a signal and then raiding party members came there. When P.W. No. 4- Investigating Officer, inquired with P.W. No. 2- Solge as to who has accepted the amount, panch pointed out finger towards the person wearing grey colour shirt and pant. However this was not said by the P.W. No. 1 and P.W. No. 2. They have simply said that after catching red handed the Talathi, all went to the office of the Talathi. They nowhere said about the inquiry made by the P.W. No. 4 as to who has accepted the amount. There is also variance in respect of place of carrying out the trap panchnama. That is to say in the office of Talathi or the Police Station.

10. Mr. Patil relied upon the following judgments:

- (a) *The State of Maharashtra Vs. Sitaram Maruti Ture* decided by this Court on 10th January, 2012 (Coram J. H. Bhatia, J.)
- (b) *Suryabhan s/o. Shrawan Sawaitul Patwari Vs. The State of Maharashtra*¹
- (c) *Vijaykumar Raghunath Gosavi Vs. State of Maharashtra* decided by this Court on 28th July, 2021 (Coram Smt. Bharati Dangre, J.)

11. As contemplated under Section 7 of the Prevention of Corruption Act illegal gratification must be accepted as a motive or reward for doing some official act of a showing some favour. Though the Complainant followed up with the Respondent-accused since may 2006, entry was made on 7/12 extracts by the Respondent earlier to that.

12. During cross-examination he has said that mutation entry was not taken till April 2006. However Sanctioning Authority during cross-examination has said otherwise. He has explained the procedure for certifying mutation as per the provisions of Section 149 of the Maharashtra Land Revenue Code.

13. The report of mutation has to be given to Revenue

¹ 1996 (1) Bom. C.R. 46.

authorities within prescribed period. If the document is registered, there is an exemption. Even Sub-Registrar can send necessary information to the Revenue Authorities. The Respondent has effected the Kacchi entry in the mutation register on 21/02/2006. It is true that objections have to be called. Thereafter Circle Inspector certified that entry. In this case it was done on 17/06/2006. That is why trial court has observed that there was no work of Complainant pending with the accused on the date of demand of bribe and on the date of trap (para 39)

14. This Court in case of **Suryabhan s/o. Shrawan Sawaitul Patwari** (Supra) has dealt with this issue. Patwari was trapped for demand and accepting gratification for effecting mutation entry. Whereas fact is otherwise entries were already effected. That is why there were inherent improbabilities.

15. It is true that this Court in case of **The State of Maharashtra Vs. Sitaram Maruti Ture** (Supra) has referred above has refused to grant leave because sanction was given by the Sub Divisional officer. Whereas it is required to be given by the Collector to prosecute Talathi as per Section 7(4) of the Maharashtra Land

Revenue Code. The Collector is appointing authority and removing authority for Talathi. In this case, Sub-Divisional officer has given sanction. He was not competent to grant sanction. During cross-examination there is no evidence of delegation by the Collector to the Sub-Divisional Officer. I agree with the trial court that sanction is by incompetent officer.

16. It is true that Complainant has said about demand and bribe made with his father. He has not been examined. He was on the point of initial demand of bribe. It was made with the Complainant also. His brother Nivrutti accompanied him in the office of the Anti Corruption Bureau and he told the facts while lodging the complaint. His another relative is in Police force. Apart from this mutation, there was another proceedings initiated by the father of the Complainant and he was interested in getting a road from the land of one Dattatraya Gengje. For ascertaining that issue Tahalsildar and the Respondent accused has visited the land on 07/06/2004. Tahasildar rejected that request and it was on the basis of the information given by the present Respondent about availability of the another road. The Respondent contend that due to performance

of this official duty the Complainant was annoyed with him and that is why false complaint is lodged.

17. Considering all the circumstances, the evidence on the point of earlier demand cannot be accepted. Trial Court is right. There is statement recorded of the owner of that Ganesh Sweet Home, he has not been examined. P.W. No. 2 initially said that trap panchnama was prepared in the Anti Corruption Bureau. Later on he said in Talathi office (in the cross-examination). He was not sure where it was prepared

18. For the above discussion, the finding by the trial Court cannot be said to be erroneous. There is well reasoned judgment. If there are inconsistencies in the testimonies of the witnesses, benefit is to be given to the accused. Hence no interference is wanted. The Appeal is meritless and is dismissed.

[S. M. MODAK, J.]