

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.272 OF 2003

Vijay s/o Bhausahab Chavan,
Age-28 years, Occu:Govt. Service,
R/o-Phulambri, Tq-Phulambri,
Dist-Aurangabad.

...APPELLANT
(Ori. Accused)

VERSUS

The State of Maharashtra,
A.C.B. Aurangabad,
Through P.S. Kannad,
Dist-Aurangabad.

...RESPONDENT
(Ori. Complainant)

...
Mr. Govind Kulkarni Advocate h/f. Mr. Rajendra
S. Deshmukh Advocate for Appellant.
Mr. S.M. Ganachari, A.P.P. for Respondent.

...

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

DATE OF RESERVING JUDGMENT : 2ND APRIL, 2016

DATE OF PRONOUNCING JUDGMENT: 7TH APRIL, 2016

JUDGMENT :

1. The Appellant - original accused has been convicted on 15th March 2003 in Special Case No.21 of 1998, by the Special Judge, Aurangabad, for offence punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (the "Act" in brief) and sentenced to suffer rigorous imprisonment as well as fine as directed.

2. Facts relevant, are as follows:-

(A) Complainant Ramnath Lonkar (PW-2) on 2nd January 1998 filed brief complaint (Exhibit 20) with PW-4 Dy.S.P. Subhash Joshi alleging that he has taken on rent one Bigha land from one Janardan Gaike at Hatnur, Tq-Kannad for operating kiln. He wanted permission for the same and applied in the office of Tahsildar, Kannad in November 1997. As per rules, he deposited Rs.746/- in the bank by

challan. Thereafter he had gone to Tahsil Office to inquire regarding his permission and met Appellant - accused Vijay Chavan (hereafter referred as "accused") many times. Every time the accused did not give him the information and also did not give the permission. Complainant Ramnath Lonkar (hereafter referred as "complainant") made inquiries and reliably learnt that the accused does not do work of anybody without taking money. He claimed that he has no enmity with the accused or transaction of money and had no intention to give bribe to the accused and so action should be taken against the accused.

(B) PW-4 Subhash Joshi, Dy.S.P., Anti Corruption Bureau, Aurangabad on receipt of the complaint, called one Maruti Idhate and one Ahire to act as Panchas and appraised them of the complaint and gave them instructions as to what is to be done to verify the complaint. Regarding this Panchnama was drawn on 3rd January 1998 (Exhibit

22). On 3rd January 1998 raiding party went near the Tahsil and PW-1 complainant and Panch Idhate (PW-3) went inside the Tahsil Office and complainant talked with the accused in presence of the shadow Panch and at that time the accused demanded Rupees Hundred, to which complainant replied that he did not have and will have to bring the same. It was decided that complainant would come back on Monday with the money. The complainant (PW-2) and the shadow Panch (PW-3) then came back and appraised the details to PW-4 Joshi. Regarding this, another Panchnama (Exhibit 23) was prepared in the evening of 3rd January 1998. In view of the developments, the complainant and two Panchas were asked to come back to the A.C.B. Office on 5th January 1998. However, on that day the complainant claims that he was not well and reached in the A.C.B. Office only in the evening. The other Panch Ahire also did not come on the count of ill-health. Thus, it was decided to lay the trap on 6th January 1998.

(C) On 6th January 1998 another Panch Girnare was called and given details. The complainant attended A.C.B. Office with currency note of Rupees Hundred for the trap. Panch PW-3 Idhate was also present. Preliminaries regarding the trap were explained to the Panchas and the complainant. Demo regarding anthracene powder and how it reflects in ultraviolet light, was given. The number of the note was recorded and the same was kept in the pocket of the complainant. How the trap will be executed, was explained to the complainant, shadow Panch PW-3 Idhate as well as the other Panch. Completing the necessary procedures, Panchnama Exhibit 24 was prepared. The raiding party then again proceeded and came near the Tahsil Office of Kannad. While the other raiding party members waited in positions, the complainant and shadow Panch PW-3 Idhate went in the Tahsil. The complainant again inquired regarding his work and the accused asked for the

amount of Rupees Hundred. The same was paid by the complainant. The accused said that he will get the file of the complainant and went aside. The complainant said that he will drink water and come. Complainant went out and gave pre-determined signal, where-after the raiding party went inside the Tahsil Office. From the shadow Panch PW-3 Idhate, PW-4 Dy.S.P. Joshi verified who was the accused who had taken the money and the accused was called. The marked amount was recovered from the accused and his hands and shirt pocket had the signs of the anthracene powder, which was verified. The trap was successful and Panchnama Exhibit 25 was prepared and the accused was arrested in the same evening vide Panchnama Exhibit 26. PW-4 Dy.S.P. Joshi then filed F.I.R. Exhibit 29 with Kannad Police Station and Crime No.3001/98 was registered on 6th January 1998. After investigation, the charge-sheet came to be filed.

The Witnesses Examined

3. The Special Judge framed charge against the Appellant - accused under Section 7 and also under Section 13(2) read with 13(1)(d) of the Act. The accused pleaded not guilty and he was tried. The prosecution brought on record evidence of Collector Balasingh Chahal PW-1 regarding the sanction proposal he received and sanction he granted, vide Exhibit 18. Regarding the incident, the complainant deposed as PW-2 and the shadow Panch Maruti Idhate deposed as PW-3 and Dy.S.P. Joshi recorded his evidence as PW-4. The concerned documents have been proved.

Defence

4. The defence of the accused as appearing from the cross-examination of prosecution witnesses as well as his statement under Section 313 of the Code of Criminal Procedure, 1973 ("Cr.P.C." in brief) along with his written statement attached with the statement, shows that

when the complainant had filed the application, the Tahsildar had directed the complainant to deposit royalty for 500 brass, which was not liked by the complainant. The complainant made an application and another order was passed directing the complainant to deposit royalty for 100 brass. The complainant held anger regarding this against the accused. Thereafter the Tahsildar had directed that the complainant should deposit Rupees Five Hundred worth small savings and even for this the complainant felt that accused was responsible. The amount was again revised and it was directed that the complainant should spend Rupees Three Hundred towards small savings. The complainant deposited only Rupees Two Hundred towards small savings and was still to deposit Rupees Hundred, for which the complainant was asked to do the needful from time to time. Orders of Tahsildar were appraised to the complainant. On date of incident when complainant came, the accused claims that he asked complainant to bring Kisan Vikas Patra of Rupees Hundred and

complainant claimed that the same was not available in the post office and so saying complainant started giving Rupees Hundred to the accused. The accused told complainant that he should himself get the Kisan Vikas Patra. The complainant then forcibly put Rupees Hundred in the pocket of the accused, which accused removed and tried to give back. At such time the raiding party came in and caught the accused. The defence is that the accused did not demand or receive gratification amount and false case has been filed.

Arguments for Appellant-Accused

5. I have heard learned counsel for the Appellant - original accused and learned A.P.P. for the State. It is argued for the accused that the complaint filed by the complainant Exhibit 20, does not show that accused had demanded any money. It is stated that even when PW-2 and PW-3 went for verification and it is claimed that money was

demanded, there is no evidence as to for what purpose money was demanded. The revenue record of the application which the complainant had filed for permission of kiln, shows orders of Tahsildar of getting small savings investment done to the extent of Rupees Three Hundred and only Rupees Two Hundred had been invested. This can be seen from the record. The balance Rupees Hundred was sought to be got deposited by the accused and this has been branded as taking of bribe money. The learned counsel for the Appellant submitted that if the evidence of PW-2 and PW-3 is properly appreciated, it is clear that no offence was made out and the accused has been wrongly trapped. According to the learned counsel, the accused had rebutted the presumption under Section 20 of the Act, looking to the cross-examination of the shadow Panch and the record from the office of Tahsildar. The counsel relied on the case of **State of Punjab vs. Madan Mohan Lal Verma, reported in A.I.R. 2013 S.C. 3368**, to submit that mere receipt of the

amount is not sufficient to hold the accused guilty and when Section 20 of the Act is sought to be invoked, explanation of the accused needs to be considered.

Arguments for State

6. The learned A.P.P. submitted that in the trial Court no dispute regarding the validity of the sanction was raised and even now in this Appeal, dispute on that count is not being raised and thus the evidence of PW-1 Balsingh Chahal and the sanction order are not in dispute.

. The learned A.P.P. further submitted that the record shows that the accused was protracting giving of permission for kiln and the amount of Rupees Hundred was demanded, firstly on 3rd January 1998 when PW-2 and PW-3 went for verification and on the second occasion on 6th January 1998 when the trap was executed. According to the learned A.P.P., the defence that Rupees

Hundred was demanded for Kisan Vikas Patra was not proved. According to A.P.P., the complainant was in the business of brick kiln since before and he was familiar with the procedures. The learned A.P.P. submitted that the reasonings recorded by the trial Court are correct and need to be upheld and the Appeal should be dismissed.

7. I have gone through the record and the oral and documentary evidence relied. The case of **State of Punjab vs. Madan Mohan Lal Verma**, referred supra, needs to be kept in view before discussing the evidence. In that matter, the accused was convicted by the trial Court under Section 7 and 13(1)(d) read with Section 13(2) of the Act. In the appeal to the High Court, the accused came to be acquitted. The State carried appeal further to the Hon'ble Supreme Court. The Hon'ble Supreme Court considered the facts of that matter as well as law. In Para 7 it was observed as under:-

"7. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act of 1988. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act 1988. 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. However, before the accused is called upon to explain how the amount in question was

found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the Court may look for independent corroboration before convicting the accused person."

Points for Consideration

8. Keeping in view the law and observations of the Hon'ble Supreme Court, this Court has to see whether the findings arrived at by the trial Court are maintainable. It is necessary to see if the evidence spells out demand and acceptance of amount as illegal gratification. It is also necessary to see if the explanation offered by the accused on the touchstone of preponderance of probability is acceptable. I first proceed to discuss the evidence which has been brought.

The Evidence

9. First reference needs to be made to the complaint Exhibit 20. Although the complainant claimed in the complaint filed with PW-4 Dy.S.P. Joshi that he had been consistently going to the accused to inquire regarding his work being done, the complainant did not dare to mention at that time that the accused had made any demand of money to him, leave aside demanding money as gratification. Complainant merely mentions that on inquiries he has come to know that the accused does not do any work except when he is bribed.

10. Then there is Panchnama Exhibit 22 regarding instructions given to the complainant and the Panchas and Panchnama Exhibit 23 regarding how PW-2 complainant and PW-3 Idhate went to verify the complaint. In this regard, the evidence of complainant PW-2 is that leaving back the other raiding party at some distance, on 3rd January 1998 he along with PW-3 Idhate went inside the

Tahsil Office, Kannad. Complainant claims that he met the accused and asked about the permission. At that time accused told him that there is no order form in his file and he should get the form. Complainant says that he went and got the form spending Rupees three in the shop outside and gave the form to the accused. Complainant claims that the accused then asked him "whether I had brought the money". Complainant deposed that he asked how much and the accused told Rupees Hundred. The evidence is that complainant then told the accused that he will get the money on Monday. Complainant claims that, on Monday he was not well and thus the trap was laid on 6th January 1998.

. Regarding the incident of 3rd January 1998 PW-3, the shadow Panch Idhate deposed that at the Tahsil office, he went with the complainant to the accused. Complainant asked regarding permission of his brick kiln and the accused asked him to bring order form. They went to one shop and

the complainant purchased form of Rupees three and handed it over to the accused. PW-3 Idhate has deposed that the accused then told complainant that "he will have to pay Rs.100/-" but Lonkar (Complainant) told that he had no money.

11. The evidence of PW-2, PW-3 as well as Dy.S.P. Joshi PW-4 shows that the trap was thereafter laid on 6th January 1998. Regarding the actual incident, the evidence of the complainant PW-2 is that on 6th January 1998 after rest of the raiding party waited outside, he and PW-3 Idhate went inside the Tahsil office at around 2.30 p.m. It is deposed that he met the accused and asked about his work. The accused said that file was sent for signature of the Saheb and asked him to wait. According to the evidence, the accused then asked complainant whether he had brought the money and complainant said - yes. PW-2 Complainant deposed that the accused then demanded money and he took out tainted note with his right

hand and held it to the accused, who took it with his left hand and kept it in the pocket of his shirt. The accused then told him that his work would be done. The complainant said that he will drink water and come, and went out and gave signal where-after the raid took place.

. In this regard the evidence of PW-3 Idhate regarding the actual incident of 6th January 1998 is that, after he and the complainant went on foot inside the Tahsil office, the complainant inquired from the accused regarding progress of his work and the accused asked him to wait for five minutes as the file was on the table of his Saheb. The shadow Panch PW-3 deposed that after five minutes the accused asked the complainant, whether he had brought the amount of Rupees Hundred to be "deposited". The Panch then corrected himself and said that accused asked complainant that he would have to "pay" Rupees Hundered, where-after the tainted amount was paid

by the complainant and the further raid took place. In the raid, the evidence shows that, the tainted currency of Rupees Hundred was seized from the accused.

Analysis

12. Question before me is, whether this evidence is sufficient and needs to be accepted to convict the accused or the accused has any reasonable explanation for the incident. In this regard, on record there is file of Tahsil Office relating to the application for permission of kiln which had been filed by the complainant, available. The documents are at Exhibit 21/1 to 21/2. The document at Exhibit 21/1 is the application for quarry with the object of brick kiln. The endorsements on the application show that there was written order passed earlier that on investment in small savings to the extent of Rupees Five Hundred, the permission may be given.

According to the statement of the accused under Section 313 of Cr.P.C. the complainant did not like such directions and quarrelled with the accused. Thereafter the Tahsildar passed another order that small savings of Rupees Three Hundred may be accepted. There is written order below Exhibit 21/1 that the complainant is informed that small savings of Rupees Three Hundred will have to be purchased. This order appears to be of 29th December 1997. In file of Tahsil Office, then there are photocopies of two Kisan Vikas Patra each of Rupees Hundred, which are dated 1st January 1998. There is endorsement on the quarry application Exhibit 21/1 in the date of 1st January 1998 that the applicant (i.e. complainant) had "deposited" Rupees Two Hundred for Kisan Vikas Patra. Looking to such orders and documents in the concerned file dated 1st January 1998, it is clear that Rupees Hundred towards small savings investments were still short. Although it appears to be inappropriate that the Government should

force people to make such investments, for executive acts which the Government is required to perform, but that is not an issue in this matter. Fact remains that on record, by orders such investments were being got made. The existence of such documentary record, maintained in ordinary course and its closeness to the time of the trap, gives sufficient room for doubt. It is too much of co-incidence that after an order of small savings certificates of Rupees Three Hundred, Rupees Two Hundred are deposited for Kisan Vikas Patra on 1st January 1998 and on 2nd January 1998 complainant goes to PW-4 making complaint and in the verification Panchnama Exhibit 23 and the raid Panchnama Exhibit 25, the amount happens to be exactly Rupees Hundred, which as per Exhibit 21/1 was still remaining to be deposited or Kisan Vikas Patra of the said amount was yet to be submitted.

13. Apart from the above documents from the revenue record, the accused gets support from the

facts that in Exhibit 20 there was no mention of any specific demand and the evidence of PW-2 and PW-3 does not show that on 3rd January 1998 or 6th January 1998 when the amount was allegedly asked, the complainant made any query to the accused in front of the shadow Panch as to for what purpose the amount is to be paid. The complainant PW-2 Ramnath Lonkar has made the complaint Exhibit 20 and was naturally interested in success of the trap. However, if the evidence of PW-3 Idhate is perused, in examination-in-chief itself it slipped out from his mouth (in para 5 of his evidence) that on 6th January 1998 when they had gone to the accused, the accused asked the complainant "whether he had brought the amount of Rs.100/- to be deposited?" No doubt the A.P.P. appears to have immediately sought from PW-3 and he corrected his version to say that the accused told complainant that "he would have to pay Rs.100/-". In the cross examination of this shadow Panch PW-3 Idhate, the cross-examiner brought on record his admission

with reference to incident dated 3rd January 1998 that "Chavan had told Lonkar that he will have to pay Rs.100/- towards "saving" and also told him to bring it on Monday" (Emphasis supplied). Not that this was some stray admission. In further Para 10 of the cross-examination, the shadow Panch admitted that "on the second occasion also Chavan (i.e. accused) told Lonkar (i.e. complainant) to pay the "balance amount" of Rs.100/- and he paid." (Emphasis supplied).

Preponderance of Probability

14. Evidence of prosecution witness relied on by the State in the back ground of the documents and entries in the file of Tahsildar Office, discussed above, shows that on the touchstone of preponderance of probability, the defence of the accused has substance that the amount sought was for the balance towards small savings which had been ordered in the file.

Judgment of Trial Court - Not Maintainable

15. After the above discussion, I proceed to consider the Judgment of the trial Court which has recorded conviction.

16. I find that the entire approach of the trial Court in dealing with the evidence was illegal. The trial Court discussed the above evidence. It was aware that the burden on the accused to displace the presumption under Section 20 of the Act was not onerous. Trial Court discussed the file of the Tahsildar Office to observe that in the file there was an order granting permission of the date of 3rd January 1998. The trial Court reasoned that if the accused had not demanded money, he could have handed over the permission to the complainant on 3rd January 1998 itself. Now there is no material available to know if the order prepared in the date of 3rd January 1998 was also signed on 3rd January 1998. The evidence of PW-2 and PW-3 both shows that on

6th January 1998 when they had approached the accused, he had told them that the file is with his Saheb and he will get it. Even when the tainted amount was paid to the accused, it is not that he took out the file from his drawer. He was proceeding to get the file when the signal was passed and raid took place. Thus, I do not find any substance in the reasonings recorded by the trial Court in Para 20 of its Judgment. In Para 21 and 22 of its Judgment, the trial Court dealt with the admissions given by the shadow Panch PW-3 in his cross-examination and branded PW-3 as playing double game by supporting the prosecution in examination in chief and then the accused in cross-examination. The trial Court observed that skill of prosecutor lies in re-examination which if not made, the Court could not ignore attitude of the witnesses. The trial Court referred to Judgment in the matter of **State of Himachal Pradesh vs. Lekhraj, reported in (2000) 1 Supreme Court Cases, 247** to observe that to arrive at

conclusion about truth the Court is required to adopt rational approach. The trial Court went on to observe in Para 22 of the Judgment that few stray facts or statements disclosed by the witness cannot be attached more importance. The trial Court then discussed the file of Tahsildar and went on to hold that the amount accepted was towards gratification. I find that the evidence of shadow Panch could not have been accepted in part and his admissions ignored in part. As mentioned above, in the examination in chief itself the shadow Panch had blurted out that the accused had asked the complainant if he had brought the amount of Rs.100/- "to be deposited". Of course, this was corrected in the subsequent sentence. However, in the cross-examination the witness did accept that the amount sought was towards savings and it was towards balance amount which had remained. If the trial Court felt that the witness perjured, it did not take any action under Section 344 of the Cr.P.C. If the trial Court felt that it was the

duty of the prosecutor to get things clarified in the re-examination, the trial Court also did not, on its own, in order to arrive at truth put any questions to the witness, which it was competent to do under the Indian Evidence Act as per Section 165. The trial Court forgot that if the responsibility is of the A.P.P., the trial Court itself was also not a silent spectator, only to speak at the time of Judgment. The admissions recorded in cross-examination could not have been simply ignored by blaming the prosecutor and itself remaining silent at the time of recording evidence.

17. Taking over all view of the evidence and keeping in view the original file from the record of Tahsildar, the orders passed therein and the documents in the file as well as the oral and documentary evidence in the trial, I find that the conclusions arrived at by the trial Court to convict the accused cannot be maintained. The

approach regarding appreciation of evidence was wrong. While invoking provisions of Section 20 of the Act, the trial Court did not properly considered the explanation offered by the accused which was acceptable on the touchstone of preponderance of probability. It has to be held that there is room for reasonable doubt. The amount of Rs.100/- accepted by the accused exactly matched with the requirement which had remained in the concerned file for permission and keeping in view the timing of the orders as well as the incident of trap, there is substance in the defence. It is probable that the amount was received in compliance of requirements in the file. It is not proved beyond reasonable doubt that the amount was accepted as gratification.

18. For above reasons, I pass following order:-

O R D E R

(I) Criminal Appeal is allowed.

(II) The impugned Judgment and order of conviction and sentence imposed, in Special Case No.21 of 1998 dated 15th March 2003 passed by the Special Judge, Aurangabad, is quashed and set aside.

(III) Giving benefit of doubt, the Appellant-accused is acquitted of the offence punishable under Section 7 and Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

(IV) Fine if paid, be refunded to the Appellant.

(V) The directions of the trial Court in Para (4) of the operative part of the impugned Judgment regarding return of the

amount of Rs.100/- and disposal of shirt of
the accused, are maintained.

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

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