

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.144 OF 2008

1. Ravindra Vitthal Jevre,
Age : 50 years,
Occ. Cadastral Surveyor,
Class-III, City Survey Office,
Ahmednagar, r/o. Near Zopadi
Canteen, Gaikwad Colony,
Ahmednagar
 2. Ismail Abdul Tamboli,
Occ. Service, Peon Class IV,
City Survey Office,
Ahmednagar,
Dharti Chowk, H.No.3270,
Ahmednagar
- ..Appellants

Vs.

The State of Maharashtra

..Respondent

Mr.Anant R. Phadnis i/b. Mr.A.R.Avachat, Advocate for
appellants

Mr.K.D.Mundhe, APP for respondent

CORAM : SANGITRAO S. PATIL, J.
RESERVED ON : SEPTEMBER 01,2017
PRONOUNCED ON : SEPTEMBER 14, 2017

JUDGMENT :

Heard

2. The appellants have taken exception to the judgment dated 07.04.2008 passed in Special Case No.4 of 2003 by the learned Special Judge (P.C.), Ahmednagar, whereby appellant no.1 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 ("the Act", for short), while appellant no.2 has been convicted for the offences punishable under Sections 12 and 13(2) read with Section 13(1)(d) of the Act.

3. Appellant no.1 was serving as Surveyor, while appellant no.2 was serving as Peon in the City Survey Office, Ahmednagar in the year 2003. It is alleged that on 17.03.2003, the complainant namely, Shaikh Ayaz Isaq r/o. Zendigate, Shani Galli, Ahmednagar met appellant no.1 in his office and inquired as to whether the name of his father (i.e. Shaikh Isaq Gafoor) was recorded in the city survey record in respect of the house bearing City Survey

No.923/A, which was purchased by him on 09.02.2001. Appellant no.1 informed the complainant that as long as the notices issued against all the vendees are not served, the name of his father would not be recorded in the city survey record of that house. The complainant expressed inability to serve all of the vendees and requested appellant no.1 to find out some other way. At that time, appellant no.1 asked him to pay Rs.1,000/- and assured that he would record the name of the father of the complainant in the record of city survey and issue property extract within 2-3 days. The complainant requested appellant no.1 to reduce that amount, but appellant no.1 refused to reduce it. Since the complainant was not inclined to pay the bribe amount to appellant no.1, he went to the office of Anti Corruption Bureau (A.C.B.), at Ahmednagar and lodged a complaint against appellant no.1.

4. On the basis of that complaint, it was decided to lay a trap. Accordingly, the Deputy

Superintendent, A.C.B., called two panchas to his office. The complaint against appellant no.1 lodged by the complainant was verified before them. Demonstration in respect of use of anthracene powder was conducted in order to show that the traces of that powder could be seen in the form of blue shining under the light of ultra violet lamp. The complainant produced two currency notes of the denomination of Rs.500/- each. They were smeared with anthracene powder. The Police Constable - Sonule kept those currency notes in the left side chest pocket of the shirt of the complainant. The complainant was instructed to visit the office of appellant no.1 along with panch namely, Ashok Shelar and hand over the tainted currency notes of Rs.1,000/- to him on being demanded by him. The complainant was further instructed that after handing over the tainted currency notes to appellant no.1, he should take out his handkerchief by his left hand from left side pocket of his pant and move it around his face.

Another panch namely, Sachin Kotkar was instructed to keep himself at some distance from the office of appellant no.1 and watch the activities of the complainant and appellant no.1. Police Constable - Sonule was instructed to remain in the office of the A.C.B. itself. A pre-trap panchnama was prepared.

5. After preparing the pre-trap panchnama, the raiding party along with the complainant and both of the panchas went to the office of appellant no.1 and reached there at about 4.20 p.m. The complainant and the panch namely, Ashok Shelar entered into the office of appellant no.1 at about 4.30 p.m. The complainant asked appellant no.1 as to whether his work was done. Appellant no.1 asked the complainant, whether he had brought the money. When the complainant answered in the affirmative, appellant no.1 asked to handed over the amount of Rs.1,000/- to appellant no.2, who was sitting in a chair at some distance from the table of appellant no.1.

