

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 255 OF 2000

Suresh s/o Daderao Suryawanshi,
Age : 56 years, Occu. Police
Head Constable, B. No. 620,
P.S. Latur (Gramin), at present
P.S. Wadhwana, Taluka Udgir,
District Latur

APPELLANT

VERSUS

The State of Maharashtra

RESPONDENT

Mr. P.M. Shah, Senior Advocate instructed by and
with Mr. H.F. Pawar, Advocate for the appellant
Mr. S.R. Palnitkar, A.P.P. for respondent-State

[CORAM : M.T. JOSHI, J.]

[RESERVED ON : 10th AUGUST, 2015]
[PRONOUNCED ON : 26th AUGUST, 2015]

JUDGEMENT :

1. Aggrieved by the recording of conviction for the offences punishable under section 7 and 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, vide judgement and order dated 9th June, 2000, passed by the learned Special Judge, Latur in Special Case No. 4/1992, the present appeal is preferred by the

original accused. He was sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs. 500/- for the offence punishable under section 7 while sentence of rigorous imprisonment for one year and to pay fine of Rs. 500/- for the offence punishable under section 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act was awarded to him. Hence, the present appeal.

2. The prosecution case, in short, is as under:-

. That, PW1 Rajendra Mane, the complainant and his two brothers are residents of Kasarkheda, Taluka Latur. They had an agricultural land in the said village. His youngest brother Muktendra was serving in military during the relevant period. The rest of the two brothers used to cultivate the agricultural land. In the month of April, 1991, the complainant Rajendra wanted to extend the pipeline already laid by him in the land. One Dagdu Mane, however, obstructed the same on 1st May, 1992. Therefore, cross-complaints were filed between them with Latur Gramin Police Station. The complainant, his two brothers were, therefore, made accused in the counter complaint for the offences punishable under

section 324, 337 and 34 of the I.P. Code.

. On the next day i.e. 2nd May, 1992, Muktendra, the brother of the complainant went away on his job. On 2nd May, 1992, the present appellant being the police head constable came to the spot to investigate the crime. He recorded the panchanama of the spot of occurrence and gave a message to the complainant and his another brother Dilip to attend the police station in the evening. When they reached there, the present appellant arrested them and put them in the lockup. In the evening, he told them that in case they would pay him an amount of Rs. 1000/-, he would see the facilitation of their release on bail by merely asking for magisterial custody. He also promised them that he would not arrest brother Muktendra and his anticipatory bail may be obtained. The complainant told that at that time, he did not have any money and after release on bail, he would meet the appellant.

. Accordingly, the appellant asked them to come to him on 5th August, 1992 with an amount of Rs. 1000/-. Both the brothers were released on bail by the court on 3rd May, 1992. However, since the surety for Dilip was remained to be furnished on 5th May, 1992, they again

came to Latur to attend the court for furnishing the surety. At about 5 p.m. in the evening, police constable Gore, the assistant of the present appellant met them in the court. He gave a message that the present appellant had asked them to meet him at his house. As the last of the bus for the village was scheduled at 6.00 p.m. in the evening, the complainant did not approach the appellant at his house and went to his village.

. On 7th May, 1992, the complainant alongwith his friend P.V. Deshmukh went to Latur in the noon. The meeting, however, took place between the appellant and the complainant in the evening in Kamgar square in front of the police station. The appellant again made a demand of money. The complainant told that he could not arrange for the money. Upon that, the appellant said that already a chapter case under section 107 of Criminal Procedure Code in view of similar earlier incident was pending with the Executive Magistrate and therefore, he would write for cancellation of the interim bond furnished by the complainant in the said case. However, if the complainant wanted that such action should not be taken, he should provide the agreed money at the earliest. The complainant promised him to pay the money

within two to three days. The appellant, however, told that on 8th May, 1992, as the appellant was to come in Vivekanand square, atleast an amount of Rs. 500/- be paid to him at that time while the rest of the amount be paid lateron. As the complainant did not want to pay the bribe, he filed FIR on 8th May, 1992 with Anti Corruption Bureau, Latur.

3. PW8 Laxman Wadje, the police inspector of Anti Corruption Bureau, Latur conducted the investigation in the said complaint. He sent a letter to the Government Polytechnic college for sending two employees as panch witnesses. Accordingly, two panch witnesses, including PW2 Sudhir Pande were sent by the Principal of the said college to the Anti Corruption Bureau. The pre-trap exercise of reading over the complaint, demonstration of anthracene powder, application of anthracene powder to the decoy money i.e. five notes in the denomination of Rs. 100/- each was carried. The serial numbers of the notes were recorded in the panchanama. The decoy money was placed in the watch-pocket of the complainant. The complainant and the shadow panch witnesses were asked to go together to the spot. The rest of the raiding party

followed them. The predetermined signal to be given, upon acceptance of the decoy money, was already settled.

. The raiding party remained in the vicinity while the complainant and the panch witnesses went in the square at about 2.45 p.m.

. At about 3.00 p.m. to 3.15 p.m., the appellant came on his motorcycle in the square. Thereafter, the trio went in a tea stall. After having some preliminary chat and after taking tea, the appellant made demand of an amount of Rs. 500/-. Upon his demand, the complainant placed before him decoy money. The appellant accepted it in his right hand and put it on the table. Thereafter, he wiped his face to remove sweat by handkerchief and kept the handkerchief on the notes. Thereafter, by his left hand, he lifted the handkerchief alongwith the notes and put it in his left hand shirt pocket. At that time, he had also made an enquiry regarding the shadow panch witness. The complainant told that he was the brother of his wife. Thereafter, the complainant gave predetermined signal upon which the raiding party came at the spot and the hands of the appellant were apprehended.

. During the post-trap exercise, the hands of the

appellant, his handkerchief and the decoy money, seized from him were tested under the ultra-violet lamp, as detailed supra. In the circumstances, the panchanama was prepared by the Investigating Officer. The statements of the relevant witnesses were recorded, the necessary documents regarding the criminal case filed against the present complainant were also collected from the police station. The necessary sanction to prosecute the appellant was obtained from PW9 Mr. Bipin Bihari, the then Superintendent of Police, Latur and the chargesheet came to be filed in the court.

4. Before the learned Special Judge, in all nine witnesses were examined. PW1 Rajendra Mane is the complainant. PW2 Sudhir Pande is shadow panch witness. PW3 Bhagwat Chavan is the owner of tea stall situated in Vivekanand Chowk at Latur. PW4 Venkat Wagalgave is the brother-in-law of the complainant, who was examined to show that police constable Gore had given the message of the complainant through him and is also witness regarding the second demand. PW5 Yusuf Beg is the scribe of the complaint made by the complainant in the Anti Corruption Bureau. PW6 Baburao Khandare was the then

police inspector of Latur Rural Police Station. He was examined to show that the necessary papers regarding the crime registered against the complainant were recovered from him by the Anti Corruption Bureau. The defence has also pressed into service certain certified copies of the correspondence made through the police station to the Executive Magistrate and other documents concerning the defence. He has proved those documents through cross-examination. PW7 Maruti Ananda, the revenue inspector at Tahsil Office, Latur has prepared the map of the spot. PW8 Laxman Wadje is the Investigating Officer, as described above while PW9 Mr. Bipin Bihari, the then Superintendent of Police, Latur had accorded sanction to prosecute the appellant at Exhibit-53.

5. The defence of the appellant was that the complainant was enraged by the fact of registration of crime against him and his brothers, including the brother who is in military. The letter for revocation of the bail bond in the earlier proceeding under section 107 of the Code of Criminal Procedure was already sent by the present appellant to the Executive Magistrate. Even a letter was already sent to the Commandant of the

Unit where the brother of the complainant was serving in order to send him for his arrest. The complainant, however, wanted that stern action should be taken against the rival. In the circumstances, at any time, no demand was made. At the time of trap, one Jafar Bagwan and Ramchandra had called the appellant for tea in the said hotel. In fact, the shadow panch witness is the habitual panch witness from the Government polytechnic college and similar witnesses used to be called by the Investigating Officer continuously for a period of more than two years from that sole institute only. In the circumstances, a false trap was shown in order to show that the raid was successful and hence, the appellant be acquitted.

6. Learned Special Judge, however, concluded that the issue as to whether the appellant has already sent a letter to the Executive Magistrate for cancellation of the bail bond is not material. The prosecution case is proved not only by the complainant but also by the independent panch witnesses and therefore, the conviction and sentence, as detailed supra came to be recorded.

7. Mr. P.M. Shah, learned senior counsel, in brief of Mr. H.F. Pawar, learned counsel for the appellant, made the following submissions :-

That, the complaint itself would show that the appellant allegedly started making demand initially on one count and thereafter on another count. The complaint itself would show that there was no "settlement of amount". The documents brought in defence would show that on 4th May, 1992 itself, a letter was sent by the present appellant to the Executive Magistrate requesting him to cancel the interim bond furnished by the complainant in the earlier chapter case in view of the registration of the present crime. Even on the very same day, a letter was sent to the Commandant of the Unit in which the brother of the complainant was working to send him for arresting him. Therefore, the case that the appellant on 7th May, 1992, made demand of gratification for not taking the action does not hold any water.

. The evidence on record would show that the recording of the complaint started at 11 a.m. The letter (not on record), as orally deposed to by the

Investigating Officer, was sent by the Investigating Officer to the Principal of the Government Polytechnic College at 11.00 a.m. The letter reached to the said Institution at 11.00 a.m. and the panch witness had gathered at the office of Anti Corruption Bureau at 11.05 a.m. The Investigating Officer has further admitted that in the years 1992-1993, all the panch witnesses collected by him for raiding purposes were from the same Institution.

8. As regards the sanction to prosecute the appellant, Mr. Shah, learned senior counsel, submitted that the record would show that the Investigating Officer had not sent all the material documents i.e. the documents pressed into service in defence to the sanctioning authority and therefore, according to him, the sanction is not legal and valid.

. Learned senior counsel thus submitting that the learned Special Judge ought to have extended the reasonable benefit of doubt, he wanted that the appeal be allowed.

9. On the other hand, the learned A.P.P. submitted that the issue is not as to whether the appellant has

already sent letters to the concerned authorities i.e. to the Executive Magistrate or to the Commandant of the Military Unit but as to whether what promise he had given to the complainant. He further submitted that the demand and acceptance of the gratification is proved from the mouth of the independent shadow panch witness, as found by the Investigating Officer during the examination of the appellant under the ultra violet lamp. In the circumstances, he submits that no interference in the order of the learned Special Judge is warranted.

10. On the basis of above material on record and the submissions advanced on behalf of both the sides, the following points arise for my determination :-

- (I) Whether the prosecution has proved that on 2nd May, 1992 and thereafter, the present appellant made demand of an amount of Rs. 1000/- as a gratification other than the legal remuneration for showing favour to the complainant in Crime No. 80 of 1992 and Chapter Case No. 11 of 1992, registered against him and his brother ?

- (II) Whether the prosecution has proved that on 7th May, 1992 at Latur, the present appellant has again made demand of an amount of Rs. 500/- and accepted it as a part payment towards the said remuneration ?
- (III) Whether the prosecution has further proved that the present appellant, being a police head constable, attempted to obtain the gratification by corrupt and illegal means ?

My findings to all the above three points are in negative. The appeal is, therefore, allowed and the appellant is acquitted of all the offences, for the reasons to follow :-

R E A S O N S

11. The complaint of the complainant PW1 Rajendra Mane would show that though he was carrying the work of extending pipeline in the agricultural land owned by himself, the neighbour had unnecessarily restrained him. The counter complaints were filed by the neighbour and the complainant with the police station which were

investigated by the present appellant. Admittedly, prior to this episode, one another incident had also occurred between them and the complainant was already facing proceeding under section 107 of the Code of Criminal Procedure before the Executive Magistrate. It can thus be inferred that there was certain animus in the mind of the complainant against the present appellant as the complainant would have wanted that an action should have been taken only against the neighbour.

. As per the prosecution, while initial demand made on 2nd May, 1992 when the complainant and his one brother were in lock-up, was for facilitation of their release on bail and for delaying the arrest of brother Muktendra, who was in military, as the appellant protracted in fulfilling the demand, upon their release, the demand was renewed for not sending a recommendation for revocation of interim bond in the proceeding under section 107 of the Code of Criminal Procedure as well as for not sending a letter to the military superior officials of another brother Muktendra who was serving in military. The certified copies of the letters sent to the Executive Magistrate and to the Commanding

Officer under the signature of the present appellant were already forwarded on 4th May, 1992. The documents in this regard were proved by PW6 PI Baburao Khandare. The certified copy of the inward-outward register in this regard was duly proved by him.

12. According to the appellant, the complainant met him near the hotel and at that time, one Jafar Bagwan and one Ramchandra were with him and no incident of demand and acceptance of money had occurred. PW2 Sudhir Pande, the shadow panch witness had also deposed that he, the complainant and the appellant went in the hotel alongwith the appellant's friends. The complainant also deposed that these two persons were present in the hotel. He, however, did not depose that they had come with the complainant, appellant and the shadow panch witness. In this regard, the appellant has examined said Jafar Bagwan as a defence witness No. 1, who has deposed that he went in the hotel with three persons, took the tea and all of them came outside and thereafter, he went away, meaning thereby that no incident of demand and acceptance of money had occurred in the hotel.

. Even PW3 Bhagwat Chavan, the proprietor of the tea stall deposed that all this group took tea and went away on the road and thereafter, they were again brought in the hotel. Thus, the catching of the appellant raid-handed in the hotel has been belied by this prosecution witness himself. Further, though the complaint narrates that at the time of second demand by the appellant on 2nd May, 1992, one P.V. Deshmukh was with the complainant, this P.V. Deshmukh is not examined but a different person i.e. PW4 Venkat Wagalgave, the brother-in-law of the complainant was claimed as the witness to this incident. He did not depose about said P.V. Deshmukh as one of the persons accompanying when the present appellant made demand of money. To the utter surprise, this witness, who is the brother-in-law of the complainant, in cross-examination, deposed that he did not know whether complainant PW1 Rajendra Mane was sent to mental hospital for two times.

13. Above all facts, the glaring fact regarding the investigation is required to be taken note of. According to the prosecution, the FIR was filed at 11.00 am, the letter at Exhibit-13 sent by the Principal of I.T.I.,

Latur would show that he has directed his officials, including PW2 Sudhir Pande, the shadow panch witness to remain present in the office of the Anti Corruption Bureau on that day at 11.00 a.m. The pre-trap panchanama at Exhibit-14 would show that the panch witnesses appeared before the Investigating Officer at 11.00 a.m. The letter sent by the Investigating Officer to the Principal of I.T.I. is not on record and therefore, the Investigating Officer has orally deposed about sending the letter at 11.00 a.m. Thus, as to when the complaint was recorded, at what point of time, the letter was sent by the Investigating Officer to the Principal, when the Principal typed the letter directing his officials to attend the Anti Corruption Bureau at 11.00 a.m., would be an enigma. In normal course, this could have been brushed aside by explaining that while oral direction may have been issued, the written letters might have followed later. The present case, however, would cast doubt regarding such explanation.

14. The reasons for doubting this exercise is obvious. The Investigating Officer PW8 Laxman Wadje admitted during cross-examination that continuously for

two years i.e. 1992 and 1993, in all the trap cases, he had collected the panch witnesses solely from the I.T.I. college. Thus, everything was being done in routine manner. The panch witnesses were definite. In the circumstances, it is difficult to place reliance on the testimony of PW2, Sudhir Pande, the shadow panch witness by calling him as an independent panch witness.

15. Mr. P.M. Shah, learned senior counsel, relied on the ratio laid down in the case of "**Banarsi Dass Vs. State of Haryana**", reported in **AIR 2010 S.C. 1589**, to show that mere proof of recovery of decoy money of the accused would not be sufficient to prove the offence.

. That apart, the reasonable doubt has arisen as to whether the decoy money was, in fact, recovered from the appellant.

16. For all the above reasons, the learned Special Judge ought to have extended reasonable benefit of doubt to the appellant. In the circumstances, the appeal deserves to be allowed. Hence, the following order:-

17. In the result, the appeal is allowed. The judgement and order dated 9th June, 2000, passed by the Special Judge, Latur in Special Case No. 4/1992, convicting and sentencing the appellant for the offences punishable under section 7 and 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, is hereby set aside.

. Instead, the appellant is acquitted of the offences punishable under section 7 and 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act. The fine amount, if any deposited by the appellant, be refunded to him. The bail bonds of the appellant shall stand cancelled. The disposal of the muddemal property shall be in terms of the order already issued by the learned Special Judge.

Sd/-
[M.T. JOSHI]
JUDGE

