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

Criminal Appeal No.315 of 2000

Dagadu s/o Bhanudas Kokate,
Age 54 years,
Occupation : Service,
R/o Charthana, Taluka Kaij,
District Beed. .. **Appellant.**

Versus

The State of Maharashtra. .. **Respondent.**

Shri. R.R. Mantri, Advocate, holding for Shir. M.K. Deshpande, Advocate, for applicant.

Shri. M.M. Nerlikar, Additional Public Prosecutor, for respondent.

CORAM: T.V. NALAWADE, J.

Judgment reserved on : 22nd JANUARY 2015

Judgment pronounced on : 10th FEBRUARY 2015.

JUDGMENT :

1) The appeal is filed against the judgment and order on Special Case No.54/1991 which was pending in the Court of Additional Sessions Judge, Beed (Special Judge appointed under the provisions of the Prevention of

Corruption Act, 1988) (hereinafter referred to as "the Act'). The appellant is convicted for offences punishable under sections 7, 13(1)(d) read with section 13(2) of the Act. Sentence of rigorous imprisonment of one year is given and fine of Rs.1000/- is imposed on the appellant. Both the sides are heard.

2) Original complainant, Shri. Pandurang is an agriculturist and he is required to do labour work also to earn livelihood. He had applied to the Land Development Bank of the State of Maharashtra for giving loan as he wanted to purchase a cow. Loan of Rs.13,000/- was sanctioned by the bank. As per the procedure, it was necessary to take entry of the mortgage of the two lands made by the original complainant by way of security for the loan on the revenue record. Only after taking entry of encumbrance, the bank would have made disbursement of the loan amount. The bank handed over a letter addressed to the concerned Talathi, present accused for taking entry of the mortgage on the revenue record.

3) The original complainant is a rustic illiterate villager. According to him he had approached the appellant about 8 to 10 days prior to the incident in question and he had handed over the letter of the bank to the accused. As per the case of prosecution, the accused had refused to make entry unless illegal gratification of Rs.200/- was given to him. On that day, the original complainant had no money with him and he also expressed his inability to pay Rs.200/- due to his poor financial condition. Then the appellant, accused said that he would do the work if an amount of Rs.100/- was given to him. Nothing was to be charged for making entry as per the procedure and no charges were payable by the original complainant either to the Talathi or to the Government for taking entry. The Talathi gave promise to make entry and give copies of 7/12 extract having entry on it after giving of the amount of Rs.100/-.

4) The original complainant approached ACB (Anti Corruption Bureau) on 4-12-1990 at 10.00 a.m. and he gave report against the accused. Shri. Kohok was working as Police Inspector in ACB office. After receiving the

report, he collected staff and he gave instructions to the panch witness for laying trap. As per routine procedure the complainant was introduced to panch witnesses, the purpose of trap was told to them, demonstration of use of anthracene powder was given to them, the amount of bribe money (two currency notes of Rs.50/- denomination each) was collected from the original complainant and anthracene powder was applied to the notes in the presence of the complainant and the panch witnesses, the amount was kept in the pocket of shirt of the complainant. The numbers of the notes were also noted. Shri. Taher, Panch No.1 was asked to remain in the company of the original complainant at the time of trap and instructions were given by the investigating officer not to hand over the amount unless there was demand from the accused. Instructions were given to the complainant to give signal after acceptance of bribe money by the accused. Instructions were given to other panch witness and staff about action to be taken after receiving the signal from the complainant, etc.

5) The office of the accused is situated in a lane situated by the side of Beed-Karanja road, Beed. The trap team went to the spot at about 15.45 hours. The complainant and Taher (panch No.1) entered the office of the Talathi and the remaining members of the trap team were in disbursed condition in the vicinity of the office.

6) When the original complainant Pandurang and Taher entered the office of the accused they noticed that two persons were already sitting there. When Pandurang told the Talathi in low voice that he had brought the money and he asked the accused about the work, the accused said that he would talk outside and asked them to go out side of the office and the accused came out of the office. The complainant and the first panch followed the accused.

7) The accused took the complainant towards main road, to the spot which was near a hair cutting saloon (Lokseva shop). At that place the accused took out two copies of 7/12 extract from the pocket of his clothes and he handed over them to the complainant. The

complainant then took out the notes from the shirt pocket and handed over them to the accused. The accused accepted it by using his hand. By using his two hands he counted the notes. Thereafter the complainant gave pre-decided signal. After receipt of the signal, Investigating officer Kohok and his team rushed forward. One constable held both the hands of the accused. When Kohok gave his introduction, accused threw away the notes on the ground. Kohok then asked Panch No.2 to collect the notes and proceed to the office of Talathi. Then they proceeded to the office of the Talathi for preparing post-trap panchanama. The pre-trap panchanama was written in the office of the ACB.

8) In the office of Talathi, Investigating officer Kohok collected information from Panch No.1 and the complainant about the incident. The hands of the complainant and the accused were checked in ultra violent lamp. Anthracene powder was found on both the hands of the accused. Anthracene powder was also noticed on the notes. The number of the two notes tallied with the numbers mentioned in the pre-trap panchanama.

Two copies of 7/12 extracts were recovered from the complainant. There was entry about the encumbrance on 7/12 extracts.

9) The Investigating Officer collected 7/12 extract in respect of the complainant from the office and one register in which entry was expected to be made by the appellant about the aforesaid change made in the 7/12 extract. Post trap panchanama was prepared accordingly.

10) After completion of investigation, Shri. Kohok produced all the papers before the sanctioning authority, the Sub Divisional Officer of the concerned Division and Kohok requested for sanction for prosecution under aforesaid sections of the Act. The competent authority gave sanction and case came to be filed against the accused for the aforesaid offences. Charge was framed. The accused pleaded not guilty. The prosecution examined the complainant, the first Panch Taher, one employee from the Land Development Bank, the sanctioning authority and the investigating officer. All the witnesses stuck to the versions given before the investigating officer and the

trial Court has believed all the witnesses.

11) Before the trial Court the accused has given his say in writing in addition to the answers given to the questions put under the provisions of Section 313 of the Code of Criminal Procedure. The say and the cross examination show that the accused admitted that the complainant had given to him a letter of the bank and he had requested for taking entry about encumbrance on the revenue record. He admitted that he had received the letter from the complainant but he had not taken entry in the 7/12 extract on the first day. He contended that when the complainant came to him in his office on the day of trap, two revenue officers were present in his office for the work of preparation of record of consolidation of lands. He contended that, in the presence of these officers he had told the complainant that he was ready with the 7/12 extract but entry was not made in the register and so the complainant should come to him after 4 to 5 days. He contended in the written say that the complainant insisted for giving 7/12 extract on the same day and he said that the bank was not making disbursement of the loan

amount. He contended that in his office two revenue officers were sitting and he handed over the 7/12 extract to the complainant in their presence. He contended that the complainant requested him to come out of office for having tea with him and as the complainant was insisting for it, he came out of the office with the complainant. He contended that when he reached the entrance of the lane, the point from where the approach road leads to the office from Beed-Karanja Road. The accused contended that there, complainant tried to forcibly keep the money first in the pocket of his shirt and then in the pocket of his pant. The accused contended that he resisted this act of the complainant and for that he first used the left hand and then right hand. He has contended that the amount then fell on the ground and after that 4 to 5 persons rushed towards him. He contended that when one of those persons made inquiry about the notes which were lying on the ground, he picked up the notes and handed over the same to one of the persons who had rushed at him. Accused contended that the complainant gave false complaint against him at the instance of previous landlord of the accused as there was some dispute between the previous landlord and the accused. He contended that he had some dispute with a labour contractor, Mukadam and at the instance of the said Mukadam, false complaint is given. He contended that the trap was not successful.

12) The complainant Pandurang (PW 1) has given evidence that he had handed over the letter of the bank to the accused well before the date of the incident but the accused did not make entry of the encumbrance on the revenue record and he refused to do so unless illegal gratification of Rs.100/- was given to him. On this point one bank employee from the bank, Digambar (PW 2) is examined. He has deposed that letter dated 13-10-1990 was handed over to the complainant by the bank and it was addressed to Talathi. Evidence of PW 2 also shows that unless entry was made in the revenue record, the bank would not have disbursed the loan amount. The accused has not disputed that the letter was handed over to him and he could have made entry on the revenue record. Further no is reason given as to why on 20-11-1990 when the letter was given to him the entry was not

made by him. The defence taken by the accused does not show that the matter was required to be taken to the higher officer for making entry. Thus there are circumstances to infer that on the first day when the letter was handed over, he avoided to make entry and he did not give 7/12 extract after taking entry of encumbrance to the complainant. Thus he had refused to do the work on the first day and it was necessary for him to give explanation about it. There are other circumstances that on the day of the trap also no entry was made in the register when such entry was made on the 7/12 extract. These circumstances support the case that there was demand of bribe. The contents of the report (Exhibit 33) given by the complainant against the accused are consistent with the version of the complainant.

13) In view of nature of defence taken by the accused and the facts and circumstances of the present case, there is no need to discuss the evidence on the routine procedure which is followed before laying the trap and the evidence of pre-trap panchanama.

14) The complainant (PW 1) has given evidence that on the date of the trap as per instructions received by him, he and the first panch entered offence of the accused. He has given evidence that he first made inquiry with the accused about his work and the accused said that he had done the work. He has deposed that there were 3 to 4 persons already present in the office of the accused and so the accused came out of the office. He has deposed that he followed the accused and they went towards hair cutting shop. He has deposed that near the shop when accused gave 7/12 extract and accused demanded the money, he gave the money to the accused. He has deposed that the accused received the amount and after that police persons held him. The suggestion given by the defence counsel as per the aforesaid written say to the complainant are denied by him.

15) In the cross examination of PW 1 it is suggested that bribe money was lying on the ground when police caught the accused and the accused had picked up the money. This suggestion is admitted by the complainant (PW 1). Much was argued by the learned counsel for the

accused in view of such admission. This Court has no hesitation to hold that, this admission has not created any probability in favour of the accused. In the examination-in-chief, there is specific evidence of the complainant about demand and acceptance of the bribe. The cross-examination further shows that the complainant was not in a position to say as to who had taken the money to the office when post trap panchanama was written. Evidence of the complainant (PW 1) shows that he was not able to give evidence on few things correctly. It needs to be kept in mind that he is a rustic illiterate villager. His evidence before Court was recorded on 17-1-2000 when the trap was laid on 4-12-1990. The discrepancies are not on material points.

16) The evidence of the first panch Taher (PW 4) is consistent on material points with the evidence of PW 1. His evidence shows that in the office itself PW 1 had told to the accused that he had brought money as per direction given by the accused. PW 4 has deposed that accused asked him to come out of office. He has deposed that, when the complainant gave tainted money to the accused,

he was at distance of 8 feet from the complainant and the accused. He could not listen the conversation which was going on between the accused and the complainant but the fact remains that he witnessed the incident in which the accused accepted the amount, tainted money, from the accused by using his hands. He has deposed that he had seen that prior to giving of the money, the accused had handed over the papers to the complainant. PW 4 has given specific evidence that when members of the trap team caught hold the accused he threw the notes on the ground. He has given evidence that, the second panch witness Shri. Tadwi picked up the notes and he took the notes to the Talathi office. The evidence of Taher (PW 4) shows that on both the hands of the accused anthracene powder was detected. His evidence shows that there was anthracene powder on the notes and the numbers of the notes tallied with the numbers mentioned in the pre-trap panchanama.

17) The evidence of Taher (PW 4) shows that in addition to the 7/12 extract which was collected from the PW 1 in the Talathi office some relevant record like

register and 7/12 extract was collected from Talathi office by police. Letter of the bank (Exhibit 36) was collected from the Talathi office. Documents like panchanama (Exhibit 42) are duly proved in the evidence of Taher and the contents of the panchanama are consistent with the evidence of Taher and the evidence of Investigating Officer.

18) In the cross examination of Taher (PW 4), it is brought on record by the defence that office of the Talathi is situated in small lane and it is not situated on the main road. It is also brought on record that the office is not visible from the main road – Beed – Karanja road. Much was argued on the basis of this admission by the learned counsel of the accused. The evidence, however, shows that panch witness is very specific about acceptance of money and the place where the money was accepted, near hair cutting shop. It is not disputed that the said hair cutting shop is situated on the main road. Thus not much weight can be given to the so called admission given by the panch during cross examination. The defence taken by the accused on this point also needs to be kept in mind.

19) In the cross examination of Taher, it is brought on record that after the accused, the panch witness and the complainant came out of the office and the revenue officers, who were present also left the office. Thus they were not available when the post trap panchanama was prepared. Submission was made for the appellant that the Investigating Officer ought to have recorded statements of these witnesses and they ought to have been examined as witnesses. This submission is not at all acceptable. Nothing is hidden by the Investigating Officer and there is clear mention about presence of such persons in the office of Talathi at the relevant time. If according to the accused he had handed over the 7/12 extract to the complainant in his office itself, in the presence of these two officers it was open to him to examine them as defence witnesses. His defence that the complainant insisted to come out of office to have tea has no corroboration. It is not brought on record that in the vicinity there is any hotel or they were proceeding towards any such hotel. If he had no intention to demand money, extract money for doing his job he would not have kept the record with him and he would have handed over the record in office to the complainant.

The evidence of Investigating Officer, Kohok (PW 6) is consistent with the evidence of the aforesaid two witnesses. The aforesaid evidence is more than sufficient for proving the ingredients of the offences punishable under sections 7, 13(1)(d) read with 13(2) of the Act. The trial Court has considered and discussed the aforesaid material properly.

20) Baliram Pawar (PW 5) was the Sub Divisional Officer of the concerned division. He was competent officer for granting sanction. He has given evidence that the relevant record like statements of witnesses, panchanama and report of police officer was made available to him for his consideration for giving sanction. He has deposed that he had perused the record and he was satisfied that the Talathi had demanded bribe for taking entry of the encumbrance in the revenue record and he had accepted the amount of Rs.100/- from the complainant as bribe. He has deposed that after getting satisfied, he gave sanction. The sanction order is at Exhibit 51. Learned counsel for the appellant submitted that only photostat copies were produced for perusal

before the sanctioning authority and this is a lacuna. This submission is not acceptable. It is not the case of anybody that the relevant record was not made available. The relevant record is described in the sanction order. Another submission was made that no notes were prepared by the sanctioning authority before granting sanction. There is no law for following such procedure. After consideration of the relevant material, the sanctioning authority can accord sanction and the satisfaction of the sanctioning authority can be found in the material mentioned by him in the sanction order. Thus there is no force in the challenge made to the validity of the sanction.

21) Learned counsel for the appellant has placed reliance on the following reported cases :

(1) **AIR 1979 SC 1191 (Panalal Damodar Rathi v. State of Maharashtra**.

(2) **AIR 1974 SC 218 (Darshan Lal v. The Delhi Administration)**.

(3) **1999 Cri.L.J. 1270 (Yashwant Nanubhai Pingle v. State of Maharashtra (C.B.I.).**

22) The Apex Court has observed that there needs corroboration to the version of the complainant in view of nature and position of the complainant. It is observed that independent witness needs to be examined to give corroboration otherwise it would be hazardous to give conviction and when there is no independent corroboration benefit of doubt can be given to the accused. It is also observed that the material collected by the Investigating Officer needs to be forwarded to the sanctioning authority for getting sanction. There cannot be any dispute over these propositions made by the Hon'ble Apex Court. The relevant material is discussed by this Court. Further, facts and circumstances of each and every case are always different. In the present case there is corroboration of independent witnesses and circumstances to the version of the complainant. Reliance can be placed on the cases reported as (1) **AIR 1980 SC 873 (Hazari Lal v. State)**; and, (2) **2001 Cri.L.J. 515 (M. Narsinga Rao v. State of Andhra Pradesh).**

23) There was no reason whatsoever for the complainant to falsely implicate the accused in such a

serious case. The defence taken shows that futile attempt was made by the accused to save himself. It also needs to be kept in mind that in the year 1990 amount of Rs.100 was big amount and it was not possible for poor labourer to carry such amount with him. This circumstance supports the case of the complainant that on the first day when he approached the accused he was not having the amount. The complainant was to get amount of Rs. 13,000/- from bank as loan and the disbursement was possible only after making entry of encumbrance on the revenue record. Poor persons like the complainant rarely approach police and they generally do not show courage to approach police and so many instances of corruption go unnoticed. When the things cross limit, when the poor persons cannot afford, they go to police.

24) The appellant is sentenced to imprisonment of one year. The sentence is on lower side. There is no possibility of interference on the sentence also. Thus there is no possibility for interference in the decision of the trial Court.

25) In the result, the appeal is dismissed. The appellant to surrender to the bail bonds.

Sd/-
(T.V. NALAWADE, J.)

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