



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 506 OF 2006

. The State of Maharashtra
Through Police Station Officer,
Police Station Shivajinagar,
Latur, Dist.Latur.Appellant

Versus

1. Sambhappa Trimbakappa Girwalkar
Age: 72 years, Occu. : Advocate,
R/o. Shivchaya, Opp. To Panchayat Samiti,
Latur.
2. Shantveer Gangadhar Chaudhari
Age: 52 years, Occu.: Advocate,
R/o. Basveshwar Colony, Ausa Road,
Latur.Respondents

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APP for Appellant State : Mrs.D.S.Jape
Advocate for Respondents : Mr.Ajinkya Joshi h/f. Mr.S.V.Natu
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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 07 AUGUST, 2025

PRONOUNCED ON : 13 AUGUST, 2025

JUDGMENT :-

1. In this appeal, there is challenge by the State to the Judgment and order of acquittal dated 15-04-2006 passed by learned Chief Judicial Magistrate, Latur in R.C.C. No.232 of 2000.

BRIEF FACTS OF THE CASE

2. In nutshell, present respondents (original accused) were chargesheeted by Shivajinagar Police Station, Latur, alleging that they have committed offence under Sections 420, 465, 468, 471, 511 read with 34 of the Indian Penal Code (IPC) as they indulged in cheating the State Government by filing application under Section 28-A of the Land Acquisition Act ((hereinafter referred as “the Act”) on behalf of one Ibrahim Rahim Pathan in spite of said person filing Reference under Section 18 of the Act and having already stood beneficiary of the compensation. Allegations are that both accused manufactured documents and asserted claim for compensation even when they had knowledge about said Ibrahim had received compensation as per law.

3. On receipt of complaint from PW1 Sanjay Anantrao Adhav, Special Land Acquisition Officer (SLAO), investigation was carried out and on its completion, both accused were chargesheeted and tried before learned Chief Judicial Magistrate, Latur. During trial, prosecution adduced evidence of in all five witnesses and relied on documentary evidence. Learned Chief Judicial Magistrate appreciated the above evidence and ultimately reached to a finding that prosecution failed to bring home any of the charges and finally acquitted accused by judgment and order dated 15-04-2006.

Feeling aggrieved by the same, appellant State preferred present appeal.

SUBMISSIONS

On behalf of appellant State :

4. On behalf of State, learned APP pointed out that the Government of Maharashtra acquired lands of village Uti for Tavarja Project i.e. by invoking provisions under Section 4 of the Act i.e. of issuing notification then acquiring lands of several persons and awarding compensation by the SLAO. Learned APP pointed out that persons aggrieved by the quantum of compensation had also preferred land references under Section 18 of the Act including Ibrahim Rahim, who was also a resident of same village. His LAR number was 74 of 1980 and in the same award was also passed.

5. Learned APP further pointed out that while scrutinizing the process of disbursement of award, PW1 Adhav, who was acting as SLAO, realized that respondents accused, who are lawyers, concealed the fact of receipt of award under Section 18 of the Act and moreover, filed proceedings under Section 28-A of the Act. This was according to PW1 Adhav fraud tried to be played on the State Government by manufacturing documents and moreover, without consent and knowledge of Ibrahim Pathan.

6. Learned APP further submitted that on receipt of complaint from PW1 Adhav, investigating machinery carried out thorough investigation, which revealed commission of above offence and therefore, both respondents were chargesheeted and tried. She pointed out that, there was both oral as well as documentary evidence on behalf prosecution, however, same has been improperly appreciated and learned trial Court has erred in acquitting accused.

On behalf of respondents - accused :

7. In answered to above, learned counsel representing accused respondents supported the judgment and order of acquittal and prayed to dismiss the appeal.

SUM AND SUBSTANCE OF EVIDENCE IN TRIAL COURT

8. **PW1** Sanjay Anantrao Adhav is Complainant. He in his evidence at exh.35 deposed that, he scrutinized LAR No.402 of 1979 which was decided on 27-02-1986 and realized that Advocate Chaudhary and Advocate Girvalkar had filed application under Section 28-A contending that reference under Section 18 has not been filed. He further deposed that, it was noticed that in fact Ibrahim Rahim on whose behalf both above accused acted and initiated

proceedings, had already filed claim for enhancement and it was already decreed on 31-01-1987 and even decree was passed. In spite of knowledge to that extent, above named accused Advocates filed fresh claim under Section 28-A of the ACt for again availing the benefits of compensation in Ibrahim Rahim's name, who had already died, and therefore, he lodged report.

