

(1979) 12 BOM CK 0013
In the Bombay High Court
Case No : Criminal Appeal No. 85 of 1978

Bhaurao Marotrao Manekar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 11-12-1979

Acts Referred:

Constitution of India, 1950 — Article 311, 311(1)
Maharashtra Land Revenue Code, 1966 — Section 11(2), 13(4), 7(4), 9A
Penal Code, 1860 (IPC) — Section 161

Citation : (1980) MhLj 445

Hon'ble Judges : M.R. Waikar, J

Bench : Single Bench

Advocate : M.T. Dharmadhikari, for the Appellant; M.A. Garud, Asstt. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.R. Waikar, J.—Appellant Bhaurao who was working as a Talathi having been convicted of the offence punishable u/s 161 of the Indian Penal Code and section 5 (1) (d) read with section 5 (2) of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 500, or in default to suffer rigorous imprisonment for six months, has preferred the present appeal.

2. It is common ground that the appellant at the relevant time was working as a Talathi or a Patwari at village Tiwari, district Yavatmal. Kuwarsing (P. W. 1), Jemla (P. W. 4) and one Sakru owned lands at village Tiwari. Kuwarsing and Sakru wanted to sink wells in their fields, while Jemla wanted to install an oil engine on his existing well. They required loan from Land Development Bank, Digras and for that purpose they required copies of crop-statements, Record of rights and a certificate from the Patwari.

3. The prosecution alleged that these three persons had approached this appellant and had furnished him with blank forms required for preparation of the

above documents. The appellant demanded a sum of Rs. 25 from each of them for supply of these documents to them.

4. It was then alleged that on second occasion Kuwarsing (P. W.1) and Jemla (P. W. 4) approached the appellant when he again made a demand for an amount of Rs. 25 from each of them and when they expressed their inability the appellant told them that they may collect the amount and meet him at Digras weekly bazar on 31-1-1976 (Saturday). He further told them that if for any reason he failed to attend the weekly bazar they should see him at his residence at Tiwari. On returning to their village Kuwarsing and Jemla decided to inform the Anti-Corruption department and accordingly Kuwarsing went to Yavatmal on 31-1-1976 and lodged his complaint with Police Sub-Inspector Choudhari (P. W. 8), Kuwarsing had carried with him a sum of Rs. 50 for himself and for Jemla. Choudhary sent a wireless message to Deputy Superintendent of Police A. C. B., Nagpur to come to Yavatmal for the trap and produced (Cuvvarsing before the Judicial Magistrate, First Class, with an application for permission to make an investigation into his complaint. The learned Magistrate accorded the necessary permission (Ex. 43) to Police Sub-Inspector Choudhary. Choudhary then requisitioned the services of two Panchas, namely, Sorte (P. W. 3) and one Kashattiwar. The currency notes of Rs. 50 were produced by Kuwarsing, the necessary test with the help of phenolphthalein powder necessary for the execution of such trap was taken and the party went to Digras in a jeep. As the appellant was not found in Digras weekly bazar, the party went to village Tiwari. Kuwarsing and Panch Sorte went to the house of the appellant and learnt from his son, who was playing with other children in front of the house, that the appellant was taking meals. After some time the appellant came out and flashed torch light on the faces of both of them. The appellant then asked Kuwarsing whether the amount was brought and he told the appellant that he had brought the amount only for two persons, whereafter the appellant again flashed the torch light around the courtyard, went inside the house and returned asking Kuwarsing to give the money to his son. When Kuwarsing requested the appellant that he himself should accept the amount, the appellant told him that he and his son were not different entities. Kuwarsing then took out the tainted notes from his pocket and handed them over to the son of the appellant aged about 11 years, who counted the same and told his father that they were Rs. 50. He then kept the same in the pocket of his pant. After the agreed signal was given, Police Sub-Inspector Choudhary, the other Panch and policemen rushed to the spot. Police Sub-Inspector Choudhary was told that the amount was given to the son of the appellant, but by this time the son of the appellant had disappeared. The son of the appellant was found concealing himself in the nearby house and was traced out. The hands of the son were tested in the solution of sodium carbonate and the result was positive. Then the currency notes were taken out from his pocket. After the currency notes were tested and sealed they were attached. From the cupboard inside the house of the appellant the blank forms of crop-statement, Record of night and Asamiwar patrak bearing the

