

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 127 OF 2008

Syed Murtuza Syed Murad Ali,
Age : 61 years, occu. Pensioner,
R/o Vidya nagar (E),
Behind Sahyadri hotel, Beed,
Taluka and District Beed

APPELLANT
(ORIG. ACCUSED)

VERSUS

The State of Maharashtra

RESPONDENT
(Prosecution)

Mr. Joydeep Chatterji, Advocate for the appellant
Mr. G.O. Wattamwar, A.P.P. for the respondent/State

CORAM : SANGITRAO S. PATIL, J.

JUDGMENT RESERVED ON : 1st SEPTEMBER, 2017
JUDGMENT PRONOUNCED ON : 14th SEPTEMBER, 2017

JUDGMENT :

Heard the learned counsel for the appellant
and the learned A.P.P., representing the State/
Prosecution.

2. The appellant has challenged the legality and
correctness of the judgment dated 27th March, 2008,
delivered in Special Case No. 56 of 2004 by the

learned Special Judge, Beed, whereby he has been convicted for the offences punishable under Sections 7 and 13 (2) read with Section 13 (1)(d) of the Prevention of Corruption Act, 1988 ("Act", for short).

3. The appellant was serving as an Awal Karkun in Village Panchayat Election Division of the Collectorate, Beed in the year 2004. The complainant namely Parmeshwar Rangnath Gite, resident of Pangri, Taluka Parali, District Beed was a member of Village Panchayat, Pangri. One Meera Bhagat Pachange was the Sarpanch. The complainant filed a petition before the Additional Collector, Beed on 14th July, 2004, seeking disqualification of the said Meera Pachange on the ground that she did not hold monthly meetings and gram sabha. He went to the Village Panchayat Division of the Collectorate, Beed on 21st July, 2004 to enquire whether notice was issued to the respondent – Meera Pachange in respect of that petition. He met the appellant and asked him about issuance of notice in respect of that petition. The appellant told him that notice was not issued and further informed that for issuing notice, he would have to spend some amount. The complainant asked the appellant as to what would be the quantum of that

expenditure, whereon the appellant told him that he would require Rs.1000/-. He assured that on receiving Rs.1000/-, he would issue notices to the Sarpanch and others. The complainant requested him to reduce that amount, whereon the appellant asked the complainant to pay Rs.400/- for issuing notices. The complainant asked for some time for payment of that amount on the say that he was not having that much amount with him, whereon the appellant asked him to pay that amount by 5.00 p.m. on that day. The complainant was not inclined to pay bribe to the appellant. Therefore, he went to the office of Anti-Corruption Bureau (A.C.B.) at Beed and lodged complaint against the appellant.

4. After receiving the complaint, Deputy Superintendent of Police (Dy.S.P.) A.C.B. - Deshmukh decided to lay trap. He called two panchas. The demonstration in respect of the characteristics and use of anthracene powder was done before the complainant and the panchas. Necessary instructions were given to the complainant and panchas as to how the bribe amount should be paid to the appellant on being demanded by him and how the complainant should give signal after payment of that amount to the appellant. Four currency notes of

Rs.100/- each were smeared with anthracene powder and kept in the left side chest pocket of the shirt of the complainant. The Pre-trap panchanama was prepared.

5. The complainant, both the panchas and the other members of the raiding party went to the office of the appellant at about 4.30 p.m. The complainant met the appellant in that office in the presence of panch No. 1 namely Sheshgir Kulkarni and on being demanded by the appellant, handed over the tainted currency notes of Rs.400/- to him. The complainant gave the predetermined signal. The other members of the raiding party entered into the office of the appellant. The tainted currency notes were recovered from the appellant. The tainted currency notes as well as the right hand and left side chest pocket of the shirt of the appellant were examined under the light of ultraviolet lamp. Blue shining was noticed on the said currency notes, on the right hand fingertips and inside the left side chest pocket of the shirt of the appellant. The statement of the appellant was recorded wherein he denied of having demanded and received any amount from the complainant. The post-trap panchanama was prepared.

