

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 546 OF 2001

Dattatraya S/o Vishnupant Joshi
Age : 65 years, Occ: Retired
R/o. N/2 152, C-Sector, N-2,
Thakre Nagar, Aurangabad

APPELLANT
(Ori.Accused)

VERSUS

The State of Maharashtra
through Police Station City
Chowk, Aurangabad

RESPONDENT
(Ori.Complainant)

Mr. C.R. Deshpande, Advocate for the appellant
Mr. P.N. Kutti, A.P.P. for the respondent-State

CORAM : M.T. JOSHI, J.
DATE : 05/12/2015

ORAL JUDGEMENT :

1. Heard both sides.
2. Aggrieved by the conviction recoded by the learned Special Judge, Aurangabad in Special Case No. 5/1996 on 3rd November, 2001, for the offences punishable under section 7 and 13 (2) read with section 13 (1)(d) of the Prevention of Corruption Act, the present appeal is filed by the original accused. By the said order, the appellant was sentenced to suffer

rigorous imprisonment for one year and to pay a fine of Rs.1000/- for the offence under section 7 and to suffer rigorous imprisonment for two years and to pay a fine of Rs.2000/- for the offence under section 13 (2) read with section 13(1)(d) of the Prevention of Corruption Act.

3. The present appellant during the relevant period was working as enquiry officer in departmental enquiries at Aurangabad and as such, was a public servant. The departmental enquiry against the complainant i.e. PW3 - Arvind Engineer was being conducted by him.

. On or about 8th September, 1992, the complainant went to the office of the appellant. At that time, the appellant told the complainant that he should co-operate him otherwise an exparte decision against him would be taken and the complainant may lose his job. When the complainant asked for further guidance, the appellant asked him to meet at his house and the clerk in his office gave him the residential address of the appellant in his own handwriting.

. On 17th September, 1992, the complainant met the appellant at his house. At that time, the appellant

said that the presenting officer has made a demand of an amount of Rs. 10,000/- for securing order in favour of the complainant. The appellant ultimately told that looking into financial difficulty of the complainant, the amount may be paid in installment of Rs. 5000/- each. The appellant also promised that the complainant would be exonerated in the departmental enquiry. At that time, the complainant told the appellant that he was having only Rs. 500/- and therefore, on that day, he put the said amount in an envelope as per the directions of the complainant and handed over the same to the appellant.

. Thereafter on 15th December, 1992, the complainant again visited the office of appellant. At that time, the appellant made enquiry as to whether the arrangement for money was made. At that time, the complainant told that he could arrange only for Rs. 250/- and later at 12.00 to 12.30 in the noon, as per the directions of the appellant, he also handed over an envelope containing the said amount on the road in front of the office of the appellant as per his direction.

. On 28th January, 1993, the complainant remained present in the enquiry proceeding in the office of the

appellant. The appellant directed the complainant to remain present near the gate at 2.00 p.m. The appellant came to him at 2.00 p.m. At the designated place and made enquiry as to whether the entire amount was arranged for. The complainant told that he could arrange for only Rs. 200/- and handed over the said amount again in an envelope. Both of them returned to the office and the work of enquiry was continued upto 5.00 p.m. The appellant handed over an amount of Rs. 100/- from the very same envelope to the presenting officer – M.B. Topale in the office itself. At that time, only three of them were present.

. Lastly on 23rd March, 1993, at about 8.30 p.m., the complainant went to the house of the appellant. The appellant told that 26th March, 1993 would be the final date in the enquiry and he will have to submit the report and therefore, the balance amount of Rs. 4050/- be paid before the said date. He also threatened that in case the amount is not paid, he would send an adverse report. At that time, the complainant told that since he was not able to get salary for preceding two months, he would not be able to make arrangement for that much amount, but he would pay an amount of Rs. 1050/- before

26th March, 1993 and the rest of the amount of Rs. 3000/- would be paid within 2/3 days thereafter. The appellant told that on that day, he would be on leave and asked the complainant to meet on 29th March, 1993 at 11.00 a.m. and pay the amount of Rs. 1050/- in the office as usual. Since the complainant did not wish to pay the amount, he filed the complaint with Anti Corruption Bureau, Aurangabad at Exhibit-23 on 25th March, 1993. He further communicated that the appellant would be accepting the amount on 29th March, 1993 at 11.00 a.m. on road near Mohannagar gate.