Accordingly, the complainant handed over the tainted currency notes to appellant no.2, who, in turn, kept those currency notes in the left side pocket of his shirt. The complainant then went outside the office of appellant no.1 and gave the pre-determined signal by moving his handkerchief around his face. The raiding party entered into the office of appellant no.1. Appellant nos.1 and 2 were caught hold of. The tainted currency notes of Rs.1,000/- were taken out from the left side chest pocket of the shirt of appellant no.2. The hands and the shirt pocket of appellant no.2 were examined under the light of ultra-violet lamp. Blue shining was noticed on the tips of the right hand fingers and inside the left side chest pocket of the shirt of appellant no.2. The shirt of appellant no.2 and the tainted currency notes came to be seized. A post-trap panchnama came to be prepared. The statements of witnesses were recorded. After completion of investigation, the papers of investigation were sent to the Deputy

Director, Land Records, Nashik seeking sanction for prosecution of the appellants. After obtaining sanction for their prosecution, the appellants came to be charge-sheeted for the above-mentioned offences.

6. The learned Special Judge framed charges against the appellants vide Exh.12 and explained the contents thereof to them in vernacular. The appellants pleaded not guilty and claimed to be tried. Their defence is that of total denial. According to appellant no.2, when he was sitting in a chair in the office, an unknown person thrust something in the left side pocket of his shirt. He took out by his right hand from his shirt pocket whatever was thrust inside it by that unknown person. At that time, he was caught hold of by police. He denied of having received any bribe amount from any person. According to appellant no.1, he never demanded any bribe amount from the complainant.

He denied that he ever asked the complainant to hand over the bribe amount to appellant no.2.

7. The prosecution examined the complainant at Exh.24; panch Ashok Shelar (PW 2) (Exh.29); The Sanctioning authority Sable (PW 3) (Exh.40); and Deputy Superintendent of police (Dy.S.P.) - Joshi (PW 4) (Exh.44), who conducted the raid and lodged FIR (Exh.47) against the appellants. After evaluating the evidence of these witnesses, the learned Special Judge found the appellants guilty of the above-mentioned offences. He sentenced appellant no.1 for the offence punishable under Section 7 of the Act with rigorous imprisonment for one year and a fine of Rs.1,000/-, in default, to suffer simple imprisonment for two months; and further sentenced him for the offence punishable under Section 13(2) read with Section 13(1)(d) of the Act with rigorous imprisonment for three years and a fine of Rs.2,000/-, in default, to suffer simple imprisonment

for four months. The learned Special Judge sentenced appellant no.2 for the offence punishable under Section 13(2) read with Section 13(1)(d) of the Act with rigorous imprisonment for three years and a fine of Rs.2,000/-, in default, to suffer simple imprisonment for four months; and for the offence punishable under Section 12 of the Act with rigorous imprisonment for one year and a fine of Rs.1,000/-, in default, to suffer simple imprisonment for three months. The substantive sentences were ordered to run concurrently. The appellants deposited the fine amount in the trial Court.

8. The learned Counsel for the appellants submits that there is no sufficient, cogent and dependable evidence on record to establish that appellant no.1 demanded bribe amount from the complainant. According to him, the evidence of the complainant and Ashok Shelar (PW 2) in respect of the place of demand of bribe, is not at all consistent.

There was no verification of demand of bribe conducted by Joshi (PW 4). The evidence of the complainant about the time of the alleged first demand is not at all believable. He then submits that the evidence of Ashok Shelar (PW 2) and Joshi (PW 4) in respect the person, who allegedly took out the tainted currency notes from the pocket of shirt of appellant no.2, also is not consistent. Ashok Shelar (PW 2) states that the said amount was taken out by P.C. Sonule, who was instructed to remain in the office of A.C.B. itself, while Joshi (PW 4) states that it was taken out by the another panch namely, Sachin Kotkar. He submits that in view of this inconsistency, it was necessary for the prosecution to examine Sachin Kotkar. However, he has not been examined without assigning any reason. He further submits that there were 7-8 other persons inside the office of appellant no.1 at the time of the raid. However, none of them has been examined by the prosecution without assigning any reason. Though

independent evidence was available, the prosecution has suppressed that evidence. He further submits that there is absolutely nothing on record to show that appellant no.2 had any discussion with appellant no.1 in connection with the alleged demand of bribe from the complainant. Appellant no.2 was totally unaware as to what was thrust inside the pocket of his shirt by the complainant. He submits that the evidence on record does not show that appellant no.2 consciously accepted the bribe amount for and on behalf of appellant no.1. In the circumstances, according to him, appellant no.1 cannot be said to have abetted appellant no.2 to commit the offence of accepting the bribe. He submits that the appellants have been wrongly convicted by the learned Special Judge. In support of his contentions, he cited certain judgments, which would be considered at the later stage.

