

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.306 OF 2001

- 1] Dnyanoba s/o. Vithal Khandagale,
Age 46 years, Occ. Service,
working as Talathi,
r/o. Panchsheel Nagar,
Dist. Beed
- 2] Dinkar s/o. Yeshwantrao Deshpande,
Age 48 years, Occ. Nil,
r/o. Deshpande Galli, Near Ganesh
Par, Parli Vaijinath,
Tq. Parli Vaijinath, Dist.Beed. ..Appellants

Versus

The State of Maharashtra,
Through Deputy Superintendent
of Police, Anti Corruption Bureau,
Beed ..Respondents

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Mr.Abhaysingh K. Bhosale with Mr.A.Y.Pandule,
advocates for appellant no.1

Mr.S.V.Suryawanshi, advocate for appellant no.2

Mr.S.D.Ghayal, APP for respondent – State

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CORAM : M.T. JOSHI, J.
RESERVED ON : NOVEMBER 20, 2015
PRONOUNCED ON : DECEMBER 18, 2015

JUDGMENT :

Heard both sides.

2] The present appellant no.1/original accused no.1 - Dnyanoba was convicted by the learned Addl. Sessions Judge/Special Judge, Ambajogai in Special Case No.1 of 1998 vide the judgment and order dated 9th July, 2001 for the offences punishable under Section 13 read with 13(2) of the Prevention of Corruption Act sentencing him to suffer rigorous imprisonment for one and half year and to pay fine of Rs.2,500/-. He was also convicted for the offence punishable under 7 of the Prevention of Corruption Act and was sentenced similarly.

. Appellant no.2/original accused no.2 - Dinkar was convicted for abettment of the above offence i.e. offence punishable under Section 12 of the Prevention of Corruption Act. He was sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.1,000/-. Hence, the present appeal.

3] The prosecution case, in short, is as under :-

. That complainant - Hanumant Dhakne, (since deceased prior to trial) an agriculturist of the village Aswal Amba, Tq. Ambajogai, Dist. Beed, wanted that mutation should be carried in the revenue record in respect of the partition of the land between him and his brother as well his father. Therefore, on 9th July, 1988, he approached present appellant no.1, the then Talathi of his village, at his house situated in Parli. Appellant no.1 asked the complainant to file an application and the partition deed. Accordingly, the complainant got the application scribed from PW 2 - Dadarao who was present and submitted said application as well as the partition deed to appellant no.1 in presence of PW 2 - Dadarao.

. In the presence of said Dadarao as well as one Motiram Ghuge, the appellant no.1 made a demand of Rs.500/-. Upon questioning, appellant no.1 told

that the work would not be done unless the amount is paid. Therefore, the complainant told that he will have to think over the same and lateron, he would tell appellant no.1 regarding the money.

. Thereafter, on 16th July, 1988, he approached appellant no.1. At that time also, the appellant told that unless the amount is paid, the work would not be done. The complainant asked for acknowledgement of the application filed by him. Accordingly, appellant no.1 handed over the acknowledgement on the photocopy of the application. Again on 20th July, 1988, the complainant as well as one Ankush met appellant no.1 at Parali. At that time also, appellant no.1 questioned as to whether, the amount was brought. He again repeated the amount as Rs.500/-. Upon negotiation, he agreed to accept Rs.300/-. The complainant promised that he would make arrangement of money by next Monday.

. On 25th July, 1988, the complainant again met appellant no.1 at his house at Parli. When the appellant no.1 questioned as to whether, the amount was brought, the complainant told that he could not arrange for money and that by next Wednesday, he would bring the money. In the circumstances, on 27th July, 1988, the complainant went to the office of the Anti Corruption Bureau, Beed and made oral complaint.

4] PW 5 – Baburao Chavan, the then Deputy Superintendent, recorded the complaint into writing at Exhibit 60. Thereafter, PW 1 – Sudhir Ghuge and PW 3 – Ravi Bagde were collected as panch witnesses by the Investigating Officer. The contents of the complaint were narrated to them. Demonstration of anthracene powder was given. The complainant brought Rs.300/-. Anthracene powder was applied to it. Additional amount of Rs.13.15 paise were with the complainant. The same were

returned to him. The decoy money was smeared with anthracene powder. Demonstration of use of ultra violet light was given. The decoy money was kept in the right side pocket of Gurushirt of the complainant. A tape-recorder was also brought by the Investigating Officer. Preliminary statements were recorded over the said tape-recorder and thereafter, the tape-recorder was kept with the complainant with a direction to switch on the same during talks with the appellant no.1. PW 1 – Sudhir was directed to accompany the complainant to approach appellant no.1. Thereafter, the raiding party proceeded to Parli by 5:00 p.m.

5] While the complainant and PW 1 – Sudhir proceeded ahead, rest of the raiding party followed them by keeping certain distance. The complainant and PW 1 – Sudhir went to the house of appellant no.1. At that time, besides the appellant no.1, three more persons were sitting in

the Varandah at the house of appellant no.1. After greetings were over, other persons went away. When the complainant questioned about his work of mutation, appellant no.1 told that he has recorded the mutation, however, his senior's signature was remained to be obtained. The appellant no.1 also asked as to whether, the money was brought and he further told that if the money has been brought, the same should be given to him and within eight days he will hand over the certified copy of the mutation. The complainant told that he has brought the money. Upon that, the appellant no.1 told that the money should be kept in the bag by going into his house. The complainant, thereafter, questioned how he would enter the house and search for the bag. Upon that, the appellant no.1 told that the amount should be given to Shri.Deshpande - appellant no.2, who was present there. Accordingly, the complainant handed over the decoy money to appellant no.2. He had counted the same

and put in his shirt pocket. Thereafter, appellant no.2 asked for Rs.10/-. Upon that, the complainant told that he did not have any money. Due to said statement, appellant no.2 started returning the decoy money of Rs.300/- and told that all the money should be paid at one time. Upon that, the complainant told that he did not have money even for his return fare. The appellant no.2, thereupon, told that the complainant may give as much money as he wished. Thereupon, the complainant took out two currency notes in the denomination of Rs.5/- each and gave them to appellant no.2. Thereupon, the predetermined signal was given.

. Upon receiving the signal, the Investigating Officer came to the spot along with the raiding party. Both the appellants were apprehended. Thereafter, the exercise of examination under ultra violet lamp was carried, which confirmed the

above activities. The panchnama of the same was prepared.

6] The Investigating Officer seized the necessary documents and recorded statements of the witnesses and sent requisition to the appointing authority of appellant no.1 for grant of sanction to prosecute the appellant no.1. Accordingly, PW 4 – Dattatraya Bansode, the then Sub-Divisional Officer, Ambejogai, has granted sanction (Exhibit 36) to prosecute the appellant no.1 whereupon, the charge sheet came to be filed.

7] As regards the tape-recorder evidence, when it was played in the presence of the panch witnesses, it was found that the voices could not be recorded clearly and nothing fruitful could be heard.

8] Before the trial could begun, the complainant has died. The I.O. proved the recording of the

complaint. roved Learned Special Judge considered the evidence of the above witnesses coupled with the documentary evidence on record. Learned Special Judge observed that while the incident has occurred in July, 1988, the witnesses could be examined only in 2001. Therefore, some variance in the evidence of the prosecution witnesses was appreciated in the light of the above period. Learned Special Judge found that the offence was proved beyond the reasonable doubt. Hence, the conviction and sentence came to be recorded, as detailed supra.

9] Mr.A.K.Bhosale with Mr.A.Y.Pandule, learned counsel for appellant no.1, made following submissions before me.

. That, as per the prosecution case, the complainant has died before the trial could begun. In the circumstances, neither the complaint could

be proved nor the substantive evidence regarding earlier demand could be placed. PW 2 – Dadarao Ghuge, though claimed to be a witness to one of the incidents of demand, he is an interested witness and his evidence would also show that it cannot be relied. Further, there is confusion as to whether, the application said to have been filed in by the complainant with appellant no.1 was seized or not. They further point towards the conduct of PW 1 – Sudhir i.e. the attesting panch witness, who, on the date of appearance in the court, avoided the witness box on the ground of his illness and later on, after 15 days, deposed in the court. His evidence is also full of omissions and improvements.

. He further submitted that the three independent witnesses, detailed above, were not examined. The voice recorder, though could have been an independent corroboration, had failed. The evidence of PW 2 – Dadarao would show that

appellant no.1 had asked for fees, while the complaint would show that money was demanded. Further, there is also variance as to what statement was made by the complainant when the bribe was demanded by appellant no.1. There is also confusion regarding the date put over the application. The evidence of the Investigating Officer would show that in fact, original document of partition deed was not in the record. Further, according to the shadow panch witness, no shining was found on the hands of the complainant, who according to the prosecution, had given the amount to appellant no.2. It is not clarified as to how, the complainant had additional amount of Rs.10/- with him to give it to appellant no.2. There is no concern between the appellants and therefore, appellant no.1 would not have asked appellant no.2 to accept the amount. In the circumstances, learned counsel for the appellant no.1 submit that appellant no.1 be acquitted.

10] Mr.S.V.Suryawanshi, learned counsel for appellant no.2, submits that the prosecution case itself is that there was no meeting of the minds between the appellants as, suddenly, appellant no.1 had asked the complainant to pay the amount to the appellant no.2. As such, there would have been no abetment. He further submitted that as the alleged incident has occurred in the month of July, 1988, the provisions of Section 165-A of the Indian Penal Code equivalent to Section 12 of the Prevention of Corruption Act, 1988, would be applicable as the same came to be repealed with effect from September, 1988 upon coming into force of the Prevention of Corruption Act, 1988. Therefore, the provisions of Section 107 of Indian Penal Code would also be applicable, which, *inter alia*, provides for intentional aiding. He further submits that the conduct of present appellant no.2 in returning the decoy money of Rs.300/-, would

show that he was not interested in receipt of the money. In the circumstances, claiming the said acceptance by chance, Mr.Suryawanshi submitted that appellant no.2 be acquitted.

11] Learned A.P.P. for the respondent - State has supported that the reasons forwarded by learned Special Judge. He submitted that since the tape-recorder version was not clear, the same was not relied by the prosecution. However, we have substantive evidence of PW 1 - Sudhir, shadow panch witness coupled with the statement of PW 2 - Dadarao. In the circumstances, he submitted that there is nothing to disbelieve the evidence of the witnesses, more particularly, that of PW 1 and PW2. Hence, he submitted that the appeal may be dismissed.

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

A] Whether the prosecution has proved that appellant no.1 being a public servant, during the month of July, 1988 made a demand of Rs.500/- and settled the same at Rs.300/-, from the deceased complainant – Hanumant Dhakne, as a remuneration other than legal remuneration to carry the mutation in the revenue record ?

B] Whether the prosecution has further proved that on 27th July, 1988, appellant no.1 again made a demand of Rs.300/- to the complainant and accepted the same ?

C] Whether the prosecution has further proved that pecuniary advantage was obtained by appellant no.1 by abusing his position as a public servant ?

D] Whether the prosecution has further proved that appellant no.2 has abetted commission of the offence ?

E] Whether the sanction is valid ?

. My findings to the above points are in the affirmative. The appeal is, therefore, dismissed for the reasons to follow.

R E A S O N S

13] Due to death of the complainant, the prosecution has relied on the statements of the shadow panch witness PW 1 – Sudhir and PW 2 – Dadarao Ghuge, before whom the earlier demand was made by the appellant no.1 and PW5—Investigating Officer who has proved the complaint.

14] The statement of PW 2 – Dadarao Ghuge would show that when the deceased complainant had approached appellant no.1 with a request to carry mutation, at that time, this witness along with one Motiram was present in the house of appellant no.1. He was there since his friend Motiram Ghuge was to obtain money from appellant no.1 towards sale of a cycle to appellant no.1. He was also requiring copy of certain 7/12 extract and appellant no.1 had handed over the same to him.

. At that time, the deceased complainant came there. As appellant no.1 asked the complainant to submit an application, the complainant got scribed the application from this witness and handed over the same to appellant no.1. At that time, the appellant no.1 asked as to whether, fees was brought upon which, the complainant told that he would bring the money from Adat (commission agent who deals in agricultural produce).

. During cross-examination, this witness deposed that he did not remember as to, for what purpose, he had obtained 7/12 extract. The transaction between appellant no.1 and Motiram of sale of cycle was oral. The application (Exhibit 27) scribed by him was dated, however, he did not put said date. The complaint was related to him. He, however, denied that neither the application at Exhibit 27 was handed over by the complainant to appellant no.1 in his presence nor any demand of fee was made by the appellant no.1.

15] The deposition of PW 1 – Sudhir, shadow panch witness, would show that during the trap exercise, an amount of Rs.300/- brought by the complainant was used as decoy money. The complainant had additional amount of Rs.15/-, however, only, the amount of Rs.300/- was taken for applying anthracene powder. Thereafter, the raiding party marched to Parli. Thereat, PW 1 – Sudhir along

with the deceased complainant went to the house of appellant no.1. During the talks, appellant no.1 questioned as to whether, money was brought and the complainant answered in the affirmative. Thereupon, appellant no.1 asked the complainant to put it in the bag in his house. The complainant, however, showed surprise that it would be strange for him to enter the house and search for the bag.

. Thereupon, appellant no.1 told that the money should be given to appellant no.2. Accordingly, appellant no.2 accepted the decoy money and further demanded Rs.10/- or Rs.20/-. The complainant replied that he did not have money even for the fare to return to his village. Upon that, appellant no.2 started returning the amount of Rs.300/- whereupon, the complainant gave him two currency notes in the denomination of Rs.5/- each. The same were kept by appellant no.2 with him. Thereafter, the predetermine signal was given

to the raiding party and next of the exercise was started. During this exercise, no application of anthracene powder was found at the hands of the complainant as well as of himself.

16] During the post trap event, appellant no.1 told that he did not receive any application, however, upon search of the house of appellant no.1, said application was found and the same was seized at panchnama at Exhibit 30. PW 3 – Ravi Bagde has deposed that at the office of the Anti Corruption Bureau, the complainant had brought an amount of Rs.300/- and the same was used as decoy money. He, as well as the Investigating Officer – PW 5, deposed about the exercise that was carried after the trap was over. According to him, the hands of the complainant showed residues of anthracene powder under the ultra violet lamp examination. He also deposed about recording from the cassette.

. The record would show that learned Special Judge had also played the cassette in the court with the aid of an amplifier and transcribed dialogues at Exhibit 50. According to learned Special Judge also, while some part of conversations could be heard, nothing was intelligible and clear.

17] Though Mr.Bhosale, learned counsel for appellant no.1, submitted that the prosecution has not clarified as to how additional amount was with the complainant to pay an amount of Rs.10/- to appellant no.2, the prosecution evidence would show that besides the decoy money of Rs.300/-, the complainant was having additional amount and the same was kept in his separate pocket. Except variance in the statement of PW 1 – Sudhir, shadow panch witness and PW 3 – Ravi Bagde on the issue as to whether, the hands of complainant were found

with residues of anthracene powder, their evidence on record supports the prosecution version.

18] It is the prosecution case that immediately, after the trap, upon questioning, appellant no.1 told that he has not received any application from the complainant. However, during search in his house, the same was found. Therefore, there is no contradiction in the prosecution case as to whether, the application was received by the appellant no.1 and therefore, there was no question of seizing the same.

19] No doubt PW 2 – Dadarao has deposed that he is related to the complainant, but that itself would not make us to discard his testimony, particularly when the application at Exhibit 27 has been sufficiently proved to have been scribed by him. It corroborates that he was present in the house of appellant no.1 at the time of demand of

money made by appellant no.1 to the complainant. This witness has deposed that present appellant no.1 had made a demand of fees while, according to the complainant, money was demanded. Further there is variance as to what answer was given by the complainant during the meeting to appellant no.1 in presence of PW 2 – Dadarao.

. While according to this witness when the appellant no.1 had asked for the fee, the complainant told that he would bring the money from the Adat and would pay it to him. As against this, the complaint at Exhibit 45 records that when appellant no.1 had made demand of Rs.500/- at that time, the complainant told that he would think over the same and lateron, would tell the appellant no.1.

20] Learned Special Judge while appreciating these inconsistencies has noted the time gap of period

elapsed between the incident and recording of the evidence in this regard. The observations of learned Special Judge in this regard cannot be called as unreasonable.

21] It is true that the date at the top of the application Exhibit 27 was not put by PW 2 – Dadarao. However, when the prosecution case has been amply proved that the said application was seized from the house of appellant no.1, no importance can be attached to the said fact.

22] The post trap panchnama at Exhibit 30 would reveal that the Gurushirt pocket of the complainant when examined, was found shining under the ultra violet light and his right hand also shown similar result. PW 1 – Sudhir, shadow panch witness, however, during his examination-in-chief, has deposed that those hands were not shining. It was, however, a composite statement: *“My hands and*

hands of Dhakne were seen under ultraviolet lamp. But there was no shining on our hands".

23] The period between the incident and recollecting the same in the witness box, however, is of around twelve years. This long period is required to be considered. Besides PW 3, the second panch witness and PW-5, the I.O., amply proved that the complainant's hand had residue of the powder. In my view, therefore, the prosecution has proved, beyond the reasonable doubt, that present appellant no.1 has made demand of remuneration other than the legal remuneration and accepted the same.

24] As regards appellant no.2, it is true that he was not involved in the earlier transaction. Even at the time of the trap, appellant no.1 initially had asked the complainant to put the decoy money in a bag by entering his house. When the complainant showed his hesitancy to enter the house of

appellant no.1 and search for bag, then appellant no.1 asked the complainant to hand over the decoy money to appellant no.2. Thus, earlier there was no meeting of minds between the appellants as argued by Mr.Suryawanshi.

25] The matter, however, does not rest there. The prosecution has proved that not only appellant no.2 had accepted the decoy money, as directed by appellant no.1, but also he had made additional demand of Rs.10/- or Rs.20/- for himself. When the complainant told that he did not have money even for his return fare, appellant no.2 told that even amount of Rs.300/- may be taken back and all the money should be paid at one time. This indicates that appellant no.2 was fully aware of the nature of the transaction. He was insisting for his own share, may be a little bit. In that view of the matter, there was intentional aiding to the commission of the offence of appellant no.1.

26] In the circumstances, the following order :-

A] The appeal is hereby dismissed.

B] Bail bonds of the appellants shall stand cancelled.

C] The learned Special Judge to take steps to secure presence of the appellants for serving remainder of the sentences.

[M.T. JOSHI, J.]

kbp