6. Dy.S.P. - Deshmukh lodged FIR against the appellant in City Police Station, Beed on the basis of which Crime No. 261 of 2004 came to be registered against the appellant for the above mentioned offences. The investigation followed. The statements of the witnesses came to be recorded. After completion of the investigation, Dy.S.P. Deshmukh obtained sanction for prosecution of the appellant and then filed chargesheet against him for the above mentioned offences.

7. The learned Special Judge framed charges against the appellant for the above mentioned offences vide Exh-13 and explained the contents thereof to him in vernacular. The appellant pleaded guilty and claimed to be tried. His defence is that of total denial. He denied that he ever demanded any bribe amount from the complainant and received the same as claimed by the complainant. He states that on being asked by the complainant about his petition, he informed the complainant that the file in respect of that petition has been submitted by him to the Additional Collector. Thereafter, the complainant, without uttering any word, thrust the tainted currency notes in the left side chest pocket of his shirt. He took out those currency

notes by his right hand for being handed over back to the complainant. At that time, he was caught hold of by the members of the raiding party.

8. The prosecution examined the complainant at Exh-20, the panch namely Sheshgir Kulkarni (PW4) at Exh-40 and Dy.S.P. - Deshmukh (PW5) at Exh-43, who had arranged for the trap. The prosecution further examined R.D.C. Kendre (PW2) at Exh-26, under whom the appellant was working and the then Collector Jantre (PW3) at Exh-38, who issued sanction order (Exh-39) for prosecution of the appellant.

9. The learned counsel for the appellant submits that the evidence on record shows that the complainant was in the habit of bringing the Government servants in trouble by arranging traps through A.C.B. by joining hands with other persons. He was a law student. He was connected with the Corruption Eradication Movement of Shri Anna Hazare. He belongs to Communist party and was the member of Village Panchayat. Considering this background of the complainant, it was necessary to have an independent corroboration to his version in respect of the demand made by the appellant for bribe. He

submits that the evidence of the complainant in respect of the time when the alleged demand of bribe was made by the appellant is not consistent. This fact itself creates doubt about his version that the appellant demanded bribe amount from him. There has been no verification of the said demand of bribe. He then submits that the evidence on Panch No.1 is not believable since he seems to have stealthily refreshed his memory by reading pre-trap panchanama and post-trap panchanama for two to four times, which were made available to him well in advance. He submits that his evidence about taking out the tainted currency notes from the appellant is not consistent with that of Dy.S.P. Deshmukh (PW5). He then submits that the file of the complainant was already submitted by the appellant to his superior officer much prior to the time when the trap was laid. The appellant had not withheld the file of the complainant. This fact itself shows that there was no reason for the appellant to ask for the bribe amount from the complainant. He further submits that the defence of the appellant that the complainant thrust the tainted currency notes into his shirt pocket without his knowledge and he took out those currency notes by his right hand for being given back to

the complainant, when he was caught hold of by the members of the raiding party, is quite natural and probable. Consequently, in the absence of positive and dependable evidence about the demand of bribe by the appellant, mere finding traces of anthracene powder in the shirt pocket and right hand fingertips of the appellant would not establish guilt of the appellant for the above mentioned offences.

10. On the other hand, the learned A.P.P. submits that there is sufficient, cogent and consistent evidence on record to prove demand of bribe made by the appellant and acceptance thereof in response to that demand. He submits that there are some minor variances in the evidence of the complainant and that of panch No.1, which do not go to the root of the matter. There was no reason for the complainant to falsely involve the appellant in this case. He submits that the learned Trial Judge has rightly considered the facts of the case as well as the evidence on record and has rightly convicted the appellant.

11. The complainant deposes that he filed a petition before the Additional Collector, Beed, seeking

disqualification of the Sarpanch – Meera Pachange on 14th July, 2004. He met the appellant on 21st July, 2004 for the purpose of making enquiry as to whether notice was issued to the respondent – Meera Pachange in connection with that petition. At that time, the appellant demanded Rs.1000/- from him as bribe for issuing notice and on his request, reduced that amount to Rs.400/-. Since he was not inclined to pay bribe to the appellant, he lodged complaint (Exh-21) in the office of A.C.B. before Dy.S.P. Deshmukh (PW5) on the same day.

