

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 345 OF 1995

Bhimrao Savala Gaikwad.

Age : Adult, Occ. Pensioner,

r/o. At and post Yavat,

Tal. Daund, Dist- Pune.

... Appellant.

Versus

The State of Maharashtra.

... Respondent.

Mr. Kuldeep Patil, advocate for Appellant.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : JANUARY 21, 2016

JUDGMENT:

1 The appellant herein stands convicted for the offence punishable under Section 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced to suffer R.I. for one year and to pay fine of Rs. 250/- in default to suffer further R.I. for one month for the offence punishable under Section 7 of the

Prevention of Corruption Act, 1988. He is further sentenced to suffer R.I. for one year and to pay fine of Rs. 250/- in default suffer further R.I. for one month for offence punishable under Section 13(2) of the Prevention of Corruption Act, 1988 by Special Judge, Pune in Special Case No. 10/1989 vide Judgment and Order dated 28/6/1995. Hence, this appeal.

2 Such of the facts which are necessary for the decision of this appeal are as follows :

(i) The appellant herein was working as Talathi of Gehera Purandhar Sajja. That one Baban Kokare and his deceased uncle Dhondiba Kokare were the owners and in possession of the agricultural land at Gat No. 108 and 88 at village Bahirwadi. That Dhondiba was a tenant and in possession of land Gat No. 108 and 88 situated at Bahirwadi. Baban Kokare was in need of 7/12 extracts of the Gat No. 88.

(ii) There was a civil dispute between Baban Kokare and his uncle Dhondiba and Genba Raut since 1988. Baban wanted 7/12 extract in order to file the same in the civil suit pending between the parties.

(iii) That on 3rd April, 1989, Baban alongwith his uncle Dhondiba had been to the office of Talathi and had demanded 7/12 extract of land Gat No. 88. It is alleged that the accused had demanded illegal gratification by asking for choli bangadi(in vernacular, which would mean illegal gratification). He had then demanded Rs. 500/- as condition precedent for giving 7/12 extracts.

(iv) Upon enquiry by Baban Kokare, the accused had allegedly informed him that in fact, the name of Dhondiba Kokare was deleted from 7/12 extract. In the eventuality that he wants the name to appear in the 7/12 extract, he will have to pay Rs. 500/-. The complainant sought time to satisfy gratification.

(v) On 4/4/1989 Baban alongwith his uncle went to the office of the accused and demanded 7/12 extract. At that time, Dhondiba had parted with Rs. 250/-. The accused had demanded balance amount.

The accused had asked the complainant to come on Friday with the balance amount and promised to give 7/12 extract.

(vi) Shri Baban Kokare had been to the office at about 3 p.m.. The accused had enquired as to whether he had brought the amount. The accused then called him on Monday with the balance amount. Baban Kokare was rest assured that he would not get 7/12 extract unless the demand is fulfilled and therefore, on 10/4/1989 he had been to the office Anti-Corruption Bureau and lodged the report.

(vii) The Anti-Corruption Bureau had summoned two public servants to act as a panchas. The trap was arranged. The pre-trap panchanama was recorded. The complainant was given necessary directions and thereafter, at about 3 p.m. they proceeded for Saswad in a Government jeep and reached at Saswad at about 4 p.m. One of the panch was directed to act as a shadow witness.

(viii) The accused was not present in his office and therefore, the complainant and the pancha Mahadev R. Satav waited for him. The accused had then arrived. There were also some other persons.

(ix) Thereafter, the complainant had asked the accused as to when his work would be done and when 7/12 extract would be issued. The accused had informed the complainant that the predecessor Talathi was not available and therefore, it would take time to issue the 7/12 extract. He requested the complainant to come on Wednesday.

(x) The accused had allegedly asked as to whether the complainant has brought the amount as agreed. The accused and the complainant proceeded towards the entrance door of the inner room of that office. The accused had then accepted the amount by his right hand.

