

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 430 OF 2014

Nagu S/o Ganpatrao Rathod,
Age : 48 years, Occu.: Government
Service, At present working as
Police Head Constable (Bakkal No. 524)
with Police Head Quarter at Jalna
(At present under suspension)
R/o : S.No. 488, Police Colony, Jalna

.. Appellant
(Orig. Accused No.1)

Vs.

The State of Maharashtra,
Through the Deputy Superintendent
of Police, Anti Corruption Bureau,
Jalna, Taluka and District : Jalna

.. Respondent
(Prosecution)

Mr. Rajendra S. Deshmukh, Advocate for the appellant
Smt. S.D. Shelke, Advocate for the respondent

CORAM : M.T. JOSHI, J.
RESERVED ON : 23/04/2015
PRONOUNCED ON : 07/05/2015

JUDGMENT:

1. Heard both sides.
2. The present appellant is convicted by the Special Judge cum Additional Sessions Judge, Jalna vide judgment and order dated 2/7/2014 for the offences punishable under section 7 and 13(1)(d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988 (for short "**the Act**").

He is directed by the learned judge to suffer rigorous imprisonment for two years and to pay fine of Rs.1,500/-, in default to undergo simple imprisonment for three months for the offence punishable under section 7 of the Act and sentenced to suffer rigorous imprisonment for one year and to fine of Rs.1,500/-, in default to suffer simple imprisonment for three months for the offence punishable under section 13(1)(d) r/w. Section 13(2) of the Act. Hence, the present appeal.

3. The original accused no.2 - Vijay S/o Rama Jadhav was acquitted by the Special Judge.

4. The prosecution case, in short can be summarized as under:-

. That the present appellant Nagu S/o Ganpagrao Rathod is appointed as a Police Jamadar and was working with Police Station, Moujpuri, Tq. and Dist. Jalna during the relevant period. On 5/4/2011, at about 5.00 pm., the appellant came to the complainant P.W. 1 Ramdas Meherban Rathod and told him that the villagers had filed certain complaint with the Police Station against

the complainant and his family members. He also told that he has been assigned the duty to enquire into the matter. During the talk, the present appellant stated that the complainant and his family members are intoxicated by something. He further alleged that they had committed murder of their own father and the sister-in-law also. Further he imputed that they also indulged into dacoity and, therefore, the complainant and his family members are required to be arrested. One written application was also shown to the complainant and the appellant continued threatening that arrest will have to be made and for the purpose of enquiry, the complainant should attend the appellant on next Thursday.

. Accordingly, the complainant met the appellant at Ramnagar alongwith his brother on 7/4/2011 at 10.00 am. During talk, the appellant made a demand of Rs.6,000/- for avoiding the arrest. The complainant asked for certain concession. Ultimately, the appellant agreed to receive an amount of Rs.5,000/-. Upon that, the complainant told that he did not have the money. Therefore, on the next day, i.e. on 8/4/2011, he would sell wheat of his house and would pay the amount. The

appellant asked the complainant to meet him on the next day at 2.00 pm. at Ramnagar and promised that he would dispose of the complaint. Upon enquiry, the appellant also gave mobile number in order to contact him on the next day.

. Reluctant to pay bribe, the complainant went to the Anti Corruption Bureau of Jalna and filed his complaint on the same day i.e. on 8/4/2011.

. P.W. 4 the then Deputy Superintendent of Police Mr. Manoj Pagare has conducted the investigation. He collected two panch witnesses from the Office of Block Development Officer, Jalna. It included shadow panch witness P.W. 2 Haridas Pandurang Raut. Panch witness read the complaint and signed in token of reading of the same.

