**Memorandum Of Appeal**

**In The Court Of The District And Sessions Judge, Ambala Cri. Appeal No....Of 19....**

**A (Give particulars) ..........Appellant**

**v.**

**State ..........Respondent**

May it Please Your Honour,

For the following among other grounds the appellant herein begs to prefer this appeal against the judgment dated......of the Judicial Magistrate F.C., Ambala in Crimi­nal Case No. 317 of 1987 convicting the appellant under Section 411, I.P.C. and sen­tencing him to undergo 6 months' R.I. and to pay a fine of Rs. 300.

**Grounds**

1. That the conviction is bad in law.

2. That the judgment of the lower Court is not according to Section 354 of the Cr. P.C., 1973.

3. That the learned Magistrate should have inferred from the conduct of the appel­lant deposed to by the Investigating Officer that he was absolutely straight-forward in his dealings and that such a conduct of the appellant as has been deposed to by P. Ws. Nos. 2 and 4 would hardly be consistent with his guilty knowledge.

4. That the learned Magistrate should have believed that the articles were purchased bonafide for proper market price and inferred from that the absence of any guilty knowledge of the appellant

5. That the learned Magistrate should have taken into account the representation made to him by the alleged thief.

6. That the articles sold were common articles of every day use found in the possession of people of even modest means.

7. That the learned Magistrate should have disbelieved the evidence of P.W's 6 and 7 who identified the Bi-cycle and alleged that it belonged to Shri Z, and should have held that it was an ordinary and common article and was incapable of identifica­tion in the absence of any special mark or name.

8. That the learned Magistrate should have believed the Defence witnesses who deposed having seen articles sold to the appellant some five months prior to the inci­dent.

9. That the lower Court ought to have given the benefit of reasonable doubt to the appellant and acquitted him.

In the circumstances stated as above, the appellant prays that your honour may be pleased to admit the appeal, call for the record, release the appellant pending disposal of the appeal on bail and after hearing the case set aside the order of conviction and sentence or pass such other order as the ends of justice may call for.

And your petitioner, as in duty-bound, shall ever pray.

Date and Place. Advocate for Appellant.

Note: No separate bail-application may be filed. The copy of the judgment of the trial Court should be filed along with the petition of appeal and Vakalatnama.

Exercise, A, a public servant is convicted under Section 420 of the Indian Penal Code for cheating the Government by making fraudulent representations and thereby obtaining certain rationed articles in his capacity as a public servant. A is sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000 or in default to undergo further six months' rigorous imprisonment by the learned Metropolitan Magistrate, 4th Court Bombay. Against this conviction and sentence A instructs you to file an appeal in the High Court of Bombay and also to apply for bail pending the disposal of the Appeal. Draft a Memorandum of appeal on behalf of the Appellant choosing your own grounds according to the nature of the case.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY Criminal Appellate Jurisdiction**

**Appeal No.........of 19........**

**A (Give brief particulars) ..........Appellant**

**v.**

**State........... ...........Respondent.**

Appeal against the order of conviction and sentence passed under S. 420,I.P.C. on (put date) by the learned Metropolitan Magistrate, 4th Court, Bombay.

To,

His Lordship, the Chief Justice and his Companion Judges of the Hon'ble Court.

The humble petition of the appellant above-named Most Respectfully Sheweth:

That the learned Metropolitan Magistrate convicted the appellant under the above-mentioned section for a period of one year and to pay a fine of Rs. 1,000 or in default to undergo further R.I. for six months.

Being aggrieved by the aforesaid order of conviction and sentence the petitioner begs to prefer this appeal to this Hon'ble Court on the following amongst other grounds:

Draft the petition on the lines of the above memorandum stating the grounds in the nature of this question. No separate application for bail is necessary. In the memoran­dum of appeal you can pray for the release of the accused on bail. Sanction to prosecute a public servant is necessary under Sec. 197, Cr. P.C. 1973.

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

**Criminal Appeal No.......of 1987.**

**Ayodhya Prasad Yadav (at present**

**in Kolhapur District Prison)...... ..........Appellant**

**v.**

**State (at the instance of**

**Borivli Police Station)......... ...............Respondent.**

Appeal against the conviction and sentences under Section 66(l)(b) of the Bombay Prohibition Act in Case No. 578/P of 1987 by the Learned Metropolitan Magistrate 26the Court Borivli, Bombay.

The appellant above-named most respectfully sheweth as follows that:

(1) The Appellant, Ayodhya Prasad Yadav, the original accused was charged under Section 66(l-b) of the Bombay Prohibition Act for possessing illicit liquor at about 11-30 P.M. on the 27th July, 1986 at Oshiwara Creek.

(2) The prosecution case in brief was that on 27-7-1986 at about 11-30 P.M. the Police party while patrolling went about three furlongs inside the Oshivara Creek and at that time the Police party came across the appellant (Original Accused) having a gunny bag and hence the Police caught the appellant on suspicion and found a K.O. tin in the gunny bag.

