

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.539 OF 2002

The State of Maharashtra,
Through Dy. S.P. Anti
Corruption Bureau, Jalgaon.

...APPELLANT
(Ori. Complainant)

VERSUS

- 1) Suresh Jayram Koli,
Age-42 years, Occu:Police
Head Constable B. No.1027
(Under Suspension),
- 2) Kishore Hiradas Bairagi,
Age-42 years, Police Constable
B.No.1434 (Under Suspension),

Both are Resident of Jalgaon,
Dist-Jalgaon.

...RESPONDENTS
(Ori. Accused Nos.1 & 2)

...
Mr. B.L. Dhas, A.P.P. for Appellant.
Mr. U.B. Bondar Advocate for Respondent
Nos.1 and 2.

...

CORAM: A.I.S. CHEEMA, J.

DATE OF RESERVING JUDGMENT : 6TH FEBRUARY, 2015

DATE OF PRONOUNCING JUDGMENT : 5TH MARCH, 2015

JUDGMENT :

1. This Appeal has been filed by the State against acquittal of Respondent Nos.1 and 2 (Original Accused Nos.1 and 2) who faced prosecution in Special Case No.2 of 2001 before Special Judge and Additional Sessions Judge, Jalgaon under section 7, 13(1)(d)(i)(ii) read with Section 13(2) of the Prevention of Corruption Act, 1947 (here after referred as "the Act").

2. Respondent No. 1 - Suresh Jayram Koli was working as Police Head Constable and Respondent No. 2 - Kishore Hiradas Bairagi was working as Police Constable at Nimbhora Police Station at the time of incident dated 28th August 2000 / 29th August 2000.

3. The case of the prosecution, in brief, is as follows:

(A). On 28th August 2000 Complainant - Trambak Keshav Gaikwad (PW-2) approached Dy.S.P., Anti Corruption Bureau Mr. Ashok Patil (PW-5) at Jalgaon and filed complaint informing that he resides at Vivare, Tq. Raver. His wife Vimal, son Gajanan, Rajendra, Nandu and daughter Ranjana and daughter-in-law Sunanda reside with him. There was quarrel with neighbour Devram Ganu Gaikwad on the count of tying of bufallow. There was complaint filed by the wife of Complainant at Nimbhora Police Station. The wife of Devram also filed complaint. The wife of Complainant and his two sons were called to the police station at 8.00 a.m. on 28th August 2000. The Accused No.1 Head Constable Suresh Koli put the sons of Complainant in lock-up. The Complainant was told that, other side has filed complaint. Complainant pleaded for bail. Accused No. 1 asked Complainant to meet lady

P.S.I. He met her but she asked to meet accused Koli only. Accused No. 1 Koli told Complainant that he will not make wife of Complainant as accused and while taking his children to the Court will not put handcuffs but the Complainant will have to pay Rs. 5000/-. Meanwhile lady P.S.I. went out of police station and when Complainant pleaded with accused Koli to reduce the amount, he made a phone call and talked - madam the party was saying that Rs.5000/- will not be possible. He thereafter told Complainant that madam has asked for Rs.4000/- or else his wife also will be arrested. On that day the wife of Complainant was allowed to go. Complainant had said that he will bring the money on 29th August 2000. But Complainant went to the A.C.B. office and filed complaint to this effect.

. PW-5 Ashok Patil sent requisition for Panchas to the Civil Hospital and Mahindra Bagul (PW-3) and Shrikant Harkunde (PW-4) were deputed.

The Panchas were called in the morning of 29th August 2000. Complainant was also asked to come in the morning of 29th August 2000. He accordingly attended the A.C.B. office. The Panchas were also present. The Dy.S.P. Ashok Patil arranged demonstration of use of anthracene powder to Complainant and Panchas. Before that, the Panchas were introduced to the Complainant and the Panchas listened to the grievance of the Complainant as well as verified the complaint (Exhibit-19) which he had filed. The Panchas were given instructions and regarding all this, pre-trap Panchnama (Exhibit-21) was drawn between 6.30 - 9.40 hours on 29th August 2000. Panch PW-3 Mahendra was asked to accompany the Complainant at the time of execution of trap. These persons proceeded to Nimbhora in two groups. The vehicles were abandoned at some distance from the police station and Complainant and Panch Mahendra Bagul went together to the police station while the other Panch, Dy.S.P. and other officials of Anti

Corruption Bureau took separate positions to watch the developments.