. All the party reached Ramnagar at about 1:45 p.m. The Investigating Officer wanted the verification of the demand. The mobile number was already given by the appellant to the complainant. However, the complainant's mobile hand set had no facility of recording of conversation. Therefore, the SIM card of

the complainant was inserted in the mobile handset of Police Constable Deshmukh and, thereafter, the complainant made a phone call to the appellant. The conversation was heard by the party. The same was recorded, which would show that the appellant has again made a demand of the bribe. The verification panchanama accordingly was drawn at Exhibit 22. Thereafter, pre-trap exercise of showing the demonstration of application of anthracene powder, application of anthracene powder to the decoy money of Rs.5,000/- produced by the complainant was carried. The decoy money was kept in the pocket of bandi (underwear) of the complainant. Necessary instructions were given to the party. Pre-trap panchanama at Exhibit 23 was recorded and, thereafter, the raiding party proceeded towards Ramnagar again.

. P.W. 2 Haridas, the shadow panch accompanied the complainant. When both of them went to Radha Tea stall, as has been agreed on the mobile by the complainant and the appellant. At about 2:45 pm., the complainant as well as accused no.2 came on motorcycle and sat on the chair nearby the complainant and P.W. 2.

During talk, the complainant told that he had difficulty in raising the amount of Rs.5000/-, therefore, he has borrowed an amount of Rs.500/- from his companion by indicating P.W. 2 Haridas. The appellant thereafter directed the complainant to hand over the amount to accused no.2. Upon that, the complainant told that the appellant himself should accept the amount. Accordingly, the appellant accepted the amount by his right hand and handed over the amount to accused no.2. Accordingly, accused no.2 accepted the amount from the appellant and kept the same in his trouser pocket.

. Predetermined signal was given by the complainant to the raiding party. Thereafter, both the accused were apprehended. As there was crowd at that place, both the accused were taken to Ramnagar Police Chowky and thereafter the next of the exercise was conducted. Personal search was taken. During the exercise, the application of anthracene powder was found at the relevant places as detailed supra and panchanama regarding the same at Exhibit 24 was drawn.

. The necessary investigation was conducted. The

C.D. (compact disc) of the conversation from mobile was made and panchanama regarding the same was drawn at Exhibit 25. Necessary statements were recorded. P.I. Mr. Bhagwat – next I.O. had collected the sanction order for prosecution of the accused from P.W.3, the then Superintendent of Police, Jalna Mr. Sanjay Mohite at Exhibit 28 and the chargesheet came to be filed.

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

6. Before the learned Special Judge, the complainant P.W. 1 though slightly deviated from the prosecution version to certain extent, substantially deposed that the bribe was settled at Rs.5,000/- between them and the complaint at Exhibit 16 and further that the verification conversation was recorded in their own mother tongue, namely, Lamani, wherein he told that he is short of some amount and the appellant asked him to bring whatever amount is with him. He also further supported the prosecution case, that at the hotel, the appellant again made a demand of the money, accepted the same and handed over it to the accused no.2.

. During cross-examination at the hands of the present appellant, however, he deviated more. He deposed that the talk between himself and the complainant at the time of accepting bribe also took place in Lamani language as both of them are from Lamani community. He further admitted that his brother Parasram had taken a hand loan from the present appellant about 1-1/2 months prior to the present incident. He deposed that he did not remember as to whether he has undertaken the responsibility to pay the same. Ultimately, during cross-examination, a written paper was shown to him. He admitted the contents thereof and his own signature thereon as correct. The same was exhibited at Exhibit 18. He however denied that he has filed a false complaint and that the appellant never demanded any cash from him to avoid the arrest. He also denied that the amount handed over by him to the appellant during the trap was infact repayment of the hand-loan given by the appellant to his brother Parsaram.

7. P.W. 2 Haridas Raut - the shadow witness inter-alia deposed that at the time of verification conversation, the complainant and the appellant conversed in Lamani language. The same was interpreted by one Constable Naik to them. He further did not depose that any demand at the tea stall was made by the appellant but supported the case of payment of decoy money to the appellant upon persuading to accept it personally instead of giving it to accused no.2. The witness was not declared hostile by the prosecution. During cross-examination at the hands of the defence, he deposed that the conversation between the complainant and the appellant took place in Lamani language, however, he did not understand the same, thereby cancelling the prosecution case that the demand of money at the time of trap was effectually heard by this shadow witness. Naturally, P.W. 4 - Investigating Officer Mr. Manoj Pagare deposed on the lines of the prosecution case.

