

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

CRIMINAL APPEAL NO. 63 OF 2000

- 1] Manik s/o Dajibaji Bhatkar,
age 35 years, occ. Junior Clerk,
R/o Sinchan Nagar, Darva Road,
Yawatmal.
- 2] Shrimant s/o Dharma Bansode,
age 38 years, occ. Office Asstt.,
C/o New Shanti Niketan Colony,
Jawahar Colony Road,
Aurangabad

...Appellants

[Original Accused Nos. 1 and 2]

VERSUS

The State of Maharashtra

...Respondent

.....
Shri A.N.Nagargoje, advocate for appellants
Shri V.H.Dighe, A.P.P. for respondent/State
.....

CORAM : V.M.DESHPANDE, J.

DATED : 9th JUNE, 2015

ORAL JUDGMENT : -

- 1] By the present appeal, the appellants are challenging their conviction and sentence as imposed upon them by the

learned Special Judge (Anti Corruption), Aurangabad, dated 1.2.2000 in Special Case No. 12 of 1994.

The appellants in this judgment will be referred to by their original position.

Appellant no.1 Manik s/o Dajibaji Bhatkar is accused no.1 and appellant no.2 Shrimant s/o Dharma Bansode is accused no.2.

By the impugned judgment and order of conviction, accused no.1 was convicted for the offence punishable under Section 12 r/w 7 of the Prevention of Corruption Act and he was directed to suffer rigorous imprisonment for six months and to pay a fine of Rs.200/-, in default to suffer rigorous imprisonment for two months.

Accused no.2 was convicted for the offence punishable under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act and he was directed to suffer rigorous imprisonment for one year and to pay a fine of Rs.300/-, in default to suffer rigorous imprisonment for three months.

Accused no.2 was also convicted for the offence punishable under Section 7 of the Prevention of Corruption Act and he was directed to suffer rigorous imprisonment for six months and to pay a fine of Rs.200/-, in default to suffer rigorous imprisonment for two months.

2] The prosecution case is as under : -

Ram Ugale (PW 1) is the complainant. He lodged complaint on 28.12.1992 with Anti Corruption Bureau, Aurangabad. The complaint is at Exh.40.

As per the complaint, the complainant belongs to Gondhali caste, which is a Nomadic Tribe.

As per the prosecution case, accused no.1 was working at the relevant time as a Junior Clerk in the office of the Vasantrao Naik V.J. and N.T. Development Corporation Limited, Aurangabad (Hereinafter referred to as, "the Corporation" for the sake of brevity). Accused no.2 was working as office assistant in the Corporation.

The complainant was in need of financial assistance for the purpose of auto rickshaw. Therefore, on 21.12.1992 he approached the Corporation and there he met accused no.2. On the said day, he was asked to attend the office on 24.12.1992 along with original papers. Accordingly, on that day he along with his friend Raju came in the office of the Corporation and met accused no.2. That time, accused no.2 asked Raju to go out of the office. Thereafter he verified all his papers and asked him to attend on 28.12.1992 for further action.

Accordingly, on 28.12.1992 complainant went to the office of accused no.2. That time, accused no.2 demanded

Rs.2,000/- from the complainant for recommending the name of the complainant to Dena Bank. Upon such demand, complainant replied that it will not be possible for him to give the said amount. Upon that, accused no.2 asked him to give Rs.500/- on the next day and to pay Rs.1,500/- after the receipt of the cheque. Reluctantly, the complainant agreed for the same. That time, it was asked by accused no.2 that on Tuesday i.e. on the next day the complainant shall show his house to accused no.1 Bhatkar and shall give Rs.500/- to him, and thereafter he will recommend the name of the complainant.

With the aforesaid assertion of the facts, the complaint was lodged with the Anti Corruption Bureau on 28.12.1992 itself.