names of Kuwarsing, Jemla and Sakru on the reverse were found and they also were seized. After obtaining the sanction for the prosecution from the Sub-Divisional Officer, Darwha Shri Ramteke (P. W. 1) the appellant came to be prosecuted for the aforesaid offence.

5. The appellant denied that he ever demanded any bribe from the aforesaid three persons, as alleged, for supply of documents. He stated that Kuwarsing and two other persons had come to him with three forms with a request to fill in the same, but he told them that he could not do so unless they made an application and paid fees as per the rules, whereafter they went away. Thereafter Kuwarsing and Jemla came and asked him again to fill in the forms and to give a letter of recommendation. He again told them that they ought to make an application and must pay the prescribed fee. The blank forms which they had brought were never retained by him but they were taken away by these persons. On the day of the incident at about 8.00 p.m. when he came out of his house after taking meals he saw Kuwarsing who again asked him to fill in the forms and that he repeated the same thing that he could not do so unless a regular application accompanied by necessary fees was made by him. When he started to move out from his courtyard for a walk, Kuwarsing said that he had not brought the application but had brought the money when again he was told that no extract could be given unless an application was made. Kuwarsing then tried to put the money forcibly in the pocket of the son of the appellant. Thus according to the appellant, Kuwarsing, Jemla and Sakru who are inter se related made a false complaint against him as he refused to fill in the forms without making any application.

6. The learned Special Judge found that the offences were duly brought home against the appellant and convicted and sentenced him as aforesaid.

7. Shri Dharmadhikari, the learned counsel for the appellant, vehemently argued that the trial must stand vitiated for want of a valid sanction as required by section 6 of the Prevention of Corruption Act (referred to hereafter as the Act). The appellant, it was submitted, was appointed by the Collector and the sanction in this case was given by the Sub Divisional Officer, who was not the authority competent to remove him from service. Shri Ramteke, the Sub Divisional Officer (P. W. 7) deposed that village Tiwari where this appellant was working fell in his jurisdiction and that there are special written orders issued by the Collector delegating powers to the Sub Divisional Officer for appointing a Talathi. The learned Special Judge held this sanction at Ex. 35 accorded by the Sub Divisional Officer, Shri Ramteke (P. W. 7), as a valid and legal one upon the construction of sections 9-A and 13(4) of the Maharashtra Land Revenue Code, 1966.

8. Section 9-A of the Maharashtra Land Revenue Code, in my opinion, has no relevance, which deals with delegation of powers by the State Government" to an officer not below the rank of the Collector. Mr. Garud, the learned Assistant Government Pleader, however, relied upon section 7 (4) and Section 13 (4) of the Maharashtra Land Revenue Code and submitted that the Sub Divisional Officer in

relation to the sub-division under his charge exercises all powers conferred by the said Code upon the Collector. The powers of the Collector to appoint Talathis in the district are thus exercisable by the Sub Divisional Officers also in relation to the sub divisions. He further submitted that the authority having power to make an appointment has also the power to dismiss that person vide section 16 of the Bombay General Clauses Act, 1954. Since the powers of the Collector and the Sub-Divisional Officer in the matter of appointment of Talathis are coordinate and concurrent the two authorities also carry with them the power to remove or dismiss the Talathis. The submission, therefore, is that though this appellant may have been appointed by the Collector, since he was serving under the Sub Divisional Officer, Shri Ramteke, in his sub-division, he could dismiss and remove him as much as the Collector could exercise that power. In other words, what is submitted is that in the matter of appointment and removal of Talathis, the Collector and the Sub Divisional Officer (in relation to his sub-division) must be deemed to be identical or concurrent authority.

