

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.1 OF 2003

Asaram Dhansing Umre,
Aged-54 years, Occu:Service,
R/o-Nadarpur, Tq-Kannad,
Dist-Aurangabad.

...APPELLANT
(Ori. Accused)

VERSUS

The State of Maharashtra,
(Through P.S. Sillegaon,
Tq-Gangpur, Dist-Aurangabad).

...RESPONDENT

...
Mr.Ajinkya Patil Advocate h/f. Mr. S.B.
Talekar Advocate for Appellant.
Mrs. V.N. Patil-Jadhav A.P.P. for Respondent.
...

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

DATE OF RESERVING JUDGMENT : 1ST AUGUST,2016.

DATE OF PRONOUNCING JUDGMENT: 11TH AUGUST, 2016.

JUDGMENT :

1. Appellant - original accused (hereafter referred as "accused") has been convicted in

Special Case No.5 of 1998 under Section 7 and Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 ("the Act" in brief) on 22nd November 2002 by Special Judge, Aurangabad.

2. The case of prosecution, in short, is as follows:-

A) Complainant (PW-1) Ganesh Baburao Shirsat was running a shop at Lasur Station, Taluka-Gangapur, Dist-Aurangabad. He along with other shop keepers at the concerned shop had been served with notices by the Gram Panchayat Lasur Station to vacate the site as their occupation was by way of encroachment. The accused was, at that time, Village Development Officer Savangi and he was to carry out the removal of encroachment. On 6th August 1997 the complainant approached Police Inspector Ambadas Savai (PW-4) who was working in Anti Corruption Bureau, Aurangabad and filed complaint Exhibit 9. Complainant had gone to the

Anti Corruption Bureau along with one of the other shop keeper Subhash Khandagale. Complainant reported that at the concerned spot he had the Tapari i.e. small stall which was in the name of his father Baburao Shirsat from where he was running the shop. He gave names of other shopkeepers in the neighbour-hood who had also received notices dated 25th July 1997. Four persons out of more shopkeepers had moved the Civil Court for stay. At that time when the accused asked the Complainant to remove the Tapari, they told him that they had moved the Court and they would be getting stay order. The accused told them that he will wait till they bring the stay order and will not remove the encroachment but each of the Tapari owner should give Rs.125/- and thus total Rs.500/- to him. They had agreed to this. They received the status-quo order on 5th August 1997. After the status-quo order was served on 5th August 1997, the accused Village Development Officer demanded Rs.500/- and

complainant had told him that he will collect the money and give the same to the accused. The accused told him to get Rs.500/- by afternoon of 7th August 1997 and give it at the Village Panchayat. Complainant reported that he had collected the money but they did not want to give bribe to the accused and thus the complaint.

B) Case of prosecution is that the complainant had produced, along-with the complaint, copy of notice (Exhibit 10) which he had received as well as the status-quo order of the Court (Article A). PW-4 P.I. Ambadas Savai decided to lay a trap. He secured presence of two Panchas from Government Dairy, namely, Shri Baban Galdhar (PW-2) and one Shri Jadhav. They were asked to come in the morning of 7th August 1997. On 7th August 1997 the Panchas and complainant reached the A.C.B. office. Subhash Khandagale was also there. The complainant was asked to tell his complaint to the Panchas and the Panchas also

verified the written complaint. The complainant had Rs.520/- with him. Rs.500/- which were in the denomination of Rs.100/- each, were separated and numbers were noted down. Remaining Rs.20/- and other personal articles were returned to complainant. The complainant and Panchas were given demonstration as to how anthracene powder works under ultra violet lamp. Procedure as to how the trap would be conducted was explained. The signal required to be given after the money is accepted was also explained. Pre-trap Panchnama (Exhibit 14) was prepared between 8.00 - 10.00 a.m. on 7th August 1997. The raiding party then proceeded to Lasur Station from Aurangabad. At Lasur Station, at some distance from the Gram Panchayat, the complainant, Subhash Khandagale and Shadow Panch PW-2 Baban Galdhar separated. While these persons went ahead, others lay in waiting. At the Gram Panchayat the complainant was asked by the accused to hand over money to one Clerk Shri Pokle. The complainant insisted that the accused

should receive the money claiming that Pokle would also ask for money. The accused asked the complainant and Panch and Shri Khandagale to come with him to his house. Shri Khandagale claimed that he had to go and left. The complainant and Panch went along-with the accused to his house and accused accepted Rs.500/- at that place. Pre-decided signal was given by the complainant and the rest of the raiding party rushed in and caught the accused. The tainted notes of Rs.500/- were recovered from the pocket of the accused. Further procedure regarding the raid was completed and Panchnama Exhibit 15 came to be drawn. At the house of accused, certain files and expenditure voucher, cash book etc. were seized. The raiding party came back from the house of the accused to the Gram Panchayat and further documents relating to the notice, status-quo order etc. were also seized. Panchnama Exhibit 28 was done. Raiding party came back to Aurangabad and further procedures regarding sealing of anthracene powder

etc. were carried out. P.I. Ambadas Savai (PW-4) filed First Information Report Exhibit 36 in the Police Station at Shillegaon and Crime No.6 of 1997 was registered on the same day in the evening. Investigation was completed and charge-sheet came to be filed.