9. **PW2** Rajjak Maheboob Pathan, resident of the village Uti, deposed at exh.46 that, his lands in Gut No.18, 19, 28 and 32 were acquired by the State Government, but as less compensation was paid, he filed claim for enhancement. He deposed that his uncle Ibrahim Rahim, who is now dead, had also sought compensation through Advocates namely Inamdar and Manale. That, Advocates Girvalkar and Chaudhari (accused herein) were never engaged and no application under Section 28-A was authorized to be filed. However, in examination-in-chief itself, he stated he does not know how above two accused filed application for enhancement.

10. **PW3** Ajam Rasulsab Pathan, a resident of same village Uti, also deposed about his land being acquired along with land of Ibrahim Rahim, who was his uncle and that he and his uncle filed claim for

enhancement of compensation through Advocate Inamdar and Advocate Manale and that accused Advocates were not engaged for further enhancement. He too denied signatures over exhibits 38 and 39 and is unable to state how said application reflects his name and finally denied engaging accused.

11. **PW4** Umrao Bashu Pathan, whose land was acquired for the same project, also stated that he knew Ibrahim Rahim. That, he had engaged Advocate Surayawanshi and Advocate Shinde for seeking enhancement. He denied having engaged accused for enhancement and denied giving thumb impression or signature over Vakalatnama exhibits 38 and 39.

12. **PW5** Ramesh Kallappa Kantewar is the Investigating Officer, who carried out investigation and filed chargesheet.

13. All above witnesses are **cross-examined** by accused. Except PW1 Adhav / informant, rest all witnesses seem to be also land owners of the lands, which were acquired and they have unanimously admitted about engaging respective Advocates of their choice for seeking enhanced compensation and have in unison

denied engaging accused for further compensation. They have also deposed about Ibrahim Rahim to be already dead. PW2 Rajjak and PW3 Ajam seem to be very nephew of the Ibrahim Rahim and they too have denied engaging accused. Therefore, the only evidence that is required to be put to scrutiny to ascertain whether prosecution has made out a case is that of PW1 Adhav.

14. This Court has already extracted the substance of examination-in-chief of PW1 Adhav. Now, it would be desirable to also deal with the **cross-examination** faced by him, which for ready reference is reproduced as under:

“Application U/Sec. 28-A was filed on 11-4-1986 whereas Judgment in L.A.R.No. 74/80 was delivered on 31-1-1987. S.T. Manale was advocate of Ibrahim Rahim in L.A.R.No. 74/80. L.A.R. No. 402/79 was decided on 27-2-86. It is not true to say that a person is competent to file application U/Sec. 28-A of L.A.Act when his claim filed U/Sec. 18 is pending in the competent Court. The L.A.O. has to conduct scrutiny of the application filed U/Sec. 28-A. The L.A.O. is competent to dismiss the application if it is not tenable. The Dept. came to know about filing application U/Sec. 28-A by Ibrahim Rahim on 11-4-86. Claim U/Sec.18 is to be filed before L.A.O. and then it is forwarded to Civil Court. Register of claim filed U/Sec. 18 is maintained. The L.A.O. office is represented by

Asstt. Govt. Pleader in the Court. The Dept. is having communication of facts with D.G.P. Information about decision in L.A.R. and execution filed on that decision is given to L.A. Office. The application U/Sec. 28-A is decided after scrutiny of all documents. It is true that Ibrahim has received enhanced compensation as per decree in L.A.R. 74/80 on 18-9-87. That payment was sent by L.A.O. Office. Before making payment, U/Sec. 28-A the L.A.O. has to ascertain the identity of claimant through Talathi or any other competent person. I was not knowing whether appeal was pending against the Judgment and decree passed in L.A.R. No. 402/79. I presumed that Ibrahim Rahim might have given information to Adv. Girvalkar and Chaudhari about reference filed U/Sec. 18. Not true to say that my presumption is false. I do not know that many people filed application U/Sec. 28-A, though they have filed claim under Section 18 of L.A. Act. I do not know whether many people were filed double applications U/Sec. 28-A. It is true that many people filed application U/Sec. 28-A after decision of L.A.R. No. 402/79. Petition U/Sec. 28-A filed by Ibrahim Rahim was kept before Lok-Nyayalaya held on 31-1-99. At that time Chandele was L.A.O. It is true that Girvalkar Advocate had filed some representation before Collector in respect of Petition U/Sec. 28-A, prior to and after to Lok-nyayalaya. Not true to say that due to frequent representation by Shri Girvalkar, the then Collector Shri Shukla was annoyed. Not true to say that to take revenge of Shri Girvalkar he instigated me to file false case. Not true to say that other L.A.O. were not ready to take action against Girvalkar so I was specially appointed as L.A.O. Not true to say that to defame Girvalkar, the Dept. has published news in the newspaper. Not true to say that only to harass and to