9. The provisions of sections 7 (4) and 13 (4) of the Code, which are relied upon by the prosecution, may be extracted here.

7(4) The Collector may appoint to each district as many persons as he thinks fit to be Circle Officers and Circle Inspectors to be in charge of a Circle, and one or more Talathis for a same, and one or more Kotwals or other village servants for each village or group of villages, as he may deem fit".

"13 (4) The Sub-Divisional Officer shall subject to the provisions of Chapter XIII perform, all the duties and functions and exercise all the powers conferred upon a Collector by this Code or any Jaw for the time being in force, in relation to the Subdivision in his charge :.....

10. Now it cannot be gainsaid that all Revenue Officers in a district, including the Sub-Divisional Officer, are subordinate to the Collector. (See section 11 (2) of the Code). The Sub-Divisional Officer thus is subordinate in rank to the Collector, though there may not be any subordination to respect of the powers and duties by virtue of sections 7 (4) and 13 (4) of the Code.

11. Whether Sub-Divisional Officer Shri Ramteke, who had not made this appointment of the appellant was an authority competent to remove him from service is the crucial question. It is necessary to advert to the constitutional protection guaranteed by Article 311 (1) of the Constitution to civil employees which reads as under:

311(1) No person who is a member of a civil service of the Union or an all-India Service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

12. The word "subordinate" used in this Article has been construed to mean subordination in rank and not subordination of function. In Mahadev Prasad Roy

v. S. S. Chatterjee A I R 1954 Pat 285 the petitioner was appointed as a lino-operator in the Government Printing Press, Gulzarbagh on 16-7-1928. The appointment was made by the Superintendent of the Government Printing Press. On a charge of theft, the Deputy Superintendent dismissed him from service and the contention of the petitioner was that there was violation of Article 311 (1) of the Constitution. The order of dismissal was sought to be justified by the Government on the ground that the Government by an order dated 26-3-1952 had authorised the Deputy Superintendent to exercise all the powers and functions exercisable by the Superintendent in respect of the press section of the Government in printing press of Gulzarbagh. The argument, similar to the one advanced here, was repelled in that case with these observations, placing reliance upon two Privy Council decisions reported in AIR 1949 112 (Privy Council) and AIR 1937 27 (Privy Council) ;

The argument of the Government Advocate is that the Deputy Superintendent has been completely vested with powers of appointment and dismissal of the staff. It was contended that the Deputy Superintendent was not subordinate to the Superintendent but his authority was coextensive with that of the Superintendent. It was argued that the designation of a particular officer was immaterial but, on the contrary, we must look to the powers and duties conferred on a particular officer. The question at issue turns therefore upon the proper interpretation of Article 311 of the Constitution; in other words, what is the meaning of the word "subordinate" used in this article? In my opinion the word "subordinate" must be properly construed to mean subordination in rank and not subordination of function; otherwise the protection referred to in Article 311 would be illusory".

13. In The state of U.P. and Others Vs. Ram Naresh Lal, the Supreme Court observed that the Government is entitled to confer powers on an officer other than the appointing authority to dismiss a Government servant provided he is not subordinate in rank to the appointing officer or authority.

14. Shri Garud, the learned Assistant Government pleader, relied upon Hariprasad Raghuram Dave Vs. State of Gujarat and Others, in support of a proposition that subordination in rank or grade may not be the only criterion in all cases. The petitioner, who was a Constable in that case, was appointed by the District Superintendent of Police Surat. He was dismissed by the Deputy Commissioner of Police Ahmedabad. Whether the order violated the provisions of Article 311 of the Constitution was the question. It was found that the District Superintendent of Police, Surat and the Deputy Commissioner of Police, Ahmedabad were coordinate in rank and in that case also the rank necessarily became the criterion for deciding the question. It was held that the fact that the District Superintendent of Police was the highest authority in a District while the Deputy Commissioner of Police was not so in the city of Ahmedabad made no difference. The criterion that both must be the heads of department or division, it was observed, could not be adopted in the present case.

