

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

CRIMINAL APPEAL NO. 87 OF 2000

1. Tukaram Iccharam Patil
Age : 45 Yrs., Occ. :Grader,
Raver Taluka Shetkari
Kharedi Vikri Sangh, Savda
Centre, Raver at present
R/o : Thorgavhan, Taluka
Raver, Dist. Jalgaon.
2. Pandurang Shankar Pardhi
Age : 45 Yrs., Occ. :Watchman,
Govt. Godown, Savda
Taluka Raver, Dist. Jalgaon.
3. Murtuza Khan Namdar Khan
Age : 42 Yrs., Occ. : Coolie,
R/o : Bada Akhada, Savda
Taluka Raver, Dist. Jalgaon.
4. Rahim Khan Namdar Khan
Age : 36 Yrs., Occ. : Coolie,
R/o : Savda, Taluka Raver,
Dist. Jalgaon.

**.... APPELLANTS/
[ORIGINAL ACCUSED
NOS. 1 to 4]**

V E R S U S

The State of Maharashtra

.... RESPONDENT

.....

Mr. Vijay Sharma, Advocate for Appellants.

Mrs. S.G.Chincholkar, A.P.P. for Resp. - State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 9th JUNE, 2015

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JUDGMENT :

1. Present Appellants are convicted by the learned Special Judge and Additional Sessions Judge, Jalgaon vide his Judgment dated 29/01/2000 in Special Case No. 7/1990 under the provisions of Prevention of Corruption Act.

Appellant Nos. 1 and 2 stand convicted for the offences punishable u/s 7 and 13 (1) (d) (i) (ii) read with 13 (2) of the Prevention of Corruption Act.

For the offence punishable u/s 7 of the Prevention of Corruption Act, both the appellants are sentenced to suffer Rigorous Imprisonment for two years and to pay fine of ₹ 10,000/- each and in default of payment of fine to undergo Rigorous Imprisonment for six months. In so far as their conviction u/s 13 (1) (d) (i) (ii) read with 13 (2)

of the Prevention of Corruption Act is concerned, they are required to suffer Rigorous Imprisonment for two years and to pay fine of Rs. 10,000/- each and in default of payment of fine to undergo Rigorous Imprisonment for six months.

2. Appellant No. 3 Murtuza Khan Namdar Khan and appellant No. 4 Rahim Khan Namdar Khan are convicted for the offence punishable u/s 12 of the Prevention of Corruption Act and they are directed to suffer Rigorous Imprisonment for six months and to pay fine of ₹ 2,000/- each and in default of payment of fine to undergo Rigorous Imprisonment for one month.

3. The appellants before this Court were accused Nos. 1 to 4 before the trial court. They will be referred to in the present Judgment by their original position for the sake of convenience.

4. The prosecution case, in brief, is as under :

Shivaji Garibrao Kaloge [P.W.4] in the year 1990 was Dy.S.P., at Anti Corruption Bureau, Jalgaon. On 05/02/1990, Ramesh Sitram Patil [P.W.1], resident of

Balwadi came to the Bureau. He lodged complaint with Shivaji Kaloge. Shivaji Kaloge took the complaint of Ramesh Sitaram Patil as stated by him. The Complaint is at Exh. 38.

According to the Complaint, complainant holds 22 Acres of land. He took various agricultural produces viz. Banana, Hybrid Jawar, Tur, Udid, etc. In the year of lodging of the Complaint, he took 119 bags of Hybrid Jawar. Said agricultural produce was kept by the complainant on 25/01/1990 to sell the same to the Govt., and as such his agricultural produce was in the Govt. godown at Savada from 25/01/1990.

According to the complaint, at Savada godown, firstly the commodity is being weighed and thereafter the Grader working there decide the quality, then he hands over one chit containing the name of the owner of the commodity, its quantity and its quality by applying appropriate grade. Thereafter the owner has to take the said chit in the office of the Sangh at Savada, whereat the owner is paid the amount as mentioned in the chit.

It is further stated in the said complaint that accused No. 1 Tukaram Patil is the Grader at the said godown. Complaint alleges that the said Grader, in order to

procure bribe from the agriculturist, intentionally firstly decides that the Jawar is of low quality. Thereafter he took ₹ 3/- to ₹ 5/- per bag from such agriculturist and thereafter the quality of the Jawar is upgraded. It is further alleged in the complaint that if the amount is not paid, then intentionally he decides that the Jawar is of low quality.

Complaint further states that first informant Ramesh Sitaram Patil has taken his Jawar for sell at Savada godown and there he kept one Deoram Bidiwale as his watchman [Chaukidar]. It is further stated in the Complaint that accused No. 1 Tukaram Patil, the Grader unless took ₹ 3/- to ₹ 5/- from him per bag, he will not give proper gradation to the commodity. Therefore, on 06/02/1990, according to his demand of ₹ 5/- per bag, he has brought ₹ 595/- and, therefore, trap should be laid down accepting the bribe amount.

5. After the receipt of the Complaint [Exh. 38], Shivaji Kaloge, Dy. S.P. sent requisition to the Chief Executive Officer, Jalgaon for providing two panchas. Then as per his requisition, Chief Executive Officer sent Mr. N.N.Deshmukh and Mr. P.G.Diwane as two panchas.

They were directed to come in the office at 4.00 a.m. on 06/02/1990. The Complainant and panchas came at 4.00 a.m. on 06/02/1990. Thereafter the panchas were directed to hear the grievance of the complainant. Complainant Ramesh Patil then handed over ₹ 595/- consisting of five currency notes of ₹ 100/- each, one currency note of ₹ 50/-, one currency note of ₹ 20/-, two currency notes of ₹ 10/- and one currency note of ₹ 5/-, as brought by him for giving the bribe. The panchas and the complainant were made aware of the use of Anthracene powder and its characteristics. Anthracene powder was applied on the currency notes. Mr. N.N.Deshmukh was instructed to be with the complainant at the time of trap and he was instructed to disclose his identity as the brother of complainant. He was also instructed to watch and see the transaction which would take place between accused No. 1 and the complainant. Complainant was also directed to give signal on acceptance of the money by accused No. 1. All these proceedings were reduced into writing and pre-trap panchanama [Exh.40] was drawn.

6. Thereafter Dy. S.P. Shivaji Kaloge, staff, panchas

and complainant proceeded by jeep from Jalgaon to Savada godown. When they reached at the gate of said godown, the vehicle was stopped there. Complainant and Mr. N.N.Deshmukh [P.W.3] were sent ahead by walk. The raiding party followed them and took suitable position near Savada godown.

7. At 9.15 a.m., accused No. 1 Tukaram Patil came and he started weighing Jawar. Complainant [P.W.1] and Mr. N.N.Deshmukh [P.W.3] went there. According to the prosecution case, after about 12.00 hrs., complainant made agreed signal and, therefore, the raiding party rushed to the spot. Dy. S.P. Shivaji Kaloge [P.W.4] made enquiry with the complainant as to who had accepted the amount of bribe. Upon that it was revealed that accused No. 2 Pandurang Pardhi, the Watchman took the amount on the say of accused No. 1 Tukaram Patil. The raiding party thereafter examined the hands of accused Nos. 1 and 2 under the ultraviolet lamp. The hands of accused No. 1, the Grader did not show any glitterance. However, the hands of accused No. 2, 3 and 4 i.e. Watchman and Coolies showed bluish glitterance. Search of accused No. 2 was taken and amount of ₹ 400/-

was found with him. Those currency notes had shown bluish glitterance. Three currency notes of ₹ 100/- and ₹ 30/- were found with accused No. 2. Though the hands of accused No. 3 Murtuza Khan showed bluish glitterance during search, nothing was found with him. Search of accused No. 4 Rahim Khan was taken and in the said search, ₹ 110/- consisting one currency note of ₹ 100/- and one currency note of ₹ 10/- were found with him. Complainant's search was also taken and amount of ₹ 155/- was found in his chest pocket of the shirt. Those currency notes were also having bluish glitterance. According to the prosecution case, thereafter Shivaji Kaloge enquired with Mr. N.N.Deshmukh [P.W.3], who disclosed to him that accused No. 3 demanded ₹ 3/- for himself and one for the Coolies for upgrading the grade and asked to hand over the amount with accused No. 2 Paradhi. Accordingly, complainant paid ₹ 440/- to the Watchman accused No. 2 Paradhi. Then accused No. 2 counted the said amount and handed over ₹ 110/- to Coolie Murtuza Khan, accused No. 3. The proceedings after the trap were reduced into writing by executing the panchanama [Exh.41] i.e. post trap panchanama.

Thereafter Shivaji Kaloge lodged Complaint with

Savada police station, which was registered as Crime No. 2/1990 for the offence punishable under the provisions of the Prevention of Corruption Act. The investigation was taken up by Shivaji Kaloge himself. After completion of investigation, charge sheet was filed in the Court of law.

8. Charge was framed against all the four accused persons. They denied the Charge and claimed for their trial. In order to bring home the guilt of the accused persons during trial, prosecution has examined following witnesses :-

- [i] Charuchandra s/o Amrut Pathak, Sub Divisional Officer, Jalgaon Division, Jalgaon and was appointing and removing authority of Watchman, accused No. 2.
- [ii] Ramesh Sitaram Patil – Complainant.
- [iii] Narendra Narayan Deshmukh – panch, who was with the complainant through out; and
- [iv] Shivaji Garibrao Kaloge – Dy. S.P., A.C.B., Jalgaon and the Investigating Officer.

Besides the oral testimonies, prosecution has also relied upon the documentary evidence, such as pre-trap and post-trap panchanamas and the other relevant proved documents.

After the completion of the trial, as observed in the opening paragraph of this Judgment, all the accused persons were convicted and sentenced giving rise to the present Appeal.

9. Heard Mr. Vijay Sharma, learned counsel for Appellants and Mrs. S.G.Chincholkar, learned A.P.P. for Respondent - State. Both of them took the Court in detail through the record and proceedings of the case and also the notes of evidence.

10. Demand is '*sine qua non*' for securing the conviction. Mere recovery of money is not sufficient to convict the accused persons when the substantive evidence is not reliable. There must be other circumstances which are consistent with the guilt of the accused persons on record by way of substantive piece of evidence.

Keeping this basic principle in mind, let us

scrutinize the prosecution case.

11. The starting point of the prosecution case is the Complaint [Exh.38]. On reading of the recitals of Exh. 38, it is clear that there is nothing in the said complaint that prior to 05/02/1990, the date on which the complaint was lodged with Anti Corruption Bureau, complainant had occasion to meet accused No. 1, the Grader and/or the Grader made any demand to the complainant. In that behalf, it will be useful to reproduce herein under the entire complaint [Exh.38] 'san', the procedural part which the complainant has disclosed in the complaint. It is as under, :

“ सावदा येथे सरकारी गोडाऊनवर तुकाराम पाटील या नावाचा ग्रेडर आहे. सदर ग्रेडर त्याला स्वतःला प्रत्येक शेतकऱ्याकडून लाच मिळावी या हेतूने मुद्दाम प्रथम ज्वारीची कमी प्रत लावतो व शेतकऱ्याकडून ३ ते ५ रुपये प्रत्येक पोत्यात याप्रमाणे लाच घेतल्यानंतर सदर ज्वारीची प्रत बदलून चिठ्ठी देतो. यासाठी प्रत्यक्ष पैशांची मागणी तो स्वतः ज्वारी खरेदी केंद्रावरच करतो. जर त्याचे मागणीप्रमाणे त्यास लाच दिली नाही तर तो मुद्दाम सदरी ज्वारीची कमी प्रत लावतो. मी माझे शेतातील ज्वारी विक्रीसाठी सावदा गोडाऊन येथे नेली असून तेथे राखणदार देवराम बीडीवाले यास राखणीसाठी ठेवून आलो आहे.

ग्रेडर तुकाराम पाटील हा माझेकडून प्रत्येक पोत्यामागे ३ ते ५ रुपये प्रमाणे लाच घेतल्याखेरीज माझे ज्वारीची योग्य प्रत लावणार नाही. त्यास उदयीक तारीख ६-२-१९९० रोजी त्याचे मागणीप्रमाणे प्रत्येक पोत्यास ५ रुपये प्रमाणे लाच देण्यासाठी मी ५९५ रुपये रोख रक्कम घेवून आलो आहे. तरी त्यास लाच घेताना पकडून कायदेशीर कार्यवाही व्हावी. सदर पैसे तो सावदा सरकारी गोडाऊनवरच घेणार आहे. ”

Reading of the aforesaid Complaint discloses following :

- [i] It clearly shows that the time when the complainant approached to Anti Corruption Bureau, that time there was no demand to him by accused No. 1, the Grader.
- [ii] Further, it is clear that complainant reached Anti Corruption Bureau since he was anticipating the demand from the Grader.
- [iii] His anticipation, it appears, was based, that initially accused No. 1 intentionally and willfully gives lower grade and thereafter after obtaining

₹ 3/- to ₹ 5/- per bag from agriculturist, he upgrades the quality of the commodity.

[iv] That he has anticipated that the Grader will take ₹ 3/- to ₹ 5/- per bag and for that he brought ₹ 595/- @ ₹ 5/- per bag.

12. From the Complaint, thus it is crystal clear that he has gained his perception on the basis of certain previous transaction with some other agriculturists. Who were those agriculturist from whom accused No. 1 demanded ₹ 3/- to ₹ 5/- per bag for up-gradation of the quality of agricultural produce, has remain in deep dark since no such agriculturist is brought before the Court to testify about the happening to them at the hands of accused No. 1.

Thus, the Court can not rely on such bald statement in the complaint. Even otherwise, the Complaint by itself is not a substantive piece of evidence. The prosecution is obliged to prove the contents of the complaint by required degree of evidence.

13. With this, if the evidence of Ramesh Sitaram Patil [P.W.2], the complainant is scanned, then it would

reveal as under :

“ My product was assigned with 'B' grade initially. The grade was then changed to 'A' when money was agreed to be paid to the Grader. I had agreed to pay ₹ 4/- per quintal, in all ₹ 440/-. I had then lodged complaint in A.C.B. Office. I had no other transaction there with the Grader. The complaint now shown to me is the same. Complaint is lodged by me and signed by me. It is at Exh. 38 ”.

Reading of the complaint and the aforesaid evidence shows the stark variance between it. As per the aforesaid evidence, there was previous meeting with appellant No. 1 and his agricultural produce was given 'B' grade and then it was agreed to be upgraded to 'A' on payment of ₹ 4/- per quintal and ₹ 440/- was agreed to be paid. This aforesaid portion, as appearing from the evidence of P.W.1, nowhere finds place in the Complaint [Exh.38]. On the contrary, if the Complaint is to be believed, there was no previous talk and gradation of the agricultural produce of the complainant.

14. Further, let us see what is the evidence of Ramesh Sitaram Patil [P.W.2], the Complainant in respect of the demand at the time of trap. The relevant portion from his Examination-in-Chief itself is reproduced herein under :

“ We had then started from Jalgaon for going to Savada on 06/02/1990. We had gone by jeep to Savada. Myself and one panch waited there near the godown. Deshmukh was the panch with me. The grader then came at about 9 to 9.45 a.m. He had then started making weight of the goods. B grade was then fixed and assigned to my goods. But after the amount was then fixed and assigned to my goods. But after the amount was agreed to be paid it was then changed to 'A' and the accused No. 1 then issued a receipt under his signature. Panchanama was then drawn and raid was effected by police. I was then asked to sit out side. I had paid the amount to watchman namely Pandurang Shankar Pardhi for changing the grade ”.

The aforesaid evidence clearly established that there was no specific demand from the accused No. 1. It is

also clear from the aforesaid that the complainant is completely silent from the witness box about what was the agreed amount per bag to be paid to accused No. 1.

In contrast to the aforesaid version of the complaint, Mr. N.N.Deshmukh [P.W.3] discloses in his evidence as under :

“ Complainant however had told to him that his jawari grain was of 'A' grade and why it was shown of lesser quality. But the grader then replied that he would change the grade if the amount of ₹ 3/- is paid per quintal to him i.e. ₹ 3/- for himself and ₹ 1/- for the coolie ”.

Thus, on the point of demand at the time of trap, the evidence of prosecution witnesses are at variance.

According to the evidence of Mr. N.N.Deshmukh [P.W.3], ₹ 3/- per bag was demanded by the grader for himself and ₹ 1/- for the Coolie. Some part of the tainted amount was found with accused No. 2 and some part of the tainted amount was found with accused No. 4 Rahim Khan.

There is no evidence on record that Watchman, accused No. 2 and Coolies, accused Nos. 3 and 4 are having

any role in respect of the up-gradation of the quality. Thus, according to the prosecution case, the Court has to assume and presume that the accused No. 1 used to demand money for himself and for remaining accused persons. However, such was not the charge framed against the accused persons.

15. There is also discrepancy in the prosecution case in respect of the exact amount which was tendered by the complainant to the Anti corruption officials for applying the Anthracene powder.

As observed in the complaint [Exh.38], it is clear that the complainant brought ₹ 595/-, whereas in the cross examination it is stated by him that he has handed over ₹ 552/- to the Anti corruption officials. As per the evidence of Mr. N.N.Deshmukh [P.W.3], complainant handed over ₹ 595/-. Exh. 40, pre-trap panchanama shows that Anthracene powder was applied on ₹ 595/-.

16. Evidence of Shivaji Kaloge [P.W.4], the Investigating Officer, the leader of the trap shows that the hands of accused No. 1, the Grader did not show any glitterance under the ultraviolet lamp, whereas the hands of

accused Nos. 2,3 and 4 i.e. Watchman and Coolies showed bluish glitterance. According to his evidence, ₹ 400/- was found with accused No. 2. Out of that, as per his evidence, three currency notes of ₹ 100/- and ₹ 30/- were found with accused No. 2, showing bluish glitterance. As per his evidence, though the hands of accused No. 3 Murtuza Khan shown bluish glitterance, no amount was found with him, whereas as per his evidence, hands of accused No. 4 Rahim Khan shown bluish glitterance and ₹ 110/- consisting one currency note of ₹ 100/- and one currency note of ₹ 10/- was found in the left side pocket of his pajama.

There is no evidence available on record to show that at any point of time, accused No. 3 Murtuza Khan handled the tainted amount. If that be so, the entire prosecution case remain to be unexplained as to how the traces of Anthracene powder were noticed on the hands of accused No. 3 Murtuza Khan. This fact creates serious doubt about the truthfulness of the prosecution case.

It is also clear that accused Nos. 3 and 4 were not responsible for up-gradation of the commodity.

No amount tainted with Anthracene powder was found in possession of accused No. 1. The quality of

evidence, as discussed in the foregoing paragraphs of this Judgment shows that there is no reliable and consistent evidence in respect of the demand made by accused No. 1 to the complainant either prior to lodging of the complaint [Exh.38] with the Anti Corruption Bureau or at the time of trap. The evidence of P.W. 2 Ramesh Sitaram Patil and Mr. N.N.Deshmukh [P.W.3], the shadow panch on the point of demand at the time of trap is not only inconsistent with each other but it shows complete variance on the said aspect. In that view of the matter, the Court has to record finding that the demand to Ramesh Sitaram Patil [P.W.2] by accused No. 1, the Grader remain to be proved.

17. The aforesaid re-appreciation of the prosecution case leads me to pass the following order.

ORDER

- (i) Criminal Appeal No. 87 of 2000 is allowed.
- (ii) The Judgment and Order of conviction passed by the learned Special Judge and Additional Sessions Judge, Jalgaon vide

his Judgment dated 29/01/2000 in Special Case No. 7/1990 is hereby quashed and set aside.

- (iii) Appellant No. 1 Tukaram Iccharam Patil and appellant No. 2 Pandurang Shankar Pardhi are acquitted for the offences punishable u/s 7 and 13 (1) (d) (i) (ii) read with 13 (2) of the Prevention of Corruption Act.
- (iv) Appellant No. 3 Murtuza Khan Namdar Khan and appellant No. 4 Rahim Khan Namdar Khan are acquitted for the offences punishable u/s 12 of the Prevention of Corruption Act.
- (v) The bail bonds of the present appellant Nos. 1 to 4 stand cancelled.
- (vi) Fine amount, if any, paid by the present appellants, be refunded to him.

[V.M.DESHPANDE, J.]