9. On the other hand, the learned APP submits that the evidence of the complainant is quite natural

and probable. It inspires great confidence. From the evidence of the complainant and Ashok Shelar (PW 2), it would be clear that there was demand of bribe by appellant no.1 for the purpose of recording the name of father of the complainant in the city survey record in respect of the house purchased by him. He then submits that the bribe amount was paid by the complainant to appellant no.2 at the instance of appellant no.1. According to him, pre-trap verification of the demand for bribe is not always essential. He submits that there was no reason for the complainant and Ashok Shelar (PW 2) to make false allegations against the appellants. The evidence of these witnesses is consistent and dependable. The learned trial Judge has rightly believed their evidence and rightly convicted the appellants for the above-mentioned offences.

10. It has come in the evidence of the

complainant that he firstly visited the office of appellant no.1 06.03.2003, when appellant no.1 had given notices for being served on the vendees. He does not state that on that day, there was demand for bribe made by appellant no.1. He states that on 17.03.2003, he went to the office of appellant no.1 and met appellant no.1 at about 11.00 a.m. to 12.00 noon. He informed appellant no.1 that the vendees could not be served with notices as they were not found on their last addresses. He requested appellant no.1 to find out some other way so that the name of his father could be recorded in the record of the city survey in respect of the house purchased by his father. At that time, appellant no.1 demanded Rs.1,000/- for doing the needful. From this evidence, it seems that on 17.03.2003 at about 11.00 a.m. to 12.00 noon, the first demand for bribe was made by appellant no.1.

11. The complainant states that since he was not inclined to pay the bribe to appellant no.1, he went

to the office of A.C.B. and lodged the complaint (Exh.25). In paragraph 7 of his deposition (see Marathi version), the complainant states that he went to the office of A.C.B. to lodge complaint at about 3.00 p.m., however, the Dy. S.P. - Joshi (PW4) in paragraph 11 of his deposition states that the complainant lodged the complaint (Exh.25) at about 10.00 a.m. to 10.30 a.m. If the evidence of the Dy. S.P. - Joshi (PW 4) about the time of lodging the FIR is considered, the evidence of the complainant that he met appellant no.1 in his office on 17.03.2003 at about 11.00 to 12.00 noon, when appellant no.1 demanded bribe from him and then he went to the office of A.C.B. at 3.00 p.m. and lodged the complaint (Exh.25) does not stand to reason.

12. It is common knowledge that the Government offices start at 10.30 a.m. Therefore, there was no question of there being any meeting between the complainant and appellant no.1 in the office of

appellant no.1 on 17.03.2003 prior to 10.30 a.m. In fact, it is not even the version of the complainant that he met appellant no.1 in his office prior to 10.30 a.m. on 17.03.2003. If that be so, the contents of the FIR (Exh.25) about so called demand of bribe by appellant no.1 prior to the visit of the complainant to the office of A.C.B. at about 10.00 a.m. to 10.30 a.m. for lodging the complaint (Exh.25) cannot at all be believed. The contents of complaint (Exh.25) do not corroborate the version of the complainant that appellant no.1 demanded bribe amount from him prior to 10.00 a.m. to 10.30 a.m. on 17.03.2003 i.e. prior to lodging of the complaint (Exh.25). In the circumstances, the first demand of bribe allegedly made by appellant no.1 from the complainant cannot be said to have been established.

13. The complainant states that he went to the office of A.C.B. for lodging complaint at about 3.00 p.m. and within 5 to 10 minutes, necessary

arrangements for laying trap was made. If this version is accepted, the evidence of Ashok Shelar (PW 2) that on being called by the Dy. S.P. – Joshi (PW 4), he went to the office of A.C.B. at 1.30 p.m. on 17.03.2003 when he found the complainant present in that office, cannot be accepted. Though Ashok Shelar (PW 2) states that the complainant stated before him about the demand of bribe of Rs.1,000/- by appellant from him, the complainant himself does not state so in his deposition. He states that the Dy. S.P.— Joshi (PW 4) apprised the panchas about his complaint. As such, the alleged demand of bribe made by appellant no.1 was not even disclosed by the complainant before the panchas. The pre-trap panchnama (Exh.30) is shown to have been prepared between 2.00 p.m. and 3.45 p.m. on 17.03.2003. When the complainant himself states that he visited the office of A.C.B. on that day at about 3.00 p.m., the evidence of Ashok Shelar (PW 2) and Dy.S.P. – Joshi (PW 4) about verification of demand of bribe before the panchas through the

complainant and the steps taken for laying the trap, as mentioned in the pre-trap panchnama (Exh.30), would create a great doubt.

