

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 28 OF 2011

State of Maharashtra,
Through Deputy Superintendent
of Police, Anti Corruption Bureau
Sleuth, Nagpur.

.... **APPELLANT**

// **VERSUS** //

- 1) Suresh S/o. Kesharao Kakade,
(Appeal **abated** against respondent
No.1 as per Court's order
dated 18.10.2012)
- 2) Ganesh S/o. Ukandrao Wadhive,
Aged 67 years, Occu. Service,
R/o. Plot No.88, Nilkanth Nagar,
New Hudkeshwar Naka, Nagpur.

.... **RESPONDENTS**

Mr. I.J. Damle, Additional Public Prosecutor for Appellant.
Mr. P.P. Kotwal, Advocate for Respondents.

CORAM : K.R. SHRIRAM, J.

DATED : MARCH 21, 2023

ORAL JUDGMENT :

1. This is an appeal impugning an order and judgment dated 26th July, 2010 passed by the Special Judge (ACB) at Nagpur. The trial Court had acquitted the respondents of offence punishable under

Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (P.C. Act 1988).

2. At the outset, Shri Damle, learned Additional Public Prosecutor informs the Court that accused/respondent No.1 Suresh S/o. Kesharao Kakade has expired and as per the Court's order dated 18th October, 2012, the Appeal has abated as against the respondent No.1.

3. With the assistance of Shri Damle and Shri Kotwal, learned Advocate for respondents, I have considered the impugned judgment, evidence and the documents. There is nothing against the accused No.2 that could even indicate that accused No.2 was even remotely guilty. Complainant who is P.W.-1 – Dilip S/o Laxman Parate @ Umredkar in his examination-in-chief has describe the role of the accused No.2 as under :-

“I informed Shri Kakade that I had brought amount of Rs.500/- as per his demand. Thereafter, Shri Kakade asked accused No.2 to take my file. Accused No.1 informed me that my work will be done immediately and thereafter No.2 was instructed by him to accompany me outside and to take money from me. Thereafter, I accompanied accused No.2 in the hotel. Thereafter, myself, another Panch and accused entered in Ghate Dugdha Mandir. We had taken tea. I paid the bill. Accused No.2 demanded money from me. Thereafter, I had given that amount to accused No.2. Thereafter, myself, panch No.1 and accused No.2 returned to Corporation office. In the room, accused No.1 made inquiry with accused No.2, as to

whether amount is received. Thereafter, I removed my handkerchief and given pre-determined signal.”

4. Moreover, in the complaint, there is no allegation against accused No.2. Admittedly, accused No.2 accepted the amount at the behest of accused No.1. Further the defence of the accused was that complainant had to pay some outstanding tax of about Rs. 496/-. Complainant wanted to have a property mutated in his own name, when the property actually was purchased together with his brother. Complaint was also told to produce his brother and pay the tax amount of Rs.496/-. Accordingly, complainant paid Rs.500/- to accused No.2 and accused No.2 collected this amount as he was legally authorized to collect the same. This stand, the trial Court has accepted was a probable case made out by accused.

5. The trial Court has also correctly noted that the statement that was recorded by PW.-3 the Investigating Officer of PW.-1 complainant, was devoid of various facts which have appeared in his testimony. The omissions have been reproduced by the trial Court and for the sake of brevity, I do not wish to reproduce it.

6. In the circumstances, the Appeal as against the respondent No.2 is dismissed.

7. The Government/Appropriate Authority shall pay over to respondent, within a period of 30 days from today, 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 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 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.

It is clarified that this is subject to there being no other complaint or proceedings pending against 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.)

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