3] Somnath Jagtap (PW 5) on 28.12.1992 was working as the Deputy Superintendent of Police in the office of Anti Corruption Bureau, Aurangabad. That day, complainant PW 1 Ram Ugale came to his office and lodged his complaint (Exh.40). After getting the complaint from the complainant, PW 5 Jagtap gave a letter to the Deputy Commissioner of Sales Tax for providing two employees to work as panchas (Exh.76). Accordingly, two panchas Shri Shilwant and Shri Joshi came to his office at 5.00 p.m. on 28.12.1992. They gave consent to act as panchas. They were called on the next day at 8.00 a.m.

On 29.12.1992 at 8.00 a.m. the complainant and panchas came in his office. They were introduced with each other. Thereafter demonstration of use of anthracene powder and ultra violet lamp was given to them. All other formalities for trap were completed since it was decided by the officials of the Anti Corruption to lay a trap as per the complaint lodged by PW 1 Ram Ugale. The proceedings were reduced into writing by drawing a pre-trap panchanama. It is at Exh.45.

4] According to the evidence of PW 1 Ram Ugale thereafter he and PW 2 Joshi panch no.1 who was asked to remain with the complainant with other members of raiding party came near Zilla Parishad building by jeep. After getting themselves alighted, complainant PW 1 Ugale and PW 2 Joshi came to the office of the accused. Ram Ugale exchanged pleasantry with accused no.2. PW 2 Joshi was introduced as cousin of Ram Ugale. As per the evidence of complainant, they sat in the office as per the instructions of accused no.2 in front of him. According to his evidence, accused no.2 was doing his work of writing and that time he told complainant to do his work and then he will do his work within 10-15 days. The evidence further discloses that accused no.2 told complainant that accused no.1 Bhatkar would come with him and he should pay money to him and should also show his house. Thereafter after

10-15 minutes accused no.1 came in the office. Accused no.2 told the complainant to bring Xerox copies of a form. Accused no.1 went in the cabin of the Manager PW 3 Ashwin Shambharkar. Thereafter accused no.1 Bhatkar asked the complainant and Joshi to bring cigarette. The said request was obliged by the complainant and Joshi. Thereafter, accused no.2 asked accused no.1 to go with the complainant to the house of the complainant and accordingly they proceeded towards his house.

The evidence of the complainant further discloses that thereafter they came to the office after filling form in the house of the complainant. According to the evidence, accused no.2 Joshi asked the complainant whether he has paid amount to accused no.1 as told yesterday. Thereafter accused no.1 Bhatkar took him and pancha in the stair case and asked him what was told by accused no.2. Thereafter, accused no.1 told the complainant to give the amount. The amount was removed by the complainant from his left pocket and held in front of accused no.1. However, accused no.1 held one brown pocket in front of the complainant and asked him to put the currency notes in the said pocket. Accordingly, complainant kept the said notes in the pocket. Then accused no.1 Bhatkar kept the said pocket in a diary and kept the said diary on the table of the Manager i.e. PW 3 Shambharkar, Thereafter, accused Bhatkar

along with the diary came down from his office. That time the signal was given to the raiding party.

Immediately, the raiding party approached. Somnath Jagtap (PW 5) asked the complainant and PW 2 Joshi as to who has accepted the amount. That time it was disclosed to him that Bhatkar accused no.1 has accepted the amount, who was not present in the office. According to the prosecution case, thereafter PW 5 Jagtap made inquiry with the Manager about the whereabouts of accused no.1. On that he was told that Bhatkar has gone to Allahabad Bank for encashment of salary cheque. He was called. Jagtap introduced himself to accused no.1 and asked him where pocket was kept. Thereafter, accused Bhatkar brought the said pocket from the file where it was kept.

As per the prosecution case, no anthracene powder was found on the hand of accused no.1. The anthracene powder was found on the notes kept in the brown envelope and also the anthracene powder was found inside the said envelope. The post trap panchanama is at Exh.46. Thereafter PW 5 Somnath Jagtap lodged report Exh.77 with the police.

5] The charge was framed vide Exh.31 against both the accused. They abjured their guilt.

6] In order to bring home the guilt of the accused, the prosecution has examined in all five witnesses. They are : -

PW 1 Ram Ugale – complainant.

PW 2 Suryakant Joshi, panch no.1, who has proved Exh.45-Pre trap panchanama and (Exh.46) post trap panchanama and who was with the complainant during the trap.

PW 3 Ashwin Shambharkar, Manager of the Corporation, who was examined on the point of presence of appellant in the office.

PW 4 Ramchandra Telang, sanctioning authority, who has proved sanction order (Exh.68).

PW 5 Somnath Jagtap, Deputy Superintendent of Police, trap was laid under his supervision and who carried out the investigation.

7] I have heard Shri A.N.Nagargoje, learned counsel for the appellants and Shri V.H.Dighe, learned Additional Public Prosecutor for the respondent/State in extenso.

Both the learned counsel and the learned Additional Public Prosecutor took me through the record and proceedings in detail. They made elaborate submissions in respect of their respective prayers.

8] Admittedly, both the accused are public servants. It is also an admitted position that the tainted notes were not in possession of any of the accused. It is also an admitted position that the tainted notes were found in the brown envelope.

The question that is posed before this court is whether there was any demand from the accused persons as alleged by the prosecution to the complainant and the money was kept in the pocket as per the say of accused no.1.

9] From the complaint (Exh.40), according to the prosecution the demand was made on 28.12.1992 for the first time though on previous occasions the complainant made visit to the office of accused no.2. From the complaint, it is clear that on earlier occasion there was no demand. Further, it is clear that on 28.12.1992 i.e. the day when complaint (Exh.40) was lodged, the accused no.2 did not make demand in presence of accused no.1. Further, complaint (Exh.40) is completely silent about the presence of accused no.1 in the office of Corporation. Thus, one can safely reach to the conclusion, even if the assertions made in the complaint are said to be correct, that the demand on 28.12.1992 was not made in presence of accused no.1 and/or accused no.1 was not aware that any demand is made to the complainant by

accused no.2.

Another demand, according to the prosecution, was made on the day of trap i.e. on 29.12.1992. Even for that, if the evidence of PW 1 Ram Ugale and PW 2 Joshi is scanned correctly, then it is crystal clear that when the demand was made by accused no.2 it was not made in presence of accused no.1 since the version of these two witnesses show that after ten minutes of the alleged demand, accused no.1 came in the office.

Now, on the point of demand by accused no.2, it would be useful to refer to the evidence of PW 1 Ram Ugale. The relevant portion is as under : -

“ We sat in the said office as per the instructions of accused no.2 in front of him. Accused no.2 was doing his work of writing. He told me to do his work and then he will do my work within 10 to 15 days. The accused no.2 told me that the accused no.1 Bhatkar would come with me and I should pay money to him and I should also show him my house. ”

10] The aforesaid version is also corroborated by PW 2 Joshi.

From the afore said evidence, it is clear that there is no specific demand. Even as per PW 3 Ashwin Shambharkar, Manager, it is the duty of the office assistant to submit the

papers to the Manager for spot verification and after spot verification, the Manager submits the proposal for loan to the Bank. It is also clear from the evidence of PW 1 Ram Ugale and PW 2 Joshi that they along with accused no.1 Bhatkar came to the house of the complainant. There two forms were filled and thereafter they returned to the office again. Thus, it is clear that before processing the proposal, spot inspection was required to be done. Even, according to PW 3 Shambharkar, accused no.1 without his permission made the spot inspection.

11] In the light of aforesaid evidence available on record, on the basis that, accused no.2 asked the complainant to do his work and told him that thereafter he will do his work within 10 to 15 days, it cannot be said that it was a demand of money.

Further even from the evidence of PW 1 Ram Ugale, accused no.1 Bhatkar was not knowing the quantum of amount demanded by accused no.2.

According to PW 1 Ram Ugale, after demand, he kept money in the pocket. It will be useful to refer to the relevant portion of his evidence.

“ Accordingly, I kept the said notes in that pocket. Then the accused no.1 Bhatkar kept the said pocket in the diary. Then accused no.1 Bhatkar kept said diary on the table of Manager and myself and Shri Joshi followed him to the

chamber of the Manager.”

This version is not corroborated by PW 2 Shamkant Joshi. His version is reproduced herein under : -

“ The pocket containing currency notes was kept in the diary and the said diary was kept below the files by the accused Bhatkar in my presence. “

However, the said diary was not found on the table of Manager, nor the diary was found below the files. The pocket containing tainted notes was seized from below the files and not with diary.

In the examination-in-chief, PW 1 Ram Ugale has stated as under : -

“ Thereafter, accused Bhatkar alongwith said diary came down from his office and I also came with him and Shri Joshi remained in the office of accused.”

Thus it is clear that both PW 1 Ram Ugale and PW 2 Joshi are not only at variance but they are ready to state anything.

12] Thus, these two witnesses are at variance where the pocket containing the tainted notes was kept. It is to be noted that the tainted notes in the brown pocket were seized from the files.

13] It has come on record that there is a partition of cupboard in between the cabin of manager and the office of accused, as well as there was curtain in between the entrance of chamber of Manager and the bundles of stationery in the office of accused.

If the version of PW 1 complainant Ram Ugale has to be accepted, then the pocket containing tainted notes was kept in a diary which was kept on the table of the manager; whereas as per the version of PW 2 Joshi the said pocket was kept beneath the files. This assumes importance since the tainted notes were not seized from the possession of any of the accused person. Further, there is nothing available on record to show that any of the accused was having exclusive control on the place whereat the files were kept from where the pocket was seized.

14] Further, according to the prosecution, after handing over the tainted amount the signal was immediately given to the raiding party and the raiding party immediately rushed in the office. If such version of the prosecution has to be accepted, then immediate presence of Bhatkar in the office was absolutely essential. However, such is not the case. According to the prosecution, when the signal was given and when raiding party

came in the office, that time PW 5 Jagtap asked PW 2 Joshi and PW 1 Ram Ugale as to whom the money was paid and it was told to him that money was paid to Bhatkar. According to the prosecution, that time Bhatkar was not available in the office. Upon inquiry from Jagtap, PW 2 Joshi informed him that Bhatkar is sent for Allahabad Bank for encashment of cheque in respect of the salary. After 10 to 15 minutes he was brought in the office by PW 5 Jagtap by sending constable.

In view of evidence of prosecution, as discussed, the possibility of planting envelop containing tainted notes cannot be ruled out completely.

15] There is no explanation in the prosecution case as to how accused no.1 Bhatkar would leave office in spite of getting agreed signal to the raiding party. In my view, the same is fatal to the case of prosecution.

16] In my view, the prosecution has utterly failed to adduce cogent and consistent evidence in respect of demand. In fact, in my opinion, there is no evidence that accused no.1 Bhatkar was knowing that there was any demand from accused no.2 and he was knowing the amount to be accepted from the complainant and therefore, he made demand of Rs.500/- to the complainant as alleged in the prosecution case. Further, the material variance in respect of placement of brown envelope

containing tainted notes creates serious doubt. In the present case, it is to be noted that PW 3 Shambharkar can be said to be under the thumb of Anti Corruption Bureau, since at the relevant time he was facing Anti Corruption case at Nagpur from Anti Corruption Bureau. In my view, this is a fit case wherein benefit of doubt is required to be extended in favour of the appellants. That leads me to pass following order.

ORDER

- (i) Criminal Appeal is allowed.
- (ii) The judgment and order of conviction passed by the learned Special Judge (Anti Corruption), Aurangabad, dated 1.2.2000 in Special Case No. 12 of 1994 is quashed and set aside.
- (iii) Appellants No.1-Manik s/o Dajibaji Bhatkar and No.2-Shrimant s/o Dharma Bansode are acquitted of the offences punishable under Sections 12 r/w 7, 13(1)(d) r/w 13(2) and 7 of the Prevention of Corruption Act, respectively.
- (iv) Bail bonds of the appellants stand cancelled.

- (v) Fine amount, if any paid by the appellants,
be refunded to them.

[V.M.DESHPANDE, J.]

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