

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 485 OF 2001

Ganesh Bhagwan Gade,
Age 46 years, Occu – Service
Clerk in Tehsil Office,
Dharur, R/o Dharur,
District – Beed

.. Appellant
Orig. Accused No.1

VERSUS

The State of Maharashtra

.. Respondent

WITH

CRIMINAL APPEAL NO. 486 OF 2001

Sayyed Khaja S/o Sayyed Halim,
Age 46 years, Occu. – Service
Peon in Tehsil Office,
Dharur, R/o Dharur,
District – Beed

.. Appellant
(Orig. Accused No.2)

VERSUS

The State of Maharashtra

.. Respondent

Mr. G.K. Thigale (Naik), Advocate for the appellant in
Criminal Appeal No. 485 of 2001

Mr. M.K. Deshpande, Advocate for the appellant in Criminal
Appeal No. 486 of 2001

Mrs. R.K. Ladda, A.P.P. for the respondent/State in both
Appeals

CORAM : M.T. JOSHI, J.

RESERVED ON : 12/10/2015

PRONOUNCED ON : 29/10/2015

JUDGMENT :

Heard both sides.

2. Both the present Appeals have arisen out of the common judgment dated 18/10/2001 passed by Additional Sessions Judge cum Special Judge, Ambajogai in Special Case No. 01 of 1999, convicting the appellants/original accused in both the Appeals.

. Appellant – Ganesh Bhagwan Gade was accused no.1 while appellant – Sayyed Khaja S/o Sayyed Halim was accused no. 2 in the aforesaid Special Case.

. Appellant – Ganesh Bhagwan Gade was convicted for the offences punishable under section 7, 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for 2 years and to pay fine of Rs.3000/- and in default of payment of fine to suffer rigorous imprisonment for 3 months for the offence punishable under section 7 of the Prevention of Corruption Act, 1988 and to suffer rigorous

imprisonment for 2 years and to pay fine of Rs.3000/- and in default of payment of fine to suffer rigorous imprisonment for 3 months for the offences punishable under section 13(1)(d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988. Both the substantive sentences were directed to run concurrently.

. Appellant – Sayyed Khaja S/o Sayyed Halim was convicted for the offence punishable under section 12 of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for 1 year and to pay fine of Rs.2000/- and in default of payment of fine to suffer rigorous imprisonment for 2 months.

. For the sake of brevity, appellant – Ganesh Bhagwan Gade hereinafter would be referred as “**appellant – Ganesh**” while appellant – Sayyed Khaja S/o Sayyed Halim would be referred as “**appellant – Sayyed**”.

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

. That PW1 – complainant – Nilabai Gangaram Samudre resident of Ganjpur, Tq. Dharur, Dist. Beed was a helpless widow and, therefore, she used to get an

amount of Rs.100/- monthly, as the grant under 'Sanjay Gandhi Niradhar Yojana'. She received the said amount through postal money order for a period of 3-4 years through one Undari Post Office, however, no monthly payment is received and sometimes the amount for 4-6 months is received at one time. For that purpose, she was required to pursue appellant – Ganesh, who was the concerned Clerk in the Tehsil Office. Only after persuasion, he used to send the money order.

. As during the period of the complaint, an amount of Rs.500/- was not sent, the complainant visited the appellant – Ganesh in his office on 31/7/1998. At that time, she had taken one Angad Dapkar as a companion. At that time, appellant – Ganesh stated that though the complainant was receiving the amount without any efforts, she did not use to take his care. Ultimately, during talk, appellant – Ganesh in presence of said Angad told that certain expenses towards tea etc. will have to be made. Upon that, the complainant offered Rs.25/-. Appellant – Ganesh however stated that unless Rs.300/- are paid, the work would not be done.

After negotiation, appellant – Ganesh agreed to accept an amount of Rs.150/- and told that the said amount be paid on 03/08/1998 in his office on or before 03.00 pm. Since the complainant did not wish to pay any bribe, on 03/08/1998 itself, she filed complaint with Anti Corruption Bureau, Beed.

