

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO. 387 OF 2000
WITH
CRIMINAL APPLICATION NO. 502 OF 2015**

Vikas s/o. Baburao Marathe,
Age 35 years, Occu. Talathi
(under suspension), Resident
of Jalgaon, Taluka and District
Jalgaon.

....Appellant.

Versus

The State of Maharashtra

....Respondent.

Mr. N.K. Kakade, Advocate for appellant.

Mr. A.V. Deshmukh, APP for State.

**CORAM : T.V. NALAWADE, J.
RESERVED ON : 27/02/2015.
PRONOUNCED ON : 05/03/2015.**

JUDGMENT :

1) The appeal is filed against judgment and order of Special Case No. 6/1995 which was pending in the Court of Special Judge, (Additional Sessions Judge) Jalgaon. The appellant is convicted and sentenced for the offences punishable under sections 7 and 13 (1) (d) r/w. 13 (2) of Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act' for short). The maximum sentence of imprisonment of three years is given for the offence punishable under section 13 (2) of the PC Act and

fine is also imposed. The substantive sentences are made to run concurrently. The application is filed by the appellant for permission to produce some record like copy of his appointment order. Both the sides are heard.

2) The original complainant Pandharinath Choudhary was a retired clerk of Municipality Jalgaon. Land admeasuring 2.85 Hectors from Gat No. 118 situated at village Paldhi was standing in the name of his wife, Durgabai Mahajan. They were in need of money and so, they wanted to sell the land. In the revenue record of this land, some encumbrances in respect of Government charges were shown and those entries were coming in the way of transfer of the land. Complainant Pandharinath approached Tahsildar for deleting the entry in respect of Tagai and by order dated 17.2.1995 Talathi was directed to delete that entry. There was one more encumbrance in respect of Bunding work. The complainant paid the charges in respect of Bunding work in the treasury and so, the direction was given to delete that entry also.

3) As per the procedure, Talathi of the concerned village viz. Paldhi is expected to delete the entries and issue 7/12 extract showing that there is no encumbrance on the land. The

complainant produced copies of aforesaid two orders along with application before Talathi and requested him to delete the entries and issue the 7/12 extract. He approached Talathi on 1.3.1995. Talathi, the accused/appellant asked him to come after one month. The complainant approached Talathi on 18.3.1995 and on that day, Talathi again asked the complainant to come after 15 days and he refused to give 7/12 extract. In view of this conduct and approach of Talathi, the complainant went to residential place of Talathi on 23.3.1995 at about 7.15 a.m. The house is named as 'Madhav Sadan' and situated at Tagor Nagar, Jalgaon. When the complainant requested Talathi to issue 7/12 extract as he wanted to sell the property, Talathi/accused asked the complainant to give illegal gratification of Rs. 800/- for doing this work. The complainant then approached Anti-Corruption Bureau (hereinafter referred to as 'ACB' for short) on 23.3.1995. Talathi had asked the complainant to come to his office on 24.3.1995 with the money.

4) Deputy Superintendent of Police Shri. Prakash Rade was attached to ACB Office. After receipt of complaint, he made inquiry with the complainant to ascertain that there were no malafides on the part of complainant. He then took steps for collecting two independent witnesses and asked the complainant

to come to the office on the morning of 24.3.1995. Two employees of Zilla Parishad were collected as panch witnesses.

5) When panch witnesses and complainant came to ACB Office at 8.00 a.m., the complainant was introduced to the panchas and the action which was to be taken during trap was explained to them. The demonstration of use of anthracene powder was given to them. From the complainant amount of Rs. 800/- was collected which consisted of currency notes of Rs.100/- denomination each. The tainted money was kept in the pocket of shirt of complainant. He was to hand over the money to accused only after making of demand by the accused. Murlidhar Koli, first panch witness, was to remain in the company of the complainant to witness the incident. After acceptance of the money by the accused, signal was to be given by the complainant and after that, the remaining members of trap team were to come forward to take further action. Pre-trap panchanama was prepared accordingly. The numbers of currency notes were recorded in pre-trap panchanama.

6) The trap team left ACB Office at 10.30 a.m. At about 11.00 a.m., complainant and first panch witness proceeded towards the office of the accused. After entering in the office of

Talathi, the complainant and the panch witness waited for some time as there was rush. Then the complainant paid respect to Talathi by saying 'Namaskar' to him. Complainant said to Talathi that as per the directions given by Talathi, he had come prepared and so, Talathi should give 7/12 extract showing that there was no encumbrances on the land. After that Talathi prepared 7/12 extract and handed it over to the complainant. When the complainant accepted the 7/12 extract, he requested to reduce the amount demanded by Talathi and upon that Talathi said that complainant should give entire amount demanded viz. Rs.800/-. After that, the complainant took out the tainted money from the pocket of his shirt by using right hand and tendered the amount to Talathi. Talathi asked the complainant to keep the amount on the table and leave the office. The complainant kept the wad of amount on the table. Talathi put a register on this amount. Complainant left the office and after going to Varanda portion of office, he gave pre-decided signal. The first panch witness remained inside of the office at that time. It was 11.45 a.m. The members of trap team, in which there was second panch witness, rushed to the office. The complainant was asked to remain at some distance from the office. Then the officer Rade gave his introduction to Talathi/accused. The accused became frightened. Inquiry was made with the accused by the

officer about the acceptance of illegal gratification. Similar inquiry was made with the panch witnesses and panch witness narrated the incident. The tainted money, which was found underneath of register, was collected. The routine procedure was followed to find out the presence of anthracene powder. The numbers of notes were also compared with the numbers noted in pre-trap panchanama. The numbers tallied. Anthracene powder was found on the pocket of the shirt of complainant and on the right hand of the complainant. The amount came to be seized in the presence of panch witnesses and the other record like register of 7/12 extract, register of form No. 6, the letters, Chalan produced by the complainant were taken over. The table cloth on which anthracene powder was found was also taken over. Notes in respect of entries made in the registers were made and the registers were returned. The 7/12 extract handed over by the accused to the complainant was taken over and the panchanama was prepared accordingly.

7) After completion of investigation proposal was forwarded to Sub Divisional Officer (for short 'SDO') under whom the office of Talathi of aforesaid village works. The relevant record like complaint, panchanama, aforesaid documents etc. were forwarded to sanctioning authority, SDO. SDO gave

sanction for prosecution of the accused for aforesaid offences and then the case came to be filed.

8) The charge was framed for aforesaid offences. The accused pleaded not guilty. The prosecution examined complainant, a panch witness, Investigating Officer, sanctioning authority etc. and proved the relevant record. In the statement given under section 313 of Criminal Procedure Code, the accused denied virtually everything, but he gave additional statement in writing. In the written statement, he contended that he had not demanded Rs. 800/- as a bribe amount. He contended that as per the orders of Higher ups, he was collecting the amount from persons coming to the office for small saving schemes and that record was not considered and taken over by ACB. He contended that he had not touched the money and that circumstance is sufficient to infer that he had not accepted the amount. Alternatively, he contended that accused had requested the complainant to open small saving account and that incident is given twist to show the incident of demand and acceptance of bribe.

9) The learned Special Judge has believed the witnesses examined by the prosecution. No defense evidence is given. In

the appeal, the learned counsel for the appellant submitted that Sub Divisional Officer (Revenue Department) was not competent authority to give sanction as he was not appointing authority and so, the appellant is entitled to acquittal. Argument was advanced also on aforesaid defences taken by the accused in the trial Court.

10) It is not disputed that the appellant/accused was working as Talathi, a public servant, of Paldhi village at the relevant time. Choudhary (PW 1), the original complainant has given evidence that he had approached the accused for getting 7/12 extract in respect of the land of his wife and he was interested in getting clear 7/12 extract, showing no encumbrances. The complainant and his wife wanted to sell the land and particulars of the proposed transaction are brought on the record during his cross examination. The proposed purchaser wanted to purchase the land which was free from encumbrances and so, such record was necessary. Complainant has given evidence that when he first approached to Talathi/appellant, he demanded Rs. 1200/- as illegal gratification for giving such 7/12 extract. He has deposed that accused then reduced the demand to make it Rs. 800/-. Complainant has given evidence that as he was not ready to give the amount, he took the steps for removal

of the encumbrance. He has given evidence that as per his inquiry, there was encumbrance of Tagai and so, he applied to Tahsildar for removal of this encumbrance. Complainant has given evidence that as per the notification issued by the State Government, the owner of this land was exempted from making payment of Tagai and so, Tahsildar issued letter addressed to Talathi accordingly. Complainant has deposed that this letter was handed over to accused, but the accused refused to give clear 7/12 extract by saying that there was one more encumbrance of the charge of Bunding work. Complainant has deposed that he deposited the amount of Rs. 61/- towards the said charges by Chalan in treasury, he obtained the order of Tahsildar for deletion of this encumbrance also and he produced the record before the accused. Complainant has given evidence that even after taking of such steps and producing the orders made by Tahsildar, the accused refused to delete the encumbrances and to give clear 7/12 extract.

11) Complainant (PW 1) has given evidence that as the accused was avoiding to give 7/12 extract, he met the accused on 23.3.1995 at the residential place of the accused. He has deposed that on that occasion also, accused expressed that he had already demanded Rs. 800/- and unless that demand was

met with, he will not do the work of complainant. Complainant has given evidence that due to this approach, conduct of the accused, he went to the office of ACB and gave the complaint which is at Exh. 9. It can be said that in the complaint, there is no mention of initial demand of Rs. 1200/- made by the accused which was made prior to collecting the orders of Tahsildar, but there is mention of the subsequent conduct of the accused and demand made after getting the orders of Tahsildar. Thus, Exh. 9 is consistent with the aforesaid oral evidence of complainant on material points.

12) The accused has denied everything including the evidence that complainant had approached him for getting such 7/12 extract. Under the post-trap panchanama, which is at Exh. 17, the relevant record was taken over from the office of Talathi. The record contains the letter of Tahsildar dated 17.2.1995 which is to the effect that the land was exempted from payment of Tagai. In this letter, order was made by Tahsildar to delete that encumbrance and issue 7/12 extract. There is another letter of Tahsildar dated 28.2.1995 showing that complainant had deposited Rs. 61/- towards Bunding charges and Tahsildar had directed to delete that encumbrance also from the revenue record. In addition to this order, the original Challan dated

28.2.1995 showing that the amount was deposited by complainant in treasury is collected under Exh. 17. Under the panchanama, the 7/12 extract issued by Talathi on the date of incident i.e. 24.3.1995 was also collected and it shows that by entering the number of changes, those two encumbrances were deleted by Tahsildar. The numbers of changes were 2428 and 2429. Same numbers were found in respect of changes in the register kept for such entries. This record shows that even when it was necessary for Talathi to issue clear 7/12 extract on 28.2.1995, he avoided to do so and he prepared the record and issued the 7/12 extract on 24.3.1995. This record is consistent with the case of prosecution. No explanation at all is given by the accused on these circumstances.

13) The evidence of complainant (PW 1) and Investigating Officer Shri. Rade (PW 4) shows that ACB received the complaint on 23.3.1995 and ACB decided to lay the trap on 24.3.1995. The evidence of complainant, Rade and Koli (PW 3), a panch witness is on the formalities completed before the trap. The pre-trap panchanama is duly proved. There is not much dispute over this part of the evidence and so, it is not necessary to discuss that evidence in detail.

14) Complainant (PW 1) has given evidence that on 24.3.1995 as per the plan, he and panch witness Koli first went to the office of accused. He has deposed that in presence of Koli, he had talk with the accused and he demanded the 7/12 extract which was not bearing entry of encumbrances. He has deposed that during his talk, the accused asked as to whether complainant had come prepared as per the directions given by the accused to complainant in the house of accused. He has deposed that he answered in affirmative. He has given evidence that after such reply, the accused prepared the 7/12 extract and handed it over to him. He has given evidence that accused then asked to give the amount as told by the accused. Complainant has given evidence that he then tendered the tainted money to accused. He has deposed that the accused asked him to keep the amount on the table and so, he kept the amount on the table of the accused. He has given evidence that he went out of that room and then he gave pre-decided signal to the remaining members of trap team. He has given evidence that after his signal, the officers of ACB came forward and they took action, but he was kept outside of the room when the officers were taking action. The defence counsel has brought on the record more particulars of the demand and more evidence is brought on the record that one more demand was made in the house of one

Marwadi. This part of evidence brought on the record during cross examination cannot be treated as contradiction or inconsistency in the case of prosecution. Considering the period taken by the accused for handing over the clear 7/12 extract and the urgency of the matter for the complainant, it can be inferred that the complainant was pressing for getting the 7/12 extract, but for extracting money, the accused was avoiding to do the work.

15) In the cross examination of the complainant (PW 1), he has stated that the accused had kept the tainted money under the register by taking the tainted money. Much was argued by the learned counsel for the appellant in this appeal due to this admission. Admittedly, no anthracene powder was detected on any part of the person of the accused when he was examined during post-trap panchanama. This admission cannot make much in favour of the accused as the evidence of complainant as a whole needs to be seen and further, the evidence of panch witnesses and the record also needs to be considered in this regard. When the complainant has deposed that he left the room after putting the amount on table, he had no opportunity to see the subsequent conduct of the accused. Further, there is the evidence of panch witness Koli (PW 3) that

the accused kept register on the wad of notes when complainant left the room. The evidence of Koli (PW 3) shows that he witnessed the incident of talk which was going on between the complainant and accused and during talk, accused had said that he had already demanded the money. Evidence is given by the panch witness that complainant requested to reduce the amount, but the accused insisted that the entire amount of Rs. 800/- need to be given. Thus, there is evidence of panch witness on the demand and the acceptance of amount though the amount was kept on table. Exh. 16, post-trap panchanama is duly proved in the evidence of PW 3 and the contents of this document are consistent with the evidence of panch witness.

16) The evidence of Koli (PW 3) and the evidence of Investigating Officer, Shri. Rade (PW 4) shows that when the Investigating Officer gave his introduction to the accused, the accused became frightened. This circumstance is also relevant in view of the nature of allegation and conduct of the accused. The remaining evidence of Investigating Officer and panch witness is on recovery of tainted money, taking over of the aforesaid record and making inquiry with the accused and the panch witness by Investigating Officer. There is no need to discuss that evidence in detail. No specific defence in this regard is taken by

the accused.

17) In the cross examination of the aforesaid witnesses, it is brought on the record that at the relevant time, there was atleast one more Talathi working in that room and there were some other persons also. The learned counsel for appellant submitted that it was necessary for the Investigating Officer to record the statements of these persons for collecting independent evidence. He submitted that as the Investigating Officer avoided to do so, the benefit of this circumstance needs to be given to the accused. This submission is not at all acceptable. Two independent witnesses were taken with him by the Investigating Officer. In view of nature of evidence which is already discussed, the other persons present in the room could not have helped much either to the accused or to the prosecution as there was no possibility of talk in loud voice in such a case. If the accused had any specific defence, he could have examined defence witnesses as the witnesses have fairly admitted that there was one more Talathi in the same office.

18) The learned counsel for appellant has placed reliance on one case reported as **1995 CRI.L.J. 3978 [M.K. Harshan Vs. State of Kerala]** for taking benefit of the circumstance that

amount was found under the register and not on the person of the accused. In view of the facts of that case, the Hon'ble Apex Court gave benefit of doubt and held that it was not possible to hold that accused tacitly accepted illegal gratification or obtained the same within the meaning of section 5 (1) (d) of the PC Act, 1947 (old Act). The facts and circumstances of each and every case are always different. There can be direct evidence on the demand of illegal gratification and acceptance of it by the accused. Different tactics are played by the persons, demanding and accepting the illegal gratification and it is the duty of the Court to ascertain from the evidence as to whether the evidence is sufficient to prove the demand and acceptance of illegal gratification. Only because the amount was not found on the person of the accused, inference cannot be drawn that there was no demand or there was no acceptance.

19) This Court has no hesitation to hold that in the present case, evidence is sufficient to prove that there was both the demand of illegal gratification and there was acceptance of the amount. In such cases, the presumption available under section 20 of the PC Act, 1988 needs to be used for proving of the offence punishable under section 7 of the PC Act. Further, there are sections 106 and 114 of the Evidence Act for proving

the offence punishable under section 7 and also for proving the offence punishable under section 13 (1) (d) r/w. 13 (2) of the PC Act. The presumption under section 20 is the mandatory presumption, though presumption under the aforesaid provisions of Evidence Act is a discretionary presumption. In view of these provisions, when the tainted money is recovered from the accused, it becomes necessary for him to give plausible explanation. If there is no plausible explanation, adverse inference needs to be drawn against him. There is not only the evidence of complainant, panch witness and Investigating Officer, but there is circumstantial check to this evidence which is already discussed. On the other hand, the accused has taken alternative defence that he had requested complainant to open small saving account. He did not dare to give evidence in that regard and even no record was produced by him when such suggestions were given to witnesses during their cross examination.

20) The learned counsel for the appellant placed reliance on the case reported as **AIR 1976 SUPREME COURT 91 [Raghubir Singh Vs. State of Punjab]**. He submitted that in bribery case, it is the duty of the officers of ACB to secure independent and respectable witnesses during raid. There

cannot be dispute over this proposition. There was no reason for the panch witness to give false evidence against the appellant and there is such independent evidence in the present case. On this point, reliance was placed on more cases reported as **AIR 1992 SUPREME COURT 644 [Ayyasami Vs. State of T.N.]**, **AIR 1973 SUPREME COURT 498 [Ram Prakash Arora Vs. State of Punjab]**, **2008 ALL MR (Cri) 15 BOMBAY HIGH COURT [Avinash Sitaram Garware Vs. State of Maharashtra]**, **AIR 1995 SUPREME COURT 2178 [M.K. Harshan Vs. State of Kerla]**.

21) The learned counsel for appellant submitted that the sanctioning authority was not competent to give sanction. In the present case, Sub Divisional Officer of the Revenue Division where the accused was working, has given evidence as sanctioning authority. Bhaskar Wagh (PW 2) has given evidence that the Investigating Officer had supplied to him the papers of investigation which included panchanamas, report etc. He had perused that record and on that basis, he had accorded sanction. He had also taken one more action like suspending Talathi. Copy of suspension order is produced at Exh. 13 and sanction order is produced at Exh. 12. In the sanction order, the relevant material is mentioned and the officer has observed that he was fully

satisfied and he had formed the opinion that there was necessity to prosecute the accused for the offences punishable under sections 7 and 13 (1) (d) r/w. 13 (2) of the PC Act, 1988. Admittedly, the accused was working as Talathi in his sub Division.

22) The learned counsel for the appellant has placed reliance on cases reported as **2011 ALL MR (Cri) 1968 BOMBAY HIGH COURT [Maruti Subrao Shinde Vs. State of Maharashtra], 1993 (1) Bom.C.R. 134 NAGPUR BENCH OF BOMBAY HIGH COURT [Sakharam Tryambak Patil Vs. State of Maharashtra] and 1980 Mh.L.J. 445 [Bhaurao Marotrao Manekar Vs. State of Maharashtra]**. He submitted that Sub Divisional Officer was not competent as the appointment to the accused/appellant was given by Assistant Collector and only the Assistant Collector could have been given sanction. In the case of **Bhaurao** cited supra the incident had taken place on 31.1.1976 when the provisions of old Act of 1947 were in force and it was held that as the Sub Divisional Officer was not appointing authority, the sanction was not given by competent authority. This case was referred by the Bombay High Court in the case of **Sakharam** reported in **1993 (1) Bom.C.R. 134** cited supra. Both the cases of **Bhaurao and Sakharam** cited

supra were referred in the case of **Maruti reported as 2011 ALL MR (Cri) 1968**. Even when the last case was in respect of the incident of 1998 or 1999, in the last case, the accused was appointed in the year 1972 by Assistant Collector of Gadhigla division of Kolhapur district, but this Court held that only the Assistant Collector could have granted sanction and so, sanction granted by SDO was held to be invalid.

23) The provision of section 19 in the Act of 1988 runs as under :-

"19. Previous sanction necessary for prosecution.

—(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any

doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

24) The aforesaid provision of section 19 and more particularly section 19 (1) (c) shows that the authority competent to remove the public servant from his service can accord sanction. Thus, in the new Act, the position has changed and there is no necessity that only appointing authority should accord sanction. With due respect, this Court needs to observe that this position of law is not discussed in the recently decided case by this Court. The Sub Divisional Officer who accorded sanction in the present case had the power to remove the appellant from the service and so, it cannot be said that the sanction was not given by the competent authority. The provision of section 19 (3) (a) further shows that setting aside of the conviction at the appellate stage on such ground is not possible. Nothing is shown as to how prejudice has been caused. Further, this defence was not taken in trial Court. This Court has already observed that the relevant material is considered by the sanctioning authority and there was the application of mind.

Nothing is brought during the cross examination of the sanctioning authority to create probability that there was no record shown to him or there was non application of mind. Thus, there is no force in the submissions made by the learned counsel for the appellant to challenge the sanction accorded against the appellant. In view of these circumstances and position of law, this Court holds that there is no possibility of interference in the decision of conviction given by the Trial Court. On the point of penalty, it can be said that imprisonment of only three years is given. It can be said that in very rare cases, the poor persons who are harassed, approach ACB. Conviction rate in such case is also surprisingly very low for the reasons which this Court is avoiding to quote. Due to these circumstances, the corruption is increasing. No lenient view can be taken in such a cases. Thus, there is no possibility of interference on the point of sentence, penalty also.

25) In the result, the appeal stands dismissed. Appellant is to surrender to his bail bonds. Criminal Application No. 502/2015 is allowed. The record of appointment is considered by this Court.

[T.V. NALAWADE, J.]

ssc/