IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 276 OF 1996

Vithal Krishnat Birajdar
R/o Easake Galli, Akkalkot,
Dist. Solapur. .....Appellant

V/s.

The State of Maharashtra ....Respondent

Mr. Kartik Garg appointed Advocate for Appellant
Mrs. A. A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : MAY 3, 2016.

JUDGMENT:-

1) Appellant herein is convicted for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and is sentenced to suffer rigorous imprisonment for a period of 6 months and fine in the sum of Rs. 300/- in default to suffer rigorous imprisonment for two months. He is also convicted for offence punishable under Section 13 (2) of the Prevention of Corruption Act and sentenced to suffer rigorous imprisonment for the period of one year and to pay fine in the sum of Rs. 500/- in default to suffer rigorous imprisonment for the period of three months by Special Judge, Solapur, in

Special Case No. 15 of 1992 vide Judgment and Order dated 30/04/1996. Hence, this appeal.

2) Such of the facts necessary for the decision of this appeal are as follows.

(i) The Appellant herein was working as Junior Clerk in Tahsil Office at Madha. He was working with the branch dealing with tenancy, watan, ceiling, small saving and agricultural census.

(ii) One Shamma Shaikh was married into a family from village Akulgaon, Tal. Madha. According to her, agricultural land block no. 317, situated at Akulgaon was recorded in her name, however, in the other coloumn in 7/12 extract, the names of Maktum and Gidhya Wadar were shown as tenants. According to her, the said two persons were not residing in village Akulgaon and were not in possession of that land and therefore, their names ought not to be reflected in 7/12 extracts. The complainant therefore wanted to alienate land block no. 317 as there were disputes between her and the members of her matrimonial home.

(iii) It is the case of the prosecution that in the year 1990 Shamma Shaikh had filed an application before Tahsildar to delete the names of the tenants from the other rights coloumn in the 7/12 extract. The accused was in-charge of the said department and therefore, she had contacted the accused. In the year 1991, she had visited the Tahsil Office on more than 3 – 4 occasions and enquired about the application filed by her. The accused had demanded Rs. 1,000/- as illegal gratification to decide the application in her favour. According to her, she had paid Rs. 500/- on one occasion and Rs. 200/- on another occasion and yet her application was not decided in her favour and names of those two persons were not deleted from 7/12 extract.

(iv) It is also the case of the prosecution that in the last week of January 1992, the demand for Rs. 500/- was reiterated by the accused and he had asked her to pay the said amount on the weekly bazar day at Madha. The complainant had therefore approached the office of Anti Corruption Bureau. She had ventilated her grievance about the demand of bribe by filing a written application to Dy.S.P., A.C.B. Upon perusal of her application, Dy.S.P. of A.C.B. had formed an opinion that it would be necessary to arrange a trap and therefore, had requested the office of Assistant Commissioner, Sales Tax to send two clerks to act as Panchas at the time of raid. One of the Panch was a lady clerk. The Panchas were summoned to the office of A.C.B. and they were apprised of the procedures to be followed at the time of raid. The application and use of anthracene powder was explained to the Panchas and the complainant.

(v) The trap was scheduled to be conducted on 04/02/1992. The raiding party had reached Madha along with original complainant. The complainant and Panch witness no. 1 Mohini Jadhav had entere)d into the office of the accused. Accused was not present in the room. The complainant and the Panch witness awaited the arrival of the accused. Accused reached the office after about 15 minutes. The complainant had initiated the talk by asking the accused about the progress of her application. It is alleged that the accused had replied that he would decide the application within a week. He had demanded the gratification. Complainant had parted with the same in his favour. The complainant had given the pre arranged signal and then the raiding party had apprehended the accused. At this stage, it is pertinent to note that at the time of trap the accused was insisting upon conveying to the Dy.S.P. that the said amount was given to the accused towards savings and he was entrusted with the work of small savings.

(vi) After obtaining sanction for prosecution against the accused, chargesheet was filed on 18/07/1992. The case was registered as Special Case No. 15 of 1992. Prosecution had examined as many as 7 witnesses to bring home the guilt of the accused. Accused had examined two defence witnesses.

3) P.W. 1 Shivaji Bhosale was working as Awwal Karkun in Tahsil Office, Madha since 1990. He has deposed before the Court that the accused was entrusted with the work of files pertaining to the applications made to Tahsildar under various heads. He used to take action as per the orders passed by Tahsildar in enquiry held by him. The names of the tenants in record of rights could be deleted only upon an order passed by Tahsildar. It is also admitted that the accused used to assist Naib Tahsildar or Tahsildar in recording the evidence in enquiry proceedings. P.W. 1 has further deposed that on 04/02/1990, in the afternoon, two women were seen talking to the accused and after 10 minutes, the A.C.B. had apprehended the accused.

4) P.W. 2 Padmanath Joshi was officiating as residential Naib Tahsildar in Tahsil Office, Madha. He has deposed before the court that the accused was initially working in supply branch. He was then shifted to tenancy branch and was working as A.L.T. Clerk, watan, tenancy, ceiling, “Small savings” and agricultural census. P.W. 2 has deposed before the Court in respect of the

procedure to be followed for deleting the names of the tenants in the record of rights. According to him, he used to conduct enquiry and record statement in such matters. Accused used to record depositions and Tahsildar used to decide the cases. It was the duty of the accused to send orders to Tahsildar and orders to be executed by Talathi.

5) Upon being confronted with the application filed by Shamma Shaikh, it is admitted by P.W. 2 that the said application is addressed to Tahsildar. The said application was filed on 19/03/1990 and P.W. 2 had received the same on the same day. The said application was made to delete the names of the tenants in other rights coloumn of 7/12 extract. Notices were issued to all parties concerned and they were directed to appear before the Authority on 02/05/1990. Notice was scribed by the accused and it is at Exhibit 19. It is admitted that initially the said land was registered as 93/2. It was converted into a block and re-numbered as block no. 317.

6) It is admitted in the cross-examination that accused was assigned with the work of small savings. In the year 1991-1992, the Collector had kept the target of 1 Crore for small savings. It was the duty of the accused to give target to Talathi and Circle Inspector to obtain their monthly report and to

advise clients, visiting Tahsil Office to subscribe to small savings. The accused was not authorized to pass orders, either to delete the names of tenants from other rights coloumn of 7/12 extract or to ascertain the genuineness of the claimants shown in the coloumn of revenue records.

7) P.W. 3 Mohini Jadhav was working as Senior Sales Tax Officer, Solapur. On 03/02/1992, as per the summons of the A.C.B. and the communication of the Deputy Director, she had shown her willingness to act as Panch and had acted accordingly. She has deposed before the Court in respect of the proceedings prior to the raid. According to her, she had entered the office room of the accused along with the complainant. They had awaited the arrival of the accused. The complainant had pointed out to the accused and told her that he was the proposed accused. She has further deposed that the complainant had asked the accused as to whether her work was done. Initially he had assured that he would do the work within 8 days. He had further asked the complainant as to whether she had brought the money as suggested by him. Upon being answered in the affirmative, he had demanded the money. The complainant had parted with the money and had given pre-determined signal to the raiding party. According to P.W. 3, at the time of raid, the

accused was praying for sympathy to Dy.S.P., A.C.B. A Panchanama was recorded which is at Exhibit 45. In the cross-examination, witness has admitted that on the day of raid, i.e. 04/02/1992, the complainant was present in the office of A.C.B. before arrival of the witness. That there was no dialogue between the complainant and the witness on the way to the Tahsil Office. They required two hours to go to Madha.

8) P.W. 3 has further deposed that the complainant and the witness were at the table of the accused for a short while and at that time, he did not enquire about the identity of P.W. 3. A suggestion that the accused was falsely implicated was rejected.

9) P.W. 4 Amardeep Bhange was a licenced bond writer. He used to write applications of the litigants coming to Tahsil Office. Application of Mrs. Shamma Shaikh was scribed by P.W. 4.

10) P.W. 5 is the De-Facto complainant. She has deposed before the Court that the names of Gidya Wadar and Pamya Makdum were recorded as tenants in other rights coloumn in 7/12 extract of land block no. 317 admeasuring 3½ acres situated at Akulgaon. **The tenants were not alive**. She was intending to sell the land. The proposed purchasers of the land had requested her to get the

names of the two persons deleted from 7/12 extract as it would then fetch a clear title. She has deposed before the Court that in the year 1990, she filed an application before Tahsildar, Madha to delete the names of the tenants from the 7/12 extract. She had enquired with Tahsildar after two months of the filing of the application. Tahsildar had informed her that the said application was given to the accused who was working at Tahsil Office, Madha. She had then made enquiry with the accused. Application was marked as Exhibit 17. The said application was scribed by petition writer i.e. P.W. 4. In the course of enquiry with the accused, he had demanded Rs. 1000/- towards gratification. The demand was made after two years of the filing of the said application. According to her, she had made an arrangement to make the money available and then had paid Rs. 500/- on one occasion and Rs. 200/- on another occasion. The accused had recorded her statement and had obtained a thumb impression on her statement. The said statement was marked as Exhibit 28. On 02/03/1990, she had again been to the office of the accused and at that time, there was demand of Rs. 500/- and she was instructed to pay the said amount on the weekly bazar day. On the same day, she had approached office of A.C.B. and lodged the report. The contents of her statement before A.C.B.

are admitted and is marked as Exhibit 30. She was specifically instructed that she should not part with the money unless demanded.

11) In the cross-examination, she has admitted that her husband resides at Bombay and there is no relative from her husband's side. She wanted to sell the land to raise the funds for the marriage of her daughter, however, the same contention does not find place in Exhibit 28. She has denied to have stated before the A.C.B. that there were differences between herself and her in-laws and has feigned ignorance about the said contention in the complaint at Exhibit 30. She has also admitted that agreement of sale was entered into with two proposed purchasers. The copies of said agreement to sale were not produced before the A.C.B. According to her, she had visited Tahsil Office on 10 – 12 occasions and had enquired about the progress in her work. She has denied the suggestion that the accused had specifically informed her that he is not empowered to delete the names of the tenants. She has admitted that she has not stated in her complaint at Exhibit 30 that her statement was recorded by accused at Madha Tahsil. She also admits that she had not enquired with Tahsildar about the delay in deciding her application. It is also admitted that she was well aware that the tenants were not residing in the said village but

the Talathi made enquiry and submitted a report that both the tenants are not residing in the village. According to her, the name of the husband of her sister is Naziroddin who is also brother of her husband. She then further states that the name of her husband is also Naziroddin. She has further admitted that her husband has two brothers by name Naziroddin and Gani. She has denied the suggestion that the name of her husband is Pygambar and his two brothers are Naziroddin and Gani. She has feigned ignorance about the address of her husband at Mumbai or the nature of his work.

12) Later, she had succumbed to the cross-examination and had admitted that Pygambar was the name of her first husband and he had died and thereafter, she has performed marriage with Naziroddin who is the brother of Pygambar. Yet, she has denied the suggestion that Naziroddin is married to Jannatbi, her sister as well.

13) She admits that she had decided to sell her land to Ashok Shendge for a consideration of Rs. 15,000/-. Agreement for sale was also executed. The said transaction had taken place 2 – 4 years prior to the date of raid. She could not execute the sale deed because of names of tenants in the record of rights. Ultimately, she sold the land to Balasaheb Kale from village Nerle. P.W. 5 has

further stated that she had not filed any proceeding against anybody before the police or court. She did not know Rafik Mahiboob Shaikh and Gafoor Mahiboob Shaikh as they were not her relatives. The Court had asked her to identify one person in the court and she refused to identify him as her relative. When questioned the person before the Court disclosed his name as Suleman Chand Shaikh. She has denied the suggestion that Suleman Shaikh is the nephew of her alleged father-in-law Jainoddin. According to her, the name of her father-in-law is Shaikhlal whose brother was Mia Shaikh. She feigned ignorance as to whether Suleman Shaikh has filed a suit against her and others before Civil Judge at Madha. She has also feigned ignorance in respect of the address of her husband Naziroddin. According to her, land block no. 317 was not ancestral property, but she has purchased the same from Naziroddin Jainuddin Shaikh, who is the husband of her sister. She then admitted that she has filed a criminal case against Rafik Mahiboob Shaikh and Gafoor Mahiboob Shaikh as they had an evil eye upon her.

14) P.W. 6 Dharmesh Pamnani was officiating as Dy.S.P. A.C.B. on 03/02/1992. He has deposed before the Court in respect of the procedure adopted by him, upon receiving the complaint at Exhibit 30. As far as the

incident is concerned, he has deposed before the Court that upon being accosted at the time of raid, accused got frightened. He had filed F.I.R. on behalf of the State, after the trap was successful. The said complaint is at Exhibit 51.

15) In the cross-examination, he has categorically admitted that there is no station diary in the A.C.B. office. That the copies of the complaint lodged by De-Facto complainant are not sent to any office or court. He has further admitted that the draft of the sanction order was not sent along with the papers of investigation, but a proforma was sent.

16) P.W. 7 Dinesh Jain was officiating as the Collector of Solapur. He was authorized and competent to issue letters of appointment and remove the clerks in the Revenue Department working in Solapur District. He had taken over the charge of his office on 18/05/1992 and after taking over the charge, he had come across the papers in the present case pertaining to sanction for prosecution of the government servant. He has deposed before the Court that he had gone through the papers and after carefully studying the same, he was satisfied that there was a prima facie case against the accused and had therefore, accorded sanction for prosecution. The sanction letter is marked at

Exhibit 56.

17) In the cross-examination he has specifically admitted that a draft sanction was sent to him. He has deposed as follows:

> "*Draft sanction was sent to me. According to me, meaning of line No. 2 in para No. 2 page no. 2 of the sanction order is other than legal remuneration in capacity of public servant. According to me, the meaning of line No. 3 in the same paragraph is either for himself or for others. On going through the papers I reached to the conclusion that he received the illegal gratification either for himself or for the benefit of any other person.*"

18) Exhibit 56 is the sanction order. Sanction order is dated 27/05/1992.

19) D.W. 1 Naziroddin Shaikh was examined by the accused as defence witness. He has deposed before the court that he has two brothers by name Pygambar and Gani. Complainant Shamma is wfie of his brother Pygambar. She has two daughters namely Parween and Shabana. He has)denied to have married the complainant Shamma and has candidly deposed before the court that the complainant is not his wife. His brother Pygambar died in the year 1981. In the cross-examination also he has reiterated that the complainant is wife of Pygambar and she performed second marriage after the death of Pygambar. She resided at Bombay. He did not know any person by name

Naziroddin Shaikh. It is admitted that Naziroddin Shaikhlal Shaikh is known as Dastgir. He was residing in Solapur District and then he went to Bombay to work as driver.

20) D.W. 2 Balaji Patil has deposed before the court that the complainant was never married to Naziroddin. He was acquainted with Rafik Shaikh and Gaffar Shaikh who were working as coolies. D.W. 2 has the agricultural land adjacent to the land of the complainant. His brother has half share in the well situated in the complainant's land. He has sold the same. D.W. 2 has admitted that the wife of D.W. 1 i.e. Jannatbi was working as maid servant in his house. Jannatbi is sister of the complainant. She also claims to know the husband of the complainant.

21) Perused the evidence adduced by the prosecution. The prosecution witness no. 2 has specifically admitted that the accused was entrusted with 'Small Savings' scheme. The accused has not denied the acceptance of the amount. P.W. 2 has specifically admitted that accused was not entrusted with the duties of dealing with applications seeking deletion of names in the record of rights. Accused was to act upon the direction of Tahsildar. That the accused used to record depositions for the Tahsildar who used to decide the cases. In

the eventuality the tenant was found to be dead or not traceable, the Talathi used to submit a report and proceedings were held to be *Ex-Parte.* Accused used to send the orders to Talathi and Talathi used to execute the same. In the present, case, there is cogent and convincing evidence which clearly indicates that the tenants shown in 7/12 extracts of land block no. 317 were not the residents of the said village. Their whereabouts were not known and therefore, there was no question of demanding gratification for the same. Application filed by the complainant which is at Exhibit 17 was received by P.W. 2. The said application was addressed to Tahsildar. It is also admitted that notices were sent to the applicant i.e. Shamma Shaikh and the tenants, summoning them to appear before the Naib Tahsildar on 02/05/1990 for the purpose of enquiry. Accused was only a scribe of the said notice. The mutation entry in respect of block no. 317 was entered no. as 1714. Notice was issued to the applicant subsequently on 14/11/1990. The said notice is also scribed by the accused. The tenants were not traceable and therefore, their notices were served by affixing copy of the notice on the particular land and the Panchanama was recorded to that effect by Talathi and the Panchanama is at Exhibit 26. Talathi had submitted a report accordingly.

22) On 03/12/1990, Shamma Shaikh had appeared before P.W. 2 and her statement was recorded by P.W. 2 and was scribed by the accused. The thumb impression of Shamma Shaikh was also obtained on Exhibit 28. Accused was then directed to obtain further orders from Tahsildar.

23) The cross-examination of P.W. 2 is in the form of an admission that in the year 1991-1992, the Collector had given a target of Rs. 1 Crore for small savings and it was the duty of the accused to give target to Tahsildar and Circle Inspector to obtain their monthly reports and advise the clients who visit Tahsil Office to subscribe to small savings. 31st March was the deadline. The accused was not authorized to pass orders to delete the name of the tenants from other right's coloumn of 7/12 extract.

24) Section 20 of the Prevention of Corruption Act contemplates as follows:

> *"**20. Presumption where public servant accepts gratification other than legal renumeration –** (1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal renumeration) or any valuable thing from any person, it shall be*

presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

3) Notwithstanding anything contained in sub-sections (1) and (2), the Court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn".

25) Sub Section 2 of Section 20 of Prevention of Corruption Act contemplates that the said presumption shall be drawn unless the contrary is proved.

26) In the case of **State of Maharashtra V/s Wasudeo Ramchandra Kaidalwar [1981 (3) S.C.C. 199]** wherein the Hon'ble Apex Court has observed :

> "*The accused is not bound to prove his innocence beyond all reason able doubt. All that he needs to do is to bring out a preponderance of probability*".

27) In the case of **T. Shankar Prasad V/s. State of A. P. [(2004) 3 Supreme Court Cases 753]** the Hon'ble Apex Court has observed as follows:

> "*For the purpose of reaching one conclusion the court can rely on a factual presumption. Law gives absolute discretion to the court to presume the existence of any fact which it thinks likely to have happened. In that process the court may have regard to common course of natural events, human conduct, public or private business vis-à-vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act.*
>
> *Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Unless the presumption is disproved or dispelled or rebutted, the court can treat the presumption as tantamounting to proof. However, as a caution of*

prudence it has to be observed that it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion”.

28) In the present case, there is positive evidence that the appellant had accepted the amount and therefore, initially presumption was drawn, however, the very fact that the accused had accepted the fact that he has accepted the tainted notes, it is clearly the case of the accused that it was accepted for the purpose of investment in small savings scheme as per the Government notification and therefore, the presumption stands rebutted.

29) In the facts of the present case, it is not just that the accused has established the preponderance of probabilities, but it is a part of the prosecution case itself. Even according to the prosecution, he was entrusted with the powers of encouraging the agriculturists to contribute to the small savings scheme and moreover, he was given a target by the orders of the Collector.

30) While according sanction for prosecution, P.W. 7 has lost sight of this fact. The duties assigned to the accused were not taken into consideration and therefore, there was non application of mind. The falsity in the complaint is writ large. The substantive evidence of the complainant also does not inspire

the confidence of the Court. According to the complainant, her statement was recorded by the accused. Moreover, at the time of raid itself, the accused had informed the Dy.S.P. that money was accepted towards small savings scheme. The Investigating Officer has deposed that he had not sent draft sanction to P.W. 7 but a proforma of sanction order was sent however, according to P.W. 7, draft sanction was sent. The discrepancy in the deposition of both the witnesses goes to the root of the matter. It will h ave to be inferred with the constraint that P.W. 7 had mechanically signed the proforma of sanction order without any application of mind.

31) In the case of **Mohd. Iqbal Ahmed Vs/ State of Andhra Pradesh [AIR 1979 SC 677]**, the Hon'ble Apex Court has held that :

> "*The grant of sanction is not in idle formality or a acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with beforeany prosecution can be launched against the public servant concerned.*"

32) In view of the above discussion, appeal deserves to be allowed. Hence, following order.

O R D E R

(i) The appeal is allowed.

(ii) The Judgment and Order passed by the Special Judge, Solapur dated 30/04/1996 in Special Case No. 15 of 1992 thereby convicting the appellant for the offence punishable under Sections 7 and 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 is hereby quashed and set aside.

(iii) The appellant is acquitted of the offences punishable under Sections 7 and 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act.

(iv) Fine amount if paid shall be refunded to the appellant.

(v) Legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Mr. Kartik Garg is quantified at Rs. 5000/-.

(vi) The enquiry initiated by this Court is closed.

(vii) Bail bonds stand cancelled.

(viii) Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J.)

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