4. PW4 – Deputy Superintendent of Police – Mahendra Bhokare of the Anti Corruption Bureau conducted the investigation in the crime. He sent the requisition letter to the office of Zilla Parishad, Beed for sending two employees for acting as panch witnesses. Accordingly, PW2 – Madhukar Hirve, Live Stock Supervisor in Animal Husbandry Department and one Mr. Mukund Umbrajkar reached the Anti Corruption Bureau office. In their presence, demonstration of application of anthracene powder was given. The decoy money was brought by the complainant. Anthracene powder was applied to it. Thereafter, the Investigating Officer instructed the complainant and PW2 – Madhukar Hirve to go together to appellant – Ganesh. He directed the complainant to pay the decoy money when the appellant –

Ganesh would make the demand. Rest of the raiding party including the Investigating Officer remained in the campus of the Tehsil Office.

. According to the said direction, the shadow panch witness and the complainant approached appellant – Ganesh in his office. At that time, appellant – Ganesh was busy in paying salary to various Talathis. He therefore asked the complainant and shadow panch witness to wait. After some period, i.e. at around 3:20 pm, both of them went to the table of appellant – Ganesh. Appellant – Sayyed, Peon in the office was about 2 feet away from the complainant. Appellant – Ganesh asked the complainant as to whether she had brought the money. She answered in the affirmative. Thereupon, the appellant – Ganesh scribbled something on a small chit and gave it to the appellant – Sayyed. Thereafter, appellant – Ganesh asked the complainant to pay the amount of Rs.150/- to appellant – Sayyed. Accordingly, the complainant handed over the decoy money to appellant – Sayyed. He counted the same and kept it in his left chest pocket. Complainant again asked

appellant – Ganesh as to when the work would be done. Thereupon, appellant – Ganesh told that on the next day itself, the work would be done and asked appellant – Sayyed to show him the chit on the next day so that he would carry the work. Thereupon, the complainant gave the pre-determined signal. The raiding party including the Investigating Officer reached the Office. Both the appellants were apprehended.

. During the next of the exercise of examining the hands and clothes of the appellants and, thereafter, the complainant confirmed the fact of transfer of decoy money from the complainant to appellant – Sayyed. Panchanama of all these activities was recorded. During further investigation sanction at Exhibit 35 to prosecute the appellants was obtained from PW3 – Vasudeo Gorde, the then Collector, Beed. Thereafter, the chargesheet came to be filed.

5. Before the learned Special Judge, in all 4 witnesses as detailed supra were examined.

6. The defence of appellant – Ganesh was that in fact, the money orders sent to the complainant – Nilabai were returned by the Postmaster as the complainant had left her native place. Thereafter, the complainant met appellant – Ganesh on 3 -4 occasions in the month of July, 1998 and was pressing the appellant to again send the money order. By that time, it was gathered that the complainant's sons were earning their livelihood and, therefore, she was not entitled for continuation of the grant. Appellant – Ganesh accordingly told these facts to the complainant however due to her pressing appellant – Ganesh ultimately told the complainant that she can meet the Tehsildar in this regard and get a written order. Accordingly, at the time of trap, he prepared a chit wherein name of the complainant – Nilabai was written and he told the complainant that she should show the said chit to the peon waiting outside the chamber of the Tehsildar i.e. appellant – Sayyed. Thereafter, he remained busy in his work. He was however apprehended during the trap.

7. The defence of appellant – Sayyed was that he

was not at all concerned with any of the transactions. At the time of trap, the complainant suddenly came to him and stated that she wanted to meet the Tehsildar. Accordingly, she put the chit and the money in his hand and suddenly went away. Therefore, he counted the money and kept the same in his pocket, however, the Investigating Officer and other members of the trap already came there and caught him.

8. The learned Special Judge however found that that prosecution case is proved beyond reasonable doubt and, therefore, the conviction and sentences, as detailed supra came to be recorded.

