IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 565 OF 1992

Vilas Yadavrao Nimbalkar Aged about 33 years, Occ. Service, Resident of Gourgaon, Taluka Tasgaon, District-Sangli.	)))))...	Appellant.

Versus

The State of Maharashtra.	)...	Respondent.

Mr. A.L. Bhise i/b. Mr. H.S. Venegavkar, advocate for appellant.

Mr. Arfan Sait, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : NOVEMBER 17, 2015

JUDGMENT :

1 Heard the learned APP for State.

2 The appellant herein is convicted for offence punishable under Section 7 of the Prevention of Corruption Act and is sentenced to undergo R.I. for a period of 6 months and to pay fine of Rs. 1000/-

i.d. to suffer R.I. for 3 months. He is also convicted for offence punishable under Section 13(d)(i) of the Prevention of Corruption Act and is sentenced to undergo R.I. for a period of one year and to pay fine of Rs. 1000/- i.d. to suffer R.I. for 3 months in Special Case No. 2 of 1989 by Special Judge, Sangli vide Judgment and Order dated 30/9/1992. Hence, this Appeal.

3 There was no assistance rendered by the advocate for appellant. Upon perusal of the roznama in the present case, it appears that-

On 22/2/2012 the matter was called out for final hearing. None appeared. Hence, this Court (Coram : R.C. Chavan, J) had passed an order - None for the appellant. Issue bailable warrants in the sum of Rs. 25,000/-.

On 3/4/2012 neither the appellant nor his advocate is present. On 8/5/2012 the appellant was present. Hearing had no proceeded. On 14/6/2012 matter was adjourned at the request of the learned Advocate for the appellant.

On 17/6/2013 none appeared. Once again bailable warrant was issued. None appeared on 20/8/2014 as well as on 31/10/2014 and 16/6/2015. On 7/8/2015 advocate for appellant sought an adjournment.

The Appeal is of the year 1992. Today also learned Counsel Mr. A.L. Bhise had initially sought adjournment and thereafter, it was informed to the Court that Mr. Venegaonkar is before another Court. The Junior advocate was directed to proceed with the matter. He did not have paper book. Meanwhile, this Court has perused the records and proceedings with the able assistance of learned APP. It is a sorry state of affairs that in the present appeal, there was no assistance rendered by the advocate for the appellant.

Taking into consideration the length of pendency, this Court has proceeded to hear the matter with the assistance of learned APP. After Judgment is delivered learned Counsel for the appellant submits that it has taken about 23 years to record an acquittal in favour of the accused. In fact, time was taken by the advocate himself and therefore, it cannot be said that there is pendency of old appeals in the court due to paucity of time for the judges.

4 Such of the facts necessary for the decision of this appeal are as follows :

(i) The appellant herein was working as Patkari since January, 1978. In December, 1986, he was transferred from Mhaisal branch to Miraj Sub-Division of Irrigation Department.

(ii) On 11/3/1987 one Tajuddin Inamdar approached the office of Anti-Corruption Bureau and filed a report alleging therein that the Patkari of his village had demanded Rs. 1600/- from him. He had contended that on 2 to 3 occasions, the Partkari had approached him and demanded the amount of penalty for not paying cesss charges for the water utilised by him from the water scheme. He was also informed by the Patkari that he had utilised water than that was sanctioned for cultivating his land. That Tajuddin had told the Patkari that he was not in any arrears and therefore, he was not liable to pay any penalty also.. The Patkari demanded Rs. 1600/-. According to the complainant, the amount was negotiated and that he was directed to pay Rs. 800/- towards bill.

(iii) The D.Y.S.P. of Anti-Corruption Bureau had reduced the report into writing. Two public servants were summoned to act as panchas to the raid. The complainant had informed the D.Y.S.P., Anti-Corruption Bureau that the Patkari was to visit his house to recover the amount in the evening. A pre-trap panchanama was recorded. After completion of the formalities, the raiding party had proceeded to the house of the complainant.