4. On the basis of the complaint, the investigation was started by PW6 Mr. Prabhakar Latange, Deputy Superintendent of Police of Anti Corruption Bureau. He collected two panch witnesses, including the shadow panch witness – PW4 Sushilchandra Ubale, the then Assistant Superintending Engineer of Jaikwadi Project. The contents of the complaint were read over to the panch witnesses. Thereafter, demonstration regarding the application of anthracene powder to the currency notes was given. The decoy money brought by the complainant was smeared with anthracene powder. The said currency

notes were put in an envelope which had window, called as window-envelope. Anthracene powder was also applied to it. The transparent side of the envelope was folded in such a fashion that the amount would be visible. Thereafter, a tape recorder was placed with the complainant. Thereafter, directions were issued to the complainant and the shadow panch witnesses to accompany each other while the rest of the members of the raiding party would follow them. The investigating officer directed the complainant to introduce the shadow panch witness as his cousin.

5. At about 11.25 a.m. on 29th March, 1994, the raiding party went near the office of the appellant. At about 11.30 a.m., the complainant and the shadow panch witness entered the office of the appellant. However, the complainant asked the shadow panch witness not to enter the office of the appellant, as at that time, the staff of the appellant was present. In the office, the appellant did not specifically ask for money but in code language said that the appellant should bring his final statement at 2.00 p.m. The complainant also explained to the investigating officer that as the appellant would

not be ready to speak about monetary transaction in presence of the third party, he had kept the shadow panch witness away from the office.

. Thereafter, the trap was again laid in the noon. During this trap, at about 5.05 p.m., the complainant and the appellant came out of the office of the appellant. Both of them started walking towards Damad Mahal arch. The shadow panch witness followed them by keeping a distance of about 4 to 5 feet. Under the arch, the appellant took the envelope from the complainant and put the same in his files. Prior to that, in the office, the complainant and appellant had discussion regarding the departmental enquiry. Ultimately, the complainant obtained the signature of the appellant over the enquiry file at about 5.00 p.m. and both of them proceeded out of the office towards arch as detailed above. On the road, according to the complainant, the appellant made an enquiry as to whether the money was brought. When the complainant answered in the affirmative, the appellant said that the complainant would not be benefited unless the money is paid. Over that, the complainant said that the appellant should do something and when they came under the arch, the

appellant made demand of money and accordingly, the complainant handed over the envelope containing the decoy money. As the complainant gave predetermined signal to the raiding party, the investigating officer as well as other members of the raiding party arrived at the spot. The appellant was apprehended. Thereafter, the necessary examination of the hands and cloths of the appellant and thereafter of the complainant under the ultra violate lamp was carried which confirmed the transfer of the decoy money and the envelope to the appellant.

6. The investigating officer thereafter conducted further investigation. The necessary papers of the departmental enquiry were seized. The statements of various witnesses were recorded. The sanction to prosecute the appellant was secured from PW5 — Mr. Harshwardhan Gajbhiye, the then Deputy Secretary of Revenue and Forest Department who accorded the sanction at Exhibit - 34. Thereafter, the charge sheet came to be filed in the Court.

7. Before the learned Special Judge, in all six

witnesses were examined including PW3 – Arvind Engineer – the complainant, PW4 – Sushilchandra Ubale – the shadow panch witness, PW5 Harshwardhan Gajbhiye – the then Deputy Secretary of Revenue and Forest Department and the witnesses, as detailed above.

8. The defence of the appellant was that earlier to his posting on 5th August, 1992, present complainant did not remain present in the departmental enquiry. Therefore, the notice was issued to him and the next date was fixed on 8th September, 1992. He was posted as enquiry officer on 10th August, 1992. On 8th September, 1992, notice was issued to the complainant as he was absent on that day. Next date was fixed as 19th September, 1992. Therefore, there was no occasion for the appellant to meet the complainant on 8th September, 1992. On 26th February, 1993 the complainant remained absent in the departmental enquiry on medical ground. He did not even file a list of defence witnesses and therefore, as a last chance, the enquiry was fixed to 26th March, 1993. On 26th March, 1993, however, the complainant was on official tour. Thereafter, on 29th March, 1993 in the morning, the complainant came to his

office. At that time, the appellant told him to file his final statement of defence. The complainant told that he would make an attempt to file the same by noon at about 2.30 p.m. He again entered the office and orally requested that the case may be adjourned for one day and therefore, it was fixed to 30th March, 1993. Thereafter, the complainant at about 5.00 p.m. proceeded from his office and the complainant met him on the road. At that time, he forwarded one envelope and asked the appellant to accept the same. Upon enquiry, the complainant told that the statement could not be made and therefore, the envelope contained the application for adjournment. At that time, the appellant told him that it was of no use. However, due to the persuasion of the complainant, he ultimately, accepted the envelope. It was later on found that it contained the decoy money. In the circumstances, he claimed acquittal.

9. The learned Special Judge, however, found that the prosecution case is proved beyond reasonable doubt. The sanction was held to be valid and therefore, the conviction, as detailed supra, came to be recorded.

10. Mr. C.R. Deshpande, learned counsel for the appellant made following submissions:-

. That while the complaint itself would show that the present appellant has allegedly on 15th December, 1992, made demand of money even in the office earlier, on the day of the trap, the complainant purposefully kept the shadow panch witness out of the office though he was deputed for verification of the demand. The case papers of the departmental enquiry would clearly show that the present appellant was very strict and had passed orders against the complainant so that early conclusion of the departmental enquiry would be possible. On the very day of trap when only 24 hours' time was granted to the complainant to file his statement of defence, the complainant signed below rojnama "under protest".

. Mr. Deshpande further submitted that the shadow panch witness PW4 Sushilchandra Ubale, had made vast improvements in the witness box as regards the actual details of the trap, though his earliest statement would show that he was not at all able to hear the conversation between the complainant and the appellant.

Thus, there is no corroboration at all to the interested version of the complainant who had already hostile attitude due to the conduct of the present appellant in the proceeding. In the circumstances, he submitted that the learned Special Judge ought to have acquitted the appellant.

11. On the other hand, Mr. P.N. Kutti, learned A.P.P. submitted that the case of the complainant is corroborated by the independent shadow panch witness. Since he was following both of them by keeping distance of only 4 or 5 feet on the road, he had an occasion to hear the conversation and the acceptance of the decoy money by the complainant. In the circumstances, he wanted that the appeal be dismissed.

12. On the basis of above material on record and the submissions advanced on behalf of both sides, the following points arise for my determination:-

(I) Whether the prosecution has proved that the present appellant since September, 1992, made a demand of Rs. 10,000/- as a gratification other than the legal remuneration to pass a

favourable report in favour of the complainant in the departmental enquiry ?

(II) Whether the prosecution has further proved that from 17th November, 1992, the appellant accepted an amount of Rs. 500/-, Rs. 250/- and Rs. 200/- towards the part payment of the aforesaid gratification ?

(III) Whether the prosecution has further proved that on 29th March, 1993, the present appellant made demand of Rs. 1050/- and accepted the same from the complainant ?

(IV) Whether the prosecution has proved that the present appellant had obtained the pecuniary advantage from the complainant and committed criminal misconduct ?

My findings to all the above points No. (I) to (IV) are in the negative. The appeal is, therefore, allowed and the appellant is acquitted of all the offences for the reasons to follows :

R E A S O N S

13. The evidence on record would show that on the day of the trap, when the complainant and the shadow panch witness went to the office of the appellant, the complainant kept away the shadow panch witness from the office on the ground that since the staff of the appellant would be present and since a stranger (shadow panch witness) would be there, the appellant would not make any demand of money. Despite this, when the complainant allegedly went inside the office all alone, at that time also, the appellant did not make any demand of money but in code language told that in the noon the statement should be provided. The FIR, however, would show that on the very first day of the meeting between the appellant and the complainant in the office itself, the appellant asked the complainant to cooperate him otherwise the adverse order would be passed and when the complainant asked for guidance, the appellant asked his clerk to give residential address of the appellant in his handwriting and accordingly, the chit was given. Thus, atleast one clerk was involved by the appellant

in the said activity.

