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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 243 OF 1998

PURUSHOTTAM RAGHUNATH KULKARNI **..Appellant.**
(Original Accused)

Vs.

STATE OF MAHARASHTRA
(Anti-Corruption Bureau, Solaput) ..**Respondent**.

Mr. S.V. Kotwal for the Appellant.
Ms. Anamika Malhotra, APP for State.

CORAM: A.S. GADKARI, J.
Reserved On: 22nd June 2016.
Pronounced On: 2nd September 2016.

JUDGMENT:

1 The appellant is convicted for the offence punishable under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and is sentenced to suffer rigorous imprisonment for one and half year and to pay a fine of Rs.1500/-, in default of payment of fine to further suffer rigorous imprisonment for nine months and under Section 7 of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.750/-, in default of payment of fine to further suffer rigorous imprisonment for six months by the learned Special Judge, Solapur in Sessions Case No. 6 of 1993 by its Judgment and Order dated 17th December 1997. It is directed that the substantive sentences to run concurrently. The said Judgment and Order dated 17.12.1997 passed by the learned Special Judge is impugned herein by way of the present appeal.

2 The facts which are relevant to decide the present appeal and are enumerated from the record can briefly be stated as under:

(i) It is the prosecution case that, the complainant-Mr. Shursen Chandram Sushaladi (PW-3) was working as a Mistry Grade-II at the Office of Deputy Engineer, Minor Irrigation, Sub-Division, South Solapur. That in the year 1990 the complainant had reached the stage of efficiency bar and further increment was not to be released until the orders were passed by his superiors to allow him to cross the efficiency bar. In this connection, the service book of the complainant was sent to the Executive Engineer, Minor Irrigation Division No.1, Zilla Parishad, Solapur. At that relevant time, the appellant was working as Senior Clerk/Assistant in the Establishment Branch of the office of Executive Engineer and used to deal with the work of sending all such files to the Executive Engineer for passing the orders.

(ii) That in the month of October 1992, the complainant met the appellant at the Division Office and requested him to issue the increment order. However, the appellant told the complainant that he would issue the order, provided the complainant pay Rs.350/- for the same. Accordingly, the complainant paid Rs.350/- to the appellant. Despite the same, the increment was not received, therefore, the complainant went to the office of the appellant on 14.12.1992 and told him that the increment was not received and requested to issue the same early. That the appellant asked the complainant to accompany him and lead him to a Hotel opposite to the Zilla Parishad and demanded Rs.1000/- from the complainant and asked him to pay by tomorrow evening and he would issue the orders on Monday.

(iii) As the complainant was not willing to pay the said amount to the appellant, he decided to file a complaint with the Anti-Corruption Office, for taking legal action against the appellant. That on the next day i.e. 15.12.1992 the complainant went to the Office of the Anti-Corruption, Solapur and contacted P.I. Shri Yunnus I. Shaikh (PW-7) and narrated the incident to him. Shri Shaikh recorded the complaint as per the version of complainant, which is at Exhibit 26. Thereafter P.I. Shaikh decided to lay a trap on the same day. P.I. Shri Shaikh issued request letter to Executive Engineer, Public Works Department, Solapur to send two clerks to ACB office for confidential work. In response to the said letter, panch witnesses namely Mr. Nimbalkar and Mr. Perla appeared at ACB Office at about 2.00 p.m.

(iv) P.I. Shri Yunnus Shaikh thereafter completed necessary legal formalities of preparation of pre-trap panchanama. The complainant produced 10 Indian currency notes of Rs.100/-each totaling to Rs.1000/-. The said pre-trap pachanama is at Exhibit-18. The complainant thereafter along with panch-witness namely Shri Vitthal Nimbalkar (PW-2) went to the office of the appellant. The appellant told the complainant and panch-witness to come to "Peoples Hotel" in front of Zilla Parishad Office. The complainant accompanied appellant and panch-witness. After the appellant demanded amount from the complainant, the complainant paid to him the amount in presence of panch-witness (PW-2). At about 3.50 p.m., the complainant, panch-witness (PW-2) and the appellant were coming outside and when they were in the gate of the Hotel, the complainant gave a pre-arranged signal. The raiding party thereafter accosted the appellant. The search of the appellant was taken. The traces of anthracene powder were found on the right hand finger and palms of the appellant. The tainted currency notes were found in the left side shirt pocket of the appellant. The said currency notes were also having traces of anthracene powder. The appellant was provided with substitute shirt and the shirt which was on the person of the appellant was taken into custody. A detailed panchanama of all the events was recorded (post-trap panchanama) which is at Exhibit 21.

(v) P.I. Shri Shaikh (PW-7) thereafter lodged a complaint with Sadar Bazar Police Station, Solapur which is at Exhibit-50. On the basis of the said complaint, CR No.969 of 1992 was registered at Sadar Bazar Police Station. The investigation of the said crime was entrusted to P.I. Shri Yunnus Shaikh (PW-7). During the course of investigation, P.I. Shaikh (PW-7) recorded the statements of various witnesses. After completion of investigation, he sent papers to the higher authorities of Anti-Corruption Bureau, Pune for obtaining sanction from the competent authority. On 17.4.1993, P.I. Shaikh received sanction Order from DGP/SP/SCV Pune. The Investigating Officer (PW-7) thereafter filed a charge-sheet on 25.5.1993 before the Special Court (ACB), Solapur. The said charge-sheet is at Exhibit 53.

(vi) The learned Special Judge framed charge below Exhibit-2 against the appellant for the offence punishable under Section 13(2) read with 13(1)(d) and 7 of the Prevention of Corruption Act, 1988. The appellant denied the said charges, pleaded not guilty and claimed to be tried. The defence of the appellant was of total denial. It was the specific defence of the appellant that the appellant had no role to play in the matter of passing an Order regarding crossing of efficiency bar. That the orders as regards crossing of efficiency bar of certain members of the staff were issued by the Executive Engineer. However, the order of the complainant Shursen Sushaladi (PW-3) was not issued because his record was not good. That despite the said fact, the complainant was having a feeling that because of the appellant, the order was not issued and on account of the said grievance and wrong impression gathered by the complainant, he filed the present false complaint against him with the Anti-Corruption Bureau. It is the further specific defence of the appellant that, to trap the appellant in the said design, the complainant requested the appellant to come to the Peoples Hotel and thereafter forcibly thrusted tainted currency notes into his shirt pocket. That the appellant never demanded and accepted the tainted currency notes from the complainant.

(vii) The prosecution in support of its case examined in all seven witnesses. The learned Special Judge of the Trial Court after recording the evidence of the prosecution witnesses and after hearing the parties to the said case, was pleased to convict and sentence the appellant by its Judgment and Order dated 17.12.1997 as stated earlier.

3 Heard Mr. S.V. Kotwal, the learned counsel for the appellant and Mrs. Anamika Malhotra, the learned APP for the State. I have also perused the entire record pertaining to the present case.

4 The learned counsel for the appellant submitted that since inception it is the specific defence of the appellant that he never made any demand of the alleged bribe amount from the complainant and as a matter of fact, the said alleged demand was never verified by the Investigating Officer. He submitted that the appellant was not authority to pass any orders for and in favour of the complainant (PW-3). That no tracess of anthracene power were found on the palms of the appellant. That the stitches on left side pocket of the shirt of the appellant were found loosened which denotes that the force was applied by the complainant while thrusting currency notes in his pocket. He further submitted that though the currency notes were alleged to have been with one fold as per pre-trap panchanama however same were found with multiple folds at the time of recording substantive evidence. That the envelope containing tainted currency notes were with the Investigating Officer for a considerable period and therefore the possibility of tampering with the said piece of evidence by the prosecution cannot be ruled out. He therefore submitted that after taking into consideration the entire evidence on record, it is apparent that in the present case, the alleged tainted currency notes were foisted and/or forcibly thrusted in the left hand side shirt pocket of the appellant and therefore prayed that the present appeal may be allowed and the appellant may be acquitted from charges levelled against him.

The learned APP per contra opposed the present appeal and submitted that the demand though not earlier verified by the Anti-Corruption Bureau, an independent panch-witness PW-2 has deposed the fact about demand of money in the office before going to the Hotel. She submitted that there is presumption under Section 20 of the Prevention of Corruption Act, which the appellant has failed to rebut. She further submitted that as per prosecution case, it is the appellant who was having duty to place the files of the staff members before the Executive Engineer along with comments and for placing file before the concerned authority, the appellant had demanded the said amount. She submitted that the evidence adduced by the prosecution is reliable and trustworthy. She therefore prayed that the conviction and sentence of the appellant may be maintained and the appeal may be dismissed.

5 As stated above, the prosecution in support of its case has examined in all seven witnesses.

(i) PW-1 Shri Sanjay Bhatiya was the then Chief Executive

Officer, Zilla Parishad, Solapur and was competent to accord the sanction under Section 19 of the Prevention of Corruption Act to prosecute the appellant. PW-1 has deposed that the appellant was working as a Senior Assistant, Minor Irrigation, Local Section, Zilla Parishad, Solapur. That after receipt of a letter from SP/ACB, Pune and after perusing the entire file of the appellant, he passed the sanction order which is at Exhibit 11. It appears that the evidence of this witness is formal in nature and restricted to the point of according sanction as contemplated under Section 19 of Prevention of Corruption Act to prosecute the appellant.

(ii) PW-2 Vithal Nimbalkar is the panch-witness to the alleged demand and trap led down by the Anti-Corruption Bureau on the complaint of PW-3. PW-2 in his deposition has stated that he was working in the Office of the Executive Engineer, PWD, Solapur. That he and panch-witness Mr. Perla were directed by the Superior Officers to attend the Office of the Anti-Corruption Bureau on that day. That after attending the office of the Anti-Corruption Bureau, P.I. Shri Shaikh (PW-7) introduced them with the complainant, who was present there. The said person was Shri Shursen Sushaladi (PW-3). That after completing necessary formalities the pre-trap panchanama (Exhibit-18) was prepared. PW-2 was directed to accompany the complainant. That PW-2 Shri Nimbalkar along with P.I. Shri Shaikh (PW-7), complainant (PW-3) and other members of the raiding party went to the office of Zilla Parishad. PW-2 along with complainant (PW-3) entered into the building and went to the first floor. The complainant met the appellant and requested to issue increment order. The appellant asked the complainant whether he had brought Rs.1000/- as suggested by the appellant yesterday, to which the complainant replied in affirmative. Then appellant directed the complainant to accompany him and then they went to the ground floor at 'Peoples Hotel'. They sat on the bench on table No.2. The complainant placed order for two cups of Coffee and all three shared it. The complainant thereafter requested the appellant to issue increment Order as early as possible. The appellant told that he would issue the said Order by Sunday and asked the complainant to pay the money. The complainant thereafter removed marked currency notes from his left pocket and handed it over to the appellant. The appellant accepted the same by his right hand and kept it in his left side bush-shirt pocket. Then all the three got up. The complainant went ahead to the gate of the Hotel and gave pre-arranged signal to the raiding party by removing gamja from left hand pocket. The raiding party thereafter accosted the appellant. The marked currency notes were found in the left side pocket of the appellant. Post trap panchanama which is at Exhibit 21 is accordingly prepared at the spot.

In the detailed cross-examination of this witness, PW-2 has admitted that before giving or putting the marked currency notes into the shirt pocket of the complainant, the Head Constable had folded it only once i.e. the said currency notes were having one fold only before putting the same in the shirt pocket of the complainant. That after accosting the appellant, the currency notes were kept in paper pocket and it was sealed. He has further admitted that from the table on which they were having Coffee, they could saw the raiding party standing outside. That when the raiding party arrived in the hotel there was crowd of about 50 to 60 persons. That it was panch No.2 who has removed the currency notes from the pocket of the appellant and counted the same. He has denied the suggestion that at the office itself the appellant had told the complainant that his record was not proper and his work would not be done. He has further denied the suggestion that the complainant came from the back side of the appellant and inserted something into the shirt pocket of the appellant. He has denied the suggestion that P.I. Shaikh held the appellant when his palm was in the bush-shirt pocket.

(iii) PW-3 Shursen Sushaladi is the complainant. PW-3 in his evidence has deposed the facts from the demand till completion of raid as has been mentioned in forgoing paragraph Nos.2(i) to 2(iv) and for the sake of brevity the repetition of the same is avoided.

PW-3 was cross-examined at length by the appellant. In his cross-examination, PW-3 has admitted that the Executive Engineer was the competent authority to pass the necessary orders and not the appellant. He did not file the complaint for the earlier demand of Rs.350/- with any authority. He further admitted that he did not feel it necessary to straightway contact the Executive Engineer in connection with his work instead of appellant. He has further admitted that the Head Constable folded the marked notes only once. That at present i.e. in the Court there are two folds to the currency notes. That the order to cross the efficiency bar in his case was passed in March 1993 i.e. after the lodgment of the present crime. PW-3 has denied the suggestion that in order to pressurize his superiors and the concerned persons he filed the present false complaint. He has further denied the suggestion that at the Hotel also the appellant told him that his work would not be done and he had left after taking coffee. He has also denied the suggestion that he foisted/thrusted the tainted currency notes in the shirt pocket of the appellant.

(iv) PW-4 is Baswantrao P. Patil was the working as a Office Superintendent in the office of Minor Irrigation, Division No.1, Solapur.

He has deposed that the appellant was subordinate to him. That the appellant was working in the establishment branch as a senior assistant and he used to look after the work of leave applications, E.B. Cross, G.P.F. Advances, Confidential Reports, meetings and other matters. That on 15.12.1992 at about 3.30 p.m. he saw the complainant and one unknown person to his office talking with the appellant. That the complainant and the unknown person and the appellant went to the ground floor. That the appellant was burdened with various types of work.

In the cross-examination, this witness has admitted that the appellant was supposed to feed necessary information to the Executive Engineer before different meetings of committees and the appellant was burdened with various types of work. That this witness used to see the note put up by the appellant and verify it, whether it was correct or not before sending it to the superior officer. That he used to send the said notes to the Executive Engineer for sanction and the Executive Engineer used to pass orders thereon. The said witness has further admitted that the note put up by the appellant was not binding on the Executive Engineer. He has further admitted that the substitute bush-shirt was provided to the appellant on 15.12.1992 when he was brought to his office.

(v) PW-5 is Shivaji Shankar Khulsure. He was the subordinate employee of the appellant. PW-6 is Mallinath V. Timake was conducting the Hotel known as “Peoples Restaurant” where the raid was conducted by the police. It appears that the evidence of these two witnesses is formal in nature.

(vi) PW-7 is Mr. Yunnus Ismail Shaikh, the Investigating Officer of the present crime. PW-7 was then attached as P.I./ACB, Solapur. In his examination-in-chief, he has narrated in detailed the facts pertaining to the present crime from the receipt of complaint till completion of the raid and submitting final report before the Special Court. The said facts are briefly mentioned in paragraph No.2 (iv) and (v) herein above and for the sake of brevity its repetition is hereby avoided.

In the cross-examination of this witness, certain omissions which were brought on record in the cross-examination of PW-2 panch-witness and PW-3 complainant, have been proved. It further appears that there is material inconsistency in the evidence of PW Nos.2 and 3 and the present witness PW-7 as regards to the substitute shirt provided to the appellant after conducting the raid. In the cross-examination PW-7 has admitted that the currency notes were not folded at the time of pre-trap panchanama in the manner in which they are now before the Court. He has further admitted that he cannot state as to how they were folded in the manner as they appear in the Court. That while keeping the currency notes in the envelope they were not folded and pinned. He has further admitted that the stitching at the left hand side of the pocket has become loose. He has further admitted that, he did not feel that he should verify the allegations as regards the demand made by the accused/appellant.

6 Thus, the evidence available on record reveals that the appellant was not having any authority to pass any orders for and in favour of the complainant (PW-3). Shri Baswantrao P. Patil (PW-4), the superintendent in the office of Minor Irrigation, Division No.1, Solapur has clearly deposed that though the appellant was having the work of preparing notes to be submitted to the Executive Engineer, the said witness i.e. PW-4 used to see the note put up by the appellant and used to verify whether it was correct or not before sending it to the superior officer. PW-4 has admitted that he used to send the said notes to the Executive Engineer for sanction and the Executive Engineer used to pass orders thereon. He has further admitted that the note put up by the appellant was not binding on the Executive Engineer. The learned APP submitted that where the marked currency notes are recovered from the pocket of the shirt which the accused was wearing and not from the shirt lying elsewhere in the room it was for the accused to show how he came into possession of the notes. In this context it is to be noted here that since inception it is the specific defence of the appellant that though the complainant (PW-3) had approached him for his work for increment despite there being efficiency bar, the appellant had specifically told him that the said work cannot be done as the record of the complainant was not good. It is his further specific case that the complainant (PW-3) requested him to come for a tea/coffee and after having the said coffee when he was returning to his office, the complainant came from the back side and foisted/thrusted the currency notes in the left side pocket of his shirt and due to which the pocket of his shirt on its left side was loosened which denotes that force was applied by the complainant while thrusting currency notes in his shirt pocket. Section 20 of the Prevention of Corruption Act deals with the presumption in case of acceptance of bribe. The Investigating Officer (PW-7) in his cross-examination has admitted that though at the time of pre-trap panchanama, the tainted currency notes were given in possession of the complainant with one fold, however, in the Court at the time of recording substantive evidence they were having two folds. He further admitted that the currency notes were not folded at the time of pre-trap in the manner in which they are now in the Court. The Investigating Officer has admitted that at the time of keeping the currency notes in the envelope they were not folded and pinned. He has further admitted that the stitching at the left hand side of the pocket of the shirt of complainant had become loose. The Investigating Officer has given a startling admission that he did not feel that, he should verify the allegations as regards demands made by the accused/appellant. In other words, there is no verification effected by the Investigating Officer prior to laying down the trap.

7 Thus, the evidence on record gives rise to a strong suspicion about the fact that force was applied while keeping the alleged tainted currency notes in the pocket of the appellant. It clearly appears to me that the appellant is successful in rebutting the presumption as contemplated under Section 20 of the Prevention of Corruption Act. The cumulative effect of the aforesaid evidence on record and the deliberation leads me to draw the irresistible inferance and hold that the appellant is entitled for the benefit of doubt. Thus the appellant is given the benefit of doubt and acquitted from all the charges framed against him.

8 Hence, the following Order:

(i) Criminal Appeal is allowed;

(ii) The Judgment and Order dated 17th December 1997 passed in Sessions Case No. 6 of 1993 is hereby quashed and set aside and the appellant is acquitted from all charges framed against him by extending benefit of doubt;

(iii) Fine, if any, paid by the appellant be refunded to him after following due procedure.

(A.S. GADKARI,J.)