3. Accused pleaded not guilty to the offence. His defence is of denial. According to the accused, for removal of encroachment labour had been engaged and when the complainant had requested to give time to him to get the stay order, he was told that he would have to pay labour charges and the amount received was towards the said labour charges.

4. The prosecution examined four witnesses. PW-3 Bhaskar Mundhe was then Chief Executive Officer, Zilla Parishad, Aurangabad who has given the sanction Exhibit 31.

5. The trial Court considered the oral and documentary evidence and discarded the defence and holding the accused guilty, convicted him for Sections above mentioned. Under Section 7 of the Act, he was sentenced to suffer rigorous imprisonment for six months and fine of Rs.100/- and in default simple imprisonment for seven days. Under Section 13 (1)(d) and 13 (2) of the Act, he was sentenced to suffer rigorous imprisonment for one year and fine of Rs.100/- and in default to suffer further simple imprisonment for seven days.

6. I have heard learned counsel for the Appellant - accused. It has been argued by the learned counsel that the Appellant - accused was taking steps against the encroachment done by the complainant and others. They were naturally angry with accused. Notice dated 25th July 1997 had been issued and the encroachment was due to be removed on 5th August 1997. On the request of the complainant, the accused gave him breathing time

to get orders from Civil Court. Fifteen labourers had been engaged at Rs.25/- per labour. The accused asked the complainant to pay the said amount and the complainant had accepted to do so. The counsel submitted that accused received Rs.500/- was not disputed but the same was towards labour charges as the labour had to be sent back due to the status-quo orders. The learned counsel referred to Section 53 (2) of the Maharashtra Village Panchayats Act, 1958 to submit that there is provision that expenditure for removal of such encroachment shall be recovered from person who has done the encroachment. It is argued that mere acceptance of the money is not enough. It has to be shown that it was towards illegal gratification. According to the counsel, the State failed to prove that the amount accepted was towards illegal gratification.

7. Against this, the learned A.P.P. submitted that in evidence the fact of acceptance

of money is not disputed. According to him, under Section 20 of the Act, there would be presumption against the accused that the amount was accepted as reward for not removing the encroachment. The learned A.P.P. supported the reasons recorded by the trial Court for convicting the accused.

8. I have gone through the oral and documentary evidence available in this matter. The evidence of the Complainant PW-1 Ganesh Shirsat supported by Shadow Panch PW-2 Baban Galdhar is regarding the execution of the trap. PW-4 P.I. Ambadas Savai has also deposed as to how complainant came along-with one Subhash Khandagale and filed the complaint and how the presence of Panchas was secured and pre-trap Panchnama Exhibit 14 was executed. The evidence of PW-1, PW-2 and PW-4 shows as to how the trap was executed leading to Panchnama Exhibit 15 and seizure of documents Panchnama Exhibit 28.

9. Going through the evidence, the fact that accused received Rs.500/- does not appear to be in dispute. What is in dispute is the purpose for which the amount was received. There is no dispute regarding the fact that Gram Panchayat had indeed issued notices like Exhibit 10 for removal of the encroachments. There is no dispute that out of the shopkeepers, four of the persons had approached the Civil Court and on the day when the encroachment was to be removed, they secured the status-quo order. Looking to the evidence, it does not appear to be in dispute that when the complainant and others requested to wait a little, the accused did not rush in to remove the encroachment but waited for the status-quo order to be brought.

10. The complainant PW-1 Ganesh deposed that he had met the accused on 4th August 1997 and told him not to remove the shops till they obtain the stay order from the Court. He deposed that accused

agreed not to remove the shops but they had to pay Rs.125/- each totaling to Rs.500/-, to which he agreed. Complainant deposed that on 5th August 1997 they obtained the stay order and served the same on Gram Panchayat at about 5.00 p.m. His evidence is that accused told him to bring Rs.500/- in the Gram Panchayat Office on 7th August 1997 and he agreed. The evidence of PW-1 Ganesh further is as to how he went to the A.C.B. office and lodged complainant Exhibit 9 and how the pre-trap Panchnama was conducted.

. Regarding the trap, complainant deposed that on 7th August 1997 he along-with PW-2 Baban and one Subhash Khandagale reached the Gram Panchayat at about 11.00 a.m. He deposed that after about 15 minutes, the accused came there and entered his office and then came out of it. Complainant deposed that he then told the accused to collect the money but the accused told him to give it to Shri Pokle. The complainant again

changed his version to depose that after the accused came out of the office, he asked Subhash Khandagale about the money, who said that the same had been brought and then the accused asked him to pay the same to Shri Pokle. The complainant deposed that he then told the accused that he should himself receive the money as Shri Pokle may disown to have received the money and would harass them. The evidence is that the accused then asked them to come to his room where he was staying. At this time, Subhash Khandagale stated that he wanted to go to Aurangabad and that the complainant would give the money. According to the complainant, he then along-with Panch Baban Galdhar and accused went towards the room of the accused and entering the same, the complainant handed over the tainted money from his pocket and gave it to the accused who collected the same and kept it in his left pocket of the trouser.

11. If the above evidence of the complainant

is kept in view, it can be seen that although the complainant along-with others was near the Gram Panchayat Office when the accused came there, he ignored them and did not ask for the money. The complainant himself offered the money which was told by the accused to be handed over to Shri Pokle but the complainant insisted that accused should receive it. In this regard firstly, Subhash Khandagale to whom the complainant says that the demand was made at the time of trap, has not been examined. Secondly, the evidence of Panch PW-2 Baban Galdhar when perused, the same is that the accused when he came out from the office, asked Khandagale if the money had been brought. He also says that when Khandagale told the accused that complainant had brought Rs.500/- for not removing the shops, the accused told to give the money to Shri Pokle but at that time complainant had claimed that Shri Pokle would ask for more money and so accused should collect the same. PW-2 Baban also deposed that Khandagale had, at such point of

time, left claiming he wanted to go Aurangabad and these people had gone to the house of the accused where the complainant paid the amount to accused.

12. Now, the cross-examination of the complainant shows admission that they had erected the shops in 1987 without obtaining permission from Gram Panchayat. The complainant could not say when the other three shop keepers had put up their stalls. His cross-examination shows that these four persons had met the accused and requested not to take action till they get the stay, to which the accused had said yes. The accused had told them that if they failed to bring the stay by 5th August 1997, then he would remove the structure. Complainant accepted in cross-examination that the accused had made all the arrangements to remove the shops by engaging labourers and there were about 20 labours. The further cross-examination shows that notices had been served on some other shop keepers like Bhausahab Ghodke, Thole, Vinayak

Chavan and Sukhdeo Wakale and they had also been given notices for removal of encroachment on 5th August 1997. Complainant admits that their encroachment was also not removed although they had not obtained any order from the Court. He admits that from those persons labour charges were also not demanded. Complainant admitted that Gram Panchayat was entitled to recover charges for removal of encroachment. His claim was that their encroachment was not removed and so they were not required to pay labour charges. The cross-examination shows that the accused had given list of 20 persons to the A.C.B. office. His cross-examination shows admission that the complainant had a feeling that it was injustice on the part of the accused to demand the money from them only and not from those other persons who were rich. The reference was to the other shopkeepers who did not go to the Court but still their encroachments were not removed. The evidence is that those other persons were from upper class and the complainant

and Subhash Khandagale and one Sunil Gaikwad belonged to Dalit caste. The evidence is that nobody had earlier obstructed or asked for removal of the structure. The complainant deposed that even the Sarpanch Mrs. Nirmala Gaikwad had supported them but still the accused had issued notices to them. The complainant claimed that Sarpanch Mrs. Gaikwad was Dalit and Boudh and she had told the accused not to remove the structure till the last but the accused did not pay heed to her.

13. When this cross-examination of the complainant is perused, the picture that emerges is that the accused as Village Development Officer had a responsibility to remove the encroachments and the complainant and others who were the encroachers, were trying to resist. Even the Sarpanch appears to have sided with the encroachers in violation of duty cast on the Panchayat to remove such encroachments, as can be

seen from Section 53 sub-clause (2) of the Maharashtra Village Panchayats Act. The accused appears to have been in a difficult situation where the elected representative was siding with the encroachers and in the situation appears to have stated to the complainant that he will wait for the day of 5th August 1997 in case the complainant and others are able to get the Court orders. In fact he had kept the labourers ready for removing encroachment, in case the stay was not brought. The further cross-examination of the complainant shows clear admission that it was true that 20 labourers were sitting there since morning of 5th August 1997. He admitted that accused did not remove their shops to honour their words till 5.00 p.m. He further admitted that it was true that the accused had told them that they would be required to pay labour charges. His evidence is that as the demand for labour charges was made without removing of the shops, hence he felt annoyed and because of that he lodged the report.

In the further cross-examination the complainant in one breath admitted that he paid the amount of Rs.500/- towards the labour charges. Then he again retracted to claim that he has not paid Rs.500/- towards labour charges. In the cross-examination, the complainant admitted that accused had made statement regarding labour charges even before PW-4 P.I. Ambadas Savai.

14. If the Judgment of the trial Court is perused, it appears to have ignored all this evidence by observing [in Para 10 I) (b)] that no doubt complainant had stated that he paid the amount of Rs.500/- as the labour charges but in the next breath he corrected himself while stating that the said amount was not for the labour charges. The trial Court then reasoned out that in the light of this answer recorded by complainant, it cannot be assumed that he had stated two probable parallel stories. The trial Court, however, further observed in Para 12 E of the

Judgment that the accused was working as Village Development Officer and in this back ground it is quite possible that Complainant deposed in such manner so that his father Baburao can retain the possession of the premises and to exonerate the accused, the complainant agreed to support the defence. Trial Court observed that in view of such possibility the complainant appears to have led the evidence in such a manner on both counts. It still went on to observe that it cannot be concluded that two equal parallel stories or versions had been put up by the complainant. I am unable to agree with the trial Court. The same Court appears to have observed in its Judgment (probably on the basis of submissions) that it does not appear that after 5th August 1997 the Gram Panchayat acted upon the notice dated 25th July 1997 to remove those shops "barring that of Baburao Shirsat". Thus, what appears is that the shop of father of the complainant was indeed removed. If that is so, it was unlikely that the

complainant would have given admissions in favour of the accused just to help the accused getting exonerated. The act of accused in not asking other shopkeepers to pay labour charges cannot be faulted as, when for part of the shopkeepers if status-quo was ordered and action was dropped, accused could not have asked those others to pay.

15. In the present matter, apart from the admissions given by the complainant, there is indeed further evidence which supports the defence that the accused did indeed claim payment of the expenditures of labour. No doubt, if the complainant had brought stay order, it would be a matter of consideration whether or not claiming labour charges was justified. However even if the accused felt that in the situation the complainant and the other three plaintiffs were liable for costs, those expenses demanded cannot be straightway branded as illegal gratification. In the cross-examination of PW-2, Panch Baban Galdhar

also the accused had put-up the defence that the complainant had on his own offered the money to the accused as labour charges. The witness denied the suggestion. The witness further denied the suggestion that before accused could prepare receipt, the police trapped him. However, He accepted that last receipt in the receipt book was dated 6th August 1998. The evidence of PW-1, PW-2 and PW-4 read with trap Panchnama Exhibit 15 shows that at the house of accused he did have arrangements of an office where the account registers and cash-book etc. were also there. Thus, only because the complainant and Panch had followed the accused home, by that itself one cannot assume that the accused was not doing official work from home. PW-2 Baban admitted in the cross-examination that statement of the accused was recorded and in that he did tell that the amount was towards the charges of those labourers. Now, the P.I. PW-4 Ambadas Savai has kept back the first response of the accused

regarding which the statement had been recorded. State has given no reason why the said statement was kept back. In the cross-examination PW-4 P.I. Ambadas also admitted that the accused had put his say on his own handwriting. He admitted that it was not with the record. PW-4 Ambadas admitted that he had not recorded statement of Clerk Pokle. PW-4 Ambadas denied suggestions as to what was mentioned by the accused in the statement. Such denials would have to be ignored when this investigating officer has kept back the statement he admittedly received from the accused. A fair investigation officer would have ascertained facts from Clerk Pokle to see if he had instructions to collect labour charges. There was no pre-trap verification of demand and trap was laid on the say of an encroacher who had already taken advantage of indulgence from accused who was otherwise un-accommodative and not ready to listen to the Sarpanch also. Complainant clearly had an axe to grind and wanted to protect encroachment.

16. Looking to the above evidence, there is room to doubt the claim of the complainant that the amount demanded was towards the bribe. Complainant was also agitated due to insistence of the accused for labour charges. He brought about the prosecution against the accused on the basis of evidence which is seriously doubtful.

17. I have gone through the various reasons recorded by the trial Court to discard the defence. I am unable to concur with the trial Court for reasons discussed above. The admissions given by the complainant in his cross-examination cannot be brushed aside on the reasoning as recorded by trial Court that the complainant had tried to give statement in favour of the accused with object of saving his encroachment. I do not find Complainant reliable witness.

18. For such reasons, the Appeal deserves to

be allowed. Hence, I pass following order:

O R D E R

(I) Criminal Appeal is allowed.

(II) The impugned Judgment of conviction and sentence as imposed by Special Judge, Aurangabad in Special Case No.5 of 1998 on 22nd November 2002 against the Appellant - accused is quashed and set aside.

(III) The Appellant - accused is acquitted of the charges punishable under Section 7 as well as 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988.

(IV) The bail bonds of the Appellant are cancelled.

(V) The order of the Special Judge,
Aurangabad, however regarding disposal of
the property is maintained.

[A.I.S. CHEEMA, J.]

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