IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 271 OF 2001

Ratnakant S/o Tukaram Waghmare,
Age 44 years, Occu. Senior Clerk,
M.S.E.B. Assistant Engineer,
Sub Division, M.S.E.B. Vaijapur,
Taluka Vaijapur, Dist. Aurangabad
R/o. H.No.3693, Nearby Bardi Masjid
Ladgaon Raod, Vaijapur,
Dist. Aurangabad .. Appellant

Vs.

The State of Maharashtra,
Through Anti Corruption Bureau,
Aurangabad .. Respondent

Mr. R.N. Dhorde, Sr. Advocate with Mr. P.G. Patil, Advocate and Mr. Vasant Shelke, Advocate for the appellant
Mrs. B.B. Gunjal, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

RESERVED ON : 20/07/2015
PRONOUNCED ON : 23/07/2015

JUDGMENT :

Heard both sides.

2. The present appellant was convicted by the learned Special Judge, Aurangabad in Special Case No. 15 of 1995 vide judgment and order dated 3/5/2001 for the offences punishable under section 7 and also under

section 13(2) r/w. Section 13(1)(d) of the Prevention of Corruption Act. He was sentenced to suffer rigorous imprisonment for 1 year and to pay fine of Rs.1000/-, in default to suffer simple imprisonment for 2 months for the offence punishable under section 7 of the Prevention of Corruption Act and was sentenced to suffer rigorous imprisonment for 2 years and to pay fine of Rs.2000/-, in default to suffer simple imprisonment for 4 months for the offence punishable under section 13(2) r/w. Section 13(1)(d) of the Prevention of Corruption Act. Hence, the present appeal.

3. The prosecution case in short is as under:-

. That appellant was serving as Senior Clerk in the Office of Assistant Engineer, Sub Division, Maharashtra State Electricity Board (M.S.E.B.) at Vaijapur. Within the jurisdiction of this Sub Division, the complainant P.W. 6 - Nivrutti Namdeo Adhude was running his flour mill at village Pathari, Tq. Vaijapur. P.W. 2 - Uttam Kere was working as a Line Helper within the same Division. His duty was to record the reading of the meter of the electricity and forward the reading to the Office of Junior Engineer i.e. P.W. 3 -Satish

Karpe. The present appellant was serving as a Senior Clerk in the Accounts section. It was his duty to issue bills after receiving information from the Garaj Sub Office and P.W. 2 thereafter used to distribute those bills to the consumers. During the relevant period, all these activities were manually done. In the month of February, 1995, the complainant received the bill. In the bill, the previous reading ought to have been recorded as 15808, however, it was recorded as 15088. The current reading was 16058, however, due to the incorrect recording of the previous reading, 970 units of electricity was shown as consumption, which was in excess only due to the wrong entry of the previous meter reading. The complainant did not pay the said bill and, therefore, in every month, the said amount was shown as excess.

. In the circumstances, in March, 1995, the complainant approached the present appellant at his Vaijapur Office for about 15-20 times in order to make correction in the bill. He however did not pay any heed. In the month of July, 1995 also, the complainant visited the appellant on 3-4 occasions but still the necessary correction was not made. In the circumstances, the complainant again approached the appellant at Vaijapur on 24/7/1995 accompanied by one Mr. Kachru Fakirrao Tupe. They were made to wait by the appellant upto the evening. Ultimately, in the evening, said Kachru made request to the appellant. The appellant handed over a blank paper and asked to file the application, though the complainant has already made similar application in March, 1995. On the insistence of the appellant, the complainant had prepared the application and handed over the same to the appellant. Thereupon, the appellant told that he would get the bill corrected and the complainant should meet him again either on the next day or a day thereafter.

. In the circumstances, on 26/7/1995, the complainant met the appellant in the noon with one Babasaheb Fakirrao Darekar. The appellant was invited for tea in the hotel outside the Office. At that time, the appellant told the complainant that he need not visit time and again the Office and in case his bill is reduced, he will have to pay half of the reduced amount to the appellant himself. The complainant agreed for the same. Thereupon, all of them returned to the office. At that time, the appellant handed over bill of June, 1995, reducing the same by Rs.1200.20 Ps. The appellant, therefore asked to pay Rs.600/-. Upon negotiation, he agreed for an amount of Rs.500/- and asked for the payment of the sum within a day or two. One fresh bill was also prepared and the last date for payment was shown as 28/7/1995. At that time, the appellant even warned that the complainant should keep in mind that in case the amount is not paid, in future also, he would have to deal with the appellant. Since, the complainant did not wish to pay any bribe amount, he filed his complaint with the Anti Corruption Bureau at Aurangabad on 27/7/1995.

. P.W. 9 - Police Inspector Ambadas Sawai had received the complaint. He registered the offence and conducted the further investigation in the same. Two witnesses from various departments, including P.W. 7 - Krushna Hiwrale a Senior Clerk from the Zilla Parishad, Aurangabad were collected. Raid was arranged on 28/7/1995. Demonstration of application of anthracene powder under ultra-violet lamp was given to the complainant and the panch witnesses. Anthracene powder was applied to the decoy money of Rs.500/- brought by the complainant - Nivrutti. Those were put in the shirt pocket of the complainant. He was instructed not to hand over the decoy money unless the demand is made by the complainant. P.W. 7 the shadow panch witness was deployed to accompany the complainant during the trap. The complainant was advised to give signal by wiping his face with a handkerchief kept under collar of his shirt, upon acceptance of decoy money by the appellant and pre-trap panchanama was recorded and, thereafter, the party proceeded to Vaijapur.

. At about 12:40 noon, the complainant and the shadow witness visited the M.S.E.B. office at Vaijapur. Rest of the party was at a safe distance from them. Ultimately, at 1:45 pm, the appellant came in the office. After some formal talk, appellant enquired with the complainant, as to whether he had deposited the amount under the corrected bill. The complainant showed his inability due to financial stringency. Upon that, the appellant on his own, extended the last date of payment of bill by giving a fresh bill at Exhibit 39.

. On the request of the complainant, the trio went to a tea shop adjoining to the office. They sat on the benches in the neighbourhood. The pan stall was also attached to the tea house. The appellant, instead of taking tea wanted to smoke a cigarette. Therefore, he approached the cigarette-cum-tobacco stall situated in the south-east corner of the tea house. At that time, the appellant demanded the complainant to hand over the amount of Rs.500/-. Accordingly, the complainant took out the amount and hold the same in front of the appellant. Appellant accepted the same by his right hand and put the same in the left side pocket of his safari shirt. Thereupon, the complainant gave the predetermined signal. Soon thereafter, the Investigating Officer as well as the other staff members with another panch witness came at the spot. The hands of the accused were held. The appellant was taken in the backside of the tea house where there was some darkness. The necessary activities of examining the relevant body parts and clothes of the appellant and thereafter of the complainant under the ultra-violet light was conducted. Those parts reacted positively.

. Thereafter during investigation, search of the office as well as the house of the appellant was conducted. It was disclosed during investigation that earlier, the present appellant had also met P.W. 8 – Ashok Panchariya to pay certain amount for reduction of his electricity bill. The necessary papers regarding the process of reduction of bill were collected. The statements of the relevant witnesses were recorded. Sanction to prosecute the present appellant from P.W. 5 the then Superintending Engineer – Mr. Manik Zarkar was obtained and the chargesheet came to be filed.

4. Before the learned Special Judge, in all 9 witnesses were examined. P.W. 1 – Hari Danekar was the Maintenance Surveyor at Vaijapur during the period. He has prepared the map of the place where the trap was organized at Exhibit 29. No suggestion was given to him that the map is not prepared correctly. P.W. 2 Uttam Kere was the Line Helper during the relevant period. P.W. 3 – Satish Karpe was the Assistant Engineer and P.W. 4 – Pramod Deshpande was the Junior Engineer of M.S.E.B. at Garaj during the relevant period. P.W. 5 – Manik Zarkar – the Superintending Engineer accorded the

sanction. P.W. 6 - Nivrutti Adhude is the complainant himself. P.W. 7 – Krushna Hiwrale is the shadow panch witness. P.W. 8 – Ashok Panchariya is another consumer who had deposed about the previous incident. P.W. 9 – P.I. Ambadas Sawai is the Investigating Officer.

5. While the witnesses from the M.S.E.B. deposed about the nature of the working of the present appellant, the complainant and the shadow panch witness deposed about the incident proper. Initially, during the examination-in-chief, the complainant deposed that the demand was not made directly to him but through Babasaheb Darekar. Further, according to him, during the trap, direct demand of money was not made but the complainant was asked by the appellant, as to whether, he received the message from said Babasaheb Darekar and upon that, the decoy money was handed over to the appellant. The complainant also deposed that said Babasaheb Darekar was with him at the time of filing complaint with the Anti Corruption Bureau. He was thereafter cross-examined. Thereafter, the prosecution has taken the re-examination-in-chief of the complainant, wherein he deposed as per the prosecution

case, as detailed supra. He deposed that he made wrong statement regarding the mediation of Babasaheb Darekar or that he accompanied him with the Anti Corruption Bureau, or only suggestive demand during trap was made.

6. P.W. 7 the shadow panch witness - Krushna Hiwrale, inter-alia deposed that he did not hear any demand made by the appellant to the complainant. Neither he did see any gestures. After Court recess, however, when his examination-in-chief continued, he retracted from this statement and deposed as per the prosecution case, as detailed supra.

7. The learned Special Judge while recording statement of the appellant under section 313 of the Code of Criminal Procedure put the questions to the appellant only as regards the statements made by the complainant in his examination-in-chief and it appears that the learned Special Judge has forgotten about the statements made by the complainant during his re-examination-in-chief.

8. The defence of the appellant was that he was not concerned with the preparation or correction of the

bill. He had no occasion to meet the complainant. Babasaheb Darekar however is a local politician. The appellant had a dispute with said Babasaheb Darekar. These local politicians like Babasaheb Darekar used to develop friendship with the officers and used to pressurize the subordinate staff like the appellant for doing illegal acts. In the circumstances, said Babasaheb Darekar was annoyed with the appellant and had also threatened to teach him a lesson. In the circumstances, a false complaint was filed and the trap was organized by said Babasaheb Darekar. At the time of trap, the appellant all alone went for taking a cigarette to the shop. At that time, the complainant and the shadow panch witness were taking tea in the tea shop. On seeing the appellant, both of them suddenly came to him. The complainant put something in his pocket. The appellant, therefore, was shocked and at the same time, the staff of the Anti Corruption Bureau arrived and apprehended the appellant. In the circumstances, he claimed acquittal.

9. The learned Special Judge, however concluded that the acceptance and demand is proved. Even

otherwise, according to the learned Judge, the money was admittedly found on the person of the appellant, therefore, the presumption available under section 20(1) of the Prevention of Corruption Act, will have to be drawn. Therefore, relying on the ratio of various authorities and finding that the appellant himself has issued the corrected bill, found the prosecution case as proved beyond reasonable doubt.

10. The sanction granted by P.W. 5 was held to be valid by the learned Special Judge and hence, the conviction and sentence, as detailed supra, came to be recorded.

11. Mr. Dhorde, learned Senior Counsel submits that the evidence of the officers of the M.S.E.B. would show that the appellant was not in any concerned with the preparation or correction of the electricity bill. The learned Special Judge did not put the circumstance of alleged direct demand and acceptance during the trap to the appellant, while recording his statement under section 313 of the Code of Criminal Procedure. In-fact, the evidence of the material witnesses i.e. complainant and shadow panch witness, as detailed supra, would

itself show that there was no initial demand or subsequent demand during the trap and there was no acceptance of the decoy money. The evidence would show that just within two minutes of thrusting of the decoy money by the complainant in the pocket of the appellant, the staff of the Anti Corruption Bureau had arrived. Therefore, submitting that the presumption has been wrongly drawn, Mr. Dhorde wanted that the appeal be allowed.

. He further submits that the learned Special Judge has wrongly concluded that the sanction is valid when the evidence of the sanctioning authority i.e. P.W. 5 would show that only proforma was used and no further documents were called by P.W. 5 from the Office of the appellant. He therefore submits that for non-application of the mind, the sanction suffers.

12. On the other hand, learned A.P.P. submits that it has been proved that the bill was corrected by the appellant in his own handwriting. His case therefore, that he was not at all connected with the said official work, cannot be accepted. Further, though the complainant and panch witnesses initially faltered on

some points, ultimately their evidence is found satisfactory. Besides this, the appellant admits that the decoy money was recovered from his person and, therefore, the learned Special Judge has rightly drawn the presumption available under section 20(1) of the Prevention of Corruption Act. She therefore submits that the appeal be dismissed.

13. On the basis of this material, following points arise for my determination:-

> I) Whether the sanction accorded by P.W. 5 is legal and valid ?
>
> II) Whether the prosecution has proved that the present appellant being a public servant, had on 26/07/1995, made a demand of Rs.600/- as gratification other than the legal remuneration and, thereafter, on 28/7/1995 obtained the remuneration of Rs.500/-, as reward for doing the official act ?
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> III) Whether the prosecution has proved that on 28/7/1995, the appellant has obtained pecuniary advantage of Rs.500/- by corrupt or illegal means by abusing his position as public servant and thereby committed criminal misconduct ?

IV) Whether the prosecution has further proved that the present appellant has obtained an amount of Rs.200/- during the period of June and July, 1994 from P.W. 8 Ashok Panchariya as gratification other than the legal remuneration and thereby indulged into the corrupt practices?

My findings to point no.(I) is in the affirmative, to point nos.(II) to (IV) is in the negative. The appeal is therefore allowed and the appellant is acquitted of the offences punishable under section 7, 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, by extending reasonable benefit of doubt, for the reasons to follow.

R E A S O N S

14. As regards the issue of sanction, the deposition of P.W. 5 would show that proforma was sent by the Anti Corruption Bureau authorities alongwith the necessary papers. P.W. 5 has studied those papers. Upon studying the papers, he came to the conclusion that grant of sanction for prosecution was necessary.

Therefore, he filled in the proforma and granted the sanction at Exhibit 51. Merely because, the sanctioning authority has used the proforma, it would not mean that there was no application of mind. Further, merely because the sanctioning authority did not ask for more documents from the office of the appellant, the sanction cannot be challenged as the prosecution papers had disclosed prima facie case against the appellant. The challenge to the sanction, therefore, fails.

15. On facts, however, certain salient facts are required to be taken into consideration. Though, the prosecution evidence would show that the work of preparing or correction of the bill was with one Upper Division Clerk – Mr. Bagul in the Accounts Section, it is an admitted fact that the present appellant was working as Senior Clerk in the same section during the relevant period. While cross-examining P.W. 3 - Satish Karpe, the Assistant Engineer of Vaijapur, it has come on record that not only the present appellant was working in the billing section but bill at Exhibit 39 was issued in the handwriting of the present appellant. The reading of the entire evidence would show that the

relevant staff was working under the Upper Division Clerk Shri Bagul. The present appellant included in the same. When the corrected bill at Exhibit 39 was issued in the handwriting of the present appellant, it cannot be gainsaid that the present appellant was connected with the official act of correction of electricity bill and, therefore, the case of the appellant, that he was not concerned with the same, cannot be accepted.

16. Mr. Dhorde submits that as the appellant was working in the Accounts section, merely corrected bill is in the handwriting of the appellant, that does not means that it was his official function to correct the bills. The same, however, cannot be accepted as the record clearly shows that the appellant was connected with the said official function.

17. On facts, however, the learned Special Judge has committed mistake not only in not putting the adverse material to the appellant while recording his statement under section 313 of the Code of Criminal Procedure, as detailed supra, but in coming to the conclusion that the appellant made demand to the complainant earlier and also during trap and, thereafter

accepted the decoy money.

18. Examination-in-chief of the complainant - P.W.6 Nivrutti would show that on 26/7/1995, he visited the appellant with Babasaheb Darekar. At that time, the appellant told that the bill cannot be corrected. Thereafter, the appellant went away from both of them. Later-on Babasaheb Darekar went to the complainant and brought the copy of the corrected bill with him. At that time, said Babasaheb Darekar told the complainant that some amount would have to be given to the concerned official, as the bill was reduced by Rs.1,200/-. The complainant was expected to pay half of the amount i.e. Rs.600/-. The complainant told Babasaheb Darekar, that he would pay only Rs.500/- and, thereafter, both of them went away with the corrected bill. Thereafter, the complaint with the Anti Corruption Bureau was filed.

. The complainant further deposed that Babasaheb Darekar accompanied him to the Anti Corruption Bureau. Thereat, he made a handwritten complaint. The F.I.R. at Exhibit 55 however is the typewritten complaint. During cross-examination, he deposed that he did not make the said typewritten complaint. During the dialogue between the trap also, according to the complainant, the appellant asked, as to whether the complainant has received message from Babasaheb Darekar and, thereupon he handed over the decoy money to the appellant.

19. After cross-examination of the complainant was over, the prosecution has re-examined the complainant. During cross-examination, he deposed that he was Matric fail and, thereafter deposed on the lines of the prosecution case. In this fresh version, he deposed that the typewritten complaint was read over to him and it was made by him. Further, he deposed that he had made wrong statement regarding the presence of Babasaheb Darkear, demand through him or at the time of trap, appellant merely saying that as to whether, the complainant had received message from Babasaheb Darekar. During re-examination, many leading questions were put. Though, those questions were not objected by the defence, the learned Special Judge has recorded the demeanor of the complainant during this re-examination-in-chief as under:-

> "The witness takes much time for replying the questions inspite repeatedly explaining him he pretends as if he has not followed it."

20. Similar is the case regarding the shadow panch witness i.e. P.W. 7 Krushna Hiwrale. Initially, he inter-alia deposed that during the trap, the complainant has invited the appellant to come to tea stall. Therefore, the trio went to the tea stall. At that time, as the appellant wanted to have a cigarette instead of tea, he went to the corner of the tea stall where the stall of tobacco-cigarette was there. There was however no talk between the appellant and the complainant, atleast he did not hear any talk. He had also not seen any gestures between them. At that time, the complainant took out the amount from his pocket and held in front of the appellant. The same was grabbed by the appellant and he himself put the same in the left pocket of his safari shirt. Thereupon, predetermined signal was given by the complainant.

. Examination-in-chief of the witness was deferred due to the recess of the Court. After recess, he deposed on the prosecution line. He now deposed that the appellant directly made a demand of Rs.500/- in his presence and the appellant accepted the decoy money from the complainant.

. During cross-examination, he admitted that during recess, he has read the panchanama and further admitted that upon reading of the same, he has admitted about the contents of the panchanama to be correct. He however denied that later-on he started supporting the prosecution case due to the fear of Anti Corruption Bureau.

21. The learned Special Judge observed that the arguments built on this earlier version are fallacious as said witness, even in his initial deposition, deposed that when the complainant put forward the decoy money, the appellant took the same and kept the same in his pocket. In the circumstances, the learned Special Judge observed that even assuming that there were no talks during the trap, yet it has been proved that the appellant has accepted the decoy money. In the circumstances, relying on the ratio of various authorities, the learned Special Judge held that presumption available under section 20(1) of the Prevention of Corruption Act can very well be raised in the present case. It was further found that the appellant himself has issued the corrected bill to the

complainant and, therefore, his case that he has nothing to do with the said act, was not accepted. In the circumstances, the conviction came to be recorded.

22. The learned Special Judge did not appreciate the fact that the complainant initially deposed that there was no direct demand to him earlier but it was through Babasaheb Darekar and which was also in the nature that, upon reduction of the amount, some amount will have to be paid to the "officers". Further, the powerful role of Babasaheb Darekar was not properly appreciated by the learned Special Judge. Further, the initial statement of the complainant in the examination-in-chief that said Babasaheb Darekar had accompanied the complainant to the Anti Corruption Bureau and the handwritten complaint was handed over to the officers, which is absent in the prosecution case, has not been considered by the learned Special Judge.

23. Mr. Dhorde further submits that initial statement of the complainant that oblique demand of amount during the trap was made by the appellant, as against the prosecution case, has not been considered at all by the learned Special Judge. Further, the

statements of the panch witnesses, as highlighted supra, were not considered. In the circumstances, the learned Special Judge, according to Mr. Dhorde, only adverted to the case of acceptance or alleged willful acceptance of the decoy money by the appellant and over the same, the presumption was built.

24. To buttress the above submission, Mr. Dhorde relies on the ratio of :

1) **The State of Maharashtra V. Ramesh Chhabulal Borse - 2013 ALL M.R. (Cri.) 3450**

2) **M.R. Purushotham V. State of Karnataka - (2015) 3 S.C.C. 247**

3) **B. Jayaraj V. State of Andhra Pradesh - (2014) 13 S.C.C. 55**

4) **A. Subair V. State of Kerala - 2010 ALL SCR 1115**

5) **Subash Parbat Sonvane V. State of Gujarat - AIR 2003 S.C. 2169**

. He further submits that when the demand is not proved, mere acceptance of the money would not raise the presumption. For the proposition, he relies on the ratio in the case of "**V. Venkata Subbarao V. State represented by Inspector of Police, A.P. 2007" CRI. L.J. 754.** He submits that in-fact, a reasonable doubt has arisen in the prosecution case, however, the learned Special Judge was miscarried by the facts of the alleged acceptance of decoy money.

25. The prosecution evidence would show that just within two minutes of exchange of the decoy money, the Anti Corruption Bureau staff had rushed to the spot and apprehended the appellant. We have two versions of the prosecution case as highlighted supra. In that view of the matter, merely because the money was found on the person of the appellant, a presumption cannot be raised as is available under section 20(1) of the Prevention of Corruption Act.

. As regards allegations that the appellant is habitual in making demands of illegal gratification, P.W. 8 - the sole witness on this point made a very vague statement that the appellant "once" made similar demand to him.

26. In the circumstances, though, I accept the prosecution case that the appellant has certain role to play in correction of the bill and though his activities were highly suspicious, this being a criminal case,

benefit of reasonable doubt will have to be extended to the present appellant.

. In the circumstances, though, this cannot be called a case of honourable acquittal, the learned Special Judge ought to have extended reasonable benefit of doubt, as standard of proof in the criminal case is very high. In the circumstances, the following order:-

27. Criminal Appeal is hereby allowed.

28. The judgment and order dated 3/5/2001 passed by the learned Special Judge, Aurangabad in Special Case No. 15 of 1995, convicting the appellant for the offences punishable under section 7, section 13(2) r/w. Section 13(1)(d) of the Prevention of Corruption Act and consequently sentencing him to suffer rigorous imprisonment for 1 year and to pay fine of Rs.1000/-, in default to suffer simple imprisonment for 2 months for the offence punishable under section 7 of the Prevention of Corruption Act and to suffer rigorous imprisonment for 2 years and to pay fine of Rs.2000/-, in default to suffer simple imprisonment for 4 months for the offence punishable under section 13(2) r/w. Section 13(1)(d) of

the Prevention of Corruption Act, is hereby set aside.

. Instead, the appellant is acquitted of the offences punishable under section 7, section 13(2) r/w. section 13(1)(d) of the Prevention of Corruption Act.

29. Bail bonds of the appellant shall stand cancelled.

30. The order of the learned Special Judge, Aurangabad regarding the property needs no interference.

31. Criminal Appeal stands disposed of accordingly.

[M.T. JOSHI]
JUDGE

arp/