

*Sarnobat*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION NO. 122 2003**

Babusingh P. Chavan, )  
Age 35 years, Occ. Business, )  
Residing at Shinde, Tal. Karad, )  
District : Satara. )... Applicant.

Vs.

1. Sharad Shankar Nangare, )  
Age 45 years, Occupation : A. P. I., )  
Residing at Marul Haveli, )  
Tal. Patan, District : Satara. )

2. State of Maharashtra, )  
(Anti-Corruption Bureau, Satara). )... Respondents.

Mr. Ganesh Gole a/w Mr. Ateet Shirodkar, for the Applicant.  
Mr. Prashant P. Raul a/w Mr. S. P. Kadam for Respondent No. 1.  
Ms. Sharmila S. Kaushik, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL, J.**

**DATE : OCTOBER 26, 2018.**

**JUDGMENT :**

1. The revisional applicant has preferred this revision application against the judgment and order dated 15<sup>th</sup> January, 2003 passed by the Special Judge for Anti Corruption Case Satara in Special Case No. 6 of 2001. The applicant has also prayed for quashing and setting aside the notice issued to him under Section 344 of Code of Criminal Procedure 1973 (Cr. P. C.) While acquitting the Respondent

No. 1 from the charges of committing offence punishable under Section 13(1)(d) r.w. 13(2) of Prevention of Corruption Act, 1988 the impugned notice was issued by the learned Trial Judge.

2. The relevant facts in brief are as follows :-

The applicant was the owner of Laxmi Cement Pipe Factory which was situated near Village Umbraj. The applicant was in the business of supplying cement poles and other products. In the past, he had supplied his products even to police officers for the purposes of their construction. The applicant had supplied cement poles worth Rs.5,000/- to the Respondent No. 1. Out of which the Respondent No. 1 had used the material worth only Rs.2,800/- and had returned the balance material worth Rs.2,200/-. This figure of Rs.2,200/- is important because that amount was the bribe amount involved in the instant case.

3. It was the case of the applicant that, on 5<sup>th</sup> February, 2001, applicant's brother Rajendra was taking applicant's son Jitendra to school on applicant's scooter. On the way, the scooter met with an accident and injured Jitendra and another boy named Avinash Ingale aged about 10 to 12 years. Avinash and Jitendra were taken to Gavkar Hospital, Karad. It is the case of the applicant that he incurred the medical expenses for both of them. After the incident had occurred at about 10.00 am on 5<sup>th</sup> February, 2001 itself, the applicant went to

Umbraj Police Station and gave information about the accident. At that time, he was informed that since there was no grievance of any person, there was no necessity for recording the information. On 7<sup>th</sup> February, 2001 the Respondent No. 1 who was attached to Umbraj Police Station as Havaldar informed the applicant that police had received a call from Krishna Hospital about the occurrence of the accident. He further directed the applicant to come to Umbraj police station with his scooter. The applicant met the Respondent No. 1 at the police station and requested him to grant some time for bringing the vehicle. Even on that day no information was recorded at the police station. However, police constable Gaikwad prepared a panchanama of the scene of offence and also recorded statements of a few witnesses. On 10<sup>th</sup> February, 2001, Avinash was discharged from the hospital. The applicant went to the police station to enquire with the Respondent No. 1 as to when they intended to effect arrest of Rejendra and send charge-sheet against Rajendra. It was the case of the applicant that since the panchanama was completed, the applicant was under the impression that the logical step would be of filing of the charge-sheet. Again on 11<sup>th</sup> February, 2001 the applicant met the Respondent No. 1 and enquired as to when the scooter should be brought. He was asked to come on the next day. On the next day the applicant requested Respondent No. 1 to complete the formalities as the injured was already discharged from the hospital.

On this occasion the Respondent No. 1 told him to bring an amount of Rs.2,200/-. According to the applicant, the Respondent No. 1 informed him that, the matter would be sent to the Court only if that amount was paid. Till that day the applicant's brother Rajendra was not arrested. Since the applicant did not want to pay the bribe amount, he approached Anti-Corruption Bureau, Satara on 12<sup>th</sup> February, 2001. He informed Dy. Superintendent Mr. Mane who was present at the Anti-Corruption Bureau office about the demand made by the Respondent No. 1. The applicant's complaint was reduced into writing. (The said complaint is produced in the trial at Exh. 14). In the complaint it was mentioned that the Respondent No. 1 had demanded Rs.5,000/- as bribe and after negotiation the amount was reduced to Rs.2,200/-. This aspect is important because during trial, the applicant had taken a stand that he had not made this statement in the complaint. The learned Trial Judge had taken strong objection to his variance in the complaint and deposition of applicant and mainly on that basis the impugned notice was issued.

4. After the applicant's complaint was recorded, the Dy. Superintendent Mr. Mane arranged for setting of trap on Respondent No. 1. For that purpose two panchas were called. They were explained the functioning of anthracene powder and ultraviolet lamp. The 22 currency notes of Rs.100/- each was produced by the complainant

before panchas and Dy. S.P. The pre-trap procedure was completed . The Anti-Corruption Bureau officers, the applicant and the panchas went to Umