

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.316 OF 2001

Uttamrao s/o. Rambhau Raut,
Age 50 years, Occ. Service,
(Under suspension), r/o. Sillod,
Tq. Sillod, Dist. Aurangabad ..Appellant

Versus

- 1] The State of Maharashtra,
through Public Prosecutor,
High Court of Judicature of
Bombay, Bench at Aurangabad
- 2] The Superintendent of Police,
(Anti Corruption Bureau),
Aurangabad ..Respondents

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Mr.Joydeep Chatterji, advocate for appellant

Mrs.R.K.Ladda, A.P.P. for respondents - State

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CORAM : M.T. JOSHI, J.
JUDGMENT RESERVED ON : OCTOBER 12, 2015
JUDGMENT PRONOUNCED ON : OCTOBER 27, 2015

JUDGMENT :

Heard both sides.

2] Present appellant was convicted by learned
Special Judge, Aurangabad in Special Case No.12 of

1995 for the offences punishable under Section 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (for short "the Act") vide judgment and order dated 19th July, 2001. He was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1,000/- for the offence punishable under Section 7 of the Act; and to suffer rigorous imprisonment for two years and to pay a fine of Rs.2,000/- for the offence punishable under Section 13(2) read with 13(1)(d) of the Act. Hence, the present appeal.

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

. That during the relevant period, present appellant was serving as a Clerk in the office of the Assistant Registrar, Co-operative Societies, Sillod. The complainant i.e. PW 1 - Ramkrishna Dabke, being a Lecturer in Yashwant College, Sillod, was Chairman of the Co-operative Credit

Society (for short "the Society") of the employees of the college. The Society was allowed to sanction loan to its members to the extent of Rs.40,000/-. The Society had moved the Assistant Registrar, Co-operative Societies, Sillod, for extending said limit to Rs.60,000/-. Necessary procedure was followed. One Shri.B.L. Jadhav was the then Assistant Registrar. The complainant as well as Secretary of the Society Shri.Korde had visited the said Shri. Jadhav. Accordingly, said Jadhav had accorded the request and told that necessary letter/order can be obtained from the present appellant i.e. Clerk. Thereafter, said Jadhav was transferred.

. In the month of March or April, 1995, the complainant and Shri. Korde visited the appellant for getting the order. Thereafter, on 21st May, 1995, they met the appellant and asked for the order. The appellant told them that the order was

already in his custody, however, since he was required to take much efforts to get said order, the complainant and Secretary Korde should pay him Rs.5,000/-. The complainant told that he as well as the members of the Society are from teacher class and it is against their principle to pay bribe. He also questioned as to under what head, amount of Rs.5,000/- can be debited in the account book. Upon that, the appellant suggested them that the the office bearers of the Society can collect an amount of Rs.50/- or Rs.100/- from each members. The complainant, however, declined for the same.

. In the situation, on 23rd May, 1995 in the night, the appellant himself came to the house of the complainant. Secretary Korde was already present there. The respondent again made the demand of money. Upon that, the complainant and Korde asked the appellant to show the order.

Thereupon, the appellant showed the order to them. When the complainant was reading said order, some other guests arrived at the house of the complainant, therefore, the appellant told that the order may be kept in the custody of the complainant and he would come lateron to collect the money. Accordingly, on 2nd June, 1995, the appellant again visited the complainant and made demand of money. Thereupon, the complainant told him that the money cannot be paid. The appellant, thereafter, reduced his demand to Rs.4,000/-. He further warned that the complainant may tell him about the final decision regarding payment of money by next Monday. Thereafter, the appellant again went to the house of the complainant and made demand for money. The complainant again showed his inability and told that he would not pay the amount. Thereupon, the appellant threatened that in case, the amount is not paid, he would create hurdle in the smooth functioning

of the Society and warned to take decision by 8th of June, 1995 about payment of money else, he would do what he wished in future. He issued a final warning that final decision should be told to him on 8th June, 1995 at 7:00 pm. or 7:30 pm. at the house of the complainant. In the circumstances, the complainant filed the complaint with the Anti Corruption Bureau, Aurangabad on 8th June, 1995.

4] PW 3 – Khushalchand Baheti, upon recording of the complaint, conducted investigation. He called two panch witnesses by issuing requisition letter to the Divisional Agriculture Officer at Aurangabad. The contents of the complaint were read over to the panch witnesses. Thereafter, it was decided that verification of the demand of the appellant should be made. It was made to understand that PW 2 – Sakharam Waghmare should be introduced to the appellant as one of the teachers

and a member of the Society. Accordingly, on 8th June, 1995, the complainant and PW 2 – Sakharam remained in the house of the complainant at Sillod. At about, 7:40 pm., the appellant came there. After certain chit-chatting, the appellant asked as to whether, arrangement for Rs.4,000/- was made. Upon that, the complainant tried to negotiate and told that at the most, an amount of Rs.3,000/- can be raised. The appellant told that he would not accept a paisa less than Rs.4,000/- as he had promised his senior to pay that much amount. He further suggested that the amount can be adjusted in purchasing of instruments, stationary etc. for the Society, but the amount must be paid to him. Upon that, the complainant told the appellant that since there was summer vacation and the members of the Society were not available, within 2-3 days necessary arrangement would be made. Upon that, the appellant told that he would come to collect the amount on 13th June,

1995 at about 7:00 p.m. to 7:30 p.m. Accordingly, the complainant and PW 2 – Sakharam, panch witness narrated all these facts to the Investigating Officer and panchnama of activities was recorded at Exhibit 28.

5] Accordingly, trap was organized on 13th June, 1995. The complainant brought the decoy money of Rs.4,000/-. It was smeared with anthracene powder in presence of the panch witnesses. Thereafter, the decoy money was kept in the left hand pocket of shirt of the complainant. Instructions was given to the complainant that the amount be paid to the appellant only on his demand and after acceptance of the amount by the appellant, pre-determined signal be given by the complainant by giving direction to his wife to prepare tea.

6] The trap was accordingly laid. During the trap, at around 7:00 pm., the appellant entered

the house of the complainant in presence of the panch witness. At that time, chit-chatting was started between them. During the talks, Secretary of the Society - Korde also entered the house. The appellant asked as to whether, the work is done. Upon that, the complainant told that as directed by him, arrangement of Rs.4,000/- is made and that in future the appellant should look after the Society. Upon that, the appellant made demand of Rs.4,000/-. The complainant accordingly produced the decoy money. The appellant accepted the same by his right hand. He counted the same by his both hands. When he was again counting the currency notes, the complainant gave a predetermined signal and the other members of the raiding party arrived at the spot including PW 3 - Khushalchand Baheti. Necessary exercise of search of the appellant was carried in which, the transaction as detailed supra, was confirmed. Panchnama regarding the same was also prepared at Exhibit 30. Investigating

Officer Baheti, thereafter, carried further investigation. He collected necessary papers from the office of the Assistant Registrar, Co-operative Societies. He obtained sanction to prosecute the appellant (Exhibit 40) from the Divisional Joint Registrar, Co-operative Societies and charge sheet came to be filed.

7] The appellant examined one Mukumchand Patni, defence witness. Said Patni was serving as a Head Clerk in the office of the Assistant Registrar, Co-operative Societies, Sillod during the relevant period. He was examined to show that during the relevant period, the appellant, in fact, was holding inspection of the agricultural co-operative credit societies in the villages and was not concerned with any non-agricultural co-operative society. The work of increasing limit of the loan was being pursued by Secretary of the Society Shri Korde and he was relative of the

appellant. The appellant, in fact, had recommended said Patni that he must favour the Society of the complainant in getting the bye-laws amended. Accordingly, Mr.Patni processed the matter and the order was passed by Shri. Jadhav. Thereafter, in presence of Mr.Patni, Secretary Korde had obtained a hand loan of Rs.4,000/- from the appellant/accused and told that he would repay the amount after collecting it from the members of the Society. Thus, the defence was that the decoy money received by the appellant was, in fact, towards the repayment of the hand loan obtained by Secretary Korde and the appellant was not, in any way, concerned with official work of amendment of bye-laws of the Society.

8] Before the learned Special Judge, the prosecution examined the complainant – Ramkrishna Dabke as PW 1. PW 2 – Sakharam Waghmare is a shadow panch witness. PW 3 – Khushalchand Baheti

was the Investigating Officer. The sanction granted by the sanctioning authority was exhibited at Exhibit 40 during deposition of the Investigating Officer.

9] Learned Special Judge found that in fact, present appellant had made demand of the amount for the efforts taken by him for amendment of the bye-laws of the Society and also towards the promise that in future, he would see that there would be smooth relations of the Society with the office of the Assistant Registrar, Co-operative Societies. According to the learned Special Judge, in fact, the amount accepted by the appellant was towards the said demand and therefore, the conviction and sentence came to be recorded against the appellant, as detailed supra.

10] Mr.Chatterji, learned counsel for the appellant, made following submissions before me.

. That, in fact, the evidence on record would show that the appellant was not, in any way, concerned with the Co-operative Credit Societies. Secretary of the said Society Shri Korde, who was regularly transacting with the office of the Assistant Registrar, Co-operative Societies, was not examined. The evidence of PW 2 – Sakharam Waghmare, shadow panch witness, would show that he could not get during the talks, either at the time of verification of demand by appellant or at the time of the trap, the purpose of passing of the amount to the appellant. The sanction was not legally proved and even otherwise, it was admitted by the Investigating Officer that he had sent a draft sanction order to the sanctioning authority. In the circumstances, he submitted that the appeal may be allowed and the appellant may be acquitted.

11] On the other hand, learned A.P.P. for the respondents – State submitted that the evidence on

record would clearly show that initially, the appellant had made a demand of Rs.5,000/- towards the alleged efforts taken by him for ratification of the bye-laws of the Society and also promised for smooth relationship of the Society in future with the office Assistant Registrar, Co-operative Societies. He, thereafter, reduced his demand to Rs.4,000/-. The acceptance of the decoy money was admitted by the appellant. In the circumstances, the presumption under Section 20 of the Act that has arisen due to admitted acceptance of money, is not rebutted. The issue of non-examination of the sanctioning authority cannot be raised in the appeal in view of the provisions of Section 19 of the Act. In the circumstances, she submitted that the appeal may be dismissed.

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

i) Whether the prosecution has proved that present appellant being an assistant in the office of Assistant Registrar, Co-operative Societies, Sillod, had during the period April, 1995 and June, 1995 made a demand of Rs.5,000/- and thereafter, agreed to accept an amount of Rs.4,000/- towards the efforts taken by him for amendment of the bye-laws of the Society and also for the future work in the office of the Assistant Registrar, Co-operative Societies ?

ii) Whether the prosecution has further proved that during the said period the appellant, time and again, made demand of Rs.4,000/- and ultimately, obtained it on 13th June,

1995 as a gratification other than legal remuneration ?

iii) Whether the prosecution has further proved that present appellant has obtained pecuniary advantage, as detailed supra, by corrupt or illegal means by abusing his position as a public servant and therefore, committed criminal misconduct ?

iv) Whether the appeal deserves to be allowed for want of examination of the sanctioning authority or for invalid sanction ?

. My findings to points (i) to (iii) above are in the affirmative and to point (iv) in the negative. The appeal is, therefore, dismissed for the reasons to follow.

R E A S O N S

13] PW 1 – Ramkrishna Dabke, complainant, during the relevant period, was a Lecturer in Yashwant College, Sillod. According to the appellant, PW 1 – Ramkrushna was not, in any way, concerned with the work in the office of Assistant Registrar, Co-operative Societies, as Secretary Korde, admittedly, was pursuing the matter. According to the defence, in fact, said Korde had obtained a hand loan of Rs.4,000/- from the appellant and promised him to repay the same by collecting subscriptions from the members of the Society.

14] PW 1 – Ramkrishna, complainant, was candid enough in deposing that the Secretary Korde used to visit the office of the Assistant Registrar time and again for the work of amending bye-laws of the Society. He further deposed that despite his visits, no orders were received from the said office. Therefore, on 21st May, 1995, Secretary

Korde took him to the appellant, who told that the order was ready, but since he had spent his energy, they should pay him Rs.5,000/-. Thereafter, the appellant, time and again, pressed for the amount and later on, reduced the same to Rs.4,000/- and during the trap, he accepted the decoy money towards illegal gratification. During cross-examination, the complainant admitted that he came to know from Secretary Korde that the appellant was making demand for money. He further showed ignorance as to whether, Secretary Korde had, at any point of time, obtained any hand loan of Rs.4,000/- from the appellant. He, however, has denied that the appellant had, at any point of time, told that Secretary Korde had obtained an amount of Rs.4,000/- in this connection. He denied that only to show some adventure, he has filed a false complaint with the Anti Corruption Bureau to implicate the appellant falsely.

15] Besides the evidence of the complainant, we have the deposition of PW 2 – Sakharam, shadow panch witness, to the verification exercise as well as to the actual trap.

. According to this witness, during verification exercise, the appellant had come to the house of the complainant. At that time, during talk, the appellant asked the complainant as to whether, the arrangement for the amount has been made or not. Upon that, the complainant told him that as all the teachers were on vacation, after 3 to 4 days, he would make the arrangement. The statement of this witness coupled with panchnama at Exhibit 28, would not show that during the said talks, at any point of time, either the appellant or the complainant said or indicated that it was the amount towards the repayment of hand loan taken by Secretary Korde.

16] As regards the activities that took place at the time of the acceptance of decoy money by the appellant, this shadow panch witness deposed that at that time, the appellant again had asked the complainant as to whether, the arrangement for Rs.4,000/- was made by the complainant or not. The complainant thereupon by answering in the affirmative passed the decoy money to the appellant.

. Thus, the statement of this witness would not reveal that though there was certain chit-chatting for a considerable time on both the occasions, any issue of repayment of hand loan was discussed. His examination-in-chief would show that he was aware that the amount was demanded for extension of the individual lending limit and the order in that respect was passed by Assistant Registrar Shri. Jadhav.

17] Had it been a fact that Assistant Registrar Shri. Jadhav had obtained the amount of Rs.4,000/- from Secretary Korde which was raised by the said Secretary by obtaining hand loan from the appellant and the complainant was only repaying the said hand loan during trap, then the shadow panch witness would have also been aware of this part of the transaction as alleged by the appellant. It is necessary to underline that during the cross-examination, it was also suggested to the shadow panch witness that during both the meetings, conversation took place was on political or other subjects and it was not only limited to the demand of money or payment of the same.

18] Had the complainant any grievance about payment of Rs.4,000/- to the Assistant Registrar Shri Jadhav, as suggested by the defence, then the complainant would have animus against the

Assistant Registrar Shri Jadhav and not against the appellant, who has merely facilitated the Society by giving alleged hand loan of Rs.4,000/- to the Secretary Shri Korde for payment of the amount to the Assistant Registrar. The complainant, who is a Lecturer in the college would not have unnecessarily involved the alleged facilitator i.e. present appellant, who was merely an Assistant in the office of the Assistant Registrar, Co-operative Societies, Sillod.

19] Taking into consideration all these facts on record, in my view, the prosecution has proved beyond reasonable doubt that the present appellant had made a demand of Rs.5,000/- and thereafter, reduced it to Rs.4,000/-, as a gratification for taking efforts in securing the suitable order from the Assistant Registrar and also towards the future facilitation, as detailed supra. It was also a criminal misconduct.

20] The issue, therefore, remained is regarding the proof of the sanction order and whether, the said sanction was valid.

. The Investigating Officer, during his examination-in-chief, has pointed towards the sanction order received from the sanctioning authority. Neither it was shown nor argued as to whether, any prejudice is caused due to non-examination of the sanctioning authority. The provisions of sub-section (3) of Section 19 of the Act runs as under :-

“(3)(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)

(c) "

21] In the present case, in my opinion, no failure of justice has occasioned due to non-examination of the sanctioning authority. Learned Special Judge has taken into consideration all the facts regarding grant of sanction including the admitted fact that the draft sanction order was sent by the Investigating Officer to the sanctioning authority, which would not show that there was any non-application of mind at the time of grant of sanction. Even, absence of the sanction order may not vitiate the proceedings unless it is shown that failure of justice has occasioned due to absence of any such sanction order. In the circumstances, I do not find any substance in the

arguments that for want of examination of the sanctioning authority, the trial has vitiated.

22] Mr.Chatterji, learned counsel for the appellant, has relied upon the ratio laid down in the case of ***Jagannath Maruti Tekade Vs. State of Maharashtra, 1991(2) Mh. L.J.976.*** However, in view of the specific provisions of sub-section (3) of Section 19 of the Act, as detailed supra, and finding that the sanctioning authority, in due course, had granted the sanction, I found no force in the submissions made on behalf of the appellant in this regard.

23] In the result, the following order :-

A] The appeal is hereby dismissed.

B] Bail bonds of the appellant shall stand cancelled.

C] Learned Special Judge to take steps for securing presence of the appellant to serve the sentence.

[M.T. JOSHI, J.]

kbp