(3) The Learned Metropolitan Magistrate after recording the evidence did not ac­cept the innocence plea of the accused and has convicted and sentenced the appellant to undergo Rigorous Imprisonment for nine months and to pay a fine of Rs. 500 or in default to suffer Rigorous Imprisonment for three months. A certified copy of the said judgment and order is annexed hereto and marked as Annexure "A".

(4) Being aggrieved by the said order and judgment of the Learned Metropolitan Magistrate, the Appellant, respectfully, approaches this Honourable Court to call for the records and set aside the said order of conviction and sentences on the following other grounds:

(a) The Learned Magistrate erred in not taking into account the basic principle of presumption of innocence in a criminal case.

(b) The Learned Magistrate's approach to the entire case was that the defence of the accused was false and, therefore, the prosecution case should be accepted. The Learned Magistrate should have on the contrary held that the prosecution has not proved the case beyond reasonable doubt irrespective of the defence set up by the Appellant (Accused).

(c) The Learned Magistrate should have held that the defence of the Appellant was reasonably probable and, therefore, the prosecution has not led any evidence to show that the defence of the Appellant could not be accepted.

(d) The Learned Magistrate should have rejected the entire prosecution case as highly improbably because no Panchanama was drawn up to prove the prosecution case.

(e) The Learned Magistrate has erred in relying only on the evidence of the constables who were the interested witnesses.

(f) The Learned Magistrate has erred in accepting the evidence of the con­stables in the absence of any independent witness.

(g) The Learned Magistrate should have called for and recorded the evidence of S.I. Sundar who was also in the Police Party.

(h) The Learned Magistrate should have held that in the absence of corroboration by any independent witness it is unsafe to rely on the statements of the so-called interested witnesses of the prosecution.

(i) The Learned Magistrate should have rejected the prosecution case on ac­count of different versions given by the two constables.

(j) The Learned Magistrate should have rejected the entire prosecution case as false and fabricated because the sample was taken in a bottle without any panchanama and the bottle sent to C.A. was not brought to the Court

(k) The Learned Magistrate greatly erred in law on account of being preju­diced by the previous convictions of the Appellant

(l) The Judgment of the Learned Magistrate is against the weight of evidence and probabilities and is based on inferences which are not sustainable in this Honourable Court.

(m) In any event the sentence is extremely severe and therefore, the same should be reduced.

(5) The Appellant, submits that he has not filed any other appeal in this Honourable Court prior to this.

(6) The Appellant has been undergoing the sentence and is at present in the District Prison of Kolhapur.

(7) The Appellant also most respectfully prays that pending the hearing and final disposal of this appeal the Appellant be released on bail on the original terms and conditions by the order of this Honourable Court.

This..........day of........19.......

Advocate for the Appellant.

Appeal Against Acquittal

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

**Cri. Appeal No........of 1987**

**Vithalrao Ramrao Nalavade, aged about**

**52 years, having agricultural lands**

**and house at Nalavadewadi, Dhondaj,**

**Tal. Purandhar, Distt. Poona, residing ..........Appellant**

**at 171, Godupdea Road, Bombay-33 (Orig. Complainant)**

**v.**

**1. Namdeo Baburao Nalavade, aged 36 yrs.**

**2. Baban Subhedar Nalavade, aged 30 yrs.**

**3. Chander Vyankatrao Nalavade, aged 31 years.**

**4. Maruti Sarjerao Khalate, aged 31 yrs.**

**All Agriculturists residing at Nalavadewadi.**

**Dhondaj, Tal. Purandhar, Distt. Poona.**

**5. State of Maharashtra ...........Respondents**

**(Nos. 1 to 4 Orig. Accused)**

Appeal against acquittal under Sections 451, 323, 325 R/W Sec. 34 of the Indian Penal Code in Criminal case No. 137 of 1986, passed by the Learned Judicial Magis­trate, first class, Saswad, Poona.

The Appellant Most Respectfully sheweth as follows:

1. The Appellant, Vithalrao Nalavade, the original complainant, begs to submit this appeal against the order of acquittal, passed on the 22nd October, 1987, by the Learned Judicial Magistrate, First Class, at Saswad, in Criminal Case No. 147 of 1986. The appellant had lodged a complaint at the Jejuri Police Station which recorded the case and filed the charge-sheet against all the Respondent (original accused) under sections 323, 325, 451 r/w Sec. 34 of the Indian Penal Code for having committed house trespass with an intent to commit an offence by entering into the house of the Appellant on the night of 27th February, 1985 at about 9.00 p.m. and had voluntarily caused simple and grievous hurts to the Appellant and others.

2. The facts leading to this Appeal are as below. As it is necessary and relevant the Appellant is referred to as Complainant, and the Respondents Nos. 1 to 4 are referred to as accused hereunder.

3. The complainant is in permanent employment in Bombay and has been perma­nently residing at the address given in the title hereto for the last about 35 years. The complainant has got his house and agricultural lands, etc. at Nalawadewadi in Village Dhondaj, Taluka Purandhar, Distt. Poona The Complainant's family have been residing both at Bombay and at Nalawadewadi. The complainant has to go to his native place, i.e., Dhondaj on some ceremonial occasions as well as to supervise his agricultural lands.

4. All the accused have been residing at the address given in the title hereto and have got their agricultural lands.

5. On the night of 27-8-1985 at about 9.00 p.m. all the accused entered the house of the complainant and caused simple and grievous hurts with sticks and iron-bars to the complainant, one Jagannath Gulabrao the relative of the complainant, and the two elder males present in the house and some minor injuries to other also.

6. In the morning of 28-8-85, the complainant and Jagannath were admitted for their injuries and treated in the Government Dispensary at Jejuri and also at Sassoon Hospital, Poona. The Medical Officer of Government Dispensary at Jejuri informed the Police and consequently the P.S.I. Jejuri came to the said dispensary and recorded the F.I.R. and proceeded to the spot of the incident in order to investigate into the said incident. The said Police filed F.I.R. and prosecuted the said accused for the said offences.

7. All the said accused pleaded not guilty to the charge framed against them, and continued to the effect that the prosecution evidence led against them was false and fabricated. The accused denied that they had committed any offence punishable under the law on 27-8-1985. The accused further contended that since the criminal and civil disputes are going on in Bombay between the accused and the complainant and, there­fore, the complainant had falsely involved them. The accused led no defence evidence.

8. The said trial Court decided the said case on the 22nd October, 1987, and acquitted the said accused. A true copy of the said Judgment and order is annexed hereto and marked Annexure 'A'.

9. Being aggrieved by the said order of acquittal passed by the Judicial Magistrate of the First Class at Saswad, on 22.10.1987, in the said Criminal Case No. 147 of 1986 on his file and whereby the opponents Nos. 1 to 4 are acquitted of the charge framed against them. The Appellant, humbly and respectfully, begs to prefer this Appeal, against the same to this Honourable Court, for leave to appeal against the said order of acquittal. The Appellant, therefore, prays that the record and proceedings of the said criminal case be called for, and the evidence in the case be reassessed, and the Respon­dents herein (the original accused) be convicted of the offence charged, and be pun­ished according to law on the following amongst other grounds:

(a) That the order of acquittal is not warranted by law and is against the weight of evidence;

(b) That the Learned Judicial Magistrate's approach to the entire case was that the prosecution case was false and hence he had accepted the defence without any reasonable ground. The learned Magistrate should have, on the contrary, held that the prosecution has proved the case beyond reasonable doubt;

(c) That the Learned Magistrate should have held the story of the defence as highly improbable;

(d) That the Learned Magistrate has erred in relying on the prosecution witness No. 4 who has turned hostile and has suppressed the material facts;

(e) That the Learned Judicial Magistrate has greatly erred in law by finding minor contradictions in the evidence of prosecution witnesses Nos. 2 and 3. On the contrary, the Judicial Magistrate should have neglected those minor contradictions on the ground that P.W. No. 2 is an illiterate country woman and P. W. No. 3 is an illiterate girl of hardly 16 years of age;

(f) That after rightly observing that the P.W. No. 4 has suppressed the facts the trying Magistrate should have convicted the accused. The trying Magistrate should have also held that P.W. No. 4 is one of the occupants who have vacated the Appellant's premises in Bombay and have thus a grudge against the Appellant and is on cross terms with the Applicant

(g) That the Learned Judicial Magistrate erred in law and facts both by not having accepted the evidence of P.W. No. 7 who is a Government Medical Officer who has clearly stated that the injuries caused to the complainant cannot be caused by fall. The injuries can be caused by crowbar.

(h) The Learned Magistrate should have appreciated the point that the blood­stains cannot be found in the house and the bloodstained stones and sticks could not have been found in the house unless the accused entered the house and beat the Appellant (complainant) as shown in Exhs. Nos. 29 and 30.

(i) The Learned Magistrate has wrongly believed the litigation proceedings of the Court of Small Causes at Bombay, Exh. 42 which has been commenced by the well-wishers of the accused considerably subsequent to the date of the incident.

(j) The Magistrate should have held that the villagers are on cross-terms be­cause the Appellant has not allowed them to stay in his room in Bombay. Therefore, it is natural for the villagers to conspire against the Appellant and hence to cause injury and harass him.

(k) The Learned Magistrate's Judgment is against the weight of evidence and probabilities and is based on inferences which are not sustainable in this Hon'ble Court

10. The Appellant submits that he has filed, separately an application for leave to appeal in this matter.

11. The Appellant further submits that he has preferred no other similar petition in the matter to this Hon'ble Court

And for this act of kindness and justice the Appellant shall as in duty bound ever pray.

Bombay dated this.................day of December 1987.

Sd/- Sd/-

 Advocate for Appellant. Appellant.

(This appeal against acquittal must accompany an application for leave to appeal alongwith the certified copy of the judgment and order appealed against).