

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Appeal No. 371 Of 2000.

Pralhad s/o. Sitaram Yeole.
Age : 46 Years., Occ.: Service.
R/o.: Plot No.36, Jeevan Nagar, North
Side of Ramanand Nagar, Bus Stand,
Jalgaon, District – Jalgaon.



Appellant.
(Ori.Accused No.1.)

Versus

The State of Maharashtra.
(Through the Public Prosecutor, High
Court, bench at Aurangabad.



Respondent.

Appearance ==>

Mr. Joydeep Chatterji, Advocate for the Appellant.

Mr. A.S. Shinde, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. DESHPANDE, J.

DATE : 19th MARCH, 2015.

ORAL JUDGMENT :-

The appellant is before this court, since he felt aggrieved by his conviction and consequent sentence imposed upon him for the offence punishable under Section 7 and under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (In short, “the Act”.) and sentenced him to suffer Rigorous Imprisonment for one year and to pay fine of Rs.3000/- and in default of payment of fine, to suffer further Rigorous Imprisonment for three months in so far as conviction under Section 7 of “the Act” is concerned and sentenced to three years Rigorous Imprisonment and to pay fine of

Rs.5000/- and in default of payment of fine amount, to undergo Rigorous Imprisonment for six months, in respect of conviction under Section 13(1)(d) read with Section 13(2) of “the Act”, by the learned Special Judge, and Additional Sessions Judge, Jalgaon, District – Jalgaon dated 24th August, 2000 in Special Case No.6 Of 1998.

[2] I have heard Mr. Joydeep Chatterji, learned counsel for the Appellant and Mr. A.S. Shinde, learned Additional Public Prosecutor for the State of Maharashtra in detail.

Both the learned counsel took me throughly through the record of the Special Case No.6/1998.

Sum and substance of the submission of the learned counsel for the appellant would be that, the prosecution was not able to bring home the guilt of the appellant, in as much as, the evidence as sought to be used against the appellant by the prosecution, in this case, is not sufficient to record the findings of guilt.

He further submitted that, if the prosecution case is tested in the light of the available evidence then, it is just un-digestable that the prosecution has proved the 'demand' and consequent 'acceptance' to the said, by the appellant, from the complainant. He submitted that the learned trial court ought to have considered the evidence of defence as well as explanation in its true perspective which according to him clearly shows that, the tainted amount was thrust upon the appellant.

[3] Per conta, Mr. A.S. Shinde, learned Additional Public Prosecutor for the State would submit that the evidence appearing against the appellant in the prosecution case is cogent and consistent, which un-mistakanly shows the finger

of guilt towards the appellant alone. He would further submitted that the evidence of the complainant is duly supported by the independent panch witnesses and, therefore, submitted that Criminal Appeal be dismissed

[4] In order to appreciate the rival contentions, as enumerated briefly in the preceding paragraphs, it would be useful to have a glance to the prosecution case and the evidence brought on record.

[5] The prosecution case is as under :-

Pandurang Udaysingh Patil, approached to the Anti Corruption Bureau, Jalgaon on 20th December, 1997. He lodged complaint on that day (Exhibit – 22).

According to the complaint, Pandurang Patil at the relevant time, was discharging his duty as A.I.O., at C.I.D. (Intelligence), Jalgaon. He joined police force in the year 1983. He resides jointly with his parents at village Pimprala – Patilwada, Taluka & District - Jalgaon. There are two houses standing in the name of his father. One is used for residential purpose and another is used as cattle shed. In both these houses, there are two electric meters of Maharashtra State Electricity Board (In short, M.S.E.B.) Both the meters stand in the name of his father.

Since both these electricity meters were not functioning, an application was made by him since he is the 'Karta' of his family either to repair it or for its replacement. The said application was signed by his father, addressed to the Junior Engineer, M.S.E.B, Pimprlala dated 15th August, 1997. He also has deposited Rs.15 each dated 15th August, 1997 and 18th August, 1997 for inspection of electricity meters from the Junior Engineer, M.S.E.B., Pimprlala. Accordingly, amount was deposited. Inspite of that no employee from the office of M.S.E.B. had taken necessary action.

Complaint further states that on 5th December, 1997, he received electricity bill in respect of the house, which is used as cattle shed, for Rs.906/- mentioning therein that, if bill amount is deposited lately, he was called upon to deposit Rs.920/-. Since prior to said at no point of time, such huge bill was received, therefore, he on 18th February, 1997 at 2/30 p.m. went to the office of M.S.E.B., situated near the Mutton market alongwith electricity bill. There he met with one Mandore, Clerk, who directed him to meet Mr. Patil. The bill was shown by the complainant to Mr. Patil. The bill was shown by the complainant to Mr. Patil upon that Mr. Patil asked him to come out of his office for taking the tea and, therefore, the complainant, Mr. Patil and Mr. Mandore came to tea kiosk. There, complainant disclosed Mr. Patil that application dated 15th august, 1997 to repair the electricity meter is already given however, no action is taken on that. He further stated that in the cattle shed only there is one electricity line and inspite of that he has received bill for Rs.906/-, when past bills were for Rs.47/- only.

After perusing the bill, as per the complaint, Mr. Patil said that right now only bill of Rs.906/- is received by him and in future, bill can be for Rs.4000/- to Rs.5000/-. Getting such information, the complainant got frightened.

After some discussion, according to the complainant, Mr. Patil told the complainant that he will do “Something” and for saving Rs.906/- of the current bill and Rs.4000/- to Rs.5000/- that may be for future bill, the complainant will have to give Rs.2000/- to him.

The complaint further states that, ultimately Mr. Patil agreed to Rs.1500/- which was agreed to be paid by the complainant. Thus Mr. Patil demanded Rs.1500/- however, that time, the complainant was not having Rs.1500/- with him and only having Rs.500/-. On that Mr. Patil said that

presently he will receive Rs.500/- and Rs.1000/- be given after work is done and, therefore, as per the demand of Mr. Patil in presence of Mr. Mandore, the complainant gave Rs.500/-. After accepting the said demand amount, Mr. Patil disclosed that in the evening, he will come to the house of the complainant and he will do his work.

Complaint further proceeds that the complainant again visited the office of M.S.E.B. and met Mr. Patil in between 4.00 to 4.30 p.m. That time, Mr. Patil disclosed that he will be going on leave for 3 to 4 days for marriage purpose and, therefore, he will ask his office companion – Mr. Yeole (Appellant) to do his work and after that the complainant to pay Rs.1000/- to Mr. Yeole. Thereafter, according to the complaint – Mr. Patil called Mr. Yeole outside the office and narrated the work of the complainant to him and asked him to take Rs.1000/- from the complainant.

According to the complaint, Mr. Yeole, the appellant agreed to visit the house of the complainant on 20th December, 1997 and he visited his house however, the complainant was not present there. Complainant visited the office of M.S.E.B. and met the appellant and asked him as to why he has not done the work that time the appellant disclosed to him that, since there was nobody present in the house, after the work was done to whom he should ask the money, therefore, he has not done the work. The complaint further proceeds that Yeole thereafter disclosed to the complainant that next date he will visit the house of the complainant and will do the work.

Since according to the complainant, he was not ready to give the bribe amount, either to Mr. Patil or Mr. Yeole, he came to the office of the Anti Corruption Bureau, Jalgaon and lodged the complaint.

[6] After receipt of complaint (Exhibit -22) Kalidas shankar-rao Suryawanshi, Dy.S.P., Anti Corruption Bureau, Jalgaon, called two panchas from the Social Welfare office, by issuing letter and accordingly Suryabhan Rajaram Patil (PW No.2) and Mansing Waharya Pawara visited the office of Anti Corruption Bureau, Jalgaon, to act as panchas.

The complainant Pandurang Patil (PW No.1) was introduced to them. The use and properties of ultra violate lamp and anthracene powder was then explained to the complainant as well as panchas. Necessary demonstrations were also given to them and this exercise was reduced into writing by drawing pre-trap panchnama (Exhibit -26).

[7] PW No.2 Suryabhan Patil was instructed to accompany the complainant. They were asked to go to the house of the complainant at village Pimprala; where the appellant was to come and in case demand is made, of the amount, the complainant should give the same by his right hand and on acceptance of amount to make a signal by moving his hand, around his neck to other members of raiding party and in case of darkness, he shall give call in the name “Raju” thrice. PW No.2 Suryabhan was instructed to accompany the complainant and to hear the discussion and watch transaction and delivery of amount of bribe that will be taking place at the place.

[8] According to the prosecution, thereafter raiding party alongwith the complainant and panch proceeded to village Pimprala at 5.00 p.m. After raiding party reached near Mundada High-school alongwith PW No.1 – Pandurang (Complainant) and panch proceeded towards home of the complainant. According to the prosecution, at 17.15 hrs. one person came there on green colour scooter near the house of the complainant, who was identified as the appellant. According to the prosecution case, after some talk, between the appellant, complainant and PW No.2 – Suryabhan, all three went to the house of

the complainant, however, immediately came out and then entered nearby cattle shed. Thereafter all three came out at 18.05 hrs. from the cattle shed. That time, the complainant gave agreed signal upon that raiding party pounced upon the appellant and according to the prosecution case, tainted amount was recovered from him, by preparing panchnama Exhibit – 27.