12. Before scrutinizing the evidence of the complainant, it will be necessary to refer to the fact that the appellant was elected as a member of the Village Panchayat in by-election of 2003. He was belonging to Communist party. He was a law student in the year 2004. He admits that he is known as Comrade Gite Advocate in his village. He states that he was connected with the Corruption Eradication Movement of Shri Anna Hazare. He admits that there was R.C.C. No. 16 of 2007 filed against Advocate Tidke, himself and others for the offence punishable under Section 353 of the Indian Penal Code ("IPC", for short). He shows ignorance about pendency of Criminal Case No. 244 of

2004, R.C.C. No. 142 of 2004 (under Sections 448 and 451 of the IPC), S.C.C. No. 2214 of 2004 (under Section 500 of the IPC), R.C.C. No. 301 of 2005 (under Sections 147, 148, etc. of the IPC) and R.C.C. No. 71 of 2007 (under Section 420 of the IPC) in which he is a party either as a complainant or an accused. The certified copies of the complaints/chargesheets in respect of these cases have been produced by the appellant with his statement under Section 313 of the Code of Criminal Procedure. The present complainant is one of the accused in Cri. M.A. No. 244 of 2004, registered for the offences punishable under Sections 323, 504, 506 read with Section 34 of the IPC, Crime No. 16 of 2007 is registered against him for the offence punishable under Section 353 read with Section 34 of the IPC. R.C.C. No. 301 of 2005 has been filed against one Shrinivas Dhondiram Mundhe and others, on the report lodged by the present complainant. R.C.C. No. 71 of 2007 has been filed by the present complainant against one Milind Chavan and three others. S.C.C. No. 2214 of 2005 has been filed by the present complainant against Shrinivas Mundhe and another, while S.C.C. No. 142 of 2004 has been filed by him against one Ashok Mundhe and five others. He admits that on 29th July, 2005, some persons

assaulted him in the campus of Parali Court on the allegations that by joining hands with other persons, he (the present complainant) arranges for traps through A.C.B. against the Government officers. The above mentioned facts make it clear that the complainant was a law student at the time of above mentioned trap. He was an educated person. He was indulged in the activities of laying traps against the Government officials. With this background of the complainant, his evidence would be required to be scrutinized with great care and caution.

13. In paragraph No.2 of his evidence, the complainant states that he had gone to the appellant at about 10.00 a.m. or 10.30 a.m. on 21st July, 2004 and lodged complaint against him at about 11.00 a.m. In the first part of paragraph No.14 of his cross-examination, the complainant states that on 21st July, 2004, he went to the Court at about 10.30 a.m. and then went to the office of the Collector between 11.00 a.m. and 11.15 a.m. Again, in the latter part of paragraph No. 14, he states that he visited the office of the Collector at about 11.30 a.m. Thus, his evidence about the time of his visit to the office of the Collector for making

inquiry with the appellant is not consistent. It is understandable, if there is some variance in the evidence of the witness in respect of the time of the first demand on the background that he deposed before the Court after lapse of 3-4 years. However, in this case, the complainant is quite an educated and intelligent person. There is variance in his evidence about the time of the first demand in paragraph 2, paragraph 14 (first part) and paragraph 14 (later part). This variance in respect of the time of meeting the appellant in his office during the course of recording his evidence certainly would create a strong doubt about the said meeting and the alleged demand of bribe made by the appellant.

14. In this background, independent evidence was immensely necessary to corroborate the version of the complainant about the first demand of bribe made by the appellant. Such independent corroboration could have been obtained by conducting verification of that demand either by sending some witness with the appellant for the purpose of confirmation of that demand or through telephonic conversation between the complainant and the appellant and recording of that conversation. Nothing

of that sort has been done by the Dy.S.P. - Deshmukh (PW5). There is absolutely no corroboration to the evidence of the complainant about the alleged demand of bribe of Rs.400/- by the appellant in his office prior to the trap on 21st July, 2004.

15. R.D.C. Kendre (PW2) states that the appellant being Awal Karkun working in the Village Panchayat Section of the Collectorate, was assigned the duty of issuing notices in the proceedings filed in that Section. He states that the file of the complainant was received in the Village Panchayat Section and it was sent to the Additional Collector on 21st July, 2004 by the appellant for necessary orders. The note prepared by the appellant is at Exh-29. This witness states that he signed the note (Exh-29) produced by the appellant before him on 21st July, 2004 and submitted it to the Additional Collector on the same day under his signature. He states that the Additional Collector was the competent Authority to pass an order as to whether notices should be issued or not. He then states that unless there is order of the Additional Collector, no clerk had any authority to issue notices. He admits that there is no order of the Additional Collector in

the matter of the complainant for issuance of notices. If that be so, there was no scope for the appellant to demand any bribe from the complainant for issuance of notices. In fact, from the submission note (Exh-29) prepared by the appellant himself on 21st July, 2004, it is clear that he had done his part of the duty by preparing that submission note and submitting the file to the Additional Collector for further orders. This submission note and the file were referred to the Additional Collector much prior to the time of the trap on 21st July, 2004. From the contents of submission note (Exh-29) and the evidence of R.D.C. Kendre (PW2), it is clear that the appellant had not withheld the proceedings of the complainant with him with any ulterior motive. Nothing had been left for being done by the appellant in that matter on the day of the trap. In the absence of the order of the Additional Collector, the appellant was not authorised to issue notices. Thus, the very reason behind the alleged demand of bribe assigned by the complainant is not at all natural, probable and believable. There was no reason for the appellant to demand bribe as claimed by the complainant.

16. The complainant deposes that after the

necessary arrangement for laying trap was made and pre-trap panchnama (Exh.25) was prepared, he went to the office of the appellant along with both the panchas and other members of the raiding party. He reached the office of the appellant at about 4.30 p.m. Panch no.1 Sheshgir Kulkarni (PW4) and himself entered into the election section. The appellant was sitting in his chair. There was exchange of *Namaskars* between the appellant and himself. Then he asked the appellant, whether the notice was issued against the respondent in his petition. The appellant, in response, asked him, whether he had brought the amount of Rs.400/-. He replied in the affirmative. Then the appellant asked him to pay that amount. He then took out the tainted currency notes of Rs.400/- by his right hand from the left side pocket of his shirt. The appellant accepted that amount by his right hand. He counted the said amount by his fingers and kept it in the left side pocket of his Safari shirt. Then, he gave a predetermined signal by moving his left hand from his hairs thrice.

17. To corroborate the demand and acceptance of bribe by the appellant at the time of the trap Sheshgir

Kulkarni (PW 4)(Exh.40) has been examined by the prosecution. He states that he went to Village Panchayat Section along with the complainant. The appellant was sitting in his chair. There was exchange of *Namaskars* between the complainant and the appellant. There was a table in front of the appellant and beyond that table, there were chairs. The complainant sat in one of the chair facing towards the appellant (West). He himself sat in another chair to the left side of the appellant near one cup-board. The complainant asked the appellant, whether he served the notice to his opposite party. The appellant then asked the complainant, whether he had brought the amount as was asked by him. The complainant answered in the affirmative. The appellant then asked to give that amount. The complainant took out the tainted notes by his right hand from the left side chest pocket of his shirt and the appellant accepted that amount by his right hand. The appellant verified by his right hand fingers the quantum of those notes and kept the same in the left side chest pocket of his Safari shirts. The appellant then asked the complainant to go from his office. Then the complainant went out out of that office room and gave a predetermined signal.

18. It has come in the cross-examination of Sheshgir Kulkarni (PW 4) that there had been talks between the complainant and the appellant for about ten minutes at the time of the trap. He states that they uttered only 2-3 sentences. This evidence does not appear to be natural and probable. It is difficult for one to accept that within a period of ten minutes, the complainant and the appellant would utter 2-3 sentences only. It has further come in the cross-examination of this witness that as soon as the complainant asked the appellant about notice, the appellant replied that the file was with his office. It was specifically suggested to the complainant that when he met the appellant at the time of the trap, the appellant told him that his file was already sent by him to the Collector. But, this suggestion has been denied by the complainant. However, from the evidence of Sheshgir Kulkarni (PW 4), it is clear that the appellant had told the complainant that the file was with his Officer. The evidence of Kendre (PW2) also makes it clear that the file was already sent by the appellant to the Additional Collector on 21.04.2001 itself prior to the trap. It is, thus, clear that the complainant tried to suppress the factual position that was made clear by

the appellant to him in respect of his file prior to the trap.

19. Though the complainant states that he asked the appellant whether he issued notice to the respondent in his petition, Sheshgir Kulkarni (PW 4) states that the complainant asked the appellant, whether he served the notice to his opposite party. There is lot of difference between the meaning of "issuing notice" and "serving notice on the opposite party". Thus, the evidence of this witness in respect of what the complainant asked the appellant is not consistent.

20. The complainant states that the appellant specifically asked him, whether he had brought the bribe amount of Rs.400/-. However, Sheshgir Kulkarni (PW 4) does not state about any particular figure of bribe amount allegedly demanded by the appellant.

21. The evidence of the complainant and Sheshgir Kulkarni (PW 4) that the appellant counted the tainted currency notes by his right hand only also does not appear to be natural and probable. Firstly, in the ordinary course, both the hands would have been used by

the appellant for counting the notes, if he really wanted to count them. In that event, the traces of anthracene powder would have been noticed even on the left hand finger tips of the appellant. Moreover, when the amount was being received as bribe and not in respect of repayment of any hand-loan or towards payment of any official charges, the appellant would not have even thought of counting those notes to get verified the value thereof and would have directly kept them in the pocket of his shirt at the earliest, so as to make it difficult for others to see that the said amount was actually accepted by him from the complainant. The evidence of these witnesses about openly counting the notes to get it confirmed that they were in the sum of Rs. 400/- only and that too, by the single hand, thus, is difficult to be believed.

22. The complainant states that after the members of the raiding party entered into the office of the appellant, Dy. S.P. Deshmukh (PW5) asked panch No.1 Sheshgir Kulkarni (PW4) as to who demanded the bribe amount and with whom that amount was. Sheshgir Kulkarni (PW4) then informed that the appellant had demanded and accepted the bribe amount and that it was in the left

side pocket of shirt of the appellant. The complainant further states that Dy. S.P. Deshmukh (PW5) asked Sheshgir Kulkarni (PW4) to take out that bribe amount from the shirt pocket of the appellant and accordingly, Sheshgir Kulkarni (PW4) took out that amount.

23. Sheshgir Kulkarni (PW4) states that on being asked by Dy. S.P. Deshmukh (PW5) as to who had demanded the bribe amount, he pointed out to the appellant and replied in the affirmative that the appellant had demanded and accepted the bribe amount. He then states that the appellant himself took out the tainted currency notes and handed over them to the Dy. S.P. Deshmukh (PW5). He again states that panch No.2 (Waman Darewar) took out those currency notes. In his cross-examination, this witness states that after the tainted currency notes were examined under the light of ultra-violate lamp, they were handed over to panch No.2.

24. The evidence of the complainant and Sheshgir Kulkarni (PW 4) in respect of taking out the tainted currency notes from the possession of the appellants, as stated above, is not at all consistent. It creates a great doubt about the fact that they were actually taken

out from the shirt pocket of the appellant either by Sheshgir Kulkarni (PW 4) or panch no.1.

25. It has come in the cross-examination of Sheshgiri Kulkarni (PW4) that the copy of panchanama No.2 i.e. the post-trap panchanama (Exh-41) was made available to him by the learned A.P.P. prior to 2 to 3 days of the previous day of hearing of the case. He read it 2 to 4 times. He states that he could remember the contents of that panchanama after reading for the first time. In view of this version of Sheshgir Kulkarni (PW4), the learned counsel for the appellant submits that the evidence of this witness cannot be believed, because it is obvious that he was made to state before the Court as per the contents of the post-trap panchanama (Exh-41).

26. Here, a reference may be made to the judgment in the case of **Shri Sharad s/o Namdeorao Shirbhate Vs. State of Maharashtra 2007 ALL MR (Cri) 352**, wherein in the similar circumstances, the evidence of the witness, who refreshed his memory in the same manner in which Sheshgir Kulkarni (PW4) refreshed it in the present case, was disbelieved. It was the contention of the

learned A.P.P. in that case that since the incident had happened prior to nine years, there was nothing wrong in the witness refreshing his memory by reading his statement before deposing about the incident giving minute details. This Court repelled that contention with the following observations in paragraph No.10 of the judgment:

"There would indeed be nothing wrong in the witness refreshing his memory, but that ought to be done before the Court and not outside the Court. In order to test the veracity of a witness, he would be required to recollect the incident out of his own memory and should he falter on some material aspect, he could be allowed to refresh his memory with reference to the contemporaneous records of the incident created by the police. It would not be permissible for such a witness to stealthily referesh his memory before entering the Court and deposing abut the entire evidence giving minute details as if he was reeling them out from his memory. Therefore, the objection to the reliability of evidence of P.W.2 Prabhakar taken by the learned counsel for the appellant is valid."

27. The above mentioned reasoning for discarding the evidence of the witness has been affirmed by the Division Bench of this Court in the case of **Suresh s/o Purushottam Ashtankar Vs. State of Maharashtra and another 2015 ALL MR (CRI) 4243.**

28. In the present case, the trap was laid on 21st July, 2004 and Sheshgir Kulkarni (PW4) was examined before the Court on 5th July, 2007 i.e. within a period of three years. As stated above, he was provided with a copy of the post-trap panchanama (Exh-41) much prior to the date of his examination before the Court. He states that he read the said panchanama for 2 to 4 times. It is, thus, clear that this witness refreshed his memory not with the permission of the Court but stealthily. Therefore, it will have adverse effect on the reliability on the evidence of this witness. It cannot be believed in the absence of independent evidence. His evidence cannot be considered for seeking corroboration to the evidence of the complainant.

29. As discussed above, the evidence of the complainant in respect of the demand of bribe by the appellant being not consistent, cannot be believed. The work of issuance of notices was not withheld by the appellant. Therefore, there was no reason for the appellant to demand bribe from the complainant for issuing notices. The complainant seems to be interested in arranging traps of A.C.B. against the Government

officials by joining hands with others. The evidence of Sheshgir Kulkarni (PW4) also is not consistent with the complainant on material points. The evidence of this witness itself is not believable since he deposed before the Court after stealthily refreshing his memory by reading post-trap panchanama (Exh-41) for two to four times. In the circumstances, it was necessary to have independent corroboration to the evidence of the complainant on the point of demand of bribe by the appellant and acceptance thereof by him in connection with the discharge of his official duty. No such independent evidence has been produced by the prosecution on record.

30. The appellant has come with a specific case that without there being any demand from his side for bribe, the complainant thrust the tainted currency notes into the pocket of his shirt and when he took out those currency notes by his right hand for being handed over back to the complainant, he was caught hold of by the A.C.B. officials. The Dy.S.P. - Deshmukh (PW5) admits that at the time of the trap, the appellant had told him that the amount was thrust by the complainant into his pocket. Had the appellant consciously received

the tainted currency notes and counted them as alleged by the complainant, the fingertips of both of his hands would have got smeared with anthracene powder. The finding of traces of anthracene powder on his right hand fingertips only supports his defence that he touched the tainted currency notes, while taking them out of his shirt pocket for being handed over to the complainant. The defence of the appellant is quite probable. In the circumstances, only because traces of anthracene powder were noticed on the fingertips of right hand and inside the left side chest pocket of the shirt of the appellant, it cannot be said that he consciously accepted the money in response to his demand for bribe.

31. The learned Trial Judge did not consider the facts of the case as well as the evidence on record correctly and properly and wrongly accepted the evidence of the complainant and that of Sheshgir Kulkarni (PW4). In view of the discussion made above, the findings recorded by the learned Trial Judge holding the appellant guilty for the above mentioned offences cannot be said to be legally sustainable. The impugned judgment and order are liable to be quashed and set aside. In the result, I pass the following order:-

O R D E R

- (i) The Criminal Appeal is allowed.
- (ii) The impugned judgment and order dated 27th March, 2008, passed in Special Case No. 56 of 2004 by the learned Special Judge, Beed, are 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, 1988.
- (iv) The bail bonds of the appellant are cancelled. He is set at liberty.
- (v) The fine amount of Rs.30,000/-, deposited by the appellant, be refunded to him.

[SANGITRAO S. PATIL]
JUDGE