. Not only this, according to the FIR, on 28th January, 1993, the appellant accepted the amount of Rs. 200/- on road from the complainant and thereafter, they returned to the office and in the office itself, the appellant handed over an amount of Rs. 100/- to the presenting officer from out of the said amount. Thus, the appellant had also involved the presenting officer.

. Further it is the prosecution case that on 15th December, 1992, the appellant in his office itself made demand of money.

. Leaving aside this controversy, if we peruse the papers of the departmental enquiry, it can very well be seen that the appellant was not ready to give adjournment to the complainant. Earlier on 29th January, 1993, since the complainant failed to produce defence witness, his right to lead evidence was foreclosed by the appellant and the complainant was directed to file his statement of defence. On 29th March, 1993, only one day's time was granted for filing of this defence statement and it was fixed to 30th March, 1993. The complainant put his signature below the rojnama with endorsement as "under protest".

14. Had there been already cordial relations between the appellant and the complainant, because of the part-payment of the bribe amount, the appellant would not have closed the defence side without giving even one chance to the complainant to produce his defence witness. Even on the date of trap, time of only 24 hours was granted for filing defence statement and aggrieved by the same, the complainant, on 29th March, 1993, signed the said rojnama under protest.

. In this background, if we peruse the statement of the shadow panch witness, it would be clear that he has made vast and material omission as regards the actual activities those took place during the trap.

15. The panchanama at Exhibit-29 regarding the activity would show that the shadow panch witness remained about 4 to 5 feet away behind the complainant and the appellant as both of them were walking towards the arch. At that time, "both of them had talk regarding exchange of money". Thereafter, the shadow panch witness saw the appellant putting his right hand forward, whereupon the complainant handed over him the envelope.

. This is a statement made by the shadow panch witness to the investigating officer soon after the trap as is recorded in the panchanama (Exhibit-29). As against this, during his examination-in-chief, the shadow panch witness deposed that he followed the appellant and the complainant by keeping a distance hardly of 2 to 3 feet. The appellant was saying to the complainant that "he should give him at the earliest else it may cause loss to him". Then both of them went to the arch and at that time, the appellant asked the complainant, "who is having the money". Upon that, the complainant replied that it was with him. Thereupon, the appellant asked the complainant to give him the money and accordingly, the complainant handed over the envelope.

16. The shadow panch witness, therefore, was naturally cross-examined on this aspect. During cross-examination, he deposed that he did not remember as to whether he had noted the text of conversation between the complainant and the appellant while they were walking from the office upto the spot of trap. He also clarified that he could state about the details of

conversation in the witness box on the basis of his memory. However, at the time of recording the panchanama, he did not tell the conversation as detailed above.

. Thus, while in the immediately recorded panchanama at Exhibit-29, all these details are missing, the shadow panch witness, after a gap of seven years, in the witness box has deposed that though all these details of conversation are missing in the panchanama, on the basis of his memory only, he was giving the exact verbatim conversation between the appellant and the complainant.

17. It is an admitted fact that though the voice recorder was kept with the complainant, due to the traffic noise, nothing could be recorded and therefore, the cassette was not produced in evidence. Thus, it can very well be gathered that due to the traffic, the conversation between the appellant and the complainant was not audible. The shadow panch witness, however, claims that he heard the conversation by making vast improvement in the witness box, as detailed above.

. If the evidence of the shadow panch witness is

kept away from consideration, what would remain is the un-corroborated statement of the complainant. The hostility between the complainant and the appellant is, however, manifest in the departmental enquiry papers.

19. The learned Special Judge, however, has relied on the statement of the shadow panch witness and convicted the appellant. In my view, the learned Special Judge ought to have extended reasonable benefit of doubt in the case. In the result, the following order:-

20. The appeal is hereby allowed. The order of learned Special Judge, Aurangabad dated 3rd November, 2001, passed in Special Case No. 5 of 1996, convicting and sentencing the present appellant for the offences punishable under section 7 and 13 (2) read with 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 and 13 (2) read with section 13 (1) (d) of the Prevention of Corruption Act. His bail bonds shall stand cancelled. The fine amount

deposited by him, if any, be refunded to him after a period of ninety days from the date of this order.

. The disposal of the property, including the departmental enquiry papers, be carried as per the directions issued by the learned Special Judge.

[M.T. JOSHI]
JUDGE

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