15. Then a reference was made to a catena of cases and it was observed that in some decisions the concept of subordination has been judged mostly from the point of view of rank or grade and at times even from the point of view whether removing authority is the head of the department just as, appointing authority was the head of his department. Observations obiter, therefore, were made that in a particular set of facts the question may have to be answered from a point of view even on function or powers to be exercised by the respective officers. This question in fact never came up for consideration for deciding the said cases.

In the instant case, there is no doubt coordination or concurrence so far as powers and function of Collectors and Sub-Divisional Officers are concerned in the matter of appointments of Talathis by virtue of section 7 (4) and section 13 (4) of the Code, but all the same the constitutional protection guaranteed to a civil employee under Article 311 (1) of the Constitution that he could not be removed by an authority subordinate to that by which he was appointed, shall have no meaning if a subordinate authority in rank to the one which had appointed him is to be invested with powers and functions to remove him from service. In my judgment, therefore, coordination or equality in respect of the powers and functions would be no justification and no criterion, if the dismissing authority is lower in rank to the one which had made the appointment. The obiter observations of Vakil J. in Hariprasad's case (cited supra), therefore, cannot be pressed into service so far as the facts of the present case are concerned. The word "subordinate" in Article 311 (1) of the Constitution has reference to "subordination in rank".

16. In this view of the matter, reading sections 7 (4) and 13 (4) of the Code and reading both these provisions, subject to Article 311 (1) of the Constitution, what follows is that the Sub-Divisional Officer purporting to act u/s 13 (4) of the Code is empowered, no doubt, to appoint Talathis in the sub-division in his charge and by virtue of section 16 of the Bombay General Clauses Act, the power to suspend or dismiss the Talathi so appointed may be ingrained and included in it, but all the same he being subordinate in rank to the Collector in charge of the district administration, he cannot in the teeth of the constitutional provision of Article 311 (1) dismiss a Talathi appointed by the Collector, though working under him in his sub-division. The powers to appoint the Circle Inspectors or Talathis or Kotwals by the Collector in his district and by the Sub-Divisional Officer in relation to his sub-division may be co-extensive and concurrent, but the Sub-Divisional Officer being an authority subordinate to the Collector cannot remove from service the said officer appointed by the Collector without doing violence to the constitutional provision of Article 311 (1) of the Constitution of India. The argument advanced by Shri Garud, the learned Assistant Government Pleader, that though the appellant was appointed by the Collector, he could be dismissed by the Sub-Divisional Officer, under whom he was working cannot, therefore, be accepted. Thus the sanction accorded by the Sub-Divisional Officer in the instant case was bad and it invalidates the trial since the learned Special Judge could not at all take cognizance of the offence, sought to be pitchforked on such an illegal

sanction.

17. After the above submissions were made and at the conclusion of the arguments, Shri Garud submitted that the appellant-accused in this case was appointed by the Sub Divisional Officer and not by the Collector and prayed for time to produce documentary evidence. The request was granted and both the parties produced certain documents which are admitted on record being acceptable to both. The documentary evidence so adduced in this appeal shows that by Government Resolution dated 17-1-1961 the State Government created as many as 1758 posts of Patwaris in order to implement smoothly the provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958. The appellant then came to be appointed in one of these temporary posts as a tenancy Patwari with effect from 1-4-1961 by the Sub Divisional Officer, Yeotmal. The tenancy establishment was then discontinued. The Collector Yeotmal by his order dated 23-12-1965 terminated the services of junior-most regular Patwaris and those who were on temporary establishment as tenancy Patwaris were absorbed in the regular cadre of revenue Patwaris. In respect of this appellant, the order passed by the Collector, Yeotmal was to this effect:

Consequent on discontinuation of tenancy Revenue Inspectors and Tenancy Patwaris in the district with effect from 31st December 1965 afternoon, the following Postings are hereby ordered with immediate effect:

Name of tenancy Revenue Inspectors reversed as Patwaris and tenancy Patwaris absorbed and appointed as regular Patwaris.