8. The learned Special Judge found that the above lacunae are not material and even disbelieving the

deviations of the complainant and the panch witness, it was observed that since the appellant is a Government servant and as there is no evidence to show that there was close relations between the complainant and the appellant or his brother, there would not be any occasion to give any hand-loan. Further, the chit at Exhibit 18 would show that it was not executed at the time of any such transaction. Therefore, the learned Special Judge did not rely over the said chit at Exhibit 18. Further, according to the learned judge, the chit merely shows that the complainant was a mediator to the loan transaction. Further, the complainant was hesitant to accept that there was any loan transaction between his brother and the appellant. Therefore, the defence was doubted. It was further found that the explanation which was put only during the cross-examination of the complainant was absent before the commencement of the trial. Therefore, it was found by the learned Special Judge that the presumption which is available under section 20 of the Prevention of Corruption Act is not rebutted once it is admitted that the present appellant – the Government Servant has accepted the decoy money

during the trap.

9. The learned Special Judge also relied on the ratio of "**Hazarilal Vs. State (Delhi Administration)**" **A.I.R. 1990 S.C. 873**, wherein it was observed that where the evidence of Police Officer who led trap is found entirely trustworthy, there is no need to seek the corroboration.

10. Mr. Deshmukh, learned counsel for the appellant submitted as under :-

That not only the complainant P.W. 1 Ramdas but even P.W. 2 Haridas had demolished the prosecution case. According to the prosecution, the conversation between the complainant and the appellant took place in Lamani language, at the time of verification. According to the prosecution case, one Police Constable Naik had interpreted the said conversation to the members of the raiding party. Said Naik however was neither examined nor the conversation in the C.D. is proved. Further, the independent panch witness Haridas has deposed that during trap also, the conversation between the complainant and the appellant took place in Lamani

language, which according to the prosecution case, was not known to this witness and, therefore, the case of demand is not proved. The loan transaction was admitted by the complainant under the stress of cross-examination when only Exhibit-18, the chit written by him was confronted to him. In the circumstances, Mr. Deshmukh submits that the presumption available under section 20 of the Prevention of Corruption Act has been sufficiently rebutted by the appellant. He further submits that when as per the prosecution case itself, the post-trap panchanama could not be prepared at the spot as there was crowd, no independent witness is cited or examined. In the circumstances, he submits that since the prosecution failed to prove the case beyond reasonable doubt, the appellant be acquitted.

The validity of sanction however is not challenged.

11. On the other hand, learned A.P.P. submits that P.W. 1 the complainant though had conveniently admitted the execution of chit at Exhibit 18, he specifically denied that the amount that was transacted during the

trap was regarding the repayment of the said amount. His examination-in-chief as well as cross-examination throughout would show that the present appellant has made a demand of Rs.5,000/- for disposal of the complaint, which he accepted at the tea stall. He further submits that deviation of P.W. 2 Haridas, the panch witness only to the extent of conversation in Lanami language, is of no use. Further, there is no need to examine any independent witness and if the prosecution case is found to be trustworthy, the same can be relied. It was further submitted that since, the learned Special Judge had an occasion to note the demeanor of the witnesses, this Court, in appeal, need not interfere with the reasoning of the learned Special Judge.

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

- i) Whether the prosecution has proved that on 5/4/2011, the present appellant has made a demand of Rs.5,000/- as gratification other than legal remuneration as motive or reward for forbearing to make enquiry into the complaint in exercise of his official function ?

ii) Whether the prosecution has proved that on 8/4/2011 at about 2:45 pm. at Ramnagar, the present appellant attempted and in-fact obtained the said amount of Rs.5,000/- for gratification other than legal remuneration, as detailed supra ?

iii) Whether the prosecution has proved that at the date, time and place, the appellant obtained the pecuniary advantage of Rs.5,000/- for himself by corrupt and illegal means by abusing his position as a public servant ?

My finding to all the aforesaid points is in the affirmative. The appeal is therefore dismissed for the reasons to follow.

R E A S O N S

13. Chit at Exhibit 18 produced during cross-examination of the complainant and admitted by the complainant is very central to the entire case.

14. The chit purports that it was executed by the present complainant on 1/4/2011. Vide the said chit, he accepted that his brother had obtained a hand-loan of Rs.5,000/- from the appellant for celebration of the

marriage. By the said chit, the complainant himself promised to repay the said amount within a period of 15 days or one month .

15. During cross-examination of the complainant, there were no suggestion that the present appellant did not visit the complainant on 5/4/2011 brandishing the complaint against him or the said complaint was not under enquiry which was assigned to the appellant.

16. It is to be noted that the chit purports to be of 1/4/2011, whereunder allegedly P.W. 1 complainant agreed to repay the amount within 15 days or one month. Thereafter, the complaint came to be filed on 8/4/2011. Thus, if the defence is believed, then, this chit at Exhibit 18 was very well in the custody of the appellant when the investigation was carried by P.W. 4. Therefore natural conduct of the appellant would have been to place the chit before the Investigating Officer and to see that no sanction to prosecute him be accorded by P.W. 3 - the sanctioning authority. The simple placing of the said document to the Investigating Officer which ultimately would have gone to the sanctioning authority

would have changed the entire course. This is particularly relevant as the appellant is a Police Constable.

17. Non-examination of Police Constable Naik or a slight deviation by P.W. 2 - Haridas Raut that the complainant and the appellant had talk in Lamani language during the trap, would not demolish the entire edifice of the prosecution case and more particularly the presumption which is available under section 20 of the Prevention of Corruption Act.

P.W. 2 - the shadow panch witness, though in the cross-examination suddenly deposed that the conversation between the complainant and the appellant was going on in Lamani language and he did not understand the Lamani language, in examination-in-chief, inter-alia, he deposed as under:-

" The complainant took out the amount from his pocket and asked P.C. Nagu Rathod to accept. P.C. Rathod refused to accept by saying to keep aside. When complainant again insisted P.C. Nagu Rathod, he told to handover the amount to the person who was with him. The complainant again insisted P.C. Nagu Rathod to accept personally. PC Nagu Rathod accepted the amount and then said amount was handed over by him to the person who was alongwith him."

. It would be thus clear that the shadow panch witness not only understood the conversation between the complainant and the appellant but according to him also, the appellant refused to accept the amount initially and on insistence from the complainant, he ultimately accepted the same. There is no cross-examination on this issue. It is thus clear that the complainant refused to accept the amount and directed that the same shall be handed over to accused no.2. Had the amount been of repayment of loan, for which, according to the complainant, was the cause between the complainant and the appellant of having certain dispute, and not any bribe amount, there would have been no reason for him to refuse the personal acceptance of the same.

18. When the sanctioning authority i.e. P.W. 3 Sanjay Mohite deposed that after application of mind to the material on record, he accorded the sanction, a single line cross-examination was there that the sanctioning authority has not studied the material and accorded the sanction.

19. In the fact situation, when it has been proved beyond reasonable doubt that the complaint against the complainant and his family members was in the hands of the present appellant for making enquiry and the very belated placing of the chit at Exhibit 18 as a trump card during the cross-examination of the complainant is therefore of no use. The reasoning of the learned Special Judge who had occasion to note the demeanor of the witnesses, therefore, cannot be faulted with. In the result, the following order:-

20. The appeal is hereby dismissed.

21. The bail bonds of the appellant shall stand cancelled.

22. The learned Special Judge to take steps for bringing the appellant in the Court for serving the sentences.

[M.T. JOSHI]
JUDGE

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