14. The complainant states that after he left the office of A.C.B. along with the panchas and raiding party and went to the office of appellant no.1, he saw appellant no.1 coming from Varandah from his office. At that time, he pointed out to Ashok Shelar (PW 2) that the said person was appellant no.1 only. He then asked appellant no.1 about his work, whereon appellant no.1 asked as to whether he brought Rs.1,000/- as per his demand. He answered in the affirmative. Thereafter, appellant no.1 went inside the office and occupied his chair. From this evidence, it seems that the demand of bribe money was made by appellant no.1 outside his office prior to the trap. However, Ashok Shelar (PW 2) does not corroborate the evidence of the complainant in respect of this demand for bribe. He states that

when he went to the office of appellant no.1 along with the complainant, he saw appellant no.1 near one vehicle outside the office. In his cross-examination, this witness states that appellant no.1 had come to Varandah of his office. He then states that the complainant asked appellant about his work, whereon appellant no.1 informed that his work had been done. Thereafter, appellant no.1 entered into his office and occupied his chair. This witness does not state that appellant no.1 had demanded bribe amount from the complainant outside the office. As such, the version of the complainant that appellant no.1 demanded Rs.1,000/- from him towards bribe outside the office, cannot be believed.

15. The complainant states that after he entered into the office of appellant no.1 along with Ashok Shelar (PW 2) and after appellant no.1 occupied his chair, appellant no.1 asked him as to whether, he had brought the money. He does not state as to what

reply was given by him at that time to appellant no.1. However, Ashok Shelar (PW 2) states that after appellant no.1 occupied his chair inside the office, the complainant showed him copy of notice, whereon appellant no.1 showed the papers to the complainant in respect of the work that was done. Thereafter, appellant no.1 asked the complainant, whether he had brought money as decided, whereon the complainant answered in the affirmative. Thus, the evidence of the complainant and Ashok Shelar (PW 2) about the events those took place inside the office of appellant after he occupied the chair is not consistent on material points. The complainant does not state that he offered the bribe amount to appellant no.1 on being asked by appellant no.1, however, Ashok Shelar (PW 2) states that the complainant offered that amount to appellant no.1.

16. The version of the complainant that appellant no.1 asked him whether he had brought

Rs.1,000/- as per his demand outside the office, and again after occupying his chair asked him whether he had brought the money, does not appear to be natural and probable. When appellant no.1 had asked the complainant whether he had brought the amount of Rs.1,000/- and the complainant had replied in the affirmative, in the natural course, there was no reason for appellant no.1, to put again the same question to the complainant immediately after entering into the office on occupying the chair. The demand of bribe money outside the office allegedly made by appellant no.1 has not been supported by Ashok Shelar and the demand of that amount by appellant no.1 immediately after entering into the office and occupying the chair does not appear to be natural and probable. In the above circumstances, the evidence of the complainant and that of Ashok Shelar (PW 2) about the alleged demand of money by appellant no.1 prior to the trap cannot be believed.

17. The complainant and Ashok Shelar (PW 2) state that appellant no.1 asked the complainant to hand over the bribe amount of Rs.1,000/- to appellant no.2, who was sitting in another chair in the office of appellant no.1 at the distance of about 8 ft. to 10 ft. Accordingly, the said amount was paid by the complainant to appellant no.2, who took it by his right hand and kept in the left side pocket of his shirt. The complainant admits that after he entered into the office of appellant no.1 along with Ashok Shelar (PW 2), there were no talks between appellant no.1 and appellant no.2. Ashok Shelar (PW 2) states that there were 8-9 officials inside the office of appellant no.1 and they were present there until the raiding party entered into that office. After the bribe amount was handed over to appellant no.2, the complainant was asked to go outside of that office. Ashok Shelar (PW 2) states that Police Constable – Sonule took out the tainted currency notes from the shirt pocket of appellant no.2. However, Dy.S.P. –

Joshi (PW 4) states that panch no.2 took out that amount and one handkerchief (Art.2) from the shirt pocket of appellant no.2. Thus, the evidence of these two witnesses as to who took out the tainted currency notes from appellant no.2 is not consistent. The discrepancy in the evidence in that regard is very material and creates doubt as to whether the tainted notes were actually taken out from the shirt pocket of appellant no.2 by somebody else than appellant no.2 himself. In order to remove this discrepancy, it was immensely necessary for the prosecution to examine the panch no.2. However, the prosecution has not examined the said witness without assigning any reason.