(iv) The complainant was directed to part with the trap amount, only after a formal demand was made by the Patkari. He was also informed by the raiding party that if the amount is paid on demand, then he shall give signal by pulling his right hand sleeve. One of the pancha was directed to act as a shadow witness. The Inspector and other members of the raiding party had informed the complainant that they would conceal themselves and observe the incident from the slit of the door.

(v) At about 5.45 p.m. to 6 p.m. raiding party had reached the house of the complainant. At about 6 p.m. the Patkari had visited the house of the complainant. He was taken into drawing room of the house. It is alleged that he had accepted the amount and placed the said amount in the pocket of his manila. The complainant had given signal. The raiding party had then accosted the Patkari.

(vi) The hands of the accused and the complainant were examined in the ultra violet rays, which shows that the trap amount was accepted by the accused, as there was glittering on his finger as well as on his clothes worn by him. The panchanama was recorded to that effect.

(vii) After the post trap panchanama, D.Y.S.P. of Anti Corruption Bureau lodged a formal report at the police station. Crime No. 76 of 1987 was registered against the accused for offence punishable under Section 161 of the Indian Penal Code and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947. The Anti-Corruption Bureau had obtained sanction prosecution as the accused happens to be the public servant.

(viii) The case was registered as Special Case No. 2 of 1989. Charge was framed against the accused under Section 7, 13(i)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The prosecution examined 5 witnesses to bring home guilt of the accused.

5 P.W. 1 Tajuddin is the original complainant. He has deposed before the Court that he cultivates his land by providing water from

irrigation scheme and it had started under crash programme of the Government. According to the complainant, said scheme was transferred/handed over to sugar factory of Sangli for the purpose of management. P.W. 1 was a member of the said irrigation scheme and also a member of sugar factory. According to him, the water charges of the irrigation were to be recovered by the sugar factory after making deduction from the bill of the sugar-cane which was sent to the sugar factory by the farmers. He has admitted before the Court that he had not paid any water charges since 1985.

6 He has further deposed that the accused-Patkari had approached him on more than 2 to 3 occasions and had informed him that he is in arrears of the water charges. He had also informed P.W. 1 that he is liable to pay penalty of Rs. 1600/-. The complainant had retaliated by saying that he is not liable to make any payment. However, he had asked the accused-Patkari to visit him on the next day. P.W. 1 has also expressed his inability to pay entire penalty and had informed the accused that he would pay Rs. 800/- towards the bill and had disputed the payment of any penalty. In the

examination-in-chief, P.W. 1 has further stated that the accused had told him that the matter would be settled amicably between them, but had not quoted the amount of settlement. It was agreed between them that on the next day in the evening i.e. on 11/3/1987, the accused would visit the house of the complainant and recover the amount. Since P.W.1 did not intend to make the payment, he approached the office of the Anti-Corruption Bureau and informed them that the accused-Patkari had demanded illegal gratification of Rs. 1600/- which was negotiated upto Rs. 800/-. After conducting pre-trap panchanama, one of the witness was directed to accompany P.W. 1 as a shadow witness and observe the demand and acceptance of the gratification between the complainant and the accused.

7 He has deposed before the Court that on the date of the trap, on arrival of the accused, he demanded money for **water charges.** The complainant then went inside the house and enquired with the Inspector as to whether he should pay the amount. The Inspector had directed him to pay the amount. So he again came out and requested the accused to come inside the house, more particularly, in

his drawing room. There was a conversation between them. The accused-Patkari had questioned him as to why the money was deficient. P.W. 1 had then told him that he could only arrange Rs. 500/-. He had also informed the accused that he would pay more amount later on. The complainant has specifically deposed before the Court that the accused had showed him one list, which was in his bag and had also drawn his attention to the penalty which was to be recovered from him. At that juncture, P.W. 1 had parted with the tainted currency notes in favour of the accused, which the accused accepted and kept in the pocket of his manila. Immediately, P.W. 1 had given signal and the trap was made successful.

8 In the cross-examination, P.W. 1 has admitted that in the 7/12 extract, there are mutation entries showing the names of all the five brothers. Each of the brother gets water bills separately. Sometimes, they used to make direct payment of water bill. The complainant has given evasive answers to the effect that he does not recollect whether for the year 1977-78 amount of Rs. 2,700/- was due against him and his brother as water charges. He has further evaded to answer as to

whether for the year1980-81, amount of Rs. 209.60 was due against them and Rs. 933.25/- was due for the year 1983-84, amount of Rs. 38.75 for the year 1984-85 and for the year 1985-86 Rs. 112.50 ps. was due.

9 He has also admitted that he and his brother are taking sugar-cane crop in their land availing irrigation facility. There has been notional partition between the brothers and thereafter, they have been taking the crops separately. He has admitted that for each hector of sugar-cane crop, the rate of water charges is Rs. 468.75 ps. per year. He has also admitted that if the cultivation area of sugar-cane exceed the area shown in the permission letter then penalty is imposed, for excess use of the water. He has also admitted that he has never paid water charges to the Patkari since the irrigation scheme is taken over by the sugar factory, even for depositing the same in the office of the sugar factory. He has given an evasive answer to the effect that he does not know whether demand notice of the water bill was given to Noor Mohammed before one month prior to the incident and whether Noor Mohammed had given the said

notice to him. He has admitted that the accused had brought it to the notice of the complainant, on more than one occasion, that he is in arrears of the penalty imposed by the irrigation department and that he should deposit the same. He has also admitted that the accused has shown him the account of arrears. According to him, he was under the impression that after the scheme was transferred to sugar factory for management, he was not required to pay anything to the irrigation department and therefore, he had suspected that the amount demanded by the accused is illegal gratification.

10 In the cross-examination, P.W. 1 has deposed as follows :

> "It might be that the arrears found due against them (Noor Mohammed and his other brothers) was more than Rs. 2,500/-."

It is pertinent to note that when he was confronted with his earlier statement, he has deposed that he does not recollect as to whether he stated before the police that after demand in the court yard, he went inside the room and asked the Inspector as to whether he should pay or not. According to him, trap amount is accepted by the accused and kept in the baniyan pocket. The report filed by P.W. 1 is at Exh. 23. The contents of the said report are admitted by P.W. 1 .

11 P.W. 2 Bhagwan Dhale is the panch witness. He was working as clerk in Collectorate of Sangli since 1986. On 11/3/1987 he alongwith another clerk Gorak Salunkhe was directed by the Collector to report to the Anti-Corruption Bureau to act as a panch in a trap case. He has deposed before the Court about the pre-trap panchanama and the instructions given to P.W. 1 as well as to him. He has proved the pre-trap panchanama, which is at Exh. 26. As far as the trap is concerned, P.W. 2 who was acting as shadow witness has deposed before the Court that on the day of incident, they had visited the house of the complainant-PW 1 which was situated in agricultural land called as Inamdar Mala. The staff members went in the room No. 2 of that house, whereas PW. 2 had accompanied P.W. 1 as shadow witness. He was sitting in the court yard of the house. At about 6 p.m or 6.15 p.m. one person has visited the house on a moped vehicle. He has identified the accused before the court as the

person who had visited the house on that day. P.W. 1 had welcomed him.

12 P.W. 2 has specifically deposed before the court that upon arrival of the accused “The complainant then told the accused that he could not arrange for the entire money, but was able to get some advance from vegetable vendor. The complainant took accused inside the room and I also went with them. The accused told him that even if Rs. 100/- or less amount is given, then also it would do for the time being. The complainant took out Rs. 500/- and said that it was more amount which was being demanded, but the accused told him that was right. The complainant gave the 5 currency notes by using his right fingers and the accused accepted them in his hand, and kept the amount in the pocket of his manila.” That soon after the complainant had given signal to the raiding party. He has then proved the contents of the post-trap panchanama which is at Exh. 27. He has also deposed before the court that after the trap was successful, he had visited the office of the Minor Irrigation, Miraj and some documents were attached. It is pertinent to note that in the

cross-examination P.W. 2 has admitted that at the time of filing the report by P.W. 1, it was specifically stated in the statement that the accused had demanded **Rs. 1600/- as an amount of penalty** and assured him to return with the documents for verification. Upon perusal of the Exh. 27, it shows that at the time of trap, the accused was carrying one nylon bag, which was containing one notebook having names of 78 persons from whom recovery was to be made and the name of P.W. 1 was at Sr. No. 55.

13 P.W.3 Vilas Kharatmal happens to be clerk of Minor Irrigation Department. In the examination-in-chief he has stated before the Court that accused Patkari was assigned work of preparing demand statement of water charges and also prepare notices of demand and serve them upon agriculturists who are in arrears of payment of water charges. He has stated that the demand notices are not issued by the Patkari but service of demand notice is made through the Patkari. Initially, in the examination-in-chief P.W. 3 has stated that as per office record, the amount of Rs. 112.50 ps. was due from the complainant for the period of one year but there was nothing else due

from him. In the cross-examination it is admitted that the amounts were due against the complainant and his brothers. The total of the amount due against them is about Rs. 2700.30 ps.. The 7/12 record shows joint cultivation by complainant and his brothers. The witness has feigned ignorance as to whether any departmental enquiry was conducted against the accused.

14 P.W. 4 Sarjerao Mokashi is Dy. S.P. of Anti-Corruption Bureau who had conducted the trap and the investigation thereafter. He has deposed before the Court the steps taken by him prior to the trap and after the trap. It is pertinent to note that he has specifically deposed before the Court on oath that he had instructed the complainant that he shall not give amount of tainted currency notes **unless demand was made by the Patkari.** P.W. 4 has lodged the formal FIR. He has admitted in the cross-examination as follows :

> "I enquired with Miraj Irrigation Branch Engineer, i.e. Isak Sutar and recorded gist of his statement. It was revealed from his statement that the complainant and his brothers were liable to pay together, arrears of water charges. It was revealed from

> statement of said Isak that amount of Rs. 2730/- was due from brother of complainant by name Noormohammad."

His statement also disclosed that the recovery was to be made jointly. P.W. 4 has proved the contents of the formal complaint lodged by him on 12/3/1987 which is at Exh. 38.

15 P.W. 5 Ramling Sidramappa Mugalikar happens to be Executive Engineer of Sangli Division of Irrigation Department. He had accorded sanction for prosecution. He has only proved the contents of the sanction letter. He has denied the suggestions that there was no proper application of mind prior to according sanction.

16 Perused the statement of the accused recorded under Section 313 of the Code of Criminal Procedure, 1973. The accused has specifically deposed before the Court under Section 313 (1) of the Code of Criminal Procedure, 1973 that he had served notice upon P.W.1 Tajuddin and had informed him that he and his brothers were liable to pay Rs. 2700/- towards water charges. He has specifically stated that he was given a target of making recovery of arrears from

the agriculturists who were members of the irrigation scheme. He has issued demand notice. It was his job to motivate the agriculturists for making payment to his office. He had taken efforts to the best of his capacity to recover water charges from the agriculturists. That upon receipt of demand notice, Tajuddin had told him that scheme was taken over by the sugar factory in the year 1985 and therefore, the Patkari had no authority to demand water charges. In fact, according to the accused/appellant, the complainant i.e. P.W. 1 had requested the accused to visit his house on 11/3/1987 in the evening and there he would show receipt about the payment which was to be made in the office. He had visited the house of P.W. 1 to take receipt and at that time, trap was laid. He has further stated that P.W. 1 had informed him that he has not deposited the amount, but requested him to accept Rs. 500/-. Despite his refusal to accept the said amount, tainted currency notes were thrusted in his hand and soon thereafter, the raiding party had accosted him.

17 Upon perusal of the documentary and substantive evidence adduced by the prosecution, it is amply clear that P.W. 1 and his

brothers were in arrears of Rs. 2,700/- towards charges for water utilised by them for the purpose of cultivation of sugar-cane and betel leaves. It is admitted by P.W. 1 in his substantive evidence that the accused had also shown him the notice of demand as well as apprised him of the fact that he was in arrears of water charges and therefore, penalty was imposed upon him. P.W. 1 has also admitted that he had not paid water charges since 1985-86. He has given evasive answers to the questions in cross-examination to the extent that he had no knowledge as to whether demand notice was served upon his brothers and whether his brother Noor Mohammad had shown him the demand notice. It is further pertinent to note that there are material omissions and inconsistencies in the substantive evidence as far as P.W. 1 and P.W. 2 is concerned. P.W. 2 was the shadow witness. P.W. 1 has specifically deposed before the Court that the Investigating Officer had directed him not to part with the trap amount until and unless there was a demand made by the accused. P.W. 1 has not stated before the Court that upon arrival, the accused had demanded the amount. In fact, the conversation was initiated by P.W. 1, wherein he informed the accused that he could not make arrangement for the whole of the amount and therefore, he has brought only Rs. 500/-. That the shadow witness also does not say that the accused had demanded the amount from the complainant. In fact, P.W. 2 does not throw light upon the conversation between P.W. 1 and the accused at the time of parting with the amount. After having been instructed specifically that tainted amount shall not be given without being demanded, P.W. 1 deposed before the Court that he had asked the Investigating Officer as to whether he should part with amount to the accused.

18 Mere recovery of the trap amount/tainted notes from the accused dehors from the circumstances, in which it was offered or paid shall not make the accused guilty as having accepted the amount of gratification. In fact, it is a bounden duty of the prosecution to firstly prove that the amount which was given to the accused i.e. the trap amount was towards illegal gratification or was given to the accused for showing some favour in discharge of the Judicial duties. In the present case, the prosecution has not discharged the onus of proving the same. In fact, the documentary

evidence and substantive evidence, more particularly, the evidence of P.W. 3 is contrary to the evidence of P.W. 1. P.W. 3 who is a clerk in the irrigation department, upon perusal of the records has admitted in the cross-examination that the P.W. 1 was in arrears of Rs. 2700/- and in the eventuality that the amount of the water charges is not paid, the agriculturists would be liable to be saddled with penalty.

19 It is the specific defence of the accused that target was given to him for recovery of water charges and it was his incumbent upon him to motivate agriculturists to pay the water charges. The Court cannot be oblivious of the fact that the incident is of March, 1987. At the end of financial year, Cess/Taxes are recovered from all sources.

20 Demand is sine qua non to acceptance. It is admitted position in law that acceptance by itself would not be an offence and demand has to be a condition precedent for accepting the amount which would show that the accused has voluntarily accepted an illegal gratification.

21 In the case of **Subhash Sonavane v/s. State of Gujrat reported in AIR 2003 SC 2169**, the Hon'ble Apex has held that-

> "Mere acceptance of money- Not sufficient for convicting accused under S. 13(1)(d)(i)-There must be evidence on record that accused 'obtained' any amount by corrupt or illegal means- Complainant not supporting prosecution case on the points of demand and acceptance-From evidence of panch witness it was not clear that there was any demand by accused and amount was paid to him by complainant-Accused acquitted."

22 In the case of **State of Maharashtra v/s. Dnyaneshwar Wankhede reported in (2010) 2 SCC (Cri.)** 385, the Hon'ble Apex Court has held that-

> "Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into

consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-`-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt."

