

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 480 OF 2000

Mulchand s/o Barku Patil,
Age : 52 years, Occu. Police
Head Constable, B.No. 729,
Police Station, Shivoor,
Tq. Vaijapur, Dist. Aurangabad

APPELLANT

VERSUS

The State of Maharashtra

RESPONDENT

Mr.N.S. Ghanekar, Advocate for Appellant
Smt.R.P. Gaur, A.P.P. for respondent/State

CORAM : SANGITRAO S. PATIL, J.

Reserved on : 14th JULY, 2017

Pronounced on: 27th JULY, 2017

JUDGMENT :

Heard the learned counsel for the appellant and
the learned A.P.P.

2. Being aggrieved by the judgment and order dated
8th December, 2000, passed in Special Case No. 1 of 1995
by the learned Special Judge (A.C.), Aurangabad,
convicting the appellant 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), the present appeal has been filed.

3. In short, it is the case of the prosecution that the complainant namely Bhausahab Kisanrao Thombre, originally resident of Mandki, Taluka Vaijapur, District Aurangabad, presently residing at Padegaon, Taluka and District Aurangabad in connection with service in Bajaj Auto Ltd., Waluj, Aurangabad, received an information from his nephew namely Devidas Gorakh Thombre about the quarrel between his father Gorakh and uncle Daulat (i.e. the brother and cousin respectively of the complainant), on one hand and his another uncle Raibhan Trimbak Thombre and his four sons on the other on account of flowing of accumulated rain water through the agricultural land of Raibhan Thombre on 5th September, 1994. He was further informed that the appellant, who was working as a Police Head Constable in Police Station, Shivoor, Taluka Vaijapur, District Aurangabad, had been to village Mandki for conducting enquiry in respect of that incident. Therefore, the complainant visited village Mandki on 9th September, 1994. After knowing the facts of the incident, he started to proceed to Police Station, Shivoor. On the way, the appellant met him at the bus stand of village Garaj. At that time,

the appellant informed him that a report was lodged against the brother Gorakh and cousin Daulat of the complainant by Raibhan for causing damage to his crops and Gorakh and Daulat would be required to be arrested. The appellant further asked him to bring Gorakh and Daulat alongwith two sureties to Police Station, Shivoor on 12th September, 1994 so that they could be released on bail. The appellant told him that the amount of Rs.3000/- would be required for releasing them on bail. When the complainant expressed inability to pay that much amount to the appellant, the appellant reduced that amount to Rs.2500/-, but when the complainant showed inability to pay that amount also and further requested the appellant to reduce that amount, the appellant asked him to pay minimum Rs.2000/-. Left with no alternative, the appellant showed willingness to pay that amount to the appellant. The appellant asked him to pay that amount immediately. However, the complainant sought time of 2 to 3 days to collect that amount, whereon the appellant asked him to pay that amount in any case by noon on 12th September, 1994. He further asked the complainant to produce Gorakh and Daulat along with two sureties in the Police Station by noon on that day.

4. Since the complainant was not ready to pay bribe amount to the appellant, he approached the office of A.C.B. on 12th September, 1994 and lodged complaint against him. After receiving that complaint, PI Nalawade (PW6), who was working in the office of ACB at Aurangabad, decided to lay trap. Accordingly, two panchas were called. All the necessary arrangements for laying the trap were made. The raiding party, after getting instructions from PI Nalawade (PW6), proceeded to Police Station, Shivoor. However, when they reached near Deogaon Phata, the brothers of the complainant met them and informed that the appellant was not available in the Police Station. Therefore, the raiding party came back. It was decided to lay trap on the next day.

5. Accordingly, on 13th September, 1994, the raiding party, after completing necessary formalities and making necessary arrangements to lay trap, went to Police Station, Shivoor along with the complainant, his brother Gorakh and cousin Daulat, two sureties and panchas. The complainant entered into the office of the appellant along with his brother, cousin, sureties and one of the panchas. The appellant wrote something on a paper, called a Home-guard and asked him to take the

brothers of the complainant and sureties to the office of the Tahsildar. The appellant asked the complainant to be seated in his room. The Home-guard took the brother and cousin of the complainant along with their sureties out of the room of the appellant. The appellant asked the complainant to pay the money. Thereon, the complainant removed the tainted currency notes from the pocket of his shirt and held them in front of the appellant. The appellant asked him to place those currency notes on a paper which was on the table. Accordingly, the complainant kept those currency notes on the paper. The appellant then collected those currency notes along with that paper and kept them in the left side pocket of his pant. At that time, the trap panch Meshram (PW4) (Exh-22) was at the distance of about 5 to 10 feet from the complainant.

