

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.868 OF 2005

Dinkar Bapurao Deokar, since deceased
through Legal heirs Smt.Asha Dinkar
Deokar and others .. Appellants
Versus
The State of Maharashtra .. Respondent

Mr.Pradeep Pimparkhede, Advocate for the appellants.

Ms.R.M.Gadhvi, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 1st DECEMBER 2015

ORAL JUDGMENT :-

1 This Appeal is directed against the judgment and order dated 6th September 2005 passed by the Special Judge (appointed under section 3 of the Prevention of Corruption Act, 1988), Satara, convicting the appellant of offences punishable under section 7 and section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the P.C.Act'). The learned Special Judge sentenced the appellant to suffer Rigorous Imprisonment for 6 (six) months and to pay a fine of Rs.3,000/- with respect to the

offence punishable under section 7 of the P.C. Act and to suffer Rigorous Imprisonment for 1(one) year and to pay a fine of Rs.7,000/- with respect to the offence punishable under section 13(2) of the P.C. Act. Being aggrieved by his conviction and the sentences imposed upon him, the appellant has approached this Court by filing the present appeal.

2 The prosecution case, as put forth before the trial Court in brief, be stated thus :-

That the appellant – a policeman – at the material time, was attached to the Highway Security Squad. He was working as a driver. The Anti Corruption Bureau, Sangli had received a number of complaints telephonically and through anonymous letters to the effect that the police Officers and policemen deputed for duty on the National Highway No.4 as well as the local police stop the vehicles passing by the highway, threaten the drivers that they would be prosecuted and take illegal gratification from the drivers of such vehicles for not prosecuting them. The complaints were to the effect that such incidents used to take place between *Tandulwadi* and *Karad*. Because of such

complaints, Mr.R.D.Chavan (PW 3) Dy.Superintendent of Police, Anti Corruption Bureau, Sangli decided to lay a '*chance trap*', and on 10th October 2000 called for two panchas – Chaugonda Patil (PW 1) and Shivaji Kshirsagar – clerks working under a Government Department. The panchas were instructed to remain present in the Anti Corruption Bureau office on the next day at 4.30 a.m. Accordingly, the panchas went to the ACB Office on the next day i.e. 11/10/2000 at about 4.30 a.m. The panchas were explained as to how a trap was to be laid. It was decided that the police party and the panchas would stop some truck, occupy it, take the truck driver in confidence, and then would proceed by the said truck on the highway. It was decided that if the truck would be stopped by the police, one of the panchas should remain with the driver, hear the conversation that would take place between the police and the driver; and should any policeman demand money from the truck driver, and if the truck driver would be 'ready to pay', the money should be given and the concerned policeman or policemen be trapped. Two currency notes of Rs.50/- each, the numbers of which were noted in the pre-trap panchnama were given by Chavan - Dy. Superintendent of Police (PW 3) to panch Chaugonda Patil (PW 1) with instructions that the same be

given to the driver for giving to the police 'in case a demand would be made'.

3 The police party and panchas then left the Anti Corruption Bureau Office by a private vehicle. When they came near *Vatha*, they learnt that the highway security police were demanding money from truck drivers. The police party and panchas, therefore, stopped a truck bearing No.MP-09-KB-2271 which was proceeding from *Kolhapur* towards *Pune*. The police party and panchas introduced themselves to the truck driver – Gurubachhansing. The police party told the truck driver about the information which they had and told him that they would come with him in his truck and observe whether the police would stop the truck and demand money. The truck driver agreed for such an operation and thereafter, the police party and panchas sat in the said truck like passengers. The currency notes of Rs.50/-, the numbers of which had been mentioned in the pre-trap panchnama were given to the said driver. When the truck came near *Karad*, a jeep of the Highway Security Squad of the police overtook the truck, and got the truck stopped. The driver – Gurubachhansing – stopped the truck on the left side of the road. The appellant who