[9] The house of the appellant was also searched on the next day i.e. 22nd December, 19978 however, nothing incriminating was found in his house. Panchnama of the house search (Exhibit – 28) was also drawn.

[10] P.W. 4 Kalidas then lodged First Information Report with Zillha Peth Police Station, Jalgaon, prior to house of the appellant was searched. After the completion of entire investigation and after the charge-sheet was filed, sanction was also obtained from the sanctioning authority PW No.3 Govind Harkishandas Saraf. Sanction order is at Exhibit – 30.

[11] The learned Special Judge, Jalgaon framed the charge against the present appellant and one Mohan Lotu Patil (Accused No.2) under Exhibit – 11 in special Case No.6/1998. Both the accused persons denied the charge and claimed for their trial. In order to bring home the guilt of , prosecution has examined four witnesses namely :-

PW No.1 : Pandurang Udaysing Patil. (Complainant).

PW No.2. : Suryabhan Rajaram Patil.(Panch).

PW No.3. : Govind Harkishandas Saraf, who has accorded sanction.

PW No.4. : Kalidas Suryawanshi, Investigating Officer.

And also relied upon the various documents, which were proved during the course of trial. The present appellant entered into the witness-box. He was examined himself as DW No.1.

[12] After full dress trial, the learned Spacial Judge vide his Judgment and Order dated 24th August, 2000 acquitted Mohan Lotu Patil (Accused No.2.) from the charge however, he convicted the appellant (Original Accused No.1) and sentenced him jail sentence, as discussed in the opening paragraph of this Judgment.

[13] Admittedly, the appellant was working as a Clerk in the M.S.E.B., Jalgaon where-as acquitted accused was working as Line Helper in the M.S.E.B. It is clear from the evidence of PW No.3 Govind Saraf, as per the Rules, firstly amount of disputed bill is to be paid under protest. It is also available on record that there is 'testing unit', which is a technical wing and there is also Engineer and Technicians, working with the M.S.E.B. Office.

[14] The complaint is not substantive piece of evidence. It can be used for the purpose of contradiction and corroboration. The prosecution is obliged to prove the complaint by substantive evidence. Un-disputedly, as it emerges from the complaint Exhibit – 22 and evidence of PW No.1 Pandurang – complainant, on 18th December, 1997 when he had been to the office of M.S.E.B., firstly he met Mr. Mandore, who introduced him to Mr. Patil, acquitted accused, Thereafter, trio went to tea kiosk where in presence of Mandore, Mr. Patil demanded Rs.2000/- which was reduced to Rs.1500/- and consequently, upon the same, Rs.500/- were paid to the acquitted accused by the complainant in presence of Mr. Mandore.

[15] Thus, the first demand was not made in presence of the appellant. Further Rs.500/- was also not accepted in presence of the appellant. The first demand was on 18th December, 1997. It was made in presence of Mr. Mandore. Not only that, part amount of the demand was also accepted by the acquitted accused in presence of Mr. Mandore. Inspite of that for the reasons best known to the prosecution, Mr. Mandore was not examined by the prosecution.

[16] It appears that since Mandore was not examined, the learned judge of the court below was of view that the demand and consequent acceptance by the acquitted accused is not proved and, therefore, he was acquitted.

[17] According to the complaint Exhibit – 22, after the acceptance of the amount of Rs.500/-, acquitted accused introduced PW No.1 Pandurang to the present appellant and told him that he should do that work and should take Rs.1000/- from the complainant – Mr. Pandurang Patil. This assertion made in the complaint has remained to be proved in the substantive evidence of PW No.1 Pandurang.

[18] The evidence of complainant (PW No.1) and the statement of assertion that on 20/12/1997, the appellant had been to the house of the complainant at 8.00 to 8.30, when the complainant was not present cannot be accepted as gospel truth in absence of connecting evidence as to who has informed the complainant about the visit of the appellant in the morning.

[19] Therefore, the prosecution has failed to prove the basic evidence upon which the entire case of the prosecution is built, in so far as the present appellant is concerned that, the appellant visited the house of the complainant in the morning hours but, since nobody was present there and, therefore, to whom he should ask the money, he did not complete the work.

[20] According to the prosecution's case, if the evidence of PW No.1 Pandurang and PW No.2 Suryabhan is to be believed on the date of trap, the appellant came to the house of the complainant at 5.15 p.m. who thereafter was taken to the cattle shed by the complainant for repairing of the electric meter. According to the evidence, the appellant inspected the meter and in fact, the complainant has provided barrel to him for standing on the same. Thereafter, the appellant repaired the meter with the help of screw driver with him. After the

repair was done, when they came outside the cattle shed that time, according to the evidence of PW No.1, appellant demanded for Rs.1000/- as agreed, as said by Mohan (acquitted accused.)

[21] According to the prosecution case, the initial demand was made by the acquitted accused in presence of Mandore and he has accepted part of the amount. It is also to be noted that, at no point of time, prior to the date of trap, the appellant has made any demand. If the prosecution case is to be believed, the present appellant was asked to take Rs.1000/- by the acquitted accused – Mohan Patil, which remained to be proved.

[22] It is curious to note that though as per the evidence of PW No.1 - Pandurang and PW No.2 – Suryabhan, the appellant has repaired the meter with the gadget with him, for the reasons best known to the Investigating Officer, no instrument was seized from the appellant, when he was apprehended by the Investigating Officer on the spot itself.

[23] In this context, the following version, appearing in the evidence of independent witness PW No.2 – Suryabhan would be relevant :-

“ It is true that meter cannot be touched unless the seal is opened.”

“ I did not see the breaking of the seal by the accused no.1.”.

“ it is true that the seal was not seized.”.

“Dy.S.P also did not try to seize that seal or inquire about it.”.

“ It is true that the instruments of handling the meter were not seized.”.

“ I cannot tell why those articles were not seized.”.

It is also true that the meter repairing is a technical work.”

“ It is true that the clerk has no concern with the repair of meter.”.

Further as per the evidence of PW No.1 – Pandurang (Complainant) after the receipt of tainted amount, appellant has kept the said amount into the pocket of his shirt of left side by his right hand.

However, the contemporary document Exhibit – 27 reads as under :-

“तेव्हा श्री येवले यांनी त्यांचे उजवे हाताने घेवून डाव्या हातात घेतल्या व त्याचे अंगावरील सफारी शर्टाचे समोरील बाजुचे छातीवरील उजवे खिशात ठेवून दिल्यात.

This material discrepancy cannot be ignored lightly; since the complainant is not a rustic witness. He is serving in police force since 1983 and at the relevant time, he was Assistant Intelligence Officer in the State CID.

[24] If the appellant has visited the house of the complainant, as agreed and has repaired the meter as per the claim of the prosecution witness, with the instrument with him and when the appellant was apprehended then and there only, the Investigating Officer was bound to seized the instruments found with the person who has caused repairs. Not seizing the articles and instrument from the appellant cast serious shadow of doubt on the prosecution case, about it's truthfulness. It is improbable that the Investigating Officer who is of rank of Dy.S.P. will forget to seized the articles and instruments which were in possession of appellant.

[25] According to prosecution, the appellant has visited the house of the complainant and has repaired the meter and thereafter demanded the amount and accepted the same. However when prosecution case comes under shadow of doubt in absence of seizure of instruments from appellant, the defence of the appellant as appearing in the statement recorded under Section 313 of the Code of Criminal Procedure and in his evidence, cannot be ignored as improbable one, which suggest that Pandurang, the complainant came to his office and asked the

appellant to do something to show less meter reading, which the appellant refused upon which the complainant gave a threat to the appellant that since he hails from police department he will show its consequences to him.

[26] According to the defence, on the date of trap, when the appellant was proceeding to his house, that time, he met the complainant in front of his house. That time, complainant asked to take Rs.1000/- so as to give it to Mr., Mandore, to which the appellant refused however, that time, it was thrust-ed in his pocket.

[27] Here I am reminded of a authoritative pronouncement of the Hon'ble Apex court reported in the **State of Maharashtra Versus. Dnyaneshwar Laxman Rao Wankhede, reported in 2009 ALL MR (Cri.), 3127 (S.C.)**, it has been observed as under :-

“16. Indisputably, the demand of illegal gratification is a sine quo non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz. Demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as it laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden or proof on the accused vis-a-vis the standard of burden of [proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational fact must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of

preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.”

[28] In the present case, the prosecution has utterly failed to prove that any demand was made by the appellant. Further there is cloud of suspicion about the truthfulness of prosecution case as observed. In that view of the matter, the explanation offered by the appellant is probable one and has to be accepted.

[29] In that view of the matter, the conviction of the appellant needs to be set aside. Consequently, I pass the following order :-

ORDER

- (i) Criminal Appeal is allowed.
- (ii) The Judgment and Order dated 24th August, 2000 passed by the learned Special Judge and Additional Sessions Judge, Jalgaon, District – Jalgaon in Special Case No.6 Of 1998 is hereby quashed and set aside.
- (iii) Appellant - Pralhad s/o. Sitaram Yeole stands acquitted for the offences punishable under Section 7 and under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and under Section 7 of the Prevention of Corruption Act, 1988.
- (iv) Bail bonds of the appellant stands cancelled.
- (v) Fine amount, if any, paid by the appellant be refunded to him.

(V.M. DESHPANDE, J.)