9. Mr. G.K. Thigale, learned counsel for the appellant – Ganesh as well as Mr. M.K. Deshpande, learned counsel for the appellant – Sayyed made the following submissions before me :-

. That while the complainant's case would be that she approached appellant – Ganesh earlier with one Angad Dapkar in whose presence the appellant – Ganesh has made demand, said Angad is not examined. Further, the

complainant lady, who was unable to come to Tehsil Office all alone, claims to have all alone went to Beed, searched for Anti Corruption Bureau Office and filed her complaint there. The evidence on record would show that the Investigating Officer named PW2 – Madhukar Hirve in the requisition sent to Madhukar's superior so that specifically PW2 – Madhukar Hirve would be sent to become a shadow panch witness. This is against the statement of PW2 in the cross-examination that earlier to the present episode, he was not even knowing the Investigating Officer. Further, the admission of PW2 – Madhukar Hirve that he was resident of a nearby village of the complainant and his relatives reside in the village of the complainant, is not just a coincidence in the set of above facts. These facts had strengthened the defence that Angad Dapkar a busybody was instrumental in implicating the appellants in a false case. Further, even the Investigating Officer is resident of the same vicinity.

. During the cross-examination, the complainant admitted the fact that her sons became major and earning

and thus it would be clear that she was disqualified from getting the benefit of the scheme. Therefore, according to these counsels, since the appellant – Ganesh was not obliging, a false case, in collusion with Angad Dapkar, PW2 – Madhukar Hirve and the Investigating Officer, was got up against appellant – Ganesh.

10. Mr. Deshpande further submitted that appellant – Sayyed had no concern with any of the episode. The prosecution case would not show that there was any meeting of mind between the appellant – Ganesh and appellant – Sayyed. In the circumstances, it was submitted that the learned Special Judge did not advert to all these facts and hence, both the learned counsel for the appellant in these Appeals claimed that the Appeals be allowed.

11. On the other hand, learned A.P.P. submitted that merely because the panch witness is named in the requisition letter or that he happens to be the resident of a nearby village of the complainant would not lead us to the conclusion that the entire exercise was a

conspiracy.

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

I) Whether the prosecution has proved that during the period between July, 1998 and August, 1998, the present appellant – Ganesh made a demand of Rs.300/- and, thereafter reduced it to an amount of Rs.150/- as a remuneration other than the legal remuneration for continuing the grant to the complainant ?

II) Whether the prosecution has further proved that on 03/08/1998, the appellant – Ganesh again made the demand of the said remuneration and accepted the same ?

III) Whether the prosecution has further proved that appellant – Sayyed abetted the commission of offence by the appellant – Ganesh ?

IV) Whether the appellants have obtained the pecuniary advantage by misusing their position as public servants by corrupt and illegal means ?

V) What order ?

13. My findings to point nos.(I) to (IV) are in the negative. Both the Appeals are therefore allowed and both the appellants are acquitted of all the offences for the reasons to follow.

R E A S O N S

14. The complainant PW1 - Nilabai during cross-examination has admitted that one year prior to the present episode her sons started residing at Pune and earning their livelihood. She therefore used to visit Pune once in a year. She also used to visit her daughter who was married. Before approaching the Tehsil Office, she had approached Undari post office and the Postmaster had told her that due to her absence from the village, the money order was returned to the Tehsil Office and, therefore, she approached the Tehsil Office. She also admitted that after the present episode, her grant under the scheme was discontinued though she denied that as she became ineligible to receive the grant, the same was discontinued. She however admitted

that Tehsil Office, Dharur had informed her that as her son had become major and earning, the payment under the scheme would be stopped.

15. The complaint would further show that to approach the Tehsil Office, Dharur, the complainant was required to take help of one Angad Dapkar. As against this, she deposed that she all alone went to Beed, a district place and searched for the Office of Anti Corruption Bureau and filed her complaint. When searching cross-examination in this regard was carried, she deposed that she was knowing that complaint against a Government servant for demanding bribe can be filed was revealed to her at some point of time, which she did not remember. Specifically, the name of the Investigating Officer Mr. Bhokare was known to her from the complaint of one person from Chinchpur. On the day of filing of the complaint, she all alone went from her house to Beed and climbed down from the tempo near Shivaji statue at Beed. She however was unable to tell as to in which direction, the Anti Corruption Bureau Office was located from the said statue. She further

deposed that she fainted when she got down near the Shivaji statue, however, one person took her to the Anti Corruption Bureau office, however, she did not know the name of the said person.

16. PW2 – Madhukar Hirve was the Live Stock Officer in Animal Husbandry Department at Beed. He deposed that prior to the present episode, he did not know Investigating Officer PW4 – Mahendra Bhokare. The requisition sent by PW4 to Deputy Director of Animal Husbandry, Beed at Exhibit 41-C however would show that in the said requisition, the Investigating Officer has asked the said Officer to specifically send PW2 – Madhukar Hirve and another panch witness Mukund Umbrajkar to attend his Office. When there was no acquaintance between PW2 and the Investigating Officer, it is difficult to understand as to how the Investigating Officer had named him in his requisition. Besides this, while the investigation in anti corruption case is required to be done with the aid of an independent panch witness, why the Investigating Officer instead of calling any Class-III or Class-IV Government

employee from the Office of the Deputy Director, specifically named PW2 and one another panch, is an enigma.

17. This enigma is sought to be explained by the defence by cross-examining both these witnesses in this regard.

18. PW2 — Madhukar Hirve though working at Beed had admitted in his further cross-examination that his native village is near village Ganjpur and some of his relatives are resident of Ganjpur i.e. the village of the complainant and Angad. PW4 — the Investigating Officer has also deposed in cross-examination that he was not knowing those panchas though he has named them in his requisition at Exhibit 41-C. Though the panch witness stated that he had no occasion to meet the Investigating Officer earlier, the Investigating Officer tried to explain by saying that he was knowing these panch witnesses, as earlier there names were available as the panchas of a previous unsuccessful trap. He however denied that complainant — Nilabai told that Angad Dapkar had recommended the name of PW2.

19. The Investigating Officer has admitted that he has recorded the statements of the visitors, who were present at the spot during raid and also of said Angad Dapkar. None of the witnesses however was examined.

20. Mr. Naik Thigale adverted my attention to the observations of the learned Special Judge regarding the fact that PW2 – Madhukar had interest in the case. The Special Judge has observed that the explanation of the Investigating Officer Mr. Bhokare for mentioning the name of two panch witnesses in the requisition cannot be accepted. It was also observed by the learned Special Judge that the panchas were interested or may be interested in the prosecution. The learned Special Judge however observed that their evidence cannot be thrown away only because they are interested and therefore would scrutinize the evidence of PW2 – Madhukar Hirve very cautiously.

21. The issue is not whether the evidence of PW2 should be thrown as he is interested but the real issue is as to why at the very inception an interested witness

was requisitioned by the Investigating Officer. Further, the evidence regarding the approach of the complainant to the Anti Corruption Bureat office of Beed as detailed supra would also cast a doubt, as to whether the complainant is the shadow complainant used by any person having vested interest in the case. The evidence on record, as detailed supra would show that the investigation was not straightforward.

22. The facts further would reveal that the complainant had also become disqualified for receipt of the grant in view of her own admissions. Further, the facts would reveal that the benefit of the said scheme was discontinued to her later-on. Therefore, the defence case that the complainant was pressing hard for continuation of the benefit cannot be ruled out in the background of the suspicious circumstances of the investigation, as detailed supra.

23. In that view of the matter, merely because the decoy money was found on the person of the appellant – Sayyed, would not lead us to irrebuttable presumption that the appellant – Ganesh has made the demand of bribe

and both the appellants in collusion with each others have accepted the said amount as the bribe amount.

24. Learned counsel for the appellants relied on the ratio of "**Prabhat Kumar Gupta Vs. State of Jharkhand and another**" (2014) 14 SCC 516 and other authorities to show that the presumption available under section 20 of the Prevention of Corruption Act, 1988 would be applicable only if it is established that the accused have consciously accepted the gratification.

25. In the facts of the present case, in my view merely possession of said money by the appellant – Sayyed would not lead us to presume that the said amount was accepted voluntarily by him.

26. In that view of the matter, the following order:-

27. Both Criminal Appeals are hereby allowed.

28. The impugned judgment and order of the learned Additional Sessions Judge cum Special Judge, Ambajogai, convicting appellant – Ganesh Bhagwan Gade for the

offences punishable under section 7, 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988 as well as convicting appellant – Sayyed Khaja S/o Sayyed Halim for the offence punishable under section 12 of the Prevention of Corruption Act, 1988, is hereby set aside.

. Instead, both the appellants are hereby acquitted of the respective offences.

29. Bail bonds of the appellants shall stand cancelled.

30. Fine amount, if any, deposited by the appellants be refunded to them, after a period of three (3) months from the date of this judgment.

[M.T. JOSHI]
JUDGE

arp/