

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL REVISION APPLICATION NO. 59 OF 2016

APPLICANT : Vilas Narayan Ganvir, Aged 58 years,
Occu: Labour, R/o. Kinha Moke,
Tah. Sakoli, District Bhandara,
C-474, Confined at District Prison,
Bhandara.

//VERSUS//

NON-APPLICANT : The State of Maharashtra, through
Police Station Officer, Desaiganj,
Tah. Desaiganj, District- Gadchiroli.

Ms. Sonali Saware, Advocate (appointed) for the Applicant.
Ms. Mayuri Deshmukh, APP for the Non-applicant/State.

CORAM : G. A. SANAP, J.
DATED : 9th JUNE, 2023.

ORAL JUDGMENT

In this revision application, challenge is to the judgment and order dated 25th January, 2016, passed by the learned Sessions Judge, Gadchiroli, whereby the learned Sessions Judge dismissed the appeal filed by the applicant/accused against his conviction and sentence awarded by the learned Judicial Magistrate First Class, Desaiganj, for the offences punishable under Sections 171, 419 and

420 of the Indian Penal Code, 1860 (hereinafter referred to as the “IPC” for short). The learned Judicial Magistrate First Class, Desaiganj, on conviction, had sentenced the accused to suffer rigorous imprisonment of three months for the offence punishable under Section 171 of the IPC, rigorous imprisonment of three years and to pay fine of Rs.5,000/-, in default of payment, to suffer simple imprisonment of three months for the offence punishable under Section 419 of the IPC, and rigorous imprisonment of three years and to pay fine of Rs.10,000/-, in default of payment, to suffer simple imprisonment of three months for the offence punishable under Section 420 of the IPC.

02] It is the case of prosecution that on 9th and 10th December, 2013, the informant was proceeding from Desaiganj to his village Kaleta on his motorcycle. On the way at village Chandali, one person in police uniform met him at about 2:00 p.m. and requested him for lift upto village Kaleta. The informant gave him lift. During journey, the said person made enquiry with the informant about his employment. The said person introduced himself as Police Inspector Maske. When the said person alighted from the motorcycle at village Kaleta, he showed his Identity Card to the informant. The name on the Identity Card was Rajendra R.

Maske, Police Commissioner Office, Amravati. He told the informant that recruitment process for filling the post of police constables is in progress and in the said process, some candidates have been disqualified in the medical examination and in place of those candidates, other candidates can be given employment. He took the mobile number of the informant. The informant, on his request, dropped him at village Dighori.

03] It is the case of prosecution that the said person was not Assistant Police Inspector. He impersonated to be so. On 12th December, 2013, Mr. Maske went to the house of the informant at Kaleta. The informant was not present and therefore, he could not meet the informant. On 15th December, 2013, Mr. Maske made a phone call to the informant to apply for recruitment as police constable in place of candidates, who were disqualified in the medical examination at Amravati Police Headquarter. On 18th December, 2013, Mr. Maske called the informant at the backside of Desaignanj Railway Station and there filled a form of the informant for recruitment and took Rs.125/- towards fee. On 2nd January, 2014, Mr. Maske met the informant. They together went to the house of the informant at Nainpur. At the house of the informant, Mr. Maske showed Buckle No.2202 and Chest No.48 to the

informant. Mr. Maske, at the time, told the informant to arrange money till 9th January, 2014 for getting the employment. On 8th January, 2014, Mr. Maske contacted the informant on his mobile phone and made an enquiry about money. The informant told him that he and his uncle would come to Amravati. Mr. Maske suggested them to come to Gadchiroli for deposit of money at Gadchiroli Police Headquarter.

04] On 9th January, 2014, Mr. Maske came to the house of the uncle of the informant and kept his bag there. Mr. Maske instructed the informant to come to Gadchiroli with money. The informant took Rs.1,30,000/- from his uncle and kept the same in one bag with his original documents, including Caste Certificate, Marksheet, T.C., Aadhar Card, Election Card etc. and went to Gadchiroli. At Gadchiroli, Mr. Maske, instead of taking the informant to the Police Headquarter, took him to District and Sessions Court under the pretext of preparing an application for deposit of money. In the District and Sessions Court, Mr. Maske instructed the informant to bring a paper from stationery shop. Mr. Maske started writing the matter on the said paper and at the same time asked the informant to keep his bag with him. Mr. Maske again told the informant to bring revenue stamp from the

stationery shop. When the informant came back with the revenue stamp, he found that Mr. Maske had disappeared. The informant tried to contact Mr. Maske on phone, but he did not meet him.