(B). It is the case of the prosecution that at the police station, the Complainant with the Panch Mahendra Bagul with him, met Accused No.1 Suresh Koli, who asked whether the money had been brought. Initially he asked the Complainant to go and give the money to the person at the Pan Shop outside the compound of the Police Station. The Complainant, however avoided. After some time the Accused No.1 asked that the money be handed over to Accused No.2 Kishore Bairagi. The Complainant, in front of the Panch Mahendra Bagul, handed over money to Accused No.2 who kept the same in his pocket. Immediately the rest of the raiding party reached near Accused No.2 and he was caught. Realizing the situation, the Accused No.2 removed the money from his pocket and threw the same on the ground. Dy.S.P. Ashok Patil asked Panch PW-4 Shrikant to pick up the money. In the commotion

lady P.S.I. Vaishali Mule had also come out and coming to know that it was a raid by Anti Corruption Bureau, the Accused No.2 was taken inside and room was made dark in which when examined, the hand and pocket of Accused No.2 Kishore had the blue shine of anthracene powder. The money which were thrown and the hand of PW-4 Shrikant also had blue shine. Regarding the whole incident, the Trap Panchnama (Exhibit-22) was recorded between 13 - 20.10 hours.

(C). When the incident relating to catching of Accused No.2 was taking place, Accused No.1 sneaked out of the Police Station and lady P.S.I. Vaishali Mule sent persons to search the Accused No.1. PW-5 Dy.S.P. Ashok Patil in the course of execution of the trap, seized documents relating to the case which was filed against the family of the Complainant to get the xerox copies of the same made. The Accused No.1 in the evening of 29th August 2000, went back to the Police Station and

at that time, some more documents were seized from him relating to the case which was filed against the family of the Complainant vide Panchnama (Exhibit-23). Dy.S.P. Ashok Patil then filed F.I.R. (Exhibit-31) in the Police Station. The offence was investigated. PW-5 sent proposal to the Superintendent of Police at Jalgaon for necessary sanction. Then Superintendent of Police (PW-1) Dr. Bhushankumar Upadhyia examined the documents and sanction order Exhibit 14 was issued. Ultimately, the charge-sheet came to be filed against both the accused and they have been prosecuted, as mentioned above.

4. The record shows that prosecution brought on record the evidence of five witnesses. The necessary documents were proved. Defence of the accused persons was of denial. According to Accused No.1, he had never demanded any amount from the Complainant and when Complainant had asked him to release his sons, this accused had

told him that it was not in his hands and the Complainant was angry with this. The Complainant in conspiracy with retired P.S.I. Katkar, filed false complaint. The Dy.S.P. Ashok Patil on the say of the Complainant and to save P.S.I. Vaishali Mule, has involved the accused. Defence raised by Accused No.2 is that when he was near the Police Station, the Complainant called him and suddenly started putting money in his pocket and he shouted and a crowd gathered. He had given jerk to the hand of the Complainant and money fell, at which time the raiding party arrested him. The raiding party forced him to pick up the notes and to keep the same in his pocket and although he tried to explain, nobody listened to him. He claimed that he is only an assistant to Accused No.1 Koli and has been trapped in order to save P.S.I. Vaishali Mule.

5. The accused persons examined one Hasan Patel, running Pan Shop near the Police Station in

support of their defence regarding altercation between the Complainant and Accused No.2.

6. The trial Court considered the evidence which was brought by both sides and for reasons recorded, acquitted the accused persons.

7. The State filed present Appeal claiming that the trial Court wrongly held that sanctioning authority has not applied its mind to the sanction; there was evidence regarding accused making demand of the money and the same being handed over to Accused No.2; it was not properly appreciated that Accused No.2 accepted the money at the instance of Accused No.1; the corroborative evidence of Panch PW-3 Mahendra Bagul was not properly appreciated; effect of Section 20 of the Act was also not duly considered.

8. I have heard learned A.P.P. for State and learned counsel for Respondents - original

Accused. The learned A.P.P. referred to the evidence which was brought on record by prosecution and has criticized the reasonings recorded by the trial Court. It is the submission that the evidence was not properly appreciated and the accused persons should have been convicted.

