

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 308 OF 1997

Chandrakant Hanumantrao Sugare	)	
Age: 52 years, R/o. Sushil Nagar,	)	
Vijapur Road, Solapur.	)..	Appellant/Orig. Accused.
vs.		
The State of Maharashtra	...	Respondent

Mr. Ujwal R.Agandsurve, Advocate for the appellant.
Ms. A.A.Mane, APP, for the State.

CORAM: SMT. SADHANA S.JADHAV, J.
DATE : 9th February, 2016.

ORAL JUDGMENT :

1. Heard. The appellant herein is convicted for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and is sentenced to suffer rigorous imprisonment for nine months and fine of Rs.750/- in default, to suffer rigorous imprisonment for three months. The appellant is also convicted for the offence punishable under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and is sentenced to suffer rigorous imprisonment for one year and fine of Rs.1,000/-, in default S.I. for six months by the Special Judge, Solapur in Special Case No.18 of 1993 vide judgment and order dated 30.4.1997.

Hence, this appeal.

2. The appellant herein was working in the office of Panchayat Samiti, Solapur in the cadre of Mistry Grade I. It was his duty to prepare the bills of the agencies to whom the work was allotted by the Panchayat Samiti. On 12.8.1993, one Sanjay Mule approached the Office of the Anti-Corruption Bureau (ACB), Solapur, lodged a report alleging therein that he was allotted the work of repairing hand-pumps in the villages. He was given contract of repairing hand-pumps at the rate of Rs.25/- each. He had received the bills for the work which he had completed for the period April to June, 1993. He was to receive the bill for the month of July, 1993. In fact, since 1.8.1993, the contract was withdrawn from the complainant. According to him, he had been to the office of the Panchayat Samiti on 11.8.1993 and had approached the appellant and requested him to draw the bill for the month of July, 1993. It was alleged that the appellant had informed him that unless he was given some gratification, the bill would not be drawn. That the appellant had demanded Rs.100/-. The appellant had asked him to submit a list of the particulars of work done by him. After submission of the bill, the appellant had signed the bill and had sent it for approval to the office of the Block Development Officer. On 12.8.1993, he

was to receive the amount of the bill. According to him, there was a demand of Rs.100/- from the appellant which he was not willing to pay. Hence, he had approached the office of the Anti-Corruption Bureau.

3. The statement of the complainant Sanjay Mule (PW-4) is at Exhibit 28. Dy. S.P. Shri Chavan had taken cognizance of the complaint filed by Shri Sanjay Mule. He had called upon two public witnesses to act as panchas for the raid and the raid was arranged on 12.8.1993. On that day, the original complainant had received the amount of bill. Thereafter, the appellant had allegedly met the complainant in the building premises of the Panchayat Samiti. That he had demanded Rs.100/- from the complainant. However, he had told the complainant to wait at the tea stall of Swamy. Since there was rush on the said stall, they had gone to the tea stall of one Chandu. Thereafter, the accused-appellant had allegedly demanded the money which was handed over to him by the complainant. Soon thereafter, upon receiving the pre-determined signal, the members of the raiding party had accosted the accused-appellant. A panchnama was recorded of all the facts that had taken place in the course of the trap. It is the case of the prosecution that thereafter being accosted by Dy. S.P. and upon enquiry made by him, the accused was frightened. The Dy. S.P.

Chavan had made a specific query as to the purpose for which the amount was received and the accused had suddenly informed the Dy.S.P. that the complainant had assured him that soon after he received the bill, he would pay him Rs.100/- and that he had received the same. The accused had categorically informed the Investigating Officer that the complainant had told him that he would pay him Rs.100/- towards the bill. After the raid was successful, Dy.S.P.Chavan lodged the FIR against the accused. On the basis of the said report, Crime No.792 of 1993 was filed at Sadar Bazar Police Station, Solapur. On 3.12.1993, the Investigating agency received the sanction order for prosecuting the accused. After completion of investigation, charge-sheet was filed on 22.12.1993. The prosecution examined six witnesses to bring home the guilt of the accused.

4. PW-1 Dilip Gangawane was working as Horticulture Officer in the office of the Deputy Director of Horticulture, Solapur. On 12.8.1993, there was a requisition for sending PW-1 to the office of Anti-Corruption Bureau for acting as a panch to the raid. The complainant Sanjay Mule had narrated the complaint in the presence of PW-1 and had informed the panchas that accused had demanded Rs.100/- for preparing and sanctioning the bill. The complainant was specifically informed that he shall extend the

trap amount only upon being demanded by the accused. The pre-trap panchnama was recorded in the presence of PW-1.

5. PW-1 has deposed before the Court that on 12.8.1993, he was a member of the raiding party. That at about 11.30 a.m. they had stopped the jeep in front of Haribhai Devkran Prashala. They had then proceeded to the office of the Panchayat Samiti. He had acted as a shadow witness to the trap. That the members of the raiding party were standing at different places and had formed groups. They had been to the concerned Section. The complainant had received the amount of the bill. While they had descended the staircase, and went to the first floor, near the Bill Branch, they met the accused. The accused had enquired as to whether the complainant had received the bill. Upon receiving the answer in the affirmative, the accused had asked the complainant to pay him Rs.100/- as agreed and whether he needs to be reminded of giving it perpetually. The accused had suggested the complainant to go to the tea stall of Swamy and that he would reach there within a short time. They had been to the stall of Shri Swamy. However, there was rush. They had tea at the said stall. Thereafter, they had been to the stall of one Chandu. They had tea at the said stall. Thereafter they had been to the stall of one Chandu. They had

water at the said stall. Thereafter, the accused had told the complainant that he had done his work and therefore, the complainant could receive the amount of the bill and that he should pay Rs.100/- as agreed. The complainant had tendered the notes. The accused had accepted the same and kept the same in his left hand when he was accosted by the members of the raiding party. He has also deposed that the accused had informed the Dy.S.P. Chavan that he had accepted Rs.100/- from the complainant towards preparation of the bill. The accused was taken to the Tehsil Office. Thereafter, the post-trap panchnama was recorded.

It is elicited in the cross-examination that the accused had not accompanied them outside the office of the panchayat Samiti. That the members of the raiding party were also following them.

5. The learned counsel for the appellant, at this stage, has drawn attention of this Court to the post-trap panchnama. He has rightly submitted that PW-1 has not deposed before the Court that the accused had categorically stated before the Dy.S.P. that the complainant had assured him that he would pay him Rs.100/- towards the bill. It is pertinent to note that even in the deposition of PW-1, it has been categorically stated that the

accused had told the complainant that he had been reminding him on several occasion and whether he needs to be reminded once again, that he has to pay Rs.100/-. According to the learned counsel, the defence of the accused is that he had given hand loan to the complainant as the complainant had no money to travel. There is no question of reminding him on several occasions since according to the complainant, the demand was made for the first time on 11.8.1993 and the trap was laid on 12.8.1993. According to the learned counsel, the very contention of the witness that the accused had specifically stated about reminding would falsify the defence of the accused that the complainant had taken hand loan and was not returning the said amount. That it was natural upon the accused to demand money after the complainant had received the bill amount.

6. PW-2 Siddharam Choudhari was working as Section Engineer in the office of the Panchayat Samiti. He was supposed to supervise the construction work in the rural area assigned to the Grampanchayat. According to him, the accused was entrusted with the work of supplying material to the contractor and to prepare the bills and supervise the work. That the complainant and one Kadrame were the trysem contractors. PW-2 was confronted with the bill which was Exhibit 18 which was prepared in

the handwriting of the accused. The said list was submitted before the Block Development Officer and it was signed by him. The completion certificate was written by the accused.

It is elicited in the cross-examination that the repairs of the handpump was not the usual work of the accused. The preparation of bill is not the work of Mistry Grade I as per defined duties. It is also elicited that in fact the accused had prepared the bill and the same was handed over to PW-2. It was submitted to the Block Development Officer, but it was not passed since there was no classification of work done by each contractor and therefore PW-2 had asked the accused to prepare the relevant bill with separate list of each contractor. The accused had prepared the bill on 9.8.1993 and had handed over the same to PW-2. PW-2 had verified the same and had got it sanctioned from the B.D.O. The witness has further admitted that by an order dated 1.8.1993, the work orders to the complainant was terminated. The said order was sent by B.D.O. Mr. Bajarmath. The order was prepared in the handwriting of the accused. It was served upon the complainant and Kadrame defence witness on 2.8.1993. At that time, the brother of the complainant was present and they had threatened the accused that he would face dire consequences. PW-2

has further admitted that despite the fact that the work of preparation of bill is not assigned to the accused. He used to prepare the bills of the two contractors as additional work and as courtesy. It is also admitted in the cross-examination that from 9th August, the bill was pending with Accounts Branch, Mistry Grade II.

7. PW-3 Mohan Kawale was working as Cashier in the panchayat Samiti. He was assigned with the work of drawing the cheque as per the bills and to encash the same and to make payment as per the bills. The bill was submitted to PW-3 by the accused. The amount was drawn in consolidated cheque and was paid to the complainant on 12.8.1993.

8. The learned counsel for the appellant submits that the evidence on record would clearly indicate that the bills were not prepared on 9th August, 1993. According to the complainant, the gratification was demanded on 11th August, 1993 i.e. after preparation of bill.

9. PW-4 is the original complainant. He has deposed before the Court in consonance with the report which he had filed before the ACB. He

has categorically admitted in the cross-examination that his contract was terminated and the order of termination was served upon him and Kadarme by the accused. The learned counsel submits that the complainant had falsely implicated the accused due to two reasons. Firstly, that the complainant was annoyed with the accused since the termination of the work contract and secondly, because he did not wish to return the hand loan which he had obtained from the accused.

10. PW-5 Bhaurao Chavan is the first informant and the Investigating Officer. It is further submitted that the Investigating Officer has not stated before the Court about the explanation offered by the accused at the time of raid. That in fact even according to the accused, the complainant had voluntarily agreed to pay him Rs.100/-. He has admitted in the cross-examination that no time was fixed for meeting the accused by the complainant. The witness has admitted several lapses in recording the panchanama as the panchnama was not a complete narration of the events that had taken place during the raid. The accused has examined defence witness Shri Basavraj Kadrame. He has deposed before the Court that he was also given the work of repairing handpump along with the original complainant. That they used to submit report to the accused after

completion of work. That they used to receive bill of particular month around 15th or 16th of next month. The financial condition of the complainant as well as the defence witness was poor. That they used to borrow money either from the mechanics or the accused for visiting the villages and used to repay the same after the bill is received. He had received the payment for the work or four months. That the accused never obstructed and demanded money for preparation of bill. That in the month of July, he had borrowed Rs.50/- from the accused for visiting the village Valsang and at that time the complainant had borrowed Rs.100/- from the accused and that there was a perfect understanding that the amount would be returned after the bills were paid. That after termination of the contract, there was a quarrel between the brother of the complainant and the accused. He had tried to pacify them by saying that the work order was terminated by the Block Development Officer and that they should not blame the accused for the same. He has also admitted in the cross examination that he had borrowed money from the accused on 2 – 3 occasions.

11. The defence of the accused is that the complainant had accepted the hand loan of Rs.100/-. That the accused had reminded him on several occasions to repay hand loan. However, the complainant had assured that the amount would be repaid after receiving the bill for the

month of July 1993. It is also a matter of record that the bills of the previous months were received on or before 15th of the next month. In the present case, the contract was terminated on 2.8.1993. According to the complainant, the demand was made on 11.8.1993. He had approached the office of ACB on 12.8.1993. The raid was conducted on the same day. The complainant had received the amount on 12th itself and that the accused had demanded the amount after the bill was encashed. In the complaint, the complainant had not stated that the bill was ready and in fact the demand of illegal gratification was made by the accused for preparing the bill for the month of July, 1993. In fact, the bill was already prepared and on the day of the raid, he had received the amount. That it is the defence of the accused that Rs.100/- was accepted by him as a refund of the hand-loan.

12. The accused has rebutted the presumption drawn under Section 20 of P.C. Act. The accused has put forth cogent and convincing evidence to establish the preponderance of probabilities in which he was falsely implicated. Hence he deserves to be acquitted.

13. In view of this, for the reasons stated hereinabove, the following order is passed :-

ORDER

(i) The appeal is allowed.

- (ii) The Judgment and order dated 30th April, 1997 passed by the Special Judge, Solapur, is hereby quashed and set aside.
 - (iii) The appellant is acquitted of all the charges levelled against him.
 - (iv) Bail bonds stand cancelled.
 - (v) Fine, if paid, be refunded to the appellant.
- Appeal is allowed and disposed of.

(SMT.SADHANA S.JADHAV, J.)