IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 367 OF 2000

Kantilal s/o Mishrilal Bothra
Age : 52 Yrs., Occ. Service,
Junior Clerk in Supply
Division, Zone No. 7, CIDCO, **.... APPELLANT/**
Aurangabad. **[ORI. ACCUSED]**

V E R S U S

The State of Maharashtra **.... RESPONDENT**

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Mr. R.N.Dhorde, Senior Counsel a/w
Mr. Pravin Patil, Advocate for Appellant.
Mr. U.S.Mote, A.P.P. for Resp. – State.

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CORAM : V.M.DESHPANDE, J.
DATE OF JUDGMENT : 13th JULY, 2015

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JUDGMENT :

1. Present Appeal is directed against the Judgment and Order of conviction passed by the learned Special Judge

[Anti Corruption], Aurangabad dated 18/08/2000 in Special Case No. 7/1994. By the said Judgment and Order of conviction, appellant was convicted for the offence punishable u/s 7 of the Prevention of Corruption Act, 1988 and was directed to suffer Rigorous Imprisonment for one year and to pay fine of ₹ 200/- [Rupees Two Hundred] and in default, to suffer Rigorous Imprisonment for three months.

Appellant was also convicted for the offence punishable u/s 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988 and was directed to suffer Rigorous Imprisonment for two years and to pay fine of ₹ 500/- [Rupees Five Hundred] and in default, to suffer Rigorous Imprisonment for six months.

Learned Special Judge directed that both the substantive sentences shall run concurrently.

2. Prosecution case, as it was unfolded during the course of the trial, is as under :-

Somnath s/o Eknath Jagtap [P.W.6] on 06/09/1993 was working in the office of Anti Corruption Bureau, Aurangabad.

On the said date, complainant Adesh Goje

[P.W.1] came to his office and orally narrated his complaint. Complaint was reduced into writing. It is at Exh. 16.

As per Complaint [Exh.16], maternal uncle of the complainant is Dr. Vallabh Vithalrao Nikte. He practices in Medicine at Akola. He is having his bungalow at Town Centre, P-1, Plot No. 24, CIDCO, Aurangabad.

On 13/07/1993, for obtaining water tap connection in the said bungalow, application was moved at Zone No. 7 of Municipal Corporation, Aurangabad. Overseer from Zone No. 7 by name Bothra [appellant] gave notice on 25/08/1993 to him.

When on 13/07/1993, complainant was in Zone No. 7, that time Overseer Bothra [appellant] demanded ₹ 1,000/- [Rupees One Thousand], if he wish to have water tap connection immediately. It is stated in the complaint that the complainant asked that he will think over about the same. However, thereafter, since he was out of station, he did not visit the office of Zone No. 7.

Complaint further states that on 02/09/1993, when complainant had been in the office of Zone No. 7 of Municipal Corporation, Aurangabad, that time he met appellant Bothra and asked as to whether the file in respect of water tap connection is being sent or not, that time Bothra gave notice dated 25/08/1993 for payment of property tax required for water tap connection. Accordingly, on 03/09/1993, complainant went to the office of assessor and moved an application for assessment of house property tax.

Thereafter, on 04/09/1993, complainant again went to the office of appellant Bothra and that time he disclosed to appellant Bothra that he had already applied for assessment. According to the complaint, that time appellant Bothra demanded ₹ 1,000/- [Rupees One Thousand] and asked him to give the same on 06/09/1993 in between 4.00 – 4.30 p.m.

Since the complainant was not ready to give the bribe, he approached the Anti Corruption Bureau, Aurangabad and lodged aforesaid complaint.

3. After getting the aforesaid complaint [Exh.16] from the complainant, Somnath Jagtap [P.W.6] gave letter to the Superintendent of the Agricultural Department and requested to provide two employees to act as panchas. Accordingly, Amol s/o Vasantrao Rajhans [P.W.2] and Mr. Jangam came to his office. They were introduced to the

complainant. Complainant narrated his complaint to the said panchas. Thereafter, demonstration of the use of anthracene powder and ultra-violet lamp was given to the complainant and both the panchas. Pre-trap panchanama [Exh.20] was drawn.

4. According to the prosecution, it was decided to lay trap on the appellant on 06/09/1993.

5. As per the prosecution case, Amol Rajhans [P.W.2] was in constant company with Adesh Goje [P.W.1] right from the time when they left the office of Anti Corruption Bureau.

6. According to the prosecution case, Adesh Goje [P.W.1] and Amol Rajhans [P.W.2] alighted from the jeep of the Anti Corruption Bureau, which was parked in front of Garware Company and thereafter they went to the office of Zone No. 7. According to prosecution case, that time appellant was not present in the office. He came after 10-15 minutes. Pleasantry were exchanged in between them. Thereafter, complainant and Amol Rajhans [P.W.2] were

taken by the appellant in the office of Kalim Akhtar, Senior Officer in that office. He was not present there. Adesh Goje [P.W.1] that time made enquiry with the appellant about the water tap connection. There-upon appellant told him that if the amount of ₹ 1,000/- [Rupees One Thousand] is paid to him, he will do the work within a period of two days. Thereafter, Adesh Goje [P.W.1] removed tainted currency notes from his pocket. Those were accepted by the appellant and put the same in the pocket of his shirt. Thereafter, agreed signal was given requiring the anti corruption officials to rush in the office. Somnath Jagtap [P.W.6] gave his introduction to the appellant/accused. Tainted currency notes were removed from the pocket of the appellant. Those currency notes were seen in the light of the ultra-violet lamp to notice blue shining. A detail panchanama [Exh.21] was drawn.

7. Thereafter, F.I.R. was lodged vide Exh. 49.

8. Learned Special Judge framed Charge against the appellant. The same was denied by the appellant and claimed for his trial.

In order to bring home the guilt of the appellant, prosecution has examined in all six witnesses. Appellant also examined two defence witnesses apart from his statements, both oral and written u/s 313 of the Code of Criminal Procedure. Written explanation u/s 313 of the Code of Criminal Procedure is available at Exh. 56 on the record of the Court below.

Appellant has accepted those tainted currency notes which were found in his pocket. He gave explanation that the said was thrusted on him by Adesh Goje [P.W.1].

9. Heard Mr. R.N.Dhorde, learned Senior Counsel along with Mr. Pravin Patil, learned Counsel for the Appellant and Mr. U.S.Mote, learned A.P.P. for respondent – State. With their able assistance, I have gone through the record and proceedings.

According to the learned Senior Counsel, pre-requisite for securing the conviction under the provisions of the Prevention of Corruption Act, is the demand from the accused. He submitted that the evidence of Adesh Goje [P.W.1] is not at all reliable. He further submitted that if the evidence of Adesh Goje [P.W.1] and Amole Rajhance

[P.W.2] is examined in its correct perspective, then it is absolutely clear that there was no demand by the appellant on the date of trap. In that view of the matter, according to him, the explanation which he has offered, in his submission, discharges the legal presumption.

10. In the present case, prosecution has examined following witnesses :

[I] Adesh s/o Chandrashekhar Goje [P.W.1] – Complainant, who has proved Complaint [Exh.16].

[II] Amol Vasantrao Rajhans [P.W.2] – panch witness. He has proved Pre-trap panchanama [Exh. 20] and Post-trap panchanama [Exh.21].

[III] Rajendra s/o Vithalrao Pote [P.W.3] – Inward-Outward Clerk of Municipal Corporation, Aurangabad.

[IV] Krishna s/o Bhimrao Bhoge [P.W.4] – Municipal commissioner, who has proved Sanction Order [Exh.31].

[V] Kazi Ahmed Fayazuddin [P.W.5] – He has drawn Map of the site [Exh.34].

[VI] Somnath s/o Eknath Jagap [P.W.6] – Investigating Officer.

11. Appellant has also examined following two witnesses.

[I] Syed Shaukat Ali s/o Syed Akhtar Ali – Junior Engineer, Municipal Corporation, Aurangabad.

[II] Gopal s/o Tukaram Ghoge – Lecturer in Deogiri college, Aurangabad to point out that he also gave amount of property tax to the appellant.

12. Demand for illegal gratification is '*sine qua non*' for securing conviction under the provisions of Prevention of Corruption Act. Mere recovery of tainted currency notes in possession of the accused is not sufficient to record conviction against him unless the prosecution discharges its burden successfully that the said tainted currency notes were found in possession of the accused, was in consequence of the demand which he has made to the complainant.

13. Possession of tainted currency notes with the accused raises presumption as envisaged u/s 20 of the Presumption of Corporation Act. Said presumption is rebutable presumption.

Section 20 purports to lay down that the Court shall draw a particular inference from a particular proved fact. It is only an inference and not the evidence. When the law raises presumption against the accused and calls upon him to prove the contrary, the quantum of degree of proof required to dis-place that presumption are just those required in a civil case and the contrary can be said to be proved if the accused succeeds in establishing that the act attributed to him is capable of an interpretation other than that suggested by the prosecution.

14. In the present case, if the case of the prosecution is to be believed, first demand was made to Adesh Goje [P.W.1] on 13/07/1993. Second demand was made on 04/09/1993. According to the evidence of Adesh Goje, these two demands were made by the appellant in his office. Except the version of the complainant, there is no other corroborative piece of evidence to prove the said act of

demanding gratification by the appellant.

15. The last demand, according to the prosecution case, was made by the appellant at the time of trap i.e. on 06/09/1993. According to the prosecution, at that time, Amol Rajhans [P.W.2] was present with Adesh Goje [P.W.1] and in his presence such demand was made.

16. As per the prosecution, application for water tap connection was given on 13/07/1993. Complaint [Exh.16] discloses that from 13/07/1993 to 02/09/1993, complainant Adesh Goje does not visit the office of the appellant.

As per the Complaint, on 02/09/1993 when the complainant had been to the office of the appellant, that time notice was given to him by the appellant on 25/08/1993. Said notice is available on record. It is at Article 'A' and its authenticity was not denied by the prosecution. It shows that since the application dated 13/07/1993 for water tap connection is not accompanied with the receipt showing the house property tax, said deficiency should be cured within a period of seven days, else the file in respect of water tap connection will be closed.

17. Complaint itself states that after getting the said notice dated 25/08/1993, complainant gave application in the office of the Tax Assessor on 03/09/1993 and requested for assessment of house tax. Thus, it is clear that payment of house property tax was pre-requisite for water tap connection.

18. Rajendra Pote [P.W.3] was working as Inward-Outward clerk in the office of Municipal Corporation, Aurangabad. On 25/08/1993, as per his evidence, appellant brought file of Dr. Vallabh Nikte in connection with water tap connection to him. Initially number was given to him and thereafter the said file was returned to the appellant.

It is not the case of the prosecution that the appellant was the sanctioning authority for water tap connection.

Syed Shaukat Ali is defence witness No. 1. At the relevant time he was serving as Junior Engineer in Municipal Corporation, Aurangabad. In the year 1993, he was working in Water Works department having office of

Zone No. 7. According to his evidence, power to grant new water connection lies with the Executive Engineer. For taking water tap connection, house owner has to pay the property tax first and submit application through plumber. At the time of submitting application for water tap connection, amount is not required to pay. Charges for the water connection are required to pay after approval of new connection. His evidence would disclose that the property tax is required to pay before or along with the application for water connection.

Evidence of this witness further throws light that people used to give amount to the accused for payment of tax and also for water tax. This fact he states since he was sitting with the appellant when the people used to give amount and used to take receipt after one or two months.

The aforesaid acceptance of making payment by the persons in respect of payment of tax and water tax is corroborated by Gopal Ghote [D.W.2], who was Lecturer in Deogiri College, Aurangabad. He has vouched that he has given house property tax to the appellant at the time of moving an application for re-connection of water tap.

Though these two defence witnesses were put under searching cross examination of the learned A.P.P., nothing could be illicited from their cross examination for discarding their testimonies. Further, D.W.2 was an independent person, was not having any intimacy towards the appellant to state falsehood from the witness box.

19. Now, coming to the demand on the date of trap, we are having the evidence of two witnesses. Relevant portion in the Examination-in-Chief of Adesh Goje [P.W.1] is as under, :-

> *" At about 4.00 to 4.15 p.m. all of us left the office of ACB by jeep and came to Zonal office No. 7 in CIDCO. The jeep was parked in front of Garware Company. From there along with Rajhans, I proceed to Zonal office No. 7. The accused was not present in the office. He came in the office about 10 to 15 minutes, thereafter. I said him Namaskar. I told him that I was waiting for him for 5 to 10 minutes. He took us in the office of one Kalim Akthar, a senior officer in that office. Shri. Kalim Akhatar was not in his office. I made inquiry with the accused about water connection. He told me that on that day*

> *he had got sanctioned 2 to 3 such files and he would do my work, within two days if I paid him Rs.1,000/-. He told me there would be no bargaining about the amount agreed and I would have to pay Rs. 1,000/-. Thereafter, I removed the tainted currency notes from my pocket with my right hand and held in front of the accused. The accused had accepted the said notes with his right hand, counted the same and put in the pocket of the shirt. He promised to me that he would do my work within two days. Then I came out of the office and gave signal to the raiding party by moving the handker-chief on my face ".*

The veracity of the aforesaid claim about demand has to be tested from the cross examination of Adesh Goje [P.W.1] and Amol Rajhans [P.W.2]. In the cross examination, Adesh Goje [P.W.1] has stated as under, :-

> *" When we went in the office, in the beginning the accused was not present but other staff was present. We were standing under the tree, which was about 200 ft. away from the office. We*

waited for 5 to 10 minutes. I can not tell whether the accused came by rickshaw or motorcycle. The accused straight way went to his office and I followed him. I was in the cabin of Kalim Akhtar for fraction of second. I came out to give signal. I can not tell during that period i.e. from the time when I left from the tree followed the accused and came out for giving signal, where was the panch No. 1 ".

Further, the evidence of Amol Rajhans [P.W.2], the shadow witness, states as under :-

" There was no talk between me and the complainant on the way from jeep to office of accused in the said office as well as when we were standing near the main gate out of the office. There was no talk between me and complainant or anybody from the arrival of the accused to his office going in the office and coming out of the office till giving of signal ".

20. Thus, from the cross examination of Adesh Goje [P.W.1], it appears that at the beginning the appellant was

not present, however other staff was present. They went in the cabin of Kalim Akhtar for fraction of second and gave the signal. Further, from the version, as appearing in the cross examination, it is really doubtful as to whether Amol Rajhans [P.W.2] was with Adesh Goje [P.W.1]. In that context, as seen from the evidence of Amol Rajhans, which is reproduced herein above, that there was no talk between anybody from the arrival of the accused to his office till giving of the signal.

In my view, this clearly destroys the basic fabric of the prosecution case about the demand. With the availability of the aforesaid nature of the evidence, there is no hesitation in my mind to reach to the conclusion that the prosecution has utterly failed to bring home the guilt of the appellant about the demand of illegal gratification. Further, even Adesh Goje [P.W.1] is candid enough that appellant told him that he would see the payment of property tax and that he would not be worried about the same. In that context, written explanation [Exh.56] is important. It shows that on 02/09/1993, a person came to him and asked about water tap connection. Upon that, appellant asked P.W. 3 Rajendra for taking out the file of Dr. Nikte. From the said file, appellant took out the notice. On the said date, it was informed to Adesh Goje [P.W.1] that for water tap connection, property tax amount of ₹ 762/- plus the charges of plumber ₹ 250/- i.e. total amount of ₹ 1012/- will be required. According to the explanation, on 06/09/1993 said person came in the morning. Since Mr. Kalim Akhtar was not present, thereafter, he left to the main office of the Municipal Corporation for drawing his salary and when he returned in between 4.00 – 4.30 p.m., he went to the office of Kalim Akhtar, that time Kalim Akhtar was not present. At that time, amount was put in his pocket.

21. Aforesaid explanation, in my view, clearly discharges the rebutable presumption, since on the available evidence on record, it is clear that, after fraction of second, Adesh Goje [P.W.1] came out of the cabin of Kalim Akhtar and gave the signal.

22. Since the demand itself is not proved by the prosecution, in my view, it would be hazardous to maintain the conviction as imposed upon the appellant.

23. The upshot of the aforesaid discussion leads me to pass the following order.

<u>ORDER</u>

[I] Present Criminal Appeal is allowed.

[II] Judgment and Order of conviction passed by the learned Special Judge [Anti Corruption], Aurangabad dated 18/08/2000 in Special Case No. 7/1994 is hereby quashed and set aside.

[III] Bail bonds of the appellant stands cancelled.

[IV] Fine amount, if any paid by the appellant be refunded to him.

[V] Rule is made absolute in above terms.

[V.M.DESHPANDE, J.]