. Per contra, the learned counsel for Respondents - original Accused submitted that the documents showed that the lady P.S.I. had demanded the money but no investigation was made against her and even at the time of grant of sanction PW-1 did not consider this aspect. It has been submitted that the accused persons were mere head constable and constable who did not have the power to let the family members of the Complainant go. They have been wrongly involved in the offence. The counsel supported the reasonings recorded by the trial Court for the acquittal of the accused persons.

9. The Point of Determination is, whether the impugned Judgment and Order of the trial Court is correct, legal and proper?

10. If the evidence of PW-2 Complainant Trambak Gaikwad is perused, he deposed about the quarrel of his family members with Devram Ganu Gaikwad and the complaint he had filed against Devram and his wife and children. He claimed that Accused No.1 detained the wife and children of Complainant. According to him, Accused No.1 made his sons, wife and daughter sit in the Police Station and told Complainant that he will not implicate the wife and daughter and will not handcuff the sons, if he will pay Rs.5000/-. The Complainant deposed that he expressed inability to pay such amount and requested to decrease the same but he was asked to go and see P.S.I. Madam Mule. His evidence is that he met the P.S.I. but she said to go and meet Constable Koli saying that Koli would do the needful. He deposed that he

again went and saw Head Constable Koli along with one Godu Lahanu Gaikwad and said that he will pay Rs.4000/- for not implicating his wife and daughter and for not handcuffing his sons. According to him, then Accused Koli asked him to come with the money. He deposed that he then came home but his sons were detained and his wife and daughter had been made to sit at the Police Station. The evidence of Complainant is that on the next day i.e. on 28th August 2000 he went to the Office of Anti Corruption Bureau, Jalgaon.

. Thus, the evidence of the Complainant, in short, is that his family was detained or made to sit at the Police Station and he was asked to bring money and he went home and thereafter on next day went to the A.C.B. Office. Thus, as per this evidence, the demand was made on 27th August 2000 and he went to the A.C.B. Office on 28th August 2000.

. Against this evidence, if his complaint Exhibit 19 is perused, the incident of quarrel with the neighbour is stated to be of the morning of 27th August 2000 and it is claimed that his wife and children went with him to Nimbhora Police Station and they filed their complaint and they were asked to come on the next day at 8.00 a.m. The complaint claims that on next day i.e. 28th August 2000 when they went in the morning at 11.00 a.m. at that time Accused No.1 put the two sons in the jail and when requested by the Complainant, Accused No.1 asked him to meet lady P.S.I. The complaint claims that Complainant went and met the lady P.S.I. but she asked him to meet the Head Constable and do as would be told by the Head Constable. The complaint Exhibit 19 claims that Accused No.1 then told him that his wife will not be made accused and his sons would not be put in handcuffs if he pays Rs.5000/-. At the time of evidence, the Complainant claimed that it did not happen that Accused No.1 had a talk on phone with

lady P.S.I. and then told him that lady P.S.I. had asked for amount of Rs.4000/-. The oral evidence of the Complainant claims that the demand was made on 27th August 2000 while the complaint Exhibit 19 filed, claimed that the demand was made on 28th August 2000 itself.

11. The complaint Exhibit 19 claimed that on 28th August 2000 when Accused No.1 demanded Rs.5000/- and Complainant pleaded that he was poor person, the lady P.S.I. at that time went away outside the Police Station and when Complainant requested Accused No.1, Accused No.1 had phone called and talked with Madam and thereafter reduced the amount to Rs.4000/-.

. In oral evidence, however, Complainant PW-2 Trambak did not refer to any such phone call being made by Accused No.1 to lady P.S.I. and thereafter reducing the amount to Rs.4000/-. In the cross-examination, the Complainant claimed

that he had not complained that the lady P.S.I. had demanded Rs.4000/-. Complaint Exhibit 19, however, refers to the talk between the Accused No.1 and lady P.S.I. on phone and thereafter the complaint claims that the amount had been demanded by the Accused No.1 and the lady P.S.I.

12. There is evidence of PW-2 Trambak and PW-3 Bagul as well as PW-4 Panch Shrikant and PW-5 Dy.S.P. Ashok Patil regarding explaining of the procedure relating to use of anthracene powder, on 29th August 2000 in the morning and how the Complainant was introduced to the Panchas and his complaint was explained to the Panchas. The evidence shows that the officers of Bureau explained the use of anthracene powder and the same was applied to the notes totalling to Rs.4000/- which the Complainant had brought and the same were kept in the chest pocket of the shirt of the Complainant. Panchnama regarding all this was drawn vide Exhibit 21. There does not

appear to be dispute regarding procedure followed on this count. The evidence of these witnesses further shows that the Complainant and the Panchas were explained as to how they have to participate in the execution of the trap and how Complainant will give signal by moving his cap and rubbing his head. The evidence shows that these people proceeded in two vehicles to Nimbhora and stopped near Railway line. From there they proceeded on foot. The evidence is that the Complainant and PW-3 Bagul went ahead and others followed and took up respective positions.

13. Regarding the trap, the evidence of Complainant PW-2 Trambak is that he and PW-3 Bagul reached the Police Station. They made inquiry about Head Constable Koli with the police personnel but it was learnt that he had not come, so they waited. According to PW-2 Trambak, Accused No.1 then came after about 10 minutes and went into his office. According to him, he alone then

went inside and told Accused No.1 Koli that he had brought the money. Accused No.2 Bairagi was present there. According to Complainant, both of them were in uniform. Complainant says that Accused No.1 then asked the Complainant to handover the amount to Accused No.2 pointing towards him. Complainant says that the Accused No.1 then asked both of them to go out and that the amount be paid to Accused No.2 outside. According to Complainant, they then came near Panch Bagul while Accused No.1 remained inside. Complainant says that Accused No.2 then demanded money from him, which according to the Complainant, he delivered in the hand of Accused No.2 and he deposed that this was seen by the Panch.

. Now, if the evidence of Panch PW-3 Bagul is perused on this count, he claims that Complainant and he reached Nimbhora Police Station and he accompanied the Complainant. Two ladies and

one boy were sitting there. That boy then came near them and Complainant asked that boy to go and call Head Constable Koli. According to this Panch, at that time the boy went and called one person who was in civil dress and this was Accused No.1 according to the Panch. Thus, while the Complainant claimed that Accused No.1 was in uniform, this Panch claimed that he was in civil dress. The Panch then claimed that Accused No.1 asked the Complainant if the money had been brought and then told Complainant to handover the same to Tea Shopper and so saying the Accused No.1 went inside the Police Station. The Panch says that they then went to the side of tea stall and waited for return of Accused No.1. According to the Panch, they did not give money to the owner of tea stall and again went into the Police Station where Accused No.1 was present and was doing his work. The Panch has deposed that Complainant again asked Accused No.1 to come out and at that time Accused No.1 came out and a talk took place.

Accused No.1 told Complainant that it would not be possible to release his sons there itself and they would be produced before the Magistrate, but he said that the wife would not be implicated. According to the evidence of Panch, Accused No.1 then went inside and while he was going, he said that he will send one person. Thereafter Accused No.2 came out and he was in uniform. According to the Panch, Accused No.1 made gesture to make over the amount to Accused No.2 and accordingly Complainant took out the money from his pocket of shirt and gave it to Accused No.2 who kept the same in the pocket of his pant.

. Thus, the evidence of the Complainant and the Panch differs in material particulars. The Complainant did not depose that Accused No.1 asked him to go and handover the money to the person at Pan Shop. Rather, Complainant deposed that he talked to Accused No.1 in his office and there itself he was introduced to Accused No.2 and then

they had come out and the amount was handed over to Accused No.2 before the Panch. Against this, the Panch states about talk between the Complainant and Accused No.1 more than once and claims that demand was made in his presence by Accused No.1.

14. Although the Complainant deposed that Accused No.2 followed him from office of Accused No.1 and in the presence of Panch Bagul Accused No.2 demanded the amount from him, Panch PW-3 Bagul did not depose that Accused No.2 demanded the money. He rather deposed that Accused No.1 made gesture to make over the amount to Accused No.2 and accordingly the same was handed over to Accused No.2.

15. The evidence of PW's 2 to 5 is that when the Complainant gave signal, the rest of the raiding party immediately encircled the Accused No.2. Realizing about the trap, it is the evidence

that Accused No.2 threw the money on the ground. PW-2 claimed that when the Accused No.2 threw the money on the ground, Police made Accused No.2 lift the money and to keep the same in his pant's pocket. Against this, the evidence of PW-3 Panch Bagul and the evidence of PW-4 and PW-5 is that when the Accused No.2 threw the money on the ground, Panch PW-4 was asked to pick up the same.

