

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPEAL NO.540 OF 2002**

Ganpat s/o. Tukaram Barsale,  
Age 58 years, occ. Service,  
r/o. Plot No.6, Raghuveer  
Nagar, Jalna Road,  
Aurangabad

..Appellant

Versus

The State of Maharashtra

..Respondent

--

Mr.M.A.Tandale, advocate for appellant

Mr.V.P.Kadam, APP for respondent - State

--

**CORAM : M.T. JOSHI, J.**

**DATE : SEPTEMBER 23, 2015**

**ORAL JUDGMENT :**

Heard both sides.

2] Being aggrieved by the judgment and order dated 6<sup>th</sup> September, 2002 passed by learned Special Judge, Jalna in Special Case (PCA) No.1 of 1998, thereby convicting the appellant for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (for short "the Act") and

Section 13(2) read with 13(1)(d) of the Act; and directing him to suffer rigorous imprisonment for one year and to pay fine of Rs.1500/- for the offence punishable under Section 7 of the Act; and rigorous imprisonment for two years and to pay fine of Rs.2,000/- for the offence punishable under Section 13(2) read with 13(1)(d) of the Act, present appeal is preferred by the appellant/accused.

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

. That the complainant PW 2 – Mohd. Umar wanted that mutation entry regarding City Survey Survey No.9170 located at Malipura, Old Jalna, should not be made singularly in the name of his step-brother after death of his step-mother. He had, therefore, made an application to that effect in the office of the Taluka Inspector of Land Records, Jalna on 24<sup>th</sup> June, 1997. In that connection, present appellant, who was appointed as Surveyor, came for

inspection 15 days prior to the episode in question. In the circumstances, on 12<sup>th</sup> June, 1997, the complainant met the appellant and made inquiry regarding his work. At that time, the appellant told that his work cannot be done and he will have to approach the Civil Court. Upon that, when the complainant persisted as to why, his legal work cannot be done, the appellant told that there is no other difficulty, except that the complainant wanted to get the work done free of cost. Therefore, the complainant told the appellant that his work be done and he would comply the requirements of the appellant. Accordingly, the appellant told the complainant to give him Rs.500/- on 15.9.1997 at 3 p.m. in his office else, the work would not be done.

. Since the complainant did not want to pay the bribe, on 15<sup>th</sup> September, 1997, he approached the office of Anti Corruption Bureau, Jalna and filed the complaint (Exhibit 28).

. PW 4 – Khushalchand Baheti, Police Inspector, Anti Corruption Bureau, Jalna, conducted investigation. He collected two Government employees as witnesses including PW 1 – Tukaram Ghadge, shadow panch witness. Pre-trap exercise including application of anthracene powder to the decoy money was carried. Thereafter, trap was organized at place and time mentioned in the FIR. However, on that day, the appellant did not come to his office. Therefore, the next trap was organized on 16<sup>th</sup> September, 1997 in the morning session. The same, however, also proved to be fruitless.

. Therefore, third trap was organized on the same day in the noon at about 2:50 p.m. At that time, however, the appellant came in his office. Upon seeing the complainant, the appellant came out of his cabin. The appellant proceeded to toilet, therefore, the complainant and the panch witness also went towards the toilet. After

returning from the toilet, the complainant greeted the appellant and asked as to whether, his work was done. Upon that, the appellant asked as to whether, money is brought. The complainant told that he has brought the money as directed by him. Thereupon, the appellant forwarded his right hand and asked the complainant to pay the amount. Upon that, the complainant took out the decoy money from his shirt pocket, and gave it to the appellant. The appellant accepted the same and went to his cabin in the office. The complainant gave the predetermined signal. When the appellant went to his room and put the decoy money in the drawer of his table, the appellant promised the complainant that his work would be done. At that time, the raiding party arrived.

. Thereafter, next exercise of examination of the hands and clothes of the appellant and the complainant, under ultra violet lamp, was done and panchnama was carried. The Investigating Officer

carried further investigation. The appellant was arrested. Statements of the relevant witnesses were recorded. Sanction to prosecute the appellant was obtained from the Deputy Director of the Land Records, Aurangabad Region, Aurangabad (admitted by defence at Exhibit 32) and thereafter, the charge sheet came to be filed.

4] Before learned Special Judge, in all, four witnesses were examined. PW 1 – Tukaram Ghadge is the shadow panch witness. PW 2 – Mohd. Umar is the complainant. PW 3 – Maruti Gaikwad, is the then Taluka Inspector of Land Records. He proved seizure of the relevant documents from his office. PW 4 – Khushalchand Baheti is the then Police Inspector, Anti Corruption Bureau, Jalna and the Investigating Officer.

. Learned Special Judge came to the conclusion that the prosecution case is proved beyond the reasonable doubt. According to him, the

independent panch witness has proved the fact of demand and acceptance of bribe amount by the appellant.

5] The defence of the appellant was that he had no authority to carry the mutation entry; the complainant however pestered him for doing his work and that despite non acceptance of the money, behind his back, the decoy money was kept in the drawer of his table. However, learned Special Judge disbelieved this defence and recorded conviction and sentence, as detailed supra.

6] Mr.M.A.Tandale, learned counsel for the appellant, submits before me that admittedly, the authority to carry the mutation entry does not lie with the Surveyor and it would be the job of the Taluka Inspector of Land Records. He further took me through the evidence on record to show that the panch witness was unable to hear the alleged dialogues between the appellant and the

complainant at the time of the trap and still, learned Special Judge did not take into consideration these facts. He further submitted that the prosecution case that the appellant had asked the complainant to reach his office on the next day at 3:00 p.m. and pay the bribe amount, is falsified, as the prosecution was required to make three attempts to effect the trap. He, therefore, submitted that since a reasonable doubt has arisen, learned Special Judge ought to have acquitted the appellant.

7] On the other hand, learned A.P.P. for the respondent – State, submitted that the panch witness, though faulted on one occasion regarding the listening of talk between the appellant and the complainant, his evidence would show that demand and acceptance of bribe is proved. He further submitted that evidence of PW 3 – Maruti Gaikwad would show that an application was forwarded to present appellant for taking

necessary action and even, action was taken by him. He, therefore, submitted that since learned Special Judge has appreciated the evidence in all respects, as detailed above, no interference is warranted.

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

I] Whether the prosecution has proved that from the period between 2<sup>nd</sup> July, 1997 and 16<sup>th</sup> September, 1997, present appellant, being a public servant, attempted to obtain Rs.500/- as a remuneration other than the legal remuneration as a motive or reward for doing official act of making mutation entry in the record of rights in respect of property bearing C.T.S. No.9170 located at Jalna ?

II] Whether the prosecution further proved that on 16<sup>th</sup> September, 1997, the appellant in his office at Jalna had again made a demand of gratification and accepted the same ?

III] Whether the prosecution has further proved that present appellant being a public servant obtained pecuniary advantage of Rs.500/- from the complainant by using corrupt or illegal means ?

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

#### **R E A S O N S**

9] The evidence on record would show that the complainant wanted that name of his step-brother

solely should not be entered in the record of rights after demise of his step-mother, in whose name, admittedly, the property was standing. There is nothing on record to show that the property was originally owned by father of the complainant. Even if one assumes that the property was earlier in the name of the deceased father of the complainant, still, upon death of the father, as per the Mohammedan Law of Inheritance, naturally, the mother as well as both two sons, would be entitled for the share in the property. In the circumstances, it is not explained whether, the property was solely in the name of step-mother of the complainant. In that view of the matter, the defence of the appellant that he had directed the complainant to approach the Civil Court, appears to be probable one.

10] Further, it is the prosecution case that at the time of the first demand itself, the appellant had asked the complainant to bring Rs.500/- on the

next day in his office at 3:00 p.m. Admittedly, however, the appellant was not present in his office on the given date, time and place and till the evening on that day or even in the morning on the next day. The raids organized two times, therefore, were required to be aborted and only on the third occasion i.e. on 16<sup>th</sup> September, 1997 in the noon time, the appellant was found in his office and thereafter, the exercise had started.

11] I have deliberately detailed supra the dialogues between the appellant and the complainant as found in the prosecution case. As against those dialogues, the panch witness, in his examination-in-chief, deposed as under :-

*"....The complainant Umar had gone in front of accused and there was talk between accused and complainant. The complainant removed the trap amount and handed over to the accused. I am not*

*able to say what talk took place between complainant and accused. Umar disclosed before the accused that the entry of partition for the house property be taken in the name of he and his brother. The accused have consented for the same..."*

. This shadow panch witness was not declared hostile by the prosecution though he deposed on somewhat different lines than the prosecution case. Besides this, the complainant himself, in his cross-examination, in connection with the conversation which allegedly, took place between the complainant and the appellant at the time of acceptance of the decoy money, has deposed that *"The accompanying person was standing outside the office door"*, which means that PW 1 – Tukaram was standing outside the office door.

12] From all this evidence, it would be clear that the prosecution could not prove, beyond the

reasonable doubt, that at the time of the final trap, the appellant had made a demand of bribe and accepted the same.

13] It is further to be noted that according to the prosecution, the appellant himself had fixed the venue of the payment of bribe amount and still, two chance raids were required to be organized and the last raid was proved to be successful.

. In this state of affair, Mr.Tandale, learned counsel for the appellant, has rightly relied upon the ratio laid down in the case of **State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede, 2009 Cri. L.J. 4425**. In that case, two times, raids were organized and the entire procedure for making the raid was repeated. In the circumstances, the Hon'ble Supreme Court observed that this itself casts serious doubt about the case of prosecution. Therefore, *inter-alia*,

relying on other facts, the Hon'ble Supreme Court found that the prosecution case was not proved beyond the reasonable doubt.

14] In the present case, reading of the judgment of learned Special Judge would show that learned Special Judge did not refer to the statement of panch witness as reproduced earlier. Further, the complainant's statement, as detailed supra, was not referred by learned Special Judge and in that view of the matter, the conviction came to be recorded against the appellant. In my view, however, had this statement been adverted to by learned Special Judge, then, he would have, definitely, extended benefit of reasonable doubt to the present appellant.

15] In the result, the following order :-

A] The appeal is hereby allowed.

B] The judgment and order dated 6<sup>th</sup> September, 2002 passed by learned Special Judge, Jalna in Special Case (PCA) No.1 of 1998, convicting and sentencing the appellant for the offences punishable under Section 7 and 13(2) read with Section 13(1)(d) of the Act, is hereby set aside.

. Instead, the appellant is acquitted from both the offences.

C] Bail bonds of the appellant shall stand cancelled.

D] Muddemal property be disposed of as per the directions of learned Special Judge.

**[M.T. JOSHI, J.]**