6. Thereafter, the appellant and the complainant went out of that room. The complainant gave the predetermined signal to the raiding party, the members of the raiding party caught hold of the appellant. Prior to that, the appellant dropped the tainted currency notes on the ground. The hands, left side pocket of the pant of the appellant and the paper with which the

tainted currency notes were lifted by the appellant, were examined under the ultraviolet lamp whereon blue shining of anthracene powder was noticed thereon. The trap panchanama was prepared. The appellant was arrested.

7. FIR was lodged by PI Nalawade (PW6) against the appellant in Police Station, Shivoor for the above mentioned offences. On the basis of that FIR, Crime No. 9/1994 came to be registered. The investigation followed. The statements of the witnesses were recorded. After completion of the investigation, the papers of investigation were sent to the Sanctioning Authority, seeking sanction for prosecution of the appellant. After receiving the sanction order, the appellant came to be prosecuted for the above mentioned offences.

8. The learned Trial Judge framed charges against the appellant for the above mentioned offences vide Exh-4 and explained the contents thereof to him in vernacular. The appellant pleaded not guilty and claimed to be tried. His defence is that of total denial and false implication. According to the appellant, he neither demanded nor accepted the bribe amount as

alleged. The complainant thrust the tainted currency notes in the left side pocket of his pant and falsely involved him in the present case.

9. The prosecution examined six witnesses, including the complainant, trap witness Meshram (PW4) and the Investigating Officer PI Nalawade (PW6). Smt. Shridevi Goel (PW5) is the sanctioning Authority, who proved sanction order (Exh-3). The appellant examined Tukaram Pawar (DW1) (Exh-41), the Home-guard in his defence, who was on duty with the appellant on the day of the trap. After evaluating the evidence on record, the learned Special Judge found that the prosecution established beyond doubt the guilt of the appellant for the above mentioned offences. He, therefore, convicted the appellant for the said offences and sentenced him to suffer rigorous imprisonment for two years and to pay a fine of Rs. 300/-, in default to suffer rigorous imprisonment for six months in respect of the offence under Section 13 (2) read with Section 13 (1) (d) of the Act and to suffer rigorous imprisonment for one year and to pay a fine of Rs. 200/-, in default to suffer rigorous imprisonment for two months in respect of the offence under Section 7 of the Act. The learned Special

Judge directed that the substantive sentences of imprisonment shall run concurrently. The appellant deposited the fine amount of Rs. 500/- in the Special Court.

10. The learned counsel for the appellant submits that the evidence of the complainant and that of trap panch Meshram (PW4) is not consistent on material points. It creates great doubt about the case of the prosecution. He submits that the evidence of the complainant about the demand and acceptance of bribe by the appellant is not worth believing. When the appellant was not going to arrest the brother and cousin of the complainant, there was no question of paying bribe to the appellant for not arresting them. He submits that the sequence of the events stated by Meshram (PW4) is not consistent with that of the complainant. There is no independent corroboration to the version of the complainant in respect of the demand and acceptance of bribe by the appellant. He submits that the evidence of Pawar (DW1) clearly shows that after the appellant and the complainant came out of the room of the appellant, the complainant thrust the tainted currency notes in the left side pocket of the

pant of the appellant. The appellant immediately threw the said currency notes on the ground. Thereafter, he was caught hold of by the raiding party. According to him, the defence of the appellant is quite probable. It is supported by the evidence of Pawar (DW1), who is an independent witness. He further submits that one of the relatives of the complainant was serving in the office of ACB as Head Constable. The appellant has been falsely involved in this case at the instance of the said relative of the complainant. He submits that the learned Trial Judge did not appreciate the evidence of the witnesses properly and wrongly held the appellant guilty of the above mentioned offences.