16. Then, there is evidence available of PW-2 to PW-5 disclosing that due to commotion, the lady P.S.I. had come out and thereafter the raiding party along with the Accused No.2 went into the room which was made dark and the notes were then checked and it was found that they had the bluish glitterance. The notes were same, the numbers of which had already been noted. The pant of the Accused No.2 also showed the glitterance and his hand also had the glitterance. The hands of Panch PW-4 also showed the glitterance.

17. The trial Court has discussed all this evidence in details. The trial Court observed that the factum of gesture alleged to have been made by Accused No.1 was totally missing from the version of Complainant PW-2, who rather deposed that Accused No.1 told him to handover the money to Accused No.2. Trial Court discussed that there was difference in evidence regarding the lifting or collecting the amount which had been thrown on the ground. The difference in the version of the Complainant as well as his complaint Exhibit 19 with reference to the acts of P.S.I. Mule has also been examined by the trial Court. Trial Court found that evidence of the Complainant and the Panch Bagul was not harmonious with regard to demand and acceptance of the money. The trial Court considered Exhibit 19, the complaint filed by the Complainant PW-2 and observed that the Investigating Officer had given clean chit to P.S.I. Mrs. Vaishali Mule with whom no inquiry was made. Trial Court questioned as to why

investigation was not conducted with reference to Mrs. Mule. According to trial Court, the investigation was tainted. Trial Court accepted the evidence of defence witness Hasan Patel regarding the commotion near the Pan Shop involving the Accused No.2 and the Complainant regarding the handing over of money. Trial Court discussed Section 20 of the Prevention of Corruption Act and observed that the presumption under the Section is rebuttable and considering the evidence of the prosecution as well as the evidence of defence and surrounding circumstances, the trial Court did not give benefit of the said Section to the prosecution. According to the trial Court nexus between Accused No.1 and Accused No.2 was not established. It also observed that there was nothing on record to suggest that Accused No.1 or Accused No.2 were in-charge of the matter and the case for which the demand was made. Thus, it found that motive was not established.

18. For the reasons discussed above, the trial Court discarded the evidence regarding the trap and gave the benefit to the accused.

19. Regarding sanction, there was evidence of PW-1 Dr. Bhushankumar who claimed that he had received the papers of investigation for obtaining sanction and after studying the same, he claimed that he has applied his mind and accorded sanction as per Exhibit 14. In the cross-examination PW-1 Dr. Bhushankumar accepted that he did not obtain the statements of the Accused nor did he hear them. He accepted that Accused No.2 had not asked the bribe on 28th August 2000. The sanction Exhibit 14, however, referred to both the Accused jointly in the introductory part and then recorded that there was offence registered against them of (1) demand of Rs.4000/- on 28th August 2000 and (2) demand of Rs.4000/- on 29th August 2000 and in the course of trap Accused No.1 had accepted Rs.4000/- through Accused No.2. Sanction referred

to the complaint and the Sanction was accorded. PW-1 accepted in cross-examination that there was reference in the complaint to P.S.I. Vaishali Mule asking for bribe but he stated that he did not call her or give her a hearing.

. The trial Court discussed the evidence on the count of sanction also and recorded that the sanction accorded was with reference to CR. No.3012 of 2000 whereas the F.I.R. Exhibit 31 mentions that CR. Number was 12 of 2000. The trial Court discussed that the sanction which claimed that both the Accused demanded Rs.4000/- on 28th August 2000 was bad and showed non application of mind.

. Exhibit 31, the F.I.R. said to have been recorded on 29th August 2000 itself, does show that crime number registered on it was 12 of 2000 of Nimbhora Police Station. The F.I.R. in format available in the record of the trial Court

mentions the F.I.R. Number as 3012 of the date of 29th August 2000. The F.I.R. in format appears to have been presented to the Special Judge only on 5th September 2000. It does appear from record that it is difficult to reconcile the difference in crime number recorded in Exhibit 31 and the other documents including the charge sheet which claimed that the matter related to Crime No.3012 of 2000.

20. Having examined the evidence on record and going through the reasonings recorded by the trial Court, for the given evidence, the view taken by the trial Court is a possible view. Trial Court has recorded the Judgment of acquittal and in such situation, there is no substance in the Criminal Appeal when the view taken by the trial Court is possible and reasonable. From the evidence, it cannot be said that there is perversity in the Judgment recorded by the trial Court. The Judgment and Order passed by the trial

Court appears to be correct, legal and proper.

21. The Criminal Appeal is dismissed.

[A.I.S. CHEEMA, J.]

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