(xi) The accused then offered tea to the panch. In the meanwhile, the complainant had given the predetermined signal. The member of the raiding party had then apprehended the accused. Post trap panchanama was recorded. The investigating officer then lodged the report at Saswad Police Station. On the basis of which offence was registered against the accused for offence punishable under section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

(xii) After the Sub-divisional Magistrate had accorded sanction for prosecution, charge-sheet was filed. The case was registered as Special Case No. 10 of 1989.

(xiii) Prosecution examined as many as 8 witnesses to bring home the guilt of the accused.

3 P.W. 1 Baban Kokare is the original complainant. He has deposed before the Court that his uncle Dhondiba Kokare was the tenant and was in possession of gat No. 88 situated at Bahirwadi. The owners of the said land are Genba Raut and others. Since 1988, there was a civil dispute between owners and the tenants of the Gat No. 108 and 88. That he was to produce certified copy of 7/12 extract in the Court and therefore, he had approached Talathi of Village Bahirwadi on 3/4/1989. There was demand of illegal gratification to the tune of Rs. 500/- for issuing 7/12 extract. On the next date his uncle had paid Rs. 250/- to the accused. The accused had enquired about the balance amount. That he was being harassed by the accused for want of balance amount and therefore, he was

constrained to approach the office of Anti-Corruption Bureau. That at the time of trap, the complainant was alongwith shadow panch Mr. Satav. The accused had enquired about the identity of Mr. Satav. At that time, the accused had informed the complainant P.W. 1 that the previous Talathi was not available and therefore, he was requesting the complainant to come on Wednesday for taking 7/12 extract. The complainant was annoyed as he had gone to the said office more than 2-3 occasions. The accused had then enquired about the amount as agreed. The complainant had answered in the affirmative and he extended the bribe amount to the accused. That the accused was standing at the entrance door of the inner room of that office and therefore, the complainant was also standing there. The accused had accepted the amount and the complainant had given pre-determined signal.

4 It is elicited in the cross-examination that the complainant had filed the extract of the previous i.e. of the year 1986-87. On 2/1/1989 he had obtained extract of the year 1987-88 from the

predecessor Talathi Abhivant. He had never approached Abhivant for obtaining extract for the year 1988-89. He has also admitted that as far as the possession is concerned, Talathi used to visit the said land and verify as to who has actually cultivated the land.

5 It is admitted that for the year 1987-88 name of his uncle was shown in the cultivation column as tenant. His land is at a distance of 3 furlong from gat No. 88. He had not verified the entries of the year 1988-89. He was not sure as to whether Talathi Abhivant had kept the column blank. That on 4/4/1989 he had paid Rs. 250/- to the accused. It is admitted that on the same day at about 4 p.m. in the presence of Talathi Abhivant, the accused had shown the complainant the original book of 7/12 extract and had informed that the name of his uncle Dhondiba did not appear in the possession column. The complainant has further admitted in the cross-examination that by all means they wanted to show that Dhondiba was in possession and therefore, they needed their 7/12 extract. He had not asked Abhivant Talathi to fill up the entry in the blank column in that 7/12 extract.

7 P.W. 1 has further admitted that he had not informed the Anti-Corruption Bureau that he had a meeting at 4 p.m. on 4/4/1989, since he did not remember the same. According to P.W. 1, on 7/4/1989, the accused had insisted for payment and also stated that he would not issue 7/12 extract and therefore, he lodged the report with the Anti-Corruption Bureau. P.W. 1 has feigned ignorance about any entry regarding loan borrowed from Bhuvikas Bank in the said 7/12 extract record. He had denied that on 10/4/1989 after he had paid Rs. 250/- to the accused, the receipt was issued to him by the accused bearing receipt No. 19 showing that the amount was accepted towards Tagai loan. It is also admitted in the cross-examination that the accused had asked P.W. 1 to come back on Wednesday since Talathi Abhivant would be available on Wednesday.

8 P.W. 2 Mahadev Rambhau Satav was working as record keeper in Irrigation Department. He was requested to act as a shadow panch at the time of trap. As far as the incident is concerned, he has

deposed before the Court that raiding party reached the office of the accused at about 4.30 p.m. The accused was not present in the office at that time. So they waited for him in front of the office. The accused had then come to the office. That the complainant had initiated the talk by enquiring as to when his work would be done. The accused had informed the complainant that his work was with another Talathi and asked him to come on Wednesday and promised to complete his work. The complainant appeared annoyed and reacted by saying that he had attended the office more than 2 to 3 times and how many times, he should attend office. P.W. 2 has further stated that at that juncture the accused enquired with the complainant as to whether he did the work as per instructions. The complainant had answered in the affirmative. They both went in another room. P.W. 2 has claimed that he was standing at the entrance door of the said room. He saw the complainant drawing tainted notes from his pockets and handing over the same to the accused. The accused accepted the same and put them in left hand side pocket of his trouser. Soon the raiding party had apprehended

the accused. In the cross-examination, P.W. 2 has stated that in the office of Anti-Corruption Bureau Shri Balkavade had examined the record and the accused had informed him that the register of 7/12 extracts of village Bahirwadi was with previous Talathi. He has admitted that condition of the house of the accused was not very good.

9 P.W. 3 Arjun Sambhaji Abhivant was the Talathi of Sajja Gera Purandhar from 18/12/1986 to 8/3/1989. According to him, Revenue record of both the villages were kept separately. Village Bahirwadi was within his jurisdiction. The certified copy of the 7/12 extract for the year 1987-88 was in the handwriting of P.W. 3 which is at Exh. 19. He used to take entries in respect of possession of the land in December every year. He had handed over the charge to the accused on 8/3/1989. On 4/4/1989 there was meeting of Talathi at Tahasil office. He has deposed that on that day the accused met him in Tahasil office and had informed P.W. 3 that the complainant and his uncle were sitting in the campus of the Tahasil Office to meet

him(Talathi Abhivant). After completion of the meeting, the accused had taken P.W. 3 to his office. The accused had informed P.W. 3 that some correction work was necessary of Gat No. 88 and he asked P.W. 3 to correct the same by ante date entries.

10 It is admitted by P.W. 3 that possession column of the year 1988-89 was blank. He refused to correct the same because some other persons had already obtained the copies of the said 7/12 extract and that he had handed over the charge to the accused. It is admitted in the cross-examination that from the month of December, 1988 he had not verified as to who was cultivating Gat No. 88. It is admitted that in fact, he is bound to visit each and every field. It is also admitted that in the eventuality that the possession column is kept blank, Talathi is bound to give information to the Tahasil office as per proforma 14. That thereafter, Tahasildar used to make enquiry and pass necessary orders. It is admitted that he had not informed Tahasildar in Form-14 as he had forgotten to do the same. It is specifically admitted that the accused had no authority to fill in

the blank column of 7/12 extracts of the year 1988-89. It is also admitted that there was charge on the said Gat No. showing that there was a loan of bank in respect of Baban and Mahadu Raut. Loan was to be recovered from Baban Mahadu Raut and not Dhondiba Kokare.

11 P.W. 4 Prabhakar Deshmukh was working as Sub-divisional officer, Baramati. He has deposed before the Court that on 19/4/1989 his office had received letter from P.I. Balkavade enquiring as to who would be the appointing and removal authority of the Talathi. The letter was replied on 26/4/1989 by Shri Wankhede, S.D.O. On 23/8/1989 P.W. 4 has received a letter from Dy. Commissioner, Pune for according sanction for prosecution of the accused. He had received the original case papers. He has further deposed that he had perused all the papers minutely and formed an opinion that it was a fit case for sanctioning the prosecution of the accused and therefore, he accorded sanction on 12/9/1989. The sanction order is at Exh. 46. It is elicited in the cross-examination

that Tagai loan was to be recovered from the complainant at that relevant time and a list to that effect was sent to the accused. Exh. 53 is a letter accompanied with a list of agriculturist from whom Tagai loan was to be recovered.

12 P.W. 5 Rajendra More was another panch who had participated in the trap case. He has proved the panchanama at Exh. 32. It is elicited in the cross-examination that upon receiving pre-determined signal, the raiding party entered into the office. At that time, Revenue Inspector had inspected the records lying on the carpet and the desk. Shri Balkawade also inspected the record lying on that carpet. On that carpet one receipt book for recovery of Tagai was also lying. It is also elicited that the complainant was instructed to part with the tainted notes **only**, if the accused showed his readiness to supply the extracts.

13 P.W. 6 Balkrishna Shridhar Deo was working as Senior Clerk in the office of Tahasildar, Purandhar since 1/4/86. He has deposed

before the Court that on 10/4/1989 at about 3 to 4 p.m. he was orally directed by Tahsildar, Purandhar to take inspection of the office of the accused. Pursuant to the said direction, he had taken inspection of the office of the accused. He had inspected revenue record of village Bhairwadi alongwith list of charge given by previous Talathi to the accused. In the charge report at item No. 29, there is mention of receipt of 7/12 extracts book by the accused of village-Bahirwadi. It is further submitted that in the year 1988 the Government had exempted recover of fodder loan and as on the date of the incident except land revenue, nothing was outstanding against that land such as Tagai Loan. It is also specifically contended that Abhivant talathi had kept column of possession blank for the year 1988-89 and that the accused had no authority to take any entry in the blank column. It is then admitted that in Exh. 24 Abhivant Talathi had shown the outstanding government dues of land development bank of Survey No. 88.

14 P.W. 6 has further admitted in the cross-examination that the Tahasildar, Purandhar had issued a letter dated 31st March, 1989. It was cyclostyle circular which is at Exh. 54. It is admitted that as per the instructions given in the circular, it was directed to take entry regarding fodder loan on the revenue record. The list of khatedar was also given. The said list which is at Exh. 55 was issued from the office of Tahasildar. At Sr. No. 12 and 15 of Exh. 55 loan is shown to be outstanding against Dhondiba Koakare. The dues are computed prior to the year 1988. P.W. 6 has feigned ignorance that on 18/4/89 the accused had informed the Tahasildar by registered post that the amount of Rs. 250/- recovered by him from Dhondiba Kokare was seized by Anti-Corruption Officer. The said fact was brought to the notice of Tahasildar office by Shri R.S. Gavai, Member of Legislative Council, Minister Prabha Rao. It is stated in the re-examination that as per contents at Exh. 54, Talathi of each Sajja had sent the list about dues and the same was attached with the circular.

15 P.W. 7 Ganpatrao Mehetre was working on the post of leave reserved for Tahasildar at Satara. From the year 1986-87 the revenue records in respect of Bahirwadi and Chivewadi were separated by bifurcation. P.W. 7 has also admitted that Talathi had kept possession column blank. That Abhivant Talathi had changed mode of cultivation 1 to 3 in the year 1987-88 without any authority and without the order of Tahasildar. No explanation was called for from Abhivant Talathi. Neither Dhondiba Kokare had made any complaint against Abhivant Talathi for keeping that column blank. It is also admitted specifically that it was the responsibility of Abhivant Talathi for sending Form-14 to Tahasildar in respect of blank column. However, after the accused took charge, it was his duty to fill up Form No. 14.

16 P.W.8 Dilip Balkawade is the first informant and the Investigating Officer. He has deposed before the Court the steps taken by him for conducting trap and investigation in accordance with law. He has admitted in the cross-examination that on 13/4/1989 he

had called Abhivant Talathi at the office of the accused for the search of 7/12 extract book of village Bahirwadi. That on 10/4/1989 accused had informed him that the record of 7/12 extracts is lying with Abhivant Talathi. Abhivant Talathi has no office in the office of the accused. P.W.8 has denied that he had instructed the complainant to part with the tainted currency notes only if the accused showed his willingness to supply copy of the 7/12 extract. He knew that previous Talathi had kept the possession column blank. P.W. 8 had informed this fact to the sanctioning authority in his final report.

17 It is apparent on the face of the record that first and foremost Abhivant Talathi had kept column of possession blank in the 7/12 extracts as is admitted by P.W. 3 Abhivant, P.W. 6 B.S. Deo, P.W. 7 G.B. Mahatre as well as P.W. 8 Investigating Officer.

18 The prosecution has brought on record vide Exh. 54 and 55 that circular was issued that the accused had no authority to fill in the

blank column without filling Form No. 14 by Abhivant Talathi. Even on the day of the trap also, the accused had made it abundantly clear to the complainant that since 7/12 extract was issued by the previous Talathi, he would have to come back on the Wednesday. That the complainant has also categorically admitted that he wanted to file the said document in the civil suit and claim possession over Gat No. 88 through his uncle Dhondiba Kokare, although they were fully aware that their names were not shown in the possession column. The purpose for seeking extract itself was illegal. In fact, the complainant ought to have approached Abhivant Talathi for the correction of the revenue extract. On the date of the incident also, there is no positive evidence that the amount was demanded by the accused person. According to the complainant and panch i.e. shadow witness, investigating officer had informed the complainant that the tainted currency notes should be parted with in favour of the accused only if the accused shows his willingness to issue 7/12 extract. However, the same is denied by the Investigating Officer himself. It can therefore, be inferred that at the time of trap there

was no demand by the accused person. Demand is sine qua non for acceptance of the amount. Once prosecution demonstrates that the amount was accepted by the accused, it is incumbent upon the Court to draw a presumption under Section 20 of the Prevention of Corruption Act, 1988 and the onus would shift upon the accused to rebut the said presumption by demonstrating preponderance of the probabilities.

19 In the present case, Exh. 54 is the cyclostyle circular issued by the Tahasildar office alongwith list of the people who had to pay fodder loan. The name of the complainant, his uncle were at Sr. No. 15. Moreover, on 10/4/1989 itself accused had also informed the Tahasildar by registered post that the amount which he had recovered towards Tagai loan from Baban Kokare was seized by Anti-Corruption Bureau. These facts by itself are sufficient to hold that the amount of Rs. 250/- was accepted by the accused towards Tagai loan, which was outstanding against the complainant.

20 In the statement under Section 313 of the Code of Criminal Procedure, 1973, the accused has specifically stated that the complainant desired that he should be witness in the ROR proceedings, but since the matter was not within his jurisdiction, he had declined to cooperate and hence, the complainant has falsely implicated him. The accused in order to demonstrate preponderance of probabilities has filed on record Exh. 54 and 55 that the amount of Rs. 250/- was accepted towards Tagai loan. The accused had filed the statement under Section 313 (2) of the Code of Criminal Procedure contending therein that the outstanding Tagai loan against the complainant was to the tune of Rs. 1105/-. The complainant had come along with his uncle and paid Rs. 250/- on 10/4/1989. That the accused had informed the Tahasildar about the same. It can therefore, be safely held that the accused has rebutted the presumption, which was drawn under Section 20 of the Prevention of Corruption Act. The prosecution has failed to establish that the accused had demanded illegal gratification for issuing 7/12 extract. In fact, it was not within the powers of the accused to issue 7/12

extract showing the name of the uncle of the complainant in the possession column since predecessor Talathi had kept said column blank. The complainant had not made any grievance against the predecessor Talathi.

21 It is further pertinent to note that the complainant was not demanding 7/12 extract simplicitor but 7/12 extract which would show the name of Dhondiba Kokare in the possession column. The very purpose was malafide. The evidence adduced by the prosecution is not cogent and convincing to uphold the conviction of the accused.

22 In the case of **Suraj Mal v/s. State (Delhi Administration)** reported in **AIR 1979 SC 1408**, the Hon'ble Apex Court has observed as under :

“In our opinion, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable.”

23 In view of the above observations, the appeal deserves to be allowed.

ORDER

- (i) The appeal is allowed.
- (ii) The judgment and order passed by the Special Judge, Pune, in Special Case No.10 of 1989 dated 28.6.1995, thereby convicting the accused for the offence punishable under Sections 7, 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 all the charges levelled against him.
- (iv) Bail bonds stand cancelled.
- (v) Fine amount be refunded to the appellant.

24 Appeal stands disposed of.

(SMT. SADHANA S. JADHAV,J)