11. As against this, the learned A.P.P. submits that the evidence of the complainant is quite natural, probable and acceptable. The demand for bribe was made by the appellant on 12th September, 1994 which has been proved through the evidence of the complainant, who alone was there when that demand was made. She then submits that the traces of anthracene powder were noticed on the paper that was on the table inside the room of the appellant. The anthracene powder was noticed on the table also. If the tainted currency

notes would have been thrust by the complainant in the left side pocket of the pant of the appellant after coming out of the room of the appellant, the traces of the anthracene powder would not have been found on the table and the paper that was on that table. This fact itself indicates that the tainted currency notes were placed by the complainant on the paper that was on the table and after the appellant kept those tainted currency notes on the left side pocket of his pant, the appellant and the complainant went out of the room. She submits that after realizing that he was being trapped, the appellant threw the tainted currency notes out from the pocket of his pant. She submits that the defence is not at all probable and acceptable. The evidence of the Home-guard Pawar (DW1) cannot be accepted since he was working with the appellant and as such, is an interested witness. She submits that the learned Special Judge has rightly appreciated the evidence and has rightly convicted and sentenced the appellant.

12. It is stated by the complainant Bhausahab (PW3) that a report was lodged against his brother Gorakh and cousin Daulat by his uncle Raibhan in the Police Station and the appellant had visited village Mandki to make

enquiry in respect of that report after about 2 to 3 days of lodging that report. From this evidence, it is clear that the appellant being a Police Head Constable was making enquiry in respect of the report that was lodged against the brother and cousin of the complainant. PI Nalawade (PW6) has produced copies of the papers of enquiry (Exh-36/1 to 36/13) on the basis of which Chapter Case No. 100 of 1994 was instituted against Gorakh and Daulat before the Executive Magistrate, Vaijapur. The appellant has recorded statements of the witnesses and filed this Chapter Case against Gorakh and Daulat. It is, thus, clear that the appellant was holding enquiry against Gorakh and Daulat, who were brother and cousin respectively of the complainant.

13. The complainant specifically states that on receiving the information from his brother and nephew that the appellant had called Daulat and Gorakh to Police Station, he went to village Mandki and enquired with his brother on 9th September, 1994. The report against Gorkah and Daulat (Exh-36/3) seems to have been lodged on 5th September, 1994. There is a report dated 9th September, 1994 (Exh-36/6) by the Police Patil of

village Mandki to PSI, Police Station, Shivoor, wherein it is mentioned that the appellant (PHC Patil) had given the names of seven persons and called them but those persons had refused to attend. This report (Exh-36/6) supports the version of the complainant that Gorakh and Daulat were called to the Police Station on 9th September, 1994. He states that after making enquiry with his brother, he left for Shivoor, but on the way, the appellant met him on Garaj bus stand. At that time, the appellant told him that there was complaint against his brother and asked him to bring sureties with 7/12 extracts. The appellant further told him that the amount of Rs.3000/- would be required for bail. The complainant told the appellant that he was not having the amount of Rs.3000/- but agreed to pay Rs.2000/- to the appellant. This was the first demand of bribe made by the appellant. It has come in the cross-examination of the complainant that when he met the appellant at Garaj, he was alone. If that be so, no independent corroboration to the evidence of the complainant in respect of the first demand for bribe was possible. It has come in paragraph No. 12 of cross-examination of the complainant that he was prepared to give money to the appellant for not arresting his brothers and for not

taking them to Tahsil office. The complainant then filed complaint (Exh-14) against the appellant in the office of ACB on 12th September, 1994. The contents of the complaint (Exh-14) corroborates the evidence of the complainant in respect of the first demand for bribe made by the appellant.

14. As seen from the evidence of the complainant, the trap panch Meshram (PW4) and PI Nalawade (PW6), the trap was arranged by completing the necessary formalities as per the pre-trap panchanama (Exh-23) on 12th September, 1994, but it could not be materialized because when they proceeded to Shivoor from Aurangabad, the brother of the complainant met them on Deogaon phata and informed them that the appellant was not available in Shivoor Police Station since he had gone out of the Police Station in connection with some other work and that the appellant had asked them to come to the Police Station on the next day. Thus, the trap could not laid on 12th September, 1994.

15. It has come in the evidence of these three witnesses that the trap was arranged on 13th September, 1994. They have stated about the formalities that were

completed in the office of ACB as mentioned in the panchanama (Exh-25) that was prepared between 6.45 a.m. And 7.15 a.m.