23 In the case of **P. Satyanarayana Murthy v/s. Dist. Inspector of Police & anr., 2015 AIR SCW 5263**, the Hon'ble Apex Court has observed that-

"The proof of demand of illegal gratification, thus, is the gravamen of the offence under Ss. 7 and 13(1) (d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Ss. 7 or 13 of the Act would not entail his conviction thereunder."

24 Section 20 of the Prevention of Corruption Act reads thus :

"20. Presumption where public servant accepts gratification other than legal remuneration.—(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

By inference, it can be said that only when the prosecution establishes beyond reasonable doubt that the amount was paid towards illegal gratification, presumption under Section 20 can be raised by the

Court. In the present case, evidence is contrary. Hence, the presumption under Section 20 cannot be raised in the present case.

25 In the case of **Trilok Chand Jain v/s. State of Delhi reported in AIR 1977 SC 666,** the Hon'ble Apex Court has held that -

> "the degree and the character of the burden of proof which s. 4(1) casts on an accused person to rebut the presumption raised thereunder, cannot be equated with the degree and character of proof which under s. 101, Evidence Act rests on the prosecution. While the mere plausibility of an explanation given by the accused in his examination under s. 342, Cr.P.C. may not be enough, the burden on him to negate the presumption may stand discharged, if the effect of the material brought on the record, in its totality, renders the existence of the fact presumed, improbable. In other words, the accused may rebut the presumption by showing a mere preponderence of probability in his favour; it is not necessary for him lo establish his case beyond a reasonable doubt."

It is further observed that -

> "the sole purpose of the presumption under s. 4(1) is to relieve the prosecution of the burden of proving a fact which is an essential ingredient of the offences under s. S (1) (2) of the Prevention of Corruption Act and s. 161, Penal Code. The

> presumption therefore can be used in furtherance of the prosecution case and not in derogation of it. If the story set up by the prosecution inherently militates against or is inconsistent with the fact presumed, the presumption will be rendered sterile from its very inception, if out of judicial courtesy it cannot be rejected out of hand as still born.

26 In the present case, the accused in his statement under section 313 of the Code of Criminal Procedure, 1973, more particularly in answer to question No. 37 has specifically stated that he had issued demand notice and told P.W. 1 and his brothers that they were jointly liable to pay Rs. 2700/-. He has also submitted before the Court that there was a quarrel between P.W. 1 and himself and that P.W. 1 had asked the accused to visit his house on 11/3/1987 and then he would show receipt about payment of water charges. When he went to the house of P.W. 1, he had asked P.W. 1 to show the receipt. P.W. 1 had replied that he had not deposited the amount. He had requested the accused to accept Rs. 500/- from him and deposit the same in the office and thereafter to give him receipt of the same. When the accused declined to accept the amount and resisted by his left hand,

the complainant P.W. 1 had thrusted the amount in his hand and thereafter, the accused was accosted by the raiding party.

27 It is necessary to consider the defence of the accused at par with the evidence adduced by the prosecution. More particularly, when the evidence on record clearly shows that P.W. 1 was in arrears of the amount. The Court cannot be oblivious of the fact that the presumption under Section 20 of the Act has been rebutted by the accused. In the present case, it is not merely a preponderance of the probability but the accused has taken his defence to its logical end. In view of the above discussion, the Judgment of conviction recorded by the Special Judge dated 30/9/1992 deserves to be quashed and set aside. Accused/appellant deserves to be acquitted of all the charges.

28 Hence, following order is passed:

ORDER

(i) The appeal is allowed

(ii) The Judgment and Order passed by Special Judge, Sangli dated 30/9/1992 convicting the accused of the offence punishable under

Section 7, 13(d)(i) of the Prevention of Corruption Act is hereby quashed and set aside.

(iii) The accused -Vilas Yadavrao Nimbalkar is acquitted from all the charges.

(iv) Bail bonds stand cancelled.

(v) Fine amount, if paid, be refunded to the accused.

(vi) Writ be issued forthwith.

29 The appeal is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)