was sitting on the driver's seat called the truck driver by making a gesture. The truck driver and panch Patil went near the police jeep. The other policeman in the jeep – one Nalavade – told the truck driver that '*he had taken passengers in the truck and that, therefore, he would be prosecuted*'. The appellant then told the truck driver that he would have to pay Rs.100/- to them if the prosecution was to be avoided. The truck driver Gurubachhansing then said that he did not have money. The other policeman – Nalavade - then asked the driver to bring the documents of the truck. Driver Gurubachhansing then said 'that what was the necessity for the documents of the truck', and then took out the said two currency notes of Rs.50/- each, and handed over the same to the appellant. The appellant kept the said notes in his right side pant pocket. Panch Chaugonda Patil (PW 1) then gave the pre-determined signal to the police party, whereafter the police party and the other panchas came near and apprehended the appellant and the said Nalavade. On being questioned, the appellant stated that the currency notes were kept in the right side pocket of his pant. As per the directions of Dy.S.P. Chavan, panch Kshirsagar took out the notes from the appellants pant pocket. The numbers of the notes tallied with the number of notes

mentioned in the pre-trap panchnama. The statements of the appellant and Nalavade were recorded on the spot when they said that '*when the truck driver was asked as to why he had stopped the truck on road, he put the notes on the lap of the appellant*'.

4 Dy.S.P. Chavan (PW 3) then lodged the First Information Report and carried out further investigation. On completion of investigation, the appellant as well as the said Nalavade were charge-sheeted and prosecuted. Nalavade died during the pendency of the trial, and as such, the case proceeded only against the appellant. The appellant came to be convicted and sentenced, as aforesaid.

5 I have heard Mr.Pimparkhede, learned counsel for the appellant. I have heard Ms.R.M.Gadhvi, learned APP for the State. I have gone through the entire record of the case. I have carefully gone through the entire evidence, as also the impugned judgment.

6 The prosecution examined three witnesses during the trial. The first witness, as aforesaid, is Chaugonda Patil, one of the panchas. The second witness Ramrao Pawar is the one who

had granted sanction to prosecute the appellant and the other accused, as required under the provisions of section 19 of the P.C. Act. The third witness, as aforesaid, is Shri R.D. Chavan, Dy. Superintendent of Police (ACB) who is the Trap Laying Officer, the First Informant, and also the Investigating Officer.

7 The learned counsel for the appellant raised a number of contentions. According to him, the order of conviction as recorded by the learned Special Judge is not in accordance with law. He submitted that laying of a '**chance trap**' itself was not permissible, and that, therefore, no reliance could be placed on the evidence obtained by laying such a trap. He also submitted that the truck driver Gurubachhansing was not examined during the trial, and that even the second panch who is supposed to have taken out the tainted amount from the pant pocket of the appellant, was not examined. He therefore, submitted that the Appeal deserves to be allowed.

8 During the pendency of the present Appeal, the appellant passed away, but leave as contemplated by the proviso to sub-section (2) of section 394 of the Code of Criminal Procedure was granted to his heirs to prosecute the Appeal.

9 The prosecution case itself is that the trap in question was a '**chance trap**'. It did not relate to any particular incident of demand of illegal gratification from any person or persons. It did not relate to any particular public servant or servants. The trap was laid in anticipation of a possible demand by *some* policemen/policeman somewhere on the highway from *some* driver. The prosecution case is that some complaints had been received by way of anonymous letters and telephone calls that *the police on duty on the highway were regularly taking illegal gratification from the truck drivers passing through the highway by threatening them to, otherwise, face prosecution.*

10 Indeed, the propriety and legality of laying such traps which can be called not only as '**chance trap**' but also as '**fishing traps**', is extremely doubtful.

11 Laying of traps is a step in investigation. However, the propriety of laying of traps in detecting a crime has always been a matter of controversy and discussion, as is evident from the observations made by the Superior Courts and the Apex Courts in their pronouncements. A study of the case law upon the subject

reveals that these methods have been repeatedly deplored by the Courts though the Courts have regretfully acknowledged the necessity of such methods on the ground that otherwise, it would be impossible, or atleast difficult, to bring to book corrupt public servants (see **Shiv Bahadur Singh Vs. State of Vindhya Pradesh**¹, **State of Bihar Vs. Basawan Singh**², **Ramanlal Mohanlal Vs. State of Bombay**³, **Ramkrishna Vs. Delhi State**⁴ and **Ramjanam Singh Vs. Bihar State**⁵.)

12 Inspite of referring to laying of traps as a 'morally murky mechanism' (see **Som Prakash Vs. State of Delhi**)⁶ , laying of traps has been held to be justified only on the ground that it is inevitable for detecting a crime and to collect evidence against a dishonest public servant. However, the Courts have also recognized that traps could be laid in different circumstances and by different types of complainants. The authoritative pronouncements of the Apex Court have classified traps into 'legitimate' and 'illegitimate'. 'Fishing traps' which are not aimed at any particular public servant and/or which are not based on any

1 AIR 1954 SC 322

2 AIR 1958 SC 500

3 AIR 1960 SC 961

4 AIR 1956 SC 476

5 AIR 1956 SC 643

6 AIR 1956 SC 989

specific information, but are laid only because it is suspected that *certain public servants deployed or posted at a particular place, or for a particular duty obtain illegal gratification* are deplored by the Courts as evident from the observations made in several judicial pronouncements.

13 The Maharashtra State Anti Corruption and Prohibition Intelligence Bureau has issued a Manual of Instructions for the purpose of guiding the Investigating Officers in the matter of investigation into the cases of corruption and bribery and corruption. Chapter V of the Manual deals with the technique of laying a trap. A perusal of the relevant provisions indicates that laying of traps is not contemplated without there being an authentic complaint in respect of a specific incident of demand of bribe by a public servant or servants. Thus, the instructions contained in the Manual issued for the guidance of the Investigating Agencies themselves indicate that no trap – as has been laid in the instant case – should be laid. True, that the Manual is issued only for departmental use and the guidelines in the Manual cannot be read as law, but the fact remains that the guidelines do provide a clue as to what type of cases are

contemplated for laying of a trap. Coming as they are from the Investigating Agency itself, their relevancy in judging the propriety of laying '**chance traps**', cannot be ignored.

14 While one may not conclude that laying such a trap which can be called as 'illegitimate' or 'fishing trap' by itself may result in acquittal of an accused who is alleged to have accepted illegal gratification, and though no judgment of the Superior Courts or Apex Courts can be construed as going that far, the fact remains that the evidence obtained by laying such a trap, is always considered to be extremely vulnerable and expected to be viewed with extreme caution.

15 In this case, there are no details of any alleged complaints that had been received by the Anti Corruption Bureau. The laying of a '**chance trap**' in this manner raises several questions such as, when were the complaints received, what was the frequency of the complaints, and *why a particular day and particular time was selected by the trap laying officer for laying a trap when the complaints were allegedly about some regular affair that was taking place on the highway.*

16 It is also interesting that the money to trap the policeman – unknown – (as at that stage, it was not clear as to who would demand the money and further whether it would be demanded at all), was provided by the police themselves. Providing money to a truck driver for laying a trap was something which needs to be deplored [see the observations in **Shiv Bahadur Singh Vs. State of Vindhya Pradesh (supra)**]. In **State of Bihar Vs. Basawan Singh (supra)**, a Constitution Bench of the Supreme Court of India approved the decision in the aforesaid case of Shiv Bahadur Singh (supra). Undoubtedly, Their Lordships made it clear that they did not wish to be understood as deciding that if money offered as a bribe is provided by somebody other than the bribe giver, it makes a distinction in principle. However, this aspect would be relevant in assessing the value of the testimony of a witness which must be done on a consideration of diverse factors.

17 The facts of this case are rather unusual. The First Information Report in this case was lodged by Chavan after the entire operation was over. There was no official record about the receipt of the previous complaints or of the decision to lay a trap,

or of the police party and panchas leaving the office of the Anti Corruption Bureau. The First Information Report that was lodged after the entire operation was over, and the appellant and co-accused Nalavade were apprehended, actually cannot be treated as FIR at all as the investigation had already commenced. Rather, the so called FIR came to be lodged only after the investigation had been completed. Such First Information Report is, therefore, totally valueless for corroborating the evidence of Chavan.

18 Apart from this, the practice of the Officer who has recorded a FIR himself investigating into the matter and filing a police report, cannot be approved. It has been held in several judicial pronouncements that such a practice should not be resorted to. Such a practice can easily lead to unfair and partial investigation – and the least that can be said is that there would be reasonable grounds to suspect the objectivity and fairness of the investigation in such cases. In this case, the entire role in the matter was played by Chavan himself. He acted without any written complaint supposedly on the basis of telephonic complaints. He preferred not to give any details whatsoever even of such complaints when asked for in the cross-examination. He

lodged the FIR himself, and that too after the entire trapping operation was over. He had not made any official record of the trap, and intended to lodge a report only if the trap would be successful. This has been admitted by him in the cross-examination. In such a situation, it would be extremely hazardous to place implicit reliance on his testimony without sufficient and satisfactory corroboration.

19 The corroboration to testimony of Chavan is afforded only by the testimony of panch Chaugonda Patil. In the cross-examination, it is revealed that Chaugonda Patil had, on one previous occasion, acted as a panch witness in a trap arranged by the Anti Corruption Bureau. Patil (PW 1) initially denied having acted as a panch previously, but on further questioning admitted having acted as a panch in a previous trap case.

20. According to Patil (PW1) and Chavan (PW3) what was initially decided is that, the tainted amount was to be kept with the panch, till the police would demand the same from the driver of the truck, in which case, it was to be given to the driver for paying to the police. However, what was actually done was that the tainted amount was given to the truck driver as soon as

the police party and panchas occupied the truck, and explained the matter to the driver Gurubacchansing. What was the reason for changing the plan, is not said by anyone. There is also some variation in the version of panch Patil (PW1) as to what exactly happened after the truck was intercepted by the police. Patil, initially said that the truck driver Gurubacchansing gave the tainted currency notes to the ' police person ' who had asked the driver to bring the papers relating to the truck, which was Nalawade and not the appellant. It is only latter that he said about the same having been given to the driver of the police jeep i.e. the appellant. In the cross-examination, Patil said that the driver Gurubacchansing did not give any reply to the appellant when he was questioned about passengers being carried away in the truck. According to Patil, even when Gurubacchansing was asked to bring the papers of the truck, he did not give any reply. He has, however, at the same time also spoken about Gurubacchansing having spoken to the police persons from the jeep in Hindi for about three to four minutes. In this context, it may also be observed that, according to Patil, driver Gurubachhansing was talking in Hindi from the beginning, but according to Chavan (PW3) Gurubachhansing knew Marathi and

was told about the trap and as to what was to be done, in Marathi.

21 How much evidence would be sufficient to prove the charge of a criminal offence beyond reasonable doubt in a given case, would depend on the facts of each case. No fixed standard, in that regard, can be laid down. However, there are certain principles which are based on reason and logic that are always kept in mind in considering the adequacy and sufficiency of evidence for proving the charge against an accused in a criminal trial. One of the principles is that the best evidence such as the nature of the case would permit, must be given in all the cases. Another principle is that if evidence would be available, and is still not given, a doubt can legitimately be entertained about the truth of the prosecution case. In the instant case, the truck driver - Gurubachhansing - has not been examined. Also, the other panch Kshirsagar who allegedly took out the tainted currency notes from the pant pocket of the appellant, has also not been examined. The prosecution was satisfied with the examination of a panch who was known to the Investigating Agency, and had previously acted as a panch in another trap case.

22 In my opinion, the fact that the truck driver who is supposed to be the person who gave the bribe to the appellant and the other panch is not examined, affects the prosecution case adversely. There is no satisfactory explanation as to why the truck driver was not examined as a witness. It was absolutely essential for the prosecution to have examined him as a witness, as he would be the only person who could be treated as an independent witness in the facts and circumstances of the present case. Non-examination of the truck driver – Gurubachhansing – is a serious weakness in the case of the prosecution, throwing a doubt as to what exactly had happened.

23 As per the case of the prosecution, the search of the appellant after he had allegedly accepted the illegal gratification was taken by the second panch – Kshirsagar who has also not been examined as a witness. In the circumstances, it was desirable for the prosecution to have examined the said Kshirsagar particularly because Chaugonda Patil had previously acted as a panch and thus, his independence was a debatable issue.

24 The evidence shows that the appellant and the other

policeman Nalavade questioned the truck driver about carrying passengers in the truck. It is nobody's case that carrying of passengers in a truck in this manner was legal, and that the police were not entitled to question about the same. It is an admitted position that the members of the raiding party were not in police uniform. Once it is accepted that the appellant and the said Nalavade were entitled to question the truck driver about the presence of the members of the raiding party in the truck who were believed to be the passengers travelling by the truck, it would be difficult to rely upon the version of Chavan and panch Patil to ascertain what exactly had happened thereafter. As per the case of the prosecution, Nalavade said to the truck driver that he had filled passengers in the truck, and that therefore, he would be prosecuted. The evidence does not show that what was the reaction of the driver Gurubachhansing on this. The record of the panchnama does not show this. The evidence shows that the appellant made a demand of Rs.100/-, but skips the reaction of driver Gurubachhansing on the threat of prosecution given by Nalavade. It is unlikely that having threatened the truck driver, a case would be filed against him, the appellant and Nalavade did not wait for the reply or reaction of the truck driver on this.

Further, according to panch Patil, when the amount was demanded by the appellant, the truck driver Gurubachhansing said that he did not have money. It is very difficult to accept that the things would have happened this way, inasmuch as the whole object of the operation that was being undertaken by the police party was to trap the policeman who would demand money from the said truck driver. The truck driver had already been provided with the tainted amount. Under these circumstances, he had no reason to say that he had no money when a demand was allegedly made by the appellant to him. Thus, it is difficult to accept that the things would have happened the way they are spoken about by the prosecution.

25 I have carefully gone through the impugned judgment.

26 It was argued before the learned Special Judge that laying of '**chance traps**' was not permissible, and even the provisions in the Manual of Instructions issued by the Maharashtra State Anti Corruption Bureau were brought to the notice of the learned Special Judge. He, however, held that there was no

provision in the Prevention of Corruption Act that chance traps could not be laid, and that therefore, there was nothing illegal in laying a chance trap. The reason for there being no provision in the P.C. Act that 'chance traps could not be laid', is that there is no provision in the P.C. Act for laying of traps itself. The P.C. Act does not deal with 'laying of traps' and of the different types of traps. Laying of traps is a method adopted by Investigating Agency for collection of evidence. It was, therefore, not proper on the part of the learned Special Judge to have discarded the contention about chance traps by such type of reasoning. The reason why laying of '**chance traps**' is held impermissible, and chance traps are termed as '*illegitimate*', is that laying of such traps gives great scope for manipulation and the evidence obtained by laying such traps would be highly suspect.

27 The learned Judge also ignored the discrepancy in the evidence about the language in which conversation between the truck driver Gurubachhansing and the appellant took place.

28 That, Chaugonda Patil (PW 1) had earlier also acted as a panch in one more trap organized by the Anti Corruption Bureau, was pointed out to the learned Special Judge who thought

it to be of no consequence. The learned Special Judge observed that the panch had 'candidly admitted' that he had earlier acted as a panch and weighed this in favour of the panch to hold him as a truthful witness. The learned Judge overlooked that this 'candid admission' came out only in the cross- examination; and that too, after initially denying having acted as a panch in a previous trap case.

29 In my opinion, this was a case where there certainly arose a reasonable doubt about the guilt of the appellant. The appellant was entitled to have the benefit of such doubt and ought to have been acquitted.

30 Appeal is allowed.

31 The impugned judgment and order is set aside.

32 The appellant is acquitted.

33 Fine, if paid, be refunded to his heirs and legal representatives.

(ABHAY M. THIPSAY, J)

CERTIFICATE

***Certified to be true and correct copy of the original signed
Judgment/Order.***