16. The complainant deposes that after preparing the panchanama in the office of ACB at Aurangabad on 13th September, 1994, the raiding party and himself along with panch Meshram (PW4) went to Police Station, Shivoor. The appellant was present in the Police Station. The complainant sat on a bench that was inside the room of the appellant. The appellant asked the complainant as to why he did not come on the previous day, whereon the complainant told that because of some work, he could not come on the previous day. Then, the appellant called one Home-guard, wrote something on a paper and directed the Home-guard to take Gorakh and Daulat along with the sureties to Tahsil office. The complainant asked him as to why he was sending Gorakh and Daulat to Tahsil office when he had brought money as demanded by the appellant. The appellant thereon asked the complainant to pay that money. The complainant removed the tainted currency notes of Rs.2000/- from the pocket of his shirt and held them in front of the appellant. The appellant asked him to keep those

currency notes on the paper on the table and accordingly, the complainant kept those currency notes on the table. Then, the appellant collected those currency notes and kept them in the pocket of his pant. The complainant states that at that time, the panch Meshram (PW4) was in the varandah at a distance of 5 to 10 feet from him. Thereafter, the appellant and the complainant went out of the room of the Police Station. The complainant gave a predetermined signal by moving his hand on his head. When the members of the raiding party rushed towards the appellant, the appellant dropped the tainted currency notes on the ground before he was caught by the raiding party.

17. Meshram (PW4) corroborates the version of the complainant on all material points in respect of the demand of the appellant for bribe amount and compliance of that demand by the complainant. There are some inconsistencies in the evidence of the complainant and Meshram (PW4), but those are minor in nature and cannot be attached with any importance. Meshram (PW4) specifically states that on being demanded by the appellant, the complainant took out the tainted currency notes and held them in front of the appellant. The

appellant asked the complainant to place those currency notes on a paper. Accordingly, the complainant placed those currency notes on that paper. Thereafter, the appellant collected those currency notes and kept them in the pocket of his pant. At that time, he was at the distance of about 4 to 5 feet from the appellant. With this evidence of the complainant and Meshram (PW4), the prosecution has established positively that at the time of the trap, the appellant demanded the bribe amount of Rs.2000/- and in response to that demand, the complainant placed the tainted currency notes of Rs.2000/- on the paper that was on the table and the said amount was then collected by the appellant and kept in the pocket of his pant.

18. The defence of the appellant is that when the appellant himself went out of the room from the Police Station, the complainant thrust the tainted currency notes in the pocket of his pant and the appellant immediately threw those notes on the ground. In support of this defence, the appellant has examined Home-guard Pawar (DW1) (Exh-41), who states about thrusting of currency notes by the complainant in the pocket of the pant of the appellant and throwing of those notes by the

appellant on the ground. Pawar (DW1) further states that at that time, there had been a scuffle between the appellant and the complainant. There is absolutely no evidence to indicate that there had been scuffle between the appellant and the complainant in the premises of the Police Station. The theory of scuffle is ex facie improbable. The complainant would not have dared to indulge into a scuffle with the appellant, a Police Head Constable, in the premises of the Police Station itself.

19. After catching hold of the appellant, his hands and left side pocket of his pant were examined under the light of ultraviolet lamp, whereon blue shining of anthracene powder was noticed thereon, as seen from the evidence of panch Meshram (PW4) and PI Nalawade (PW6). It has come in the evidence of panch Meshram (PW4) and PI Nalawade (PW6) that a paper which was found with the tainted currency notes also was examined under the light of ultraviolet lamp, whereon blue shining was noticed thereon. Panch Meshram (PW4) identified the said piece of paper as Article 3 that was produced before the Trial Court. Panch Meshram (PW4) specifically states that the appellant had collected the currency notes along with that paper and had kept it in the pocket of his pant.

Panch Meshram (PW4) states that blue shining was noticed on the table of the appellant also. Had the tainted currency notes been thrustured by the complainant in the pocket of the pant of the appellant after coming out of the room of the appellant, the traces of anthracene powder would not have been on the paper that was on the table on which the complainant was asked to place the currency notes. The traces of the anthracene powder would not have been present on the table in the room of the appellant. The presence of anthracene powder on the table as well as on the paper that was on that table clearly shows that the bribe amount was actually paid by the complainant to the appellant inside his room and not thrustured by him after the appellant and himself left that room.