18. Appellant no.2 has come with a specific defence that the tainted currency notes were thrust in his shirt pocket by somebody else without his knowledge and when himself he took out those notes by his right hand in order to see as to what was

thrusted in his shirt pocket, his right hand was smeared with anthracene powder that was applied to those currency notes. This defence, in the above circumstances, and more particularly when the evidence in respect of the person who took out the currency notes from the shirt pocket of appellant no.2, is inconsistent and doubtful, will have to be accepted as plausible. It cannot be said that appellant no.2 consciously accepted the tainted currency notes. Appellant no.2 has, thus, rebutted the presumption laid down under Section 20 of the Act by showing a probable defence.

19. As stated above, the evidence adduced by the prosecution in respect of the demand allegedly made by appellant no.1 and acceptance of currency notes by appellant no.2 at the instance of appellant no.1, is not cogent, consistent and dependable.

20. The learned Counsel for the appellant cited the judgments in the following cases :-

- (i) The State of Maharashtra Vs. Ramrao Marotrao Khawale, 2017 All M.R. (Cri) 3269;
- (ii) Purushottam Raghunath Kulkarni Vs. State of Maharashtra, 2016 All M.R. (Cri) 4516;
- (iii) Purushottam Vasant Joshi Vs. The State of Maharashtra, 2016 ALL MR (Cri) 665;
- (iv) Pramod s/o Namdeo Choudhary Vs. The State of Maharashtra, 2017 ALL MR (Cri) 57;
- (v) Avinash s/o Sudhakar Rao Ankush and Anr. Vs. The State of Maharashtra, 2016 ALL MR (Cri) 5245;
- (vi) Vasant s/o Domaji Likhar Vs. State of Maharashtra, 2015(4) Mh.L.J. (Cri.) 416;
- (vii) Vinod s/o Savalaram Kanadkhedkar Vs. The State of Maharashtra, 2016 ALL MR (Cri) 3697;

- (viii) G.V.Nanjundiah Vs. State (Delhi administration), AIR 1987 SC 2402;
- (ix) Smt. Avinash Sitaram Garware Vs. State of Maharashtra, 2008 ALL MR (Cri) 15;
- (x) Hiroz s/o Baburao Meshram Vs State of Maharashtra, 2015(3) Mh.L.J.(Cri.) 639;
- (xi) Gopal s/o Nagnathrao Gunjkar Vs. State of Maharashtra, 2010 ALL MR (Cri) 2436;

21. The sum and substance of the above mentioned rulings is that when a trap is set for proving the charge of corruption against a public servant, evidence about prior demand has its own importance. Prior demand of bribe has to be positively established. Mere recovery of tainted currency notes by itself would not connect the person, from whom the said notes were recovered, with any offence in the absence of any evidence as to demand for bribe amount. When there is variance in the evidence of

the witnesses about the events those took place prior to and at the time of trap, it is necessary to examine an independent witness. In the absence of any evidence, to show that both the accused persons conspired to demand and accept the bribe, it cannot be said that the accused from whom the tainted currency notes were recovered abetted another accused to commit the offence of demanding and accepting the bribe. The accused has not to establish his defence beyond reasonable doubt. He may rebut the presumption under Section 20 of the Act by showing a mere preponderance of probability in his favour.

22. In the present case, as stated above, there is no sufficient and dependable evidence to established that appellant No.1 demanded bribe from the complainant. There is no evidence to show that appellant No.2 consciously accepted the tainted currency notes for and on behalf of appellant no.1 knowing that it was the bribe amount. The defence set up by appellant No.2 is quite natural and plausible.

There is no independent corroboration to the evidence of the complainant and Ashok Shelar (PW2). In the above circumstances, it cannot be said that the prosecution established beyond the reasonable doubts that appellant No.1 demanded the bribe amount from the complainant and appellant No.2 accepted the bribe amount at the instance of appellant No.1.

23. The learned trial Judge did not appreciate the facts of the case as well as the evidence on record correctly and properly. Though, the evidence on record is not cogent, consistent and dependable, the learned trial Judge believed it and wrongly convicted the appellants. The evidence on record creates strong doubt about the alleged demand of bribe by appellant No.1 and acceptance thereof by him through appellant No.2.

24. In the result, the impugned judgment and order will have to be set aside with the following order :-

O R D E R

- (i) The appeal is allowed.
- (ii) The impugned judgment and order are set aside.
- (iii) Appellant no.1 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) Appellant no.2 is acquitted of the offences punishable under Sections 12 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.
- (v) The bail bonds of the appellants are cancelled. They are set at liberty.
- (vi) The fine amount deposited by the appellants be refunded to them.

[SANGITRAO S. PATIL]
JUDGE