

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

CRIMINAL APPEAL NO. 356 OF 2000

1] Rajendra s/o Dhondiba Jogdand,
aged 57 years, occ. Service as
Agricultural Officer with Zilla
Parishad, Beed, R/o Beed,

2] Govardhan s/o Bajirao Tandale,
aged 40 years, occ. Legal Practice,
R/o Beed
[Separate Appeal filed by
Appellant No.2]

...Appellants

[Orig. Accused Nos. 1 and 2]

VERSUS

The State of Maharashtra,
through Anti Corruption
Bureau, Beed

...Respondent

WITH

CRIMINAL APPEAL NO. 498 OF 2012

Govardhan s/o Bajirao Tandale,
aged 40 years, occ. Legal Practice,
R/o Beed

...Appellant

[Orig. Accused No.2]

VERSUS

The State of Maharashtra

...Respondent

.....
Shri R.N.Dhorde, Senior Advocate i/b
Shri Pravin Patil and Shri S.J.Salgare, advocates for appellants
Shri A.S.Shinde, advocate for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 1st JULY, 2015

ORAL JUDGMENT : -

1] These two appeals can be disposed of by this common judgment, since both arise out of the judgment and order of conviction, passed by the learned Additional Sessions Judge, Beed, dated 5.8.2000 in Special Case No.14 of 1991.

Initially common appeal was filed, however, vide order, dated 25.7.2012 Govardhan Bajirao Tandale-appellant no.2 in Criminal Appeal No. 356 of 2000 was permitted to file separate appeal. Therefore, he filed separate appeal and it is registered as Criminal Appeal No. 498 of 2012.

2] Appellants in these two appeals will be referred to by their original position in this judgment.

Appellant Rajendra Dhondiba Jogdand is accused no.1 and appellant Govardhan Bajirao Tandale is accused no.2.

3] By the judgment and order of conviction in Special Case No. 14 of 1991, dated 5.8.2000. the learned Additional Sessions

Judge, Beed, convicted accused no.1 for the offence punishable under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act and directed that he shall suffer rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default further to suffer rigorous imprisonment for a period of three months.

Accused no.2 Govardhan was convicted for the offence punishable under Section 12 of the Prevention of Corruption Act for abetting accused no.1 in commission of the offence punishable under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act and he was sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.1,000/-, in default further to suffer rigorous imprisonment for a period of three months.

4] I have heard Shri R.N.Dhorde, learned Senior counsel with Shri Pravin Patil, advocate for appellant in Criminal Appeal No. 356 of 2000 and Shri S.J.Salgare, advocate for appellant in Criminal Criminal Appeal No. 498 of 2012.

Shri A.S.Shinde, learned Additional Public Prosecutor represented the State in both these appeals.

With the assistance of the learned counsel and learned Additional Public Prosecutor, I have gone through the record and proceedings of the court below.

5] Jaydrath Kishan Gaikwad is the complainant. He lodged complaint with the Anti Corruption Bureau, Beed. The said complaint is at Exh.26. From the said complaint, it appears that, the

complainant owns 3 acres and 20 gunthas of agricultural land at village Kumbhari and he comes under below poverty line.

In the month of January/February, 1988, he submitted a proposal for obtaining grant for the purpose of digging well and for electric pump. Permission to dug well was granted and accordingly the said work was completed and for that he received Rs.15,000/- in three installments from Panchayat Samiti, Beed.

After digging work was over, it was inspected by the concerned Engineer of the Panchayat Samiti. Thereafter, the complainant prayed for electric connection, since he was intending to fix electric motor pump. According to the complaint, the Block Development Officer, Beed gave a letter, dated 30.5.1988 to the Godown Superintendent to give electric motor pump to the complainant. Therefore, he met said Superintendent, however, that time it was revealed to him that the stock of electric motor pump was exhausted. On inquiry, it was revealed to him that up to March, 1989 new quota of electric motor will be available.

According to the complaint, in the month of March/April, 1989 when quota was received, that time the complainant met the Godown Superintendent Shri Kadam and requested to give motor pump. That time, he was asked to bring the letter from the Block Development Officer. Accordingly, as per the complaint, he met the Block Development Officer, who directed the complainant to meet the Agricultural Officer, Jogdand (accused no.1). Accordingly, he met Jogdand, who asked him to come after 10-15 days, so that he will be locating his file. According to the complaint, about 15 to 20

times the complainant met the accused-Jogdand.

On 4.6.1990, as per the complaint, he went to the office of the Panchayat Samiti and gave an application to the Block Development Officer for supply of electric motor pump.

The complaint further proceeds that on 16.7.1990 he and his nephew Vikas Ahire went to the Panchayat Samiti office. There he met accused no.1. That time, according to the complaint, a demand was made to the tune of Rs.300/-, however, according to the complaint, it was scaled down to Rs.200/- and the complainant was asked to come with Rs.200/- on 17.7.1990 at 12.00 O' clock.

On 17.7.1990, when the complainant and Vikas Ahire went to the office of Panchayat Samiti, that time, they got the information that Jogdand (accused no.1) is on strike. Therefore, they went to the office of the Zilla Parishad. There Jogdand met them. There also he demanded Rs.300/-, as per the complaint, Rs.200/- for himself and Rs.100/- for obtaining signature of Block Development Officer.

With this narration of facts the complaint was lodged.

6] Bhaurao Chavan (PW 5) was the Deputy Superintendent of Police, Anti Corruption Bureau, Beed. On 18.7.1990, when he was present in the office, PW 1 Jaydrath Gaikwad along with his nephew Vikas Ahire came in the office. He narrated his complaint orally. He reduced oral report of Jaydrath (PW 1) in writing (Exh.26).

After recording the report PW 5 Bhaurao Chavan decided to arrange trap on accused no.1 Rajendra Jogdand, and therefore,

he issued letter to the Executive Engineer, M.S.E.B., Beed for providing two panchas (Exh.46). In consequence to that, Ramrao Haribhau Kulkarni (PW 2) and Narayan Sopanrao Gaikwad, the Junior Clerks in the office of the M.S.E.B. came to the office of the Anti Corruption Bureau along with Constable Jadhav. They were told the purpose for which they were called. They showed their willingness to act as panchas. The panchas then were introduced to PW 1 Jaydrath Gaikwad and Vikas Ahire. The complainant also thereafter narrated his complaint to the panchas. All other formalities for conducting the trap on accused no.1 Rajendra Jogdand were undertaken. The panchanama of the same was prepared, which is available on record at Exh.30-Panchanama No.1.

7] As per the prosecution case, thereafter the complainant, PW 2 Ramrao Kulkarni and one Aher went to the office of the Panchayat Samiti. As per the prosecution case, that time accused no.1 Jogdand was sitting on the motor cycle which was parked. Accused no.1 Jogdand thereafter asked the complainant as to whether he had brought money and on favourable reply from the complainant, accused no.1 Jogdand asked him to sit on the motor cycle as a pillion rider and he took him in the office of the sub-Registrar, Beed. The motor cycle was stopped there. By that time, PW 2 Kulkarni and Aher also came there near the office of the Sub-Registrar.

According to the prosecution case, thereafter accused no.1 Jogdand called advocate Tandale-accused no.2. Jogdand

talked something to Tandale. Accused no.1 then asked the complainant to give money to accused no.2 and accordingly bribe amount was given. Thereafter agreed signal was given. According to the prosecution, tainted amount was found in possession of accused no.2. Detailed panchanama (Exh.31) was drawn.

Thereafter, first information report was lodged with Beed City police station. After completion of the investigation, charge sheet was filed. The learned Special Judge framed the charge against both the accused.

8] In order to bring home the guilt of the accused persons, the prosecution has examined in all seven witnesses.

The defence also examined four witnesses.

9] In the present case, the tainted money was recovered from accused no.2. Accused no.2 is not a public servant. He was charged for the offence punishable under Section 12 of the Prevention of Corruption Act.

10] In order to secure his conviction, the prosecution is under obligation to prove that there was a demand from accused no.1 Jogdand, a public servant. It is obligatory on the part of the prosecution to prove that accused no.2 Tandale, who is an advocate, has accepted the tainted amount in pursuance to the demand made by accused no.1 Jogdand, the public servant.

11] Let us examine, what is the available evidence on record in respect of demand and whether such evidence is sufficient to hold that accused no.1 has made a demand of illegal gratification from the complainant.

12] So far as demand is concerned, the prosecution case revolves around the evidence of PW 1 Jaydrath, the complaint lodged by him (Exh.26) and the evidence of Panch witness Ramrao Kulkarni (PW 2).

As per Exh.26, in the month of March/April 1989, when PW 1 Jaydrath went to the Godown and met Superintendent Kadam, that time, complainant was directed to bring the letter from the Block Development Officer, and accordingly, he met the Block Development Officer, who directed him to meet the Agricultural Officer Jogdand (accused no.1), and accordingly he met him. According to the complaint, for about 15 to 20 times he made visits to the office of accused no.1.

From the complaint, it is clear that first demand was made by accused no.1 on 16.7.1990. As per the assertion made in the complaint, when the demand was made, that time in view of the complainant, Vikas Ahire was with him. The demand was made for Rs.300/- and ultimately it was scaled down to Rs.200/-.

What is important to note is that as per the complaint, the demand was made in presence of his nephew Vikas Ahire.

As per the complaint, on 16.7.1990 accused no.1 asked the complainant to visit again on 17.7.1990 with Rs.200/-.

Accordingly, if statement made in the complaint is to be believed, on 17.7.1990 both the complainant and Vikas went to the office of the Panchayat Samiti, however, accused no.1 was not available since he was on strike. Thereafter, they went to the office of the Zilla Parishad. There, accused no.1 met them and that time demand was made.

Thus, on both the days the demand was made by accused no.1 in presence of Vikas Ahire. Vikas Ahire ought to have been examined by the prosecution to corroborate the version made by the complainant Jaydrath in the complaint, however, for the reasons best known to the prosecution, Vikas Ahire is not examined.

13] Worth to note is that, from the witness box the complainant Jaydrath is completely silent about the presence of Vikas Ahire on 16.7.1990 and 17.7.1990. Thus, there is material variance on the important aspect of demand made by accused no.1 to the complainant in presence of Vikas Ahire.

In that view of the matter, the evidence of PW 1 Jaydrath is not corroborated either through the contemporaneous document (Exh.26) in view of the fact that in the complaint categorical statements are made that the demand was made in presence of Vikas Ahire.

Secondly, in spite of the evidence available with the prosecution by examining Ahire to corroborate the demand on 16.7.1990 and 17.7.1990 made in his presence, Ahire is not examined. Therefore, an adverse inference is required to be drawn

against the prosecution at least in that behalf.

In that view of the matter, this court is of the view that the prosecution has utterly failed to prove that there was demand from accused no.1 on 16.7.1990 and 17.7.1990.

14] Now, so far as demand on the day of trap is concerned, let us see what is the evidence available with the prosecution in that behalf.

After the complaint (Exh.26) was lodged, PW 5 Bhaurao Chavan decided to lay a trap on accused no.1. Accordingly, PW 2 Ramrao Kulkarni was directed to remain with the complainant. In pursuance to the decision to lay trap, the raiding party went to the office of the Panchayat Samiti on 18.7.1990. According to the evidence of PW 1 complainant, the complainant, Kulkarni and also Aher went to the office of the Panchayat Samiti, Beed. It will be useful to reproduce herein under the entire evidence in respect of the demand on the said date, as reflected in the examination-in-chief of the complainant.

“ I, Kulkarni, and one Aher went to office of Panchayat Samiti, Beed. There at the office of Panchayat Samiti, Beed, we saw Shri Jogdand was sitting on motor cycle. That motor cycle was made stationary. When we reached near Jogdand, then Jogdand made an enquiry with me whether I had brought money. Then I told him as yes. There upon, Shri Jogdand asked me to sit on the motor cycle to his back side, saying that he wanted to go nearby.”

The evidence of PW 2 Ramrao Kulkarni in that behalf is as under :-

“ After completion of panchanama at the office of A.C.B., Beed as per the say of Shri Chavan, I, Shri Jayadrath Gaikwad and Ahire went ahead to the office of Panchayat Samiti, Beed to see Jogdand. At the gate of office of Panchayat Samiti, Beed, we saw Shri Jogdand. There Jayadrath Gaikwad and Jogdand wished each other, and both talked to each other some thing. Thereafter, Jogdand made Jayadrath Gaikwad to sit on the motor cycle to his back side.”

From the afore said evidence, it is clear that the complainant is completely silent in his evidence about the exact amount of demand by accused no.1. However, this court does not attach much importance to it, since the version of the complainant is that accused no.1 had asked whether he had brought money.

What is significant to note is that whether such demand made by accused no.1 with the complainant is duly corroborated by independent panch witness.

From the evidence of Ramrao Kulkarni, as reproduced herein above, he is completely silent about any demand being made. He only says that there was some talk between accused no. 1 with the complainant. The prosecution has failed to throw any light on the said talk, through the evidence of PW 2 Ramrao Kulkarni. Thus, in my view, the demand on the day of the trap to the complainant is not at all corroborated. Further, though Ahire was also directed to remain with the complainant, as observed above, Ahire is not examined.

15] Further, according to the version of PW 1 Jaydrath, when accused no.1 took him in the office of the Sub-Registrar, the motor cycle was stopped there. By that time, Kulkarni (PW 2) and Aher also came there near the office of Sub-Registrar. Accused no.1 called accused no.2. Thereafter, the complainant has deposed as follows : -

“ By that time, Shri Jogdand called Advocate Shri Tandale. Shri Jogdand talked something to Advocate Shri Tandale. Thereafter, Shri Jogdand asked me to give money to Shri Tandale. Advocate. I, therefore, gave bribe money to Shri Tandale, Advocate. “

In that behalf, it would be useful to reproduce the evidence of Ramrao Kulkarni, the panch witness.

“ I and Shri Vikas Ahire also followed them to the office of Sub-Registrar, Beed. There at the office of Sub-Registrar, Beed, Shri Jogdand called Shri Tandale, Advocate, and Jogdand asked Jayadrath Gaikwad to give money to Shri Tandale, Advocate. Jayadrath Gaikwad gave money i.e.currency notes smeared with anthracene powder to Shri Tandale, Advocate.”

From the aforesaid evidence, it is crystal clear that PW 2 Ramrao Kulkarni is at variance on the material aspect in respect of talk between accused no.1 and accused no.2.

Further, as seen in the preceding paragraph, the evidence of PW 1 Jaydrath only discloses that accused no.1 has asked him as to whether he has brought money. PW 2 Ramrao Kulkarni's evidence shows that some talk took place in between them. Thus, it is clear that, from the witness box, both these witnesses were

completely silent about the quantum of money. However, Exh.31, the post-trap panchanama has following recitals : -

" श्री जोगदंड हे जयद्रथ यांना म्हणाले कि, पैसे आणलेत काय ? त्यावर जयद्रथ हा तुमचे सांगण्याप्रमाणे ३०० रु. घेऊन आलो आहे असे म्हणाला, व देवू काय ? असे म्हणून खिशाकडे हात नेला. त्यावर जोगदंड हे म्हणाले कि, थांबा मी सांगतो त्यांचेकडे पैसे द्या व पत्र उद्या घेऊन जावा. त्यानंतर श्री जोगदंड याने आपली मोटार सायकल चालू केली व त्यावर जयद्रथ गायकवाड यास बसा म्हणाले. त्यावर जयद्रथ हा मला कशाला सोबत नेता, इथेच पैसे घेवून टाका असे म्हणाला. त्यावर जोगदंड हा म्हणाला कि, इथे जवळच जावून व तेथे मी तुम्हाला माणूस दाखवितो त्याचेकडे पैसे द्या. श्री जोगदंड याने फारच आग्रह केल्यानंतर जयद्रथ गायकवाड हा जोगदंड यांचे मोटार सायकलवर बसला. मोटार सायकल चालू करून ती उपनिबंधकाचे कार्यालाजवळ थांबविली. "

Since both the witnesses were completely silent in respect of the afore said recitals from their evidence, appearance of the afore said recitals in the contemporaneous document (Exh.31) on which the prosecution heavily relies, creates serious doubt about the truthfulness of the entire prosecution case.

16] With the quality of the aforesaid evidence as appearing in the prosecution case in respect of the demand by accused no.1, in my view, the prosecution has utterly failed to prove the demand made by accused no.1 from the complainant.

17] Since the demand itself is not proved by the prosecution, the consequent recovery of tainted money from a person who is not a public servant, in my view, is of no consequence.

18] The upshot of the discussion leads me to pass following order.

ORDER

- (I) Criminal Appeal No.356 of 2000 and Criminal Appeal No. 498 of 2012 are allowed.
- (ii) The judgment and order of conviction, passed against the appellants, by the learned Additional Sessions Judge, Beed, dated 5.8.2000 in Special Case No.14 of 1991 is quashed and set aside.
- (iii) Appellants-Rajendra s/o Dhondiba Jogdand and Govardhan Bajirao Tandale are acquitted of the offences with which they were charged.
- (iv) The 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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