

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.71 OF 2001

- 1] Madhukar Jangalu Tayade,
Occ. Service, Residing at Dhule,
At present residing at Nashik,
- Died, through his wife -
Babibai w/o Madhukar Tayade,
Age: 62 years, Occu.: Household,
R/o. 62, Bhivasan Nagar, Wadi
Bhokar Road, Deopur, Dhule.
Taluka and District Dhule
- [Amendment made as per leave granted
by this Honorable Court on 04.05.2011]
- 2] Devidas Shankar Chaudhary,
Age : 59 years, Occu. : Pensioner,
Residing at Dhule
- Died, through his L.Rs.
- 1) Smt. Pushpa w/o
Devidas Chaudhari
Age : 68 years,
Occu.: Household Work,
- 2) Jitendra S/o Devidas
Chaudhary,
Age : 31 years,
Occu.: Business,
Both R/o. H.No.3009,
besideS Prabhakar Talkies,
Agra Road, Dhule
Tq. & Dist. Dhule

3) Sau. Shailaja w/o Sunil Chaudhari,
Age : 55 years, Occ.: Service,
R/o.: "Saraswati", Lane No.10,
Neharu Nagar, Deopur, Dhule

4) Sau. Varsha w/o Rajesh Sonawane,
Age : 36 years, Occ.: Household
Work, r/o. A-29, Yeshoda Krushna,
Ashok Nagar, Govt. Quarters,
Satpur, Tq. and Dist. Nashik

..Appellants
(orig. accused)

VERSUS

The State of Maharashtra ..Respondent

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Mr.R.M.Deshmukh, advocate for appellants

Mr.S.R.Palnitkar, A.P.P. for respondent/State

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CORAM : M.T. JOSHI, J.
JUDGMENT RESERVED ON : AUGUST 10, 2015
JUDGMENT PRONOUNCED ON : AUGUST 21, 2015

JUDGMENT :

Heard both sides.

2] The appellants – original accused were
convicted by learned Additional Sessions Judge/

Special Judge, Dhule vide judgment and order dated 8th February, 2001 passed in Special Case No. 86 of 1997 for the offences punishable under section 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act. Both of them were sentenced to suffer rigorous imprisonment for a period of six months and one year, respectively, and to pay a fine of Rs.1,000/- for each of the offences. Hence, present appeal.

3] During pendency of the appeal, both the appellants have died and therefore, legal representatives of each of the appellants were granted permission to prosecute the appeal.

4] Deceased appellant no.1 (Madhukar) was serving as a Store Keeper in the Irrigation Division, Dhule, while deceased appellant no.2 (Devidas) was working as a Section Engineer in the same office during the relevant period.

. Prosecution case, in short, is as under :-

. Complainant PW 1 – Deepak Shah used to supply spare parts of the motor vehicle to the said office. He used to get regular payments. However, for a period about 3 years prior to the episode of the month of April, 1994, the officials of the said department started withholding some of his bills. In the circumstances, an amount of Rs.9,000/- was in arrears with the said office. The complainant came to know that ultimately, the bills for the said amount were sanctioned. Therefore, on 15th April, 1994, he visited deceased appellant no.1 in his office and persuaded him to supply the cheque. Deceased appellant no.1, however, told him that since the bills were very old, he was required to take effort for searching the same and therefore, the complainant should approach him after 20th April. In the circumstances, the complainant again approached deceased

appellant no.1 on 25th April, 1994. At that time, deceased appellant no.1 made a demand of Rs.1,500/- as a remuneration. After negotiation, he agreed for Rs.1,000/-. The complainant then told deceased appellant no.1 that on the next day, he would visit the office and pay the said amount. Deceased appellant no.1 told that the cheque was ready and that he would visit shop of the complainant on the next day with the cheque and at that time, he would get the bribe amount of Rs.1,000/- and thereafter, would handover the cheque to the complainant.

. As the complainant was not ready for paying the bribe amount, he filed a complaint on 26th April, 1994 with the Anti Corruption Bureau, Dhule.

. PW 6 – Prabhakar Patil, the Deputy Superintendent of Police, conducted the

investigation in the crime. He collected two panch witnesses from government departments i.e. PW 2 – Brahma Gavit and PW 4 – Manohar Patil. The demonstration regarding application of anthracene powder was given. The complainant had brought the decoy money of Rs.1,000/-. Anthracene powder was applied to the same. The decoy money was kept in the left pocket of the shirt of the complainant. Instructions were given to the complainant and PW – 2 to be at the shop of the complainant together. It was instructed to the complainant that when deceased appellant no.1 would again make demand of money, the decoy money be handed over to him and thereafter, the predetermined signal by lifting sleeve of right hand of his shirt should be given to rest of the members of the trap party. PW 2 – Brahma was instructed to pose himself as a customer in the shop.

. Accordingly, at about 5.45 p.m. in the evening, both present deceased appellants came to the shop. At that time, deceased appellant no.1 repeated that he, any how, managed to get old bills of the complainant passed and the same could be done as Chaudhary Raosaheb (appellant no.2) had helped in the same. Deceased appellant no.2 was also introduced as an official. Deceased appellant no.1 further told that if 10% of the bill amount is paid, then in future there would be no further disturbances in clearing the bills. Deceased appellant no.1 further made a demand of Rs.1,500/-. Thereupon, the complainant told that it was agreed between them to pay Rs.1,000/-. Thereafter, deceased appellant no.1 took out an envelope from his pocket and handed over a cheque to the complainant. He also asked for a receipt of the same. The complainant asked his staff member to prepare a receipt and after signing it, the complainant handed over the receipt to deceased

appellant no. 1. Thereupon, deceased appellant no.1 again asked the complainant to pay the money. Thereupon, the complainant handed over the decoy money to deceased appellant no.1. He counted said decoy money. Out of said decoy money, deceased appellant no.1 paid an amount of Rs.200/- i.e. two currency notes in the denomination of Rs.100/- each, to deceased appellant no.2 and kept the balance amount in his trouser pocket on right side. The deceased appellant no.2 also kept the decoy money in his left hand shirt pocket.

. Thereafter, the complainant gave the predetermined signal; the raiding party arrived and, thereafter, post-trap exercise was carried. In the post-trap exercise, relevant body parts as well as clothes of both the deceased appellants and the complainant were found positive to the application of anthracene powder. Further investigation was carried by the Investigating

Officer. Two sanction orders for each of the deceased appellants were received from the respective sanctioning authorities and thereafter, the charge sheet came to be filed.

5] Before learned Special Judge, in all, six witnesses were examined. PW 1 – Deepak Shah is the complainant. PW 2 – Brahma Gavit and PW 4 – Manohar Patil are the panch witnesses. PW 3 – Mr.Pratap Patil, the then Superintending Engineer, had granted sanction (Exhibit 36) for prosecution of the deceased appellant no.1; while, PW 5 – Sadashiv Bedke, the then Desk Officer, Irrigation Department, Mantralaya, Mumbai, had granted sanction (Exhibit 40) for prosecution of deceased appellant no.2. PW 6 – Prabhakar Patil, Deputy Superintendent of Police had carried the investigation of the offence.

6] The defence of both the deceased appellants was that of total denial. According to them, the complainant had misunderstanding as regards deceased appellant no.1 as, his bills were pending for a long period and therefore, out of misunderstanding, the complaint came to be filed. In fact, no money was received by any of the deceased appellants at the time of trap. However, under the pressure of the Investigating Officer, the panch witnesses, being government servants, had helped the prosecution by making false statements.

. Learned Special Judge found that the prosecution has proved its case beyond the reasonable doubt and both the sanction orders were also found to be valid and legal. Therefore, the conviction and sentence, as detailed supra, came to be recorded against the appellants.

7] Mr.Deshmukh, learned counsel for the appellants, submitted that the police constable, who, allegedly, had applied anthracene powder and given demonstration namely, Jeevan Pardeshi, was not examined. The material contradictions and omissions in the evidence of relevant prosecution witnesses were ignored by learned Special Judge. He submitted that not only the sanction accorded by the relevant sanctioning authorities, are mechanical; but PW 5 – the Desk Officer had no authority to accord the sanction. In the circumstances, Mr.Deshmukh submitted that the appeal may be allowed.

8] On the other hand, learned A.P.P. has supported the reasoning given by learned trial Judge.

9] On the basis of this material, following points arise for my determination :-

I. Whether the prosecution has proved that the deceased appellant no.1, being a public servant, since 25th April, 1994, made a demand of Rs.1,500/- and agreed to accept Rs.1,000/- as a remuneration other than the legal remuneration for doing official work of the complainant ?

II. Whether the prosecution has further proved that on 27th April, 1994, both the appellants, being public servants, have accepted the amount of Rs.800/- and Rs.200/-, respectively, as illegal gratification other than the legal remuneration, as a reward for issuing the cheque to the complainant ?

III. Whether the prosecution has further proved that both the appellants being

public servants have made demand of said amount as a pecuniary advantage by using their position as public servants and committed criminal misconduct ?

IV. Whether the sanction orders are legal and valid ?

. My findings to above points are in the affirmative as regards deceased appellant no.1 and in the negative, as regards deceased appellant no.2. The appeal is, therefore, partly allowed as regards deceased appellant no.2 only, and dismissed as regards deceased appellant no.1, for the reasons to follow.

R E A S O N S

10] The complaint as well as the deposition of PW - 1 complainant would show that deceased appellant

no.2 was never in picture regarding the demand as illegal gratification. As per the prosecution case, at the time of the trap itself, deceased appellant no.1 told that due to the efforts taken by deceased appellant no.2, the bills could be sanctioned. Thereafter, from the decoy money of Rs.1,000/- accepted by deceased appellant no.1, he paid Rs.200/- to the deceased appellant no.2. According to the prosecution case itself, deceased appellant no.2 did not make any demand to the complainant. Even during the trap, he did not directly accept the amount. Since deceased appellant no.1 had said during the trap that deceased appellant no.2 has contributed in getting the bill sanctioned and since deceased appellant no.1 told that if in future, 10% of the bills amount would be paid, there would not be any trouble in clearing the bills, deceased appellant no.2 was arrayed as an accused.

11] Learned Special Judge has observed that deceased appellant no.2 was aware that the amount accepted by appellant no.1 was towards illegal gratification. Despite this, he kept mum and accepted the amount of Rs.200/- from deceased appellant no.1. Under these circumstances, according to learned Special Judge, it would not lie in the mouth of the deceased appellant no.2 to say that he was not at all concerned with that transaction.

12] According to the prosecution case, deceased appellant no.2 was introduced by deceased appellant no.1 as one of the officials, who had taken efforts for clearing the bills. The complainant, however, in his examination-in-chief did not depose about this dialogue. On the other hand, he deposed that before he handed over the cheque, deceased appellant no.1 told that as the bills were very

old, he had taken a lot of pains for getting them sanctioned and thereafter, he paid the decoy money to deceased appellant no.1, out of which, deceased appellant no.1 handed over an amount of Rs.200/- to the deceased appellant no.2. Similar is the deposition of PW 2 – Brahma, shadow panch witness. Thus, what is proved by the prosecution as regards deceased appellant no.2, is that he accompanied deceased appellant no.1 and accepted an amount of Rs.200/- from him, though he knew about the dialogue between deceased appellant no.1 and the complainant that the amount was towards illegal gratification. This, however, does not mean that the deceased appellant no.2 had, at any time, made any demand of illegal gratification or accepted as such the amount of Rs.200/-. In the circumstances, the conviction of deceased appellant no.2 is based on the inference drawn by learned Special Judge, would not hold any water. Deceased appellant no.2,

therefore, deserves to be acquitted of all the offences.

13] Mr.Deshmukh pointed towards the contradictions in the prosecution case. As per the version of the complainant, the deceased appellant no.1 had told the complainant that he would visit the shop of the deceased and accept the bribe amount and then would hand over the cheque to him. As against this, according to the prosecution, during the trap, deceased appellant no.1 had first handed over the cheque and thereafter, the decoy money was paid to him by the complainant.

. Further, the complainant deposed that when both the appellants reached to his shop, he requested them to take seat for a while and have tea, upon which, deceased appellant no.1 told the complainant that he was in hurry. Thereafter, he handed over the cheque to the complainant.

Deceased appellant no.1 told the complainant that as the bills were very old, he took lot of pains to get the them sanctioned. Thereafter, the complainant paid the decoy money to deceased appellant no.1.

14] PW 2 – Brahma, a shadow panch witness, has deposed that in fact, deceased appellant no.1 had made demand of money as per their agreement. Thereafter, he took out the cheque and handed over it to the complainant and after preparation of the receipt, the complainant handed over the decoy money to deceased appellant no.1. He also deposed about the conversation from deceased appellant no.1 involving deceased appellant no.2 as one of the persons who helped in getting the bills cleared.

15] On the strength of these statements, Mr.Deshmukh argued that there is variance between the statements in the F.I.R. and actual occurrence

i.e. whether the cheque was handed over first and thereafter, the decoy money was paid or whether, any actual demand was made at the time of the trap.

16] Learned Special Judge has observed that while the incident has occurred on 26th April, 1994, the witnesses had deposed about the facts in the year 2001 and therefore, if some part of the dialogue is missing by any of the witnesses, the same cannot be called as a material contradiction or omission. He further observed that had the witness deposed exactly on the line of the prosecution case in verbatim, it would have created doubt in the mind of the court about the testimony.

17] In my view, in material particulars, the prosecution case regarding the demand and acceptance has been proved as regards deceased appellant no.1. The independent witness i.e. shadow panch witness had also supported the

prosecution case. The defence that due to pressure of the Investigating Officer, the panch witnesses had signed over the false panchnama or made false statements in the court, cannot be accepted as there is no material in that regard.

18] The next submission of Mr.Deshmukh, that the complainant's employee namely, Shabeer, who had prepared the receipt, has not been, examined or the police constable – Jeevan Pardeshi, who had given demonstration in the office of the Anti Corruption Bureau was also not examined, is also of no consequences, as the prosecution case has been sufficiently proved by the complainant and both the independent panch witnesses.

19] This takes me to find out the legality or validity of the sanction granted by relevant sanctioning authorities. As regards PW 5 – Sadashiv Bedke, Desk Officer, we need not dilate

over the issue of his authority as, I have already found that deceased appellant no.2 has not made any demand or accepted any illegal gratification.

. As regards the sanction accorded by PW 3 – Mr.Pratap Patil, the then Superintending Engineer, merely because he has used the draft supplied by PW 6 – Investigating Officer, to grant the sanction, would not create any doubt about his deposition that he has applied his mind by verifying all the documents sent to him at the time of grant of sanction. Further, merely because the time and place of the agreement to accept the bribe amount, is missing from the deposition of this sanctioning authority, though reproduced in the sanction order at Exhibit 36, it would not take us to conclude that the sanction was either invalid or illegal. The deposition of PW 3 – Pratap Patil, sanctioning authority, would show that he has applied mind before grant of sanction.

20] In the result, the following order :-

A] The appeal is hereby partly allowed as regards deceased appellant no.2 - Devidas Shankar Chaudhary. The judgment and order dated 8th February, 2001 passed by learned Addl. Sessions Judge / Special Judge, Dhule in Special Case No.86 of 1997, convicting and sentencing deceased appellant no.2 for the offences punishable under section 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, is hereby set aside.

. Instead, deceased appellant no.2 - Devidas Shankar Chaudhary is hereby acquitted of all the offences.

B] Fine amount deposited by deceased appellant no.2, if any, be repaid to his legal representatives.

C] The appeal is hereby dismissed as regards deceased appellant no.1 - Madhukar Jangalu Tayade. The judgment and order of conviction and sentence passed by learned Addl. Sessions Judge / Special Judge, Dhule in Special Case No.86 of 1997 as regards deceased appellant no.1, is hereby confirmed.

. However, in view of death of deceased appellant no.1, the substantive sentences now have become otiose.

[M.T. JOSHI, J.]