defame Shri Girvalkar I filed false case. A letter dated 8-6-99 I issued a letter to Collector to demanding funds. I do not know whether in reply to that letter, Collector issued letter dated 17-6-99. Not true to say that I have no authority or locus standi to file complaint against accused. Not true to say that I have filed false complaint. Not true to say that accused were not having intention to cheat Govt. Not true to say that accused acted bonafidely and in good faith.”

ANALYSIS

15. On carefully evaluating above evidence, it is emerging that here, there is no dispute that lands of village Uti were acquired by the State Government and award was declared by the SLAO, which was taken exception to by the land owners including villagers, deceased Ibrahim Rahim and PW2 Rajjak, PW3 Ajam, PW4 Umrao. There is also no dispute that references have been filed under Section 18 of the Act. What is now required to be seen is that, as is the case of prosecution, whether both accused with dishonest intention and in spite of having knowledge about deceased Ibrahim Rahim beneficiary of award under Section 18 of the Act, again at his instance, deliberately to play fraud on the Government, filed proceedings under Section 28-A of the Act.

16. In such backdrop, if the cross-examination reproduced above is

put to scrutiny, here it is emerging that witness PW1 Adhav, who has set law into motion levelling above allegations, has merely entertained a doubt. The manner of his admission in cross-examination, clearly suggests that it was his mere presumption that to play fraud on the Government, accused persons had asserted claim for further award, in spite of knowing matter to be decided under Section 18 of the Act. He has categorically used the word that he was not knowing whether any appeal is pending against the judgment and decree passed in LAR No.402 of 1979. He answered that he merely “**Presumed**” that Ibrahim Rahim “**might**” have given information to accused. He admitted that petition under Section 28-A of the Act at the instance of Ibrahim Rahim was kept before Lok Adalat held on 31-01-1999. He also admitted that accused Advocate Girwalkar filed representation before Collector both prior to and post Lok Adalat. Rest is all denial.

17. Therefore, on complete re-appreciation of evidence, there is nothing to hold that with dishonest intention from the inception accused persons, in spite of having knowledge of proceedings concluded under Section 18 of the Act, to play fraud on the Government, they manufactured documents and by suppressing

previous proceedings, fresh proceedings for further compensation were sought in the name of a dead person.

18. There is no evidence to suggest that accused persons had knowledge or in spite of being aware of proceedings under Section 18 of the Act on behalf of deceased Ibrahim Khan had come to an end and still they filed application under Section 28-A of the Act. There is no evidence whatsoever with regard to fabrication or manufacturing of false documents. Required ingredients for attracting the charges are not available as very Investigating Officer PW5 Kantewar has apparently not taken care in gathering sufficient evidence to fortify or substantiate prosecution case.

19. When case was of filing application under Section 28-A of the Act in spite of reference under Section 18 of the Act being decided, there is mechanism provided under the Act for the Collectorate Authorities to independently ascertain maintainability of proceedings under above Section. No steps are taken by Collectorate Authorities, rather PW1 Adhav, who is a SLAO, has merely entertained a doubt and has directly instituted proceedings without there being any substance in his so called apprehension.

20. Resultantly, there is no evidence on behalf of prosecution in support of the charges. Essential ingredients for bringing home the charges are patently missing. No fault can thus be found in the order of acquittal passed by learned trial Court so as to interfere. Accordingly, I proceed to pass following order :

ORDER

Appeal is dismissed.

(ABHAY S. WAGHWASE)
JUDGE