05] After this incident, the informant checked the bag of Mr. Maske, which was lying in his house. In the said bag, he found some papers. After this incident, he came into contact with one Dinesh and talked with Dinesh about Mr. Maske. Dinesh told him that he was also cheated by Mr. Maske on the same pretext by impersonating him as Police Inspector. The informant was shocked to know this. He, therefore, along with Dinesh approached Desaijanj Police Station and lodged a report. On the basis of the said report, a Crime bearing No.4 of 2014 came to be registered against Rajendra R. Maske for the offences punishable under Sections 419, 420, 470 and 471 of the IPC.

06] The informant stated in his report that he came to know that Mr. Maske would come to Brahmapuri to meet one such prospective candidate. They contacted the said prospective candidate. Accordingly, the police laid the trap. The accused was apprehended on the said spot at Brahmapuri. The accused disclosed his real identity to the police. The police then came to know that the accused was not a Police Inspector, but he

impersonated himself to be so. Investigation in the crime was conducted. The investigation revealed that the accused by impersonating himself to be a police officer, cheated several such candidates, who were in dire need of employment, by taking huge money from them. During the course of investigation, as per the statement made by the accused, amount of Rs.20,000/- was recovered. During the investigation, number of documents and articles were recovered. The investigation revealed that the accused by impersonating himself as a Police Officer, collected Rs.3,00,000/- from Deepak Kale, Rs.2,50,000/- from Shishir Shivankar, Rs.2,00,000/- from Bhojraj Madavi, Rs.50,000/- from Rakesh Dorle and Rs.1,00,000/- from Manoj Waghmare. Statements of all the victims were recorded. After investigation, charge-sheet was filed against the accused. The real identity of the accused was revealed as Vilas Narayan Ganvir.

07] Learned Judicial Magistrate First Class, Desaijanj, framed charge against the accused. The prosecution examined eight witnesses. The prosecution relied upon number of documents. The learned Magistrate, on consideration of the material, found the accused guilty of the offences punishable under Sections 471, 419 and 420 of the IPC and sentenced him as above. The appeal filed

by the accused against his conviction and sentence was dismissed by the learned Sessions Judge, Gadchiroli. The applicant/accused is, therefore, before this Court in revision.

08] I have heard Ms. Sonali Saware, learned advocate (appointed) for the applicant/accused and Ms. Mayuri Deshmukh, learned Additional Public Prosecutor for the State. With the able assistance of learned advocate and learned Additional Public Prosecutor, I have gone through the record and proceedings.

09] Learned advocate for the accused submitted that though the informant came to know that he was cheated by the accused, there was inordinate delay in lodging the report. Learned advocate submitted that delay was not properly explained. Learned advocate submitted that the Courts below have not taken this major defect in the case of prosecution into consideration. Learned advocate submitted that the investigation in this case is faulty. There was no recovery of money allegedly paid by the victims of crime to the accused. Learned advocate further submitted that the panch witnesses are the interested witnesses. Learned advocate submitted that in the fact situation, the police ought to have selected the independent panch witnesses. Learned advocate further submitted that there are material omissions and inconsistencies in the

evidence of the prosecution witnesses. Learned advocate pointed out that the prosecution has failed to examine some of the victims, who were allegedly cheated by the accused. Learned advocate submitted that there are number of doubtful circumstances on record. In the submission of learned advocate, on the basis of material on record, a doubt has been created about the involvement of the accused in the commission of crime. Learned advocate, therefore, submitted that the accused is entitled to get the benefit of the said doubt.