Name of the Halka to whom posted.

Remarks

Shri B. N. Manekar

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vice

Shri A. S. Raut. "

18. This documentary evidence that was produced in this appeal shows that though initially the appellant was no doubt appointed by the Sub Divisional Officer on the temporary establishment as a tenancy Patwari, this temporary establishment was disbanded and the appointments so made came to an end. In order to protect the personnel working on this temporary establishment, the Government decided to absorb them in the regular cadre of Revenue Patwaris. In the meantime in the regular cadre some Revenue Inspectors and Patwaris were appointed after the above temporary establishment on 17-1-1961 was created and on absorption of these personnels from temporary establishment in the regular cadre, those who were junior-most in the regular cadre were discontinued, in order to protect the length of service, pay etc. of the senior Revenue Inspectors and Patwaris, though they were working on temporary

establishment. Though the temporary establishment was converted or merged into the permanent establishment, in order to protect the interest of those who were working on the temporary establishment, the fact remains that the initial appointment made by the Sub Divisional Officer on the temporary establishment, stood superseded by the order passed by the Collector, who passed regular orders of absorption, appointments and postings. Though the length of service, pay etc. of temporary appointees were protected, the fact remains that this temporary appointment was discontinued and the absorption-cum-appointment order was passed by the Collector. The initial orders passed by the Sub Divisional Officer can no longer survive consequent on discontinuance of services of those working on temporary establishment, and the same must be deemed to have been superseded or merged in the fresh orders of absorption and appointments passed by the Collector. It is, therefore, idle to contend that the appellant in this case must be deemed to have been appointed by the Sub Divisional Officer and not by the Collector, or that the sanction given by the Sub Divisional Officer was legal and proper.

19. In the result, I find that the learned Special Judge could not take cognizance of this offence on the sanction granted by the Sub Divisional Officer, which was bad and invalid in law.

20. Though it would not be necessary to consider the matter on merits, I find that Kuwarsing (P.W.1) and Jemla (P. W. 4) duly proved that the appellant had demanded Rs. 25 from each of them and that in pursuance thereof they had supplied him blank forms. Having carefully gone through the evidence of Kuwarsing (P.W.1) I find that there are no doubt discrepancies, but they are of minor details which only show that he is a simple artless villager. He and panch witness Sorte (P. W. 3) duly proved that the appellant had made a demand at the time of the trap and that on his asking the amount was given to his son, who counted the same and kept it in his pocket. The presence of the son of the appellant is not disputed, but what is suggested in the defence was that the amount was forcibly thrust in his pocket. In that case the appellant should have examined his own son. Moreover, if the currency notes were forcibly thrust in the pocket of the boy, despite of his protest (and not surreptitiously or without his knowledge) he would have thrown away the currency notes and would not have retained them. The fact that he ran away from the place, concealed himself and that subsequently after he was traced out the tainted notes were actually recovered from his pocket is itself wholly inconsistent with the theory that money was forcibly planted in his pocket despite his protest. After all it was not something which was permanently affixed or embedded in his pocket that he could not disarm or relieve himself of that objectionable material. The fact that both the hands of that boy when tested in solution yielded positive result, coupled with the immediate subsequent conduct of the boy and the fact that he did not throw away the currency notes but retained them till he was traced out and caught is unquestionable pointer which is consistent only with the prosecution theory and wholly inconsistent with the defence version. The finding

of the learned Special Judge that the appellant was found guilty of the offences punishable u/s 161 of the Indian Penal Code and section 5(1) (d) read with section 5 (2) of the Prevention of Corruption Act seems to be well founded. All the same in view of the fact that the sanction granted by the Sub Divisional Officer in this case was invalid, no cognizance of the offences could be taken and the appeal on this ground has to be allowed.

21. In the result, the appeal is allowed and the conviction and sentence passed against the appellant are hereby set aside. His bail bond shall stand cancelled and the amount of fine, if paid, shall be refunded to him.