

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.301 OF 2005

The State of Maharashtra
through K.B. Randive,
Dy. S.P., Anti Corruption Bureau,
Ahmednagar

... APPELLANT
(Original Complainant)

VERSUS

Ghanshyam Arjun Phasale,
Age 40 years, Occ. Service,
Police Constable, B.No.1306,
Topkhana Police Station,
R/o Police Line,
Police Headquarters, Ahmednagar.

... RESPONDENT

.....
Shri A.M. Phule, A.P.P. for appellant/ State
Shri A.S. Gandhi, Advocate for respondent
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 8th June, 2016.

Date of reserving judgment : 27th April 2016
Date of pronouncing judgment : 8th June, 2016.

J U D G M E N T :

1. The State has filed this appeal against the acquittal of respondent - accused - Police Constable Ghanshyam Phasale (herienafter referred as accused). The accused was tried in Special Case No.3/1999 before Special Judge, Ahmednagar and

came to be acquitted of offence punishable under Sections 7 and 13(2)(d) of the Prevention of Corruption Act, 1988 (Act- in brief) on 31.1.2005.

2. In nutshell, the case of prosecution is as follows :-

- (a) On 13.6.1998, the complainant Shaikh Abid Babasaheb (hereafter referred as complainant) filed a complaint with Anti Corruption Bureau at Ahmednagar before Deputy S.P., Keshav Randive (P.W.3). The complainant (P.W.1) reported that, on 11.6.1998, he learnt that his uncle Shaikh Iqbal had on that day at about 3.00 p.m. consumed medicine used for killing bugs and was admitted in the Civil Hospital. On 12.6.1998, at about 11.00 a.m., Shaikh Aslam, younger brother of complainant and Zakir Shaikh came to complainant. Zakir Shaikh started telling complainant that at the Civil Hospital, Police Constable Phasale had called him and said that, "You have admitted Shaikh Iqbal and it is a matter of suicide and legal action will have to be taken and that if such action is not to be taken, Rs.300/- will have to be paid." Complaint mentioned that, thereafter

complainant and Zakir Shaikh went to Civil Hospital and came to know that, the uncle was going to be discharged on that day. So, complainant and Zakir Shaikh went and met the accused. Accused said that the case of uncle is of suicide and if such case is not to be filed, then he should be paid Rs.300/-. Zakir Shaikh was present at such time. Complainant told accused that he is poor person and from where he will get such amount. Accused told that if case is filed, more amount will have to be spent. Ultimately, complainant agreed to pay Rs.300/-. He had been now called at 10.00 a.m. (of that date of 13.6.1998).

- (b) It is the case that, the complainant had gone to the Anti Corruption Bureau Office on 12.6.1998 along with Zakir Shaikh and informed that one Government servant has demanded money from him for not doing official work and that he has been called at 10.00 a.m. on 13.6.1998 for which he will file complaint on 13.6.1998 at 8.00 a.m. Consequently, P.W.3 Randive sent letter to the office of Block Development Officer and secured presence of two panchas namely Ashok Devtarse (P.W.2) and one Dalvi. They were

asked to come in the morning of 13.6.1998.

- (c) On 13.6.1998, the complainant went to the Anti Corruption Bureau Office and filed the complaint (Exh.22) mentioned supra. The Dy.S.P. Randive then completed the procedure as to how the trap would be executed. The complainant and panchas were explained the procedure as to how anthracin powder works and the complainant who had brought Rs.300/- was explained as to how the money is to be paid and signal is to be given etc.
- (d) It is the case of the prosecution that, thereafter the raiding party went to the Civil Hospital at Ahmednagar and while other raiding party stayed some distance away, the complainant and P.W.2 Panch Ashok Devtarse went ahead. After waiting for some time near the concerned room where police sit, the accused came there. Accused signaled to the complainant regarding what happened of the money and the complainant paid the same to the accused who kept it in his back pocket. The complainant gave pre-destined signal and the rest of the raiding party

came in front. Both the hands of the accused were caught hold by a constable. Accused suspected and forcibly got his hand free and removed the money from his pocket and threw it on the ground. The raiding party revealed its identity and the accused was taken in the police room and it was found that there was blue shine on his fingers as well as on his hip pocket. The further procedure was completed. Necessary panchanamas were prepared. P.W.3 Keshav filed complaint on the same day to the Topkha Police Station. He obtained the duty list of the accused of the date of 13.6.1998. Investigation was completed and charge sheet came to be filed.

- (e) Prosecution brought on record the evidence of complainant as well as shadow panch P.W.2 Ashok Devtarse. P.W.3 Keshav Randive also stepped into the witness box. P.W.4 is Himanshu Roy, then Dy.S.P., who granted sanction (Exh.40).

The defence of the accused is of total denial.

3. Trial Court, after considering the evidence, passed

the above judgment, acquitting the accused of all the charges. Thus, this appeal by the State. It is claimed by the State and it has been argued by the learned A.P.P. that the acquittal of the accused was erroneous. It has been wrongly held that the complainant was not on duty on 12.6.1998 and that he had gone to Jamkhed. Jamkhed was only 70 Kms. from Ahmednagar and in 2-3 hours person can return. It was possible that on same day the accused demanded money from complainant to avoid filing of case. Although complainant was declared hostile, he did depose about demand by the accused. The demand was made by gesture of hand and on receiving money it was kept in back pocket by the accused and this has been proved. There is no reason why the complainant would have deposed against the accused. There was sufficient evidence to convict the accused. The offence was proved beyond reasonable doubt. The demand can be proved by indirect evidence also. According to the learned A.P.P., the acquittal deserves to be reversed.

4. Against this, the learned counsel for the accused argued that, demand was not made to the complainant but it was made to one Shaikh Zakir (referred at places as "Zakir Shaikh" also). As per the evidence of the complainant Shaikh Zakir was present at the time of trap also, but he was not examined. On

11.6.1998 and 12.6.1998 the accused was not at Civil Hospital. There is no evidence in that regard available. on 13.6.1998 also at the relevant time, when trap was executed, accused was not on duty. Although P.W.3 Keshav claimed that the complainant went to him on 12.6.1998, no complaint was recorded on that day and in advance panchas were called. There is evidence that, the doctor had not sent any intimation to the police at the Civil Hospital about the uncle of the complainant and the uncle was also discharged on 13.6.1998 and so, there was no reason for the complainant to be apprehensive. The demand and acceptance, which is pre-requisite for such offence, was not established. The evidence of P.W.2 shows that, when the trap was executed, only rough notes were prepared. As per P.W.2, the panchanamas were prepared only later on. The sanction was mechanical. The accused brought on record evidence of D.W.1 Head Constable Shivaji Sathe and D.W.2 Goraksh Bhos, Police Head Constable to bring on record the fact that on 11.6.1998 and 12.6.1998 he was not at the Civil Hospital. According to the learned counsel, the accused was rightly acquitted by the trial Court.

5. I have gone through the evidence available in this matter. Material evidence is that of complainant P.W.1 and the

shadow panch P.W.2 Ashok. Regarding the initial demand stated to be made on 12.6.1998, the complainant backed out of his complaint Exh.22. He claimed that, his uncle Shaikh Iqbal was admitted in the hospital as he accidentally consumed liquid thinking it to be medicine. The complainant deposed that on 12.6.1998 his brother Shaikh Aslam and Zakir Shaikh had gone to enquire in the hospital. According to him, they returned from the hospital and told the complainant that the Constable Phasale had demanded Rs.300/- if the uncle was to be discharged. Complainant deposed that, Zakir wanted to lodge complaint with the Anti Corruption Bureau and so he and Zakir went to Anti Corruption Bureau Office and he lodged the complaint. The complainant was confronted with Portion "A" of his complaint where it was recorded that after Shaikh Aslam and Zakir Shaikh came to him and told regarding the demand he had himself gone to the hospital and the accused demanded Rs.300/- to him also as detailed in the complaint. Thus, the complainant backed out of the alleged initial demand dated 12.6.1998. Although cross-examined, the complainant did not concede on this count although he gave evidence that he did in fact file complaint to the A.C.B. Office and that trap was laid on 13.6.1998 and it was executed.

6. Coming to the trap dated 13.6.1998, the evidence of complainant and panch P.W.2 shows that, before going for execution of the trap, they were explained the procedure regarding how the trap will be executed and they were given guidance as to what they will be required to do. The evidence then is that, they went to the Civil Hospital and only complainant and P.W.2 went ahead while other stayed at some distance. Complainant has deposed that, at the Civil Hospital he and panch Devtarse (P.W.2) proceeded and went to the Police Chowki. One Constable was present there and they asked him where constable Phasale is. That person told that Constable Phasale has gone away. They waited for Constable Phasale. It is then deposed that, Shaikh Zakir showed him the said Constable and so he went near the said Constable (accused) along with panch. Accused asked him who was the person accompanying and complainant said that he was his brother. Complainant deposed that, when accused asked him whether he has brought the said amount, he answered in the affirmative. According to complainant, he took out the currency notes from his left shirt pocket with his right hand and gave the same in the hand of accused who threw it on the floor. The complainant then claimed that, the raiding party came there and held hands of Phasale.

Regarding this actual incident, Panch P.W.3 Ashok deposed that, when he and complainant went at the Civil Hospital, complainant told him that the police sit at that place. The accused was not present and they waited for long time for about half an hour. Accused then came on bicycle and came to the police room. He deposed that, he and complainant followed accused and accused asked the complainant what happened of his work. Evidence is that, at that time, the accused made gesture of hand for demanding the money and accused took out the amount from his shirt pocket and inserted that amount in the pocket of Phasale (accused). The panch then changed his version to say that the accused accepted the amount in his hand and kept it in his back pant pocket. According to this panch, the accused came out of that room and the A.C.B. staff came there and held the hands of the accused. The amount from the back pant pocket of the accused fell down on the floor, which was then picked up by the other panch Dalvi.

7. Thus, it can be seen from the above evidence that, although the complainant deposed that the accused asked if the said amount had been brought, the panch claimed that the accused asked complainant as to what happened of his work and made gesture by hand for the money. The complainant claimed

that moment he kept the money in the hand of the accused, the accused threw it. However, the panch claimed that the raiding party came and caught the accused, and amount from back pocket of the accused fell down on the floor.

8. The cross-examination of the complainant shows that, his uncle was discharged from the hospital on 13.6.1998. The cross-examination of P.W.3 Keshav Randive shows that, the said uncle Shaikh Iqbal was discharged from the hospital on 13.6.1998 at 9.00 a.m. Thus, it was before the trap was executed. As per panchanama Exh.26, the trap-party reached the Hospital at about 10.15 a.m. P.W.3 police officer admitted that, he had recorded statement of the concerned doctor and came to know that information about the patient in M.L.C. had not been given to the police. It is stated that, until information is received in M.L.C., the police do not take action. The complainant admitted that, doctor had not informed him or anybody else that his uncle had taken poisonous medicine. Thus, the foundation for the complainant to be afraid and thus agree to pay does not appear to be there.

9. Cross-examination of the complainant further shows that on 13.6.1998 when he went to file complaint at about 7.00

a.m., Shaikh Zakir was with him. In fact, he deposed that, at the hospital Shaikh Zakir showed him the accused and thereafter he and the panch went ahead and met the accused. This Shaikh Zakir, to whom it is claimed that the first demand was made when he had gone with Shaikh Aslam, the brother of complainant, to the hospital, and who, as per the complaint Exh.22 had gone with the complainant to the Civil Hospital before they went to A.C.B. Office, has not been examined. The evidence shows that, he was present even on 13.6.1998 but he was not examined.

10. If till 13.6.1998 complainant had not personally met the accused and Zakir Shaikh was required to point out the accused to him, the other evidence becomes doubtful that when the complainant and the panch went near the accused, accused would ask the complainant as to who is the other person accompanying him. In fact the complainant himself would require an introduction.

11. The evidence of P.W.3 Dy. S.P. Keshav is that, the complainant had come to him on 12.6.1998, complaining that he wants to file complaint against Government servant for demanding bribe. According to this official, the complainant

stated that he would file the complaint on 13.6.1998. According to P.W.3 Keshav, as 13.6.1998 was Second Saturday, he sent letter to Block Development Office and secured presence of the panchas and requested them to come in the morning of 13.6.1998. Thus, all this preparation would be in anticipation. If the F.I.R. (Complaint Exh.30) filed by this Dy.S.P. to Police Station after the trap was executed is perused, he reported that the complainant had come to his office on 12.6.1998 at about 3.00 p.m. and informed that "One Government servant" has demanded money from him for not doing official work and that he has been told to come on 13.6.1998 at 10.00 a.m. with the money. P.W.3 informed in the F.I.R. that, the complainant had told P.W.3 that he would give the detailed complaint on 13.6.1998 at 8.00 a.m. Because of such oral information, note was taken in the "Samaj" Register and the signature of the complainant and Zakir Shaikh who was with the complainant had been taken.

The said "Samaj" Register or its extract has not been brought on record. This becomes material looking to the fact that the complaint Exh. 22, dated 13.6.1998 does not even bear time as to when it was recorded. This fact needs to be read along with the cross-examination of P.W.2 where he deposed (in

para 6) that after the trap was executed, rough notes were made in the Civil Hospital and then they came to the A.C.B. Office and panchanama was typed in office. The said rough notes were not brought before the Court. The conspectus of the above discussion is that, it was doubtful as to how things took place in what is claimed by the prosecution to be a successful trap.

12. Although prosecution brought on record document Exh.33 as the letter from Topkhana Police Station, and the evidence of P.W.3 Keshav that the accused had duty at the Civil Hospital on 13.6.1998 from 10.00 a.m. to 2.00 p.m. and 8.00 p.m. to next day 8.00 a.m., duty list regarding the date of 12.6.1998 was not collected. The accused examined D.W.1 Police Head Constable Shivaji to claim that on 11.6.1998 D.W.1 Shivaji and one Head Constable Labde were on duty in Civil Hospital and he had been sent to Jamkhed to deliver correspondence. D.W.1 Shivaji deposed that, he met the accused on 12.6.1998 at about 12.00 - 1.00 noon, when this D.W.1 had gone to Topkhana Police Station. According to this witness, on 12.6.1998, accused was not on duty in the Civil Hospital. D.W.2 Head Constable Goraksh was examined to prove that on 11.6.1998 the accused had gone to Jamkhed to deliver papers and met him at 5.25 p.m. No doubt there is substance in

the submission of A.P.P. that Jamkhed is only 69 Kms. (as is admitted by D.W.2) and it is possible for a person to come back, still the material date was of 12.6.1998. Although D.W.1 did not produce any document to show that accused was not on duty at Civil Hospital on that day, it was for P.W.3 Keshav to collect the duty list of 12.6.1998 also.

13. This appeal being against acquittal, merely because some other view of the evidence could be possible, would not be a reason for this Court to interfere. I have gone through the judgment of the trial Court and the reasons recorded by it. The trial Court, while discussing the evidence, observed that, the evidence of complainant was not free from shadow of doubts. His evidence showed that he has not lodged the complaint on his own accord and admitted that he lodged the complaint as his cousin brother Shaikh Zakir told him to lodge such complaint. The trial Court referred to the evidence of complainant where he accepted that, it was true that there should not be several complaints from Shaikh Zakir and so the complaint was recorded in his name. Trial Court observed that, thus the person appears to be in the habit of lodging complaints. Trial Court observed that, as Shaikh Zakir was continuously on the scene, not examining him should invite adverse inference. It was found

that, recording pre-trap demand of bribe amount, absolutely there is no iota of evidence. Trial Court also found that, the complaint was not lodged on 12.6.1998 itself and thus, on 12.6.1998 presence of panchas could not have been secured. From the evidence, trial Court raised question whether the Dy. S.P. Randive was sure that the complainant would on next day file the complaint. Trial Court raised doubts whether the complaint was lodged before going for trap or it was lodged after the trap was executed. Not producing of Station Diary entry by the Dy. S.P. also was found to be objectionable. According to trial Court, duty list of 12.6.1998 should have been produced. Trial Court discussed the evidence to find that, demand of 12.6.1998 as well as 13.6.1998 was not duly established. The evidence was discussed showing the anthracin powder was only on the tips of the hand of the accused and the evidence of the complainant as well as panch showed that when the accused was caught he had reversed his pocket to show that he did not have the money. Thus, the trial Court found that the reflection of anthracin powder on the back pocket of the accused was explained and the fact that anthracin powder was found on the tips of the hand and not the palm shows that the accused did not want the money and when it was put in his hand, he threw it immediately. The trial Court thus did not raise the presumption

under Section 20 of the Act also. Even regarding sanction, although P.W.4 Himanshu Roy deposed that he had studied the papers and granted the sanction, trial Court found that the Dy. S.P. did not have the original complaint with him when he granted the sanction.. For such reasons, the trial Court found that offence was not proved and acquitted the accused.

14. I have also gone through the evidence as discussed above and find that, there is room for doubt as to what exactly happened and demand and acceptance of the amount of gratification is not established beyond reasonable doubts. Thus, I decline to interfere with the judgment of acquittal recorded by the trial Court. There is no substance in the appeal.

The appeal is dismissed. Bail Bonds of accused are cancelled.

(A.I.S. CHEEMA, J.)