10] Learned Additional Public Prosecutor submitted that PWs 5, 6 and 7 are the victims in the commission of offence of cheating by the accused. Learned Additional Public Prosecutor submitted that the evidence of PWs 5, 6 and 7 is cogent, concrete and reliable. Learned Additional Public Prosecutor submitted that despite searching cross-examination of these witnesses, their credibility has not at all been shaken. Learned Additional Public Prosecutor submitted that there is no iota of material on record to indicate that panch witnesses are the habitual and stock panch witnesses of the police. Learned Additional Public Prosecutor submitted that while appreciating the evidence of panch witnesses, the Court has to consider the evidence of the panch witnesses in

totality, to form an opinion about the credibility of the panch witnesses. Learned Additional Public Prosecutor submitted that the evidence of panch witnesses has not at all been shaken in the cross-examination. Learned Additional Public Prosecutor submitted that even if it is found that on certain aspects the investigation is faulty, the same could not be the ground to extend the benefit to the accused against whom the evidence of the independent witnesses is cogent, credible and reliable. Learned Additional Public Prosecutor submitted that even if there is defect in the investigation, the benefit of the same cannot be given to the accused. Learned Additional Public Prosecutor submitted that on the core and crux of the case of prosecution, the evidence of PWs 5, 6 and 7 is concrete, cogent and reliable.

11] Learned Additional Public Prosecutor submitted that, in this case, there was no delay in lodging the First Information Report (FIR). Learned Additional Public Prosecutor submitted that the accused impersonated to be a Police Inspector and thereby given an assurance to the prospective candidates that after paying money, he would provide them job as Police Constable. Learned Additional Public Prosecutor pointed out that process of recruitment, according to the accused, was at various places and

therefore, after paying money for getting employment, the prospective candidates made wait on the assurance of the accused. Learned Additional Public Prosecutor pointed out that when the victims of the crime came to know that they were cheated by the accused, PW-7 lodged the report against the accused. Learned Additional Public Prosecutor submitted that during the said investigation, several other cheated candidates came forward. Learned Additional Public Prosecutor, in short, submitted that the Courts below have made a threadbare analysis of the evidence and on doing so, has recorded concurrent findings of fact. Learned Additional Public Prosecutor submitted that in the revisional jurisdiction, the concurrent findings of fact cannot be interfered with, unless and until, it is established that the Courts below have convicted the accused without having sufficient evidence on record or the available evidence on record was not properly considered. Learned Additional Public Prosecutor submitted that there is neither error apparent on the face of the record nor perversity in the concurrent findings of fact recorded by the Courts below.

12] PW-7 Sachitanand Shankar Raut is the informant. In his evidence, he has categorically stated that the accused accidentally met him and when the accused came to know that he was

unemployed, he assured him to provide employment as Police Constable in the Police Department. He has stated that the accused impersonated as a Police Officer. In his evidence, he has stated that when he met the accused for the first time, the accused was wearing police uniform. In his evidence, he has categorically stated that after developing acquaintance with him, the accused made him phone call and informed that a candidate from OBC category was disqualified from the recruitment process and in place of the said candidate, the name of the informant could be inserted, provided the informant pays him Rs.1,50,000/-. In his evidence, the informant has narrated in great detail the events occurred thereafter till payment of Rs.1,30,000/- to the accused.

13] Perusal of his evidence would show that the accused whenever met him, impersonated to be a Police Officer. In order to create confidence in the mind of the informant, the accused would always wear police uniform. It is to be noted that the informant got acquainted with the accused in the month of February, 2013 and in the month of January, 2014, he paid the amount. The informant in his evidence has stated in great detail as to how the accused cheated him and thereby prevailed upon him to make payment to him. In his evidence, he has stated that he realized the cheating when the

accused after collecting money, disappeared from Gadchiroli District and Sessions Court. He has stated that after this, the accused did not attend his phone call.

14] In the process of search of the accused, he stumbled upon one more person cheated by the accused. The name of the said person is Dinesh Patre. When PW-7 met Dinesh Patre, Dinesh Patre told him that he was also cheated in the same manner by the accused. Dinesh Patre provided informant a specific information that the accused would be coming to Brahmapuri to meet him. The informant reported the matter to the police and the police laid trap and apprehended the accused. PW-7 was cross-examined on almost all the material aspects. However, nothing has been brought on record to discard and disbelieve his evidence. In his evidence, he has categorically stated that the accused impersonated to be a Police Officer and thereby lured the informant to pay money for securing job as Police Constable.

15] It is to be noted that the report of the incident was lodged on 19th January, 2014. Learned advocate for the accused made a grievance that there was inordinate delay in lodging the report and the Courts below have not taken the said aspect into consideration. In my view, this argument cannot be accepted for

more than one reason. The informant, PW-7, was not acquainted with the accused earlier. The accused had promised to provide him job as Police Constable. The informant did not doubt the credentials of the accused until he disappeared, after collecting the money from him. The conduct of the informant after disappearance of the accused after collecting the money, is important.

16] It has come on record in his evidence that he paid money to the accused on 9th January, 2014. Learned advocate pointed out that in the FIR, it has been stated that the accused was coming to Brahmapuri on 18th January, 2014 and not on 19th January, 2014. It is submitted that as per the case of prosecution, the trap was laid and the accused was apprehended on 19th January, 2014 at Brahmapuri. Learned advocate for the accused, therefore, submitted that this discrepancy in the FIR and the evidence creates doubt about the case of prosecution. It is to be noted that the informant had no grudge against the accused. There was no reason for the informant to falsely implicate the accused. Perusal of the cross-examination would show that such defence of false implication for one reason or the other, has not been put-forth. The evidence of PW-7, in my view, is, therefore, concrete, cogent

and reliable. PW-7 has placed on record the first hand account of the role of the accused in the commission of crime.

17] PW-5 Deepak Rambhau Kale is one more victim of the accused. Perusal of his evidence would show that the accused was in search of persons, who were in dire need of employment. PW-5 has stated that one Shrikant Nandeshwar and Ajay Badole had come to his house and informed that one Mr. Maske, Police Officer, had assured him to provide employment in the Police Department and took his mobile number. After taking his mobile number, Ajay Badole and Shrikant Nandeshwar left his village. He has stated that on the next day, one Mr. Maske made a phone call to him and called him at Wadsa Railway Station with the photocopies of his document. The accused came at Wadsa Railway Station and met him. The accused introduced himself as Rajendra R. Maske. A.P.I., Amravati. He has stated that the accused told him that the post of Police Constables would be advertised at Amravati. He collected his T.C., Mark-sheet, Diploma and Caste Certificate. He also filled up one form and collected fee of Rs.125/-.

18] PW-5 has stated that after one or two days, the accused came to his house in police uniform and demanded Rs.5,00,000/- for providing him job in the Police Department. The informant

agreed to pay Rs.3,00,000/- to him. On the next day, the accused made a phone call to him and informed him that in the medical examination, some recruited candidates have been eliminated from Bhandara District and those vacancies are to be filled up. The accused personally came to his house. He told PW-5 to search for other candidates for providing them employment. PW-5 has stated that, thereafter, he conveyed this information to Shishir Shivankar, Rakesh Dorle and Bhojraj Madavi. All the three persons came to his house. The accused also came there. He conducted their medical examination and found them medically fit. He has stated that Mr. Bhojraj Madavi agreed to pay Rs.2,00,000/-, Shishir Shivnakar agreed to pay Rs.2,50,000/- and Rakesh Dorle agreed to pay Rs.50,000/- to the accused.

19] He has deposed that the accused made a phone call and informed them that they have to go to Amravati. The accused called them with money and other documents at Wadsa Railway Station. They all went there. One Manoj Waghmare was also present there with his uncle. The accused came at Wadsa Railway Station. He was in civil dress. He collected money from them.

20] After collecting money, he told them that he would go to the bank and verify that the currency notes are not fake. After

collecting the money, he told them that one person should accompany him. Manoj Waghmare and his uncle accompanied the accused. On the way, the accused told the uncle of Manoj Waghmare to go back and bring a book from his bag. The accused disappeared from the said place with money. He did not meet them. They went to the nearest police station. The police told them to go to Nagbhid Railway Police Station for report. They did not go to the said Police Station.