20. It is clear that when the appellant noticed that he was being trapped by the members of the raiding party, he threw the tainted currency notes on the ground from the left side pocket of his pant. The defence set up by the appellant about thrusting of the currency notes in the pocket of his pant is not at all natural and probable. It cannot be accepted. Thus, there is positive evidence on record to show that on being

demand by the appellant, the complainant paid him the bribe amount of Rs.2000/- inside the office room of the appellant and the appellant consciously accepted that amount as bribe for not arresting the brother and cousin of the complainant.

21. The learned counsel for the appellant submits that when it was a Chapter case, there was no question of arresting the brother and cousin of the complainant and therefore, there was no reason for the appellant to demand bribe amount for not arresting them. This submission cannot be accepted. Though it was a Chapter case, the appellant being the Investigating Officer was in a position to extend a potential threat of arresting the brother and cousin of the complainant. Therefore, the reason given by the complainant behind the demand of bribe made by the appellant cannot be said to be not acceptable.

22. Admittedly, one of the relatives of the complainant was serving as a Head Constable in the office of A.C.B. However, he was not a member of the raiding party. There is nothing on record to show that the said relative of the complainant had any axe to

grind against the appellant. There is nothing on record to show that the said relative had any occasion or opportunity to influence P.I. Nalawade (PW6) or any other official connected with the present case. In the circumstances, the contention of the learned Counsel for the appellant that the appellant has been falsely involved in this case at the instance of the said relative of the complainant, cannot be accepted.

23. The prosecution has established beyond doubt that the appellant demanded and accepted illegal gratification from the complainant as a reward for not arresting the brother and cousin of the complainant. The prosecution further established that the appellant committed criminal misconduct by obtaining bribe amount of Rs.2000/- from the complainant to his pecuniary advantage and thereby committed offence punishable under sub-section (2) of Section 13 read with Section 13 (1) (d) of the Act.

24. The learned Trial Judge has rightly appreciated the evidence and has rightly held the appellant guilty for the above mentioned offences. The impugned judgment convicting the appellant for the above mentioned

offences needs no interference.

25. The incident took place in the year 1994. The period of about 23 years has been elapsed after the date of the incident. The appellant has been convicted by the Trial Court before about 17 years. He was under the mental pressure of the said sentence for these long years. In the circumstances, I think fit to show some leniency to the appellant by reducing the sentence of imprisonment imposed against him from two years to one year, but at the same time, enhancing the sentence of payment of fine from Rs.300/- to Rs.3000/-, in default to suffer rigorous imprisonment of six months in respect of the offence under Section 13 (2) read with section 13 (1) (d) of the Act. Likewise, I think fit to reduce the sentence of rigorous imprisonment from one year to six months in respect of the offence under Section 7 of the Act and enhance the fine amount from Rs.200/- to Rs.2000/-, in default to suffer rigorous imprisonment for two months. The substantive sentences will have to be directed to run concurrently. The fine amount of Rs. 500/- already deposited by the appellant will have to be ordered to be appropriated towards the fine amount that has been directed to be paid by the appellant by this

order. The appeal is liable to be partly allowed. In the result, I pass the following order:-

O R D E R

- (i) The appeal is partly allowed.
- (ii) The conviction of the appellant for the offences punishable under Section 7 and 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 are confirmed.
- (iii) The order passed by the Trial Court sentencing the appellant for the offence under Section 7 of the Prevention of Corruption Act, 1988 is modified and he is sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs. 2000/-, in default to suffer rigorous imprisonment for two months.
- (iv) The order passed by the Trial Court sentencing the appellant for the offence punishable under Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 is modified and he is sentenced to suffer rigorous

imprisonment for one year and to pay a fine of Rs. 3000/-, in default to suffer rigorous imprisonment for six months.

- (v) The substantive sentences of imprisonment shall run concurrently.
- (vi) The fine amount of Rs. 500/- (which has already been deposited by the appellant), shall be appropriated towards the amount of fine that has been directed to be paid by the appellant by this order.
- (vii) The appellant shall surrender to his bail bonds before the Trial Court on or before 3rd August, 2017 for suffering the sentence of imprisonment.
- (viii) In case the appellant fails to surrender as stated above, the Trial Court shall issue coercive process to secure his presence.
- (ix) The Criminal Appeal is disposed of accordingly.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE