

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 657 OF 1996

Ashok Raghunath Khandagale)
Age 48, occupation Talathi)
under Suspension, residing at)
Sudhagad Pali, District Raigad.)...Appellant

VS.

The State of Maharashtra ... Respondent

Mr. S.V.Kotwal a/w Mr. B.G.Tangsali, Advocate for the appellant.
Ms. A.A.Mane, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 18th December, 2015.

JUDGMENT :

The appeal was called out for final hearing on 14.12.2015. At the threshold, the learned counsel appearing for the appellant had orally submitted that the medical history of the appellant during the pendency of the appeal needs to be considered on humanitarian grounds. It was submitted that on 14.6.2015, the appellant had undergone coronary angiography at Poona Hospital and Research Centre, Pune. The appellant was granted liberty to file an application to place the medical case history on record. Accordingly, the appellant has filed Criminal Application No.1554 of 2015, which is being heard along with the appeal.

2. The learned APP waives service for Criminal Application No. 1554 of 2015. In all fairness, she has conceded to the final hearing and disposal of the appeal. Hence, the application is taken on record.

3. The appellant herein is convicted for the offence punishable under Sections 161 of Indian Penal Code and Sections 5(1)(d) read with Section 5(2) of Prevention of Corruption Act, 1947 ("P.C. Act" for short) and is sentenced to suffer R.I. for one year and fine of Rs.500 in default S.I. for three months on each count in Special Case No. 4 of 1988 by the Special Judge (Anti Corruption Act), Raigad-Alibag vide judgment and order dated 11.9.1996. Hence, this appeal.

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

The complainant Rampal Babulal Karotiya had approached the Office of the Anti-Corruption Bureau (ACB) on 10.11.1987 and informing the ACB that he desires to lodge a report against the present appellant, who was a public servant and was working as a Talathi at Chowk as he had demanded illegal gratification for giving the correct 7 x 12 extract and map

of the land which he wanted to purchase. According to the complainant, he wanted to build a stable on Bombay-Pune Road at Panvel Chowk in partnership with one Ashpak Husen. They had learnt that one Shri Husen Siddiqui Kacchi was dealing in lands and would make available a suitable place. Shri Kacchi had informed them that he would introduce them to the Talathi of Chowk. Accordingly, they were introduced to the Talathi. The Talathi Mr. Khandagale had called them on 20.7.1987. The complainant had met the Talathi in his office. They were again called on 30th of July, 1987. On 30.7.1987, they had met the Talathi. He had informed them that one Mr. Kulote has land at Bombay Panvel Road which would be suitable for raising a stable. That it measures about 30 gunthas. He had asked for a commission of Rs.200/-. The complainant was not carrying the money on that day. The Talathi had instructed them to come on 9.8.1987. The complainant had met the Talathi Khandagale on 9.8.1987. In the morning at about 8.30 a.m., they had been to the office of Talathi. The Talathi had again demanded an amount of Rs.200/- for showing the suitable land. They had gone to the proposed land. The Talathi had quoted the price of the land as Rs.50,000/-. He had also informed the complainant that he would persuade the owner for them but the complainant would have to pay a commission of 5% for the said land. The complainant had informed that he

would come along with his partner on 11.8.1987. The complainant along with his partner had been to the office of Talathi. Upon enquiry from the villagers, it was learnt that the land belongs to one Lahu Bhiva Patil and his brother Kashinath Bhiva Patil. The complainant and his partner had met the land owners. The brothers had informed the complainant that they would sell the land for a consideration of Rs.40,000/-. Upon negotiation, it was agreed that the complainant would pay price of Rs.35,000/-. They had demanded 7 x 12 extract from the original land owner. On the same day, they had been to the office of Talathi along with the original land owners. The Talathi was annoyed as the complainant and his partner had directly approached the land owners without consulting the Talathi. They had demanded 7 x 12 extract. It had transpired that the land was demarcated under Section 32G of Bombay Tenancy & Agricultural Lands Act. On 13.8.1987, they had again approached the Talathi for seeking the 7 x 12 extract. The complainant had enquired as to whether they could purchase the said land. The Talathi had directed them to approach Advocate Shri Deshmukh at Chowk. Accordingly, the complainant had approached the Advocate. The Advocate had demanded 7 x 12 extract as well as the extract under Section 6 of the said Act. Thereafter, the appellant had demanded Rs.900/- towards the professional fees. After negotiations, the

appellant had agreed to accept Rs.700/- towards the illegal gratification. Since the complainant did not desire to pay the said gratification, he had approached the office of the Anti-Corruption Bureau. Accordingly, the trap was laid on 11.9.1987. The Office of ACB had decided to lay trap in accordance with law.

5) On 11.9.1987, panchnamas were made. The trap was successful as the accused had accepted the amount as was agreed. The Dy.S.P. of Anti-Corruption Bureau, Shri Ramchandra Chache had accordingly lodged FIR on behalf of the State at Khalapur on 11.9.1987 on the basis of which the accused was prosecuted for the offence punishable under Section 5(1)(d) and Section 5(2) of the P.C. Act and under Section 161 of the IPC. The Sanctioning Authority had sanctioned the prosecution of the appellant. Charge-sheet was filed. The case was registered as Special Case No.4 of 1988. The prosecution has examined six witnesses to bring home the guilt of the accused.

6. PW-1 is the complainant Rampal Charotia. He has deposed before the Court in consonance with the report lodged by him before the ACB. He has specifically contended before the Court that the appellant

herein had demanded Rs.900/- for giving 7 x 12 extract and the demarcation of the said land. Upon negotiation, he had agreed to accept Rs.700/-. He has further deposed before the Court that on the day of the incident, as soon as he met the accused, the accused had demanded the said amount. He had paid the amount. The raiding party had accosted the accused. He appeared to be scared. He had offered no explanation for accepting the said amount.

7. PW-2 Narayan Savant was working in the office of the Executive Engineer at Alibag. On 10.9.1987, after the report was lodged by PW-1, PW-2 was summoned by the office of the ACP to act as an independent panch at the time of the trap. He had deposed before the Court the information given by PW-2 to the ACP in his presence. As far as the incident is concerned, PW-2 has specifically stated that on the day of the incident, they had been to the office of Talathi. He was at a distance of 6/7 paces from Talathi office. The accused had taken the extracts from the cupboard. At that time, the accused had asked the complainant as to whether he has brought the remaining amount of Rs.500/-. The complainant had replied in the affirmative. The complainant had further asked as to whether the maps were ready. The accused had informed that

the maps are also ready. The accused had then demanded the amount. The complainant had extended Rs.400/- to him as Rs.300/- were paid earlier. The complainant had giving the predetermined signal to the raiding party. Accordingly, the accused was accosted. PW-2 has deposed before the Court that the accused was in a puzzled state of mind as the raid was an unexpected event for him. The traces of anthracene powder were reflected on the hands of the accused and none other. The panchnama was recorded which is at Exhibit 22. The defence has failed to make any dent in the course of cross-examination of PW-2. A stray suggestion was given in the cross-examination as to whether the personal search of the Circle Inspector was conducted. PW-2 has expressed his inability to answer the same. However, it could be an insignificant issue.

8. PW-3 Ashpak Hasan was the partner of the complainant. He has deposed in consonance with PW-1. The evidence of PW-1 and 3 in its normal course would inspire confidence of the Court.

9. PW-4 Pravinsing Pardeshi was working as Assistant Collector of Panvel Division. He has accorded the sanction to prosecute. The sanction is at Exhibit 26. He has specifically deposed before the Court that he had received the papers from the Anti Corruption Department in respect

of the prosecution of Shri Ashok Khandagale in March 1988. He had perused the papers and applied his mind and then after recording subjective satisfaction, he had arrived at a conclusion that it would be a fit case for prosecution of the accused. There is nothing on record to indicate that the sanction order suffers from any illegality or that there has been non-application of mind. All that is elicited in the cross-examination is that he had not considered the explanation given by the accused before according sanction.

10. In fact, it is not necessary for the sanctioning authority to consider the defence of the accused at the time of according sanction. All that needs to be seen is whether the Sanctioning Authority has perused the papers of investigation and has arrived at a conclusion that the prosecution has been able to make out a fit case for proceeding with the prosecution of the public servant. In fact, it would be incumbent only upon the Court to consider the defence of the accused as the statute contemplates that the onus is upon the accused to not only rebut the presumption which was to be drawn under Section 4 of the old Act but it would be sufficient if the accused is able to demonstrate the preponderance of probabilities to make out his case. It is mandatory upon the Court to draw the presumption unless

it is rebutted by the accused by demonstrating the probable defence which may explain the situation in which the amount was accepted. Therefore, the admission of the Sanctioning Authority that he had not considered the explanation of the accused would have no relevance or significance in the present case.

11. PW-5 is Advocate Avinash Deshmukh to whom the accused had directed the complainant. He has deposed before the Court about the status of the title of the said land. His evidence need not be relevant for the purpose of determining as to whether the accused had demanded any illegal gratification and that the amount of gratification was accepted pursuant to the demand.

12. PW-6 Ramchandra Chache was attached to the office of ACP as Dy. S.P. The complainant had approached him, lodged a report of which he had taken cognizance. He had arranged for the trap in accordance with law by calling two public servants to act as panchas. He had given specific instructions to the complainant to extend the amount of illegal gratification only after there is a demand by the accused. After the trap was successful, he had lodged first information report on the basis of which the accused

was prosecuted. He had obtained sanction for prosecution of the accused and after completion of investigation had filed the charge sheet on 14.10.1988. A suggestion was given in the cross-examination as to whether he could have verified the contents of the complaint by making enquiry with the partner of the complainant and with Advocate Deshmukh. The Investigating Officer PW-6 has specifically stated that he could have done so but he did not find it necessary. It is true that no such exercise is expected from the ACP as the ACP is not expected to enquire into the genuineness of the report as the offence is not registered on the basis of the report given to the ACB, but the ACP can verify the same only after the act is completed. Therefore, the first information report is lodged by ACP on behalf of the State and therefore, the said suggestion or the denial of verification by PW-6 would have no bearing upon the case.

13. Upon perusal of the evidence and hearing the submissions of the learned counsel, it is apparently clear that in the present case, the prosecution has established the guilt of the accused beyond reasonable doubt. At this stage, it would be incumbent upon the Court to consider the defence of the accused. The accused had filed his defence under Section 313(2) of Cr.P.C. He has stated before the Court that in fact one Husen

Kachhi was known to him. He was dealing in land. That it was on behalf of him that he had shown the land to the complainant. He had accepted Rs.700/- from the complainant on behalf of Husen Kachhi. IN fact, the defence of the accused is only an imaginary story without any proper foundation and upon considering the said statement, it cannot be said that the accused in any manner had rebutted the presumption which was drawn by the Court under Section 4 of the P.C. Act. In these circumstances, no interference is warranted in the judgment of conviction of the appellant.

14. At this stage, it would be necessary to consider the Criminal Application No.1554 of 2015. The appellant has placed on record the medical case history which would indicate that in June 2015, he was diagnosed with Dominant artery – 90% stenosis in the mid segment Mild plaque in the distal segment. He was advised to undergo coronary angiography. He was rather diagnosed with a coronary disease.

15. The learned counsel for the appellant submits that the appellant herein could not gather any courage to undergo operation. Moreover, due to financial stringency, he could not undergo the said operation and therefore, he had contacted some of his relatives. The

relatives had advised him to go to Madhavbaug Ayurvedic Cardiac Hospital. It is orally submitted that the close relatives of the appellant were well known to the Management of Madhasvbaug Hospital and therefore he would get concession in his treatment. In these circumstances, the appellant was left with no other alternative but to take treatment from the Madhavbaug Hospital. Since he was diagnosed with a maximum blockage in his artery, he could not work and therefore he was advised bed rest throughout. This is the condition of the appellant during the pendency of the appeal. This physical and mental condition of the appellant would make it incumbent upon the Court to consider the leniency in awarding sentence to the appellant although he is convicted under Section 5(1)(d) read with Section 5(2) of P.C. Act, 1947 Section 5(2) of PC Act contemplates as follows :-

“5(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine:

Provided that the Court may, for any special reasons recorded in writing impose a sentence of imprisonment of less than one year”.

The learned counsel for the appellant vehemently submits that the physical health of the appellant would be one of the special reason for awarding a sentence less than the minimum prescribed.

16. The learned counsel for the appellant has placed implicit reliance upon the Judgment of the Hon'ble Apex Court in the case of **V.K.Varma vs. Central Bureau of Investigation (2014) 3 SCC 485**. The Hon'ble Apex Court has considered the Judgment in the case of Ajab v. State of Maharashtra and has “passage of time was reckoned as a factor for reducing the sentence to the period already undergone”. The Court has observed as follows :-

“12. The appellant is now aged 76. We are informed that he is otherwise not keeping in good health, having had also cardiovascular problems. The offence is of the year 1984. It is almost three decades now. The accused has already undergone physical incarceration for three months and mental incarceration for about thirty years. Whether at this age and stage, would it not be economically wasteful, and a liability to the State to keep the appellant in prison, is the question we have to address. Having given thoughtful consideration to all the aspects of the matter, we are of the view that the facts mentioned above would certainly be special reasons for reducing the

substantive sentence but enhancing the fine, while maintaining the conviction.”

In view of this, this Court is inclined to impose the sentence of less than the minimum prescribed, although the conviction is upheld.

ORDER

- (i) The appeal is partly allowed.
- (ii) The conviction of the appellant for the offence punishable under Section 161 of IPC and under Section 5(1)(d) read with Section 5(2) of the prevention of Corruption Act, 1947 is maintained.
- (iii) He is sentenced to imprisonment for 15 days and fine of Rs.25,000/- in default further R.I. for one month.
- (iii) The appellant shall appear before the Special Judge, Raigad, within two weeks from today.
- (iv) The Special Judge shall take him into custody. At this stage, it would be necessary to consider the health of the appellant.
- (v) The learned Special Judge may give directions to the Jail Authorities accordingly.

Appeal stands disposed of.

(SMT.SADHANA S.JADHAV, J.)