21] On 14th January, 2014, Sandip Pramod Yadav, Police Inspector, made a phone call to him and informed that one person by name Maske was arrested. They all went to Wadsa Police Station. In the Police Station, they saw the accused. In the Police Station, they came to know that his real name was Vilas Narayan Ganvir. It is seen on perusal of his evidence that he has narrated in detail first hand account of the incident occurred with him.

22] His testimony has been assailed on the ground that he did not immediately lodge the report with the police. It is true that they were expected to lodge the report at the Police Station. It is not that they did not go to the Police Station. When they went to the Police Station, they were directed to go to Nagbhid Railway

Police Station. In the cross-examination, he was questioned on the material aspects deposed by him to test his veracity.

23] Perusal of his cross-examination in entirety would show that he has not deviated from the core and crux of the case of prosecution. It is to be noted that during the course of investigation, his documents as well as other documents were seized by the police. It is seen on perusal of his cross-examination that no suggestion was put to this witness by the accused for his false implication in the crime. It is to be noted that PW-5, in the ordinary circumstances, had no grudge against the accused to falsely implicate him.

24] The next important witness is PW-6 Ravindra Motiram Waghmare. PW-6 is the uncle of Manoj Waghmare. He has stated that his nephew Manoj Waghmare had received a phone call from Rajendra R. Maske and he told him that he was A.P.I. at Amravati. He has stated that he had assured to provide employment in the Amravati Police to his nephew. He has stated that when Manoj Waghmare discussed this matter with him, he personally talked to the accused on phone. He demanded Rs.1,00,000/- for providing a job to his nephew. They agreed to pay the money. He has stated that, as instructed by the accused, he and his nephew went to

Wadsa Railway Station. The accused met them at Wadsa Railway Station and filled the recruitment form. He has stated that in the first week of October, 2013 Manoj received a phone call from the accused. The accused informed him that on 8th October, 2013, they have to go to Amravati for recruitment and demanded Rs.1,00,000/-. He called them to Wadsa Railway Station. PW-6 has stated that he, with Manoj, Kale, Shivankar and Dorle went to Wadsa Railway Station. The accused collected money from all these candidates in a cloth bag. He told them that one person should accompany him to the bank for checking the money. PW-6 accompanied the accused to the bank. On the way, the accused told him to go back to Railway Station and bring one book. On the way, Deepak Kale met him. He made enquiry about Mr. Maske. In the meantime, accused Maske disappeared from the said place. They searched for him. He switched off his mobile phone. They realized that they were cheated. Therefore, they met one police at Railway Station and narrated the incident to him. The police informed them to go to Desaiganj Police Station. They went to Desaiganj Police Station, but the police told them to go Nagbhid Railway Police Station for lodging the report. They did not go to Nagbhid Railway Police Station. He has stated that on 20th January, 2014, he came to know that the accused was at Desaiganj Police Station.

They went there and found that the accused was in the custody of police. He has stated that he had paid Rs.1,00,000/- to the accused.

25] Perusal of his cross-examination would show that the core and crux of his evidence with regard to the incident has not at all been shaken. In his cross-examination, he has confirmed and reiterated that on more than one occasion, he met the accused. There is no material in his cross-examination to conclude that for one reason or the other the witness had grudge against the accused. Perusal of his evidence in entirety would show that his evidence cannot be discarded.

26] It is seen that PWs 5, 6 and 7 have corroborated each other. The remaining persons, who had been cheated and duped by the accused, were not examined by the prosecution. However, on the basis of the evidence of these three witnesses, the prosecution has proved that the informant paid Rs.1,30,000/- to the accused. The accused collected Rs.3,00,000/- from Dipak Kale, Rs.1,00,000/- from Ravindra Waghmare, Rs.2,50,000/- from Shishir Shivankar, Rs.2,00,000/- from Bhojraj Madavi and Rs.50,000/- from Rakesh Dorle. It is to be noted that there was no reason for these three witnesses to falsely implicate the accused in such crime. It is further seen that there is other corroborative oral

and documentary evidence to lend an assurance to the credibility of the evidence of PWs 5, 6 and 7.

27] PW-2 Nadu Najukrao Narote is the panch witness, in whose presence the accused was trapped at Brahmapuri. He has stated that as per the request of police, he accompanied the police to Brahmapuri. Dinesh, Shrawan Bulle and informant also accompanied them. The accused was supposed to come near the school. At the said spot, the police laid the trap. One person wearing police uniform came there. The informant told the police that he was the same person, who had taken money from him on the promise of providing him employment. The police in his presence apprehended the said person. In his evidence, he has stated that the accused was wearing police uniform having 3 stars on his shoulder and strips of blue colour. On enquiry by the police, he disclosed his name as Vilas Narayan Ganvir. On the spot, the police seized one belt, brown colour cap and one bag. The police inspected the said bag. The police found appointment letters of the cheated candidates, badge having buckle number and some appointment letters with seal of Commissioner of Police, Amravati. The police also seized one book from the accused. In the said book, the accused had written the names of persons from whom he had

taken money. In his presence, the police drew panchanama. It is at Exh.19.

28] As far as this witness is concerned, it is submitted that he is habitual witness of the police. He is a social worker. He was involved in criminal cases. On the basis of this, it is submitted that this panch witness was interested witness to support the case of the police. In his evidence, he has stated that the police did not give their personal search to the accused, before taking the search of the accused.

29] PW-3 is the panch witness, who was present when the accused was apprehended and the articles found in the custody of the accused were recovered and seized. The question that needs to be addressed is as to whether PW-3 Shrawan Dayaram Bulle had accompanied the police on the given date and in his presence the accused was apprehended as stated above. The evidence of interested witness cannot be discarded in *toto*, if it is found that the evidence of the said witness is otherwise credible. In this case, the first hand account of the events occurred on the spot narrated by PW-3 lends an assurance to the fact that he was indeed present on the spot. If PW-3 was not present at the time of apprehension of the accused and the recovery of articles, PW-1, based on his

imagination, would not have been able to narrate the facts with such precision.

30] PW-4 Tejram Shivram Gedam is the panch witness to memorandum and discovery panchanama. He has stated that he was called by the police to act as a panch witness. He has stated that one more person was present with him at the police station as a panch witness. He has stated that in their presence the accused made a statement that money and documents of Mr. Raut are kept at the house of one Vanjari and he would point out the house of said Vanjari. The police drew the memorandum panchanama before proceeding to the spot. It is at Exh.24. He has stated that thereafter from the Police Station, the accused took them to village Kalambi Tola. He pointed out the house of Vanjari. Mr. Vanjari was present at the house. Mr. Vanjari handed over Rs.20,000/- to the police.

31] He has stated that the accused made a statement before them that he had kept certificates and documents in a room at Arun Nagar. The accused took them to the said room and handed over a polythene bag to the police. The police inspected the said bag. They found caste certificates, some original certificates and some attested copies of documents. From the said house, the

accused handed over one more polythene bag to the police. On inspection of the said bag, the police found materials such as police uniform, badges, admission cards and identity cards. He has stated that after drawing the panchanama, the police seized the articles. PW-4 has identified all these articles in the Court at the time of his evidence. The seizure panchanama is at Exh.25. It is to be noted that the articles, recovered at the instance of the accused, clearly indicate the modus operandi of the accused to cheat the prospective candidates on the pretext of providing them employment in the Police Department. In the ordinary course of nature, the accused was not supposed to possess all these articles. It is not the case of the accused that he was doing business of manufacture and supply of these articles to the Police Department.

32] PW-4 has further deposed that the accused informed the police that he had thrown one bag near Gongle Railway Station. The police went to said Gongle Railway Station. However, they could not find the said bag. Thereafter on the say of accused, they went to Goregaon Police Station. At Goregaon Police Station, the Investigating Officer came to know that cash of Rs.11,55,500/- was recovered from the accused in a similar crime registered against the accused.

33] The evidence of this witness has been assailed on the ground that he was working as Homeguard in the said Police Station. It was also suggested to this witness that in one more case before this incident, he had acted as a panch witness. He has admitted that, at the relevant time, he was working as Homeguard. He has stated that the police had requested him to act as a panch witness and therefore, he accompanied the police. It is true that this witness, at the relevant time, was Homeguard and doing duty at the said Police Station. The Investigating Officer, by way of abundant precaution, should not have availed the services of this witness as a panch witness. However, the question that needs to be considered is whether this witness had acted as a panch witness as stated by him. If the evidence is sufficient to prove his presence as panch witness, then much weightage could not be attached to his temporary work with the police as Homeguard. He was not permanent employee. Perusal of his evidence in entirety would show that, on the given date, he acted as a panch witness. There is no reason to discard and disbelieve his oral evidence. His oral evidence has been supported by contemporaneous documentary evidence. PW-4, at the time of his evidence, identified the accused in the Court.

34] PW-8 Sandip Pramod Yadav is the Investigating Officer. He has stated that on the information of one Dinesh Patre, the accused was apprehended at Brahmapuri. He has stated that after taking personal search of the accused, they found name plates, identity cards, bogus appointment letters for the post of Police Constable and a tape for carrying out measurement of the candidates. He has stated that the accused came to the spot in police uniform. All these articles were seized. He has deposed that the accused during the course of interrogation made disclosure statement that out of Rs.1,30,000/- taken from the informant he had given Rs.20,000/- to one person and he would point out the house of the said person. He has stated that on the basis of this disclosure statement made by the accused, he along with panch witnesses, went to village Kalambi Tola. The accused pointed out the house of Lalsham Vanjari. The police made an enquiry with the said person. The said person handed over Rs.20,000/- to the police. In his evidence, he has further stated that at the instance of the accused, a bag containing articles were recovered. At the instance of the accused, they seized police cap, black belt, red belt, khaki coloured uniform, khaki coloured pant, red shoes, appointment letters for the post of Police Constable in the Police Department, identity cards of the candidates, identity card having

chest No.48, a stamp of Superintendent of Police, Amravati, name plates with badge number, photograph of the accused in police uniform and one packet containing 62 appointment letters with the stamp of Superintendent of Police, Amravati. The evidence of this witness is consistent with the evidence of independent panch witnesses.

35] PW-8, on the basis of the FIR registered against the accused, carried out investigation. PW-8 otherwise had no grudge against the accused. The investigation conducted by him, as can be seen from his evidence, revealed that the accused impersonated as a police officer for the purpose of cheating the needy candidates, aspiring to get job in the Police Department.

36] During the investigation, Identity Card No.176 of Rajendra R. Maske, Police Inspector, having seal and signature of Police Commissioner Office, Amravati was seized. Similarly, the identity card with photograph of the accused was seized. It is to be noted that the Investigating Officer otherwise had no reason to create such evidence against the accused. The evidence of the panch witnesses corroborated the evidence of PW-8 that these articles were recovered either at the instance of the accused or from the custody of the accused.

37] In this case, therefore, there is direct evidence to prove that the accused cheated the informant and other witnesses on the pretext of giving job to them in the Police Department at Amravati. He impersonated as a Police Officer. On the basis of the evidence, it has been proved that he had taken Rs.1,30,000/- from the informant, Rs.3,00,000/- from PW-5 Deepak, Rs.1,00,000/- from PW-6 Ravindra, Rs.2,50,000/- from Shishir Shivankar, Rs.2,00,000/- from Bhojraj Madavi and Rs.50,000/- from Rakesh Dorle. It has also been proved that during investigation, Rs.20,000/- were recovered at the instance of the accused.

38] Learned advocate for the accused, in support of her contention that if the panch witness is a habitual witness of police, then reliance on his evidence cannot be placed, has relied upon a decision in the case of *Simon Kaitan Fernandez Vs. State [AIR 1951 Bom. 468]*. In this case, it is held that in deciding whether the evidence of a panch witness should be believed or not, undoubtedly, his status and position in life should be considered. It should also be considered as to whether he is in the habit of frequently acting as a panch witness for the police. It is held that apart from this, the nature of the evidence given by the particular panch witness needs to be borne in mind. The mere fact that a man

has acted on several occasions as a panch witness should not be sufficient by itself to lead to the inference that the man is a police agent. It is to be noted that reliance on this judgment is placed to substantiate the submission with regard to PW-4, who at the relevant time, was working as Homeguard with the police and suggested to have acted as a witness in another case for the police. In this case, on appreciation of the evidence of PW-4, the Courts below found the evidence of this witness cogent and credible. On going through the evidence of this witness, I do not see any reason to disagree with this finding of fact. Therefore, on the basis of this decision, the submissions of the learned advocate cannot be accepted.

39] Learned advocate for the accused, relying upon a decision in the case of *Thulia Kali Vs. The State of T.N. [AIR 1973 SC 501]*, submitted that delay in lodging the FIR in this case is inordinate and therefore, in the absence of explanation of the said delay, a doubt is created about false implication of the accused in this case after due deliberation. In this case, the Hon'ble Apex Court has held that the FIR in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the stage of trial. The importance of the

report can hardly be overestimated from the standpoint of the accused. The object of insisting prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. It is held that delay in lodging the FIR quite often results in embellishment which is a creation of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is held that, therefore, the delay in lodging the FIR should be satisfactorily explained.

40] In my view, in this case, the accused had cheated and duped number of candidates, aspiring to get job in the Police Department. The aspiring candidates believed the accused and paid money to him to secure the job. The accused impersonated as a Police Officer. The material collected during the course of investigation is sufficient to conclude that in order to cheat the aspiring candidates, he had kept the entire material viz. uniform, belt, caps etc. ready to be provided to the aspirants on their

appointments in the Police Department. The aspiring candidates believed him. It is to be noted that process of recruitment is time consuming. The accused had deliberation with the aspiring candidates on more than one occasions and thereby made them to believe in his promise. In this process, when the accused was successful in creating confidence in the aspiring candidates, he took money from them. It is to be noted that when the informant came to know that he was cheated by the accused, he made an enquiry. His enquiry revealed that the accused had cheated some other candidates as well. The accused was not known to the informant as well as to the other candidates before meeting them. The informant and other candidates badly needed the employment and therefore, they succumbed to the promise and assurance of the accused. The tricks and *modus operandi* adopted by the accused were such that he made them to believe that he was the Police Inspector. The informant after making enquiry with the other candidates, came to know that they were also cheated by the accused. They took the search of the accused. When one cheated candidate informed him about the meeting of the accused with him at Brahmapuri, he went to the police and reported the matter. In this case, therefore, there was no delay, as such, in lodging the report, considering the nature and sequence of the events.

Therefore the submissions advanced by the learned advocate relying upon this decision cannot be accepted.

41] Learned advocate for the accused, relying upon a decision in the case of *Rabindranath Prusty Vs. State of Orissa [1984 Cri. L.J. 1392]*, submitted that after conducting the search of the accused, the procedural formalities were not followed. It is to be noted that the personal search of the accused was not taken. The search of his bag, which ultimately found containing the police uniform and other materials, were searched. In this case, on going through the evidence of the Investigating Officer, I do not see that there was any illegality, while conducting the search.

42] In the facts and circumstances, I conclude that the concurrent findings of fact recorded by the Courts below are based on proper consideration and appreciation of the evidence. The Courts below have not committed any mistake or error in appreciating the evidence. Therefore, the concurrent findings of fact recorded by the Courts below cannot be interfered with. It is to be noted that considering the serious nature of the crime committed by the accused, interference in the order passed by the Courts below on the quantum of sentence is also not warranted. The revision therefore fails. It is accordingly **dismissed**.

43] Before parting with the matter, it is necessary to place on record the appreciation for the able assistance rendered by learned advocate Ms. Sonali Saware, appointed by the High Court Legal Services Sub-Committee, Nagpur as well as by learned Additional Public Prosecutor Ms. Mayuri Deshmukh. Fees payable to the learned advocate for the accused is quantified at Rs.10,000/- (rupees ten thousand only) and which shall be paid to her by the High Court Legal Services Sub-Committee, Nagpur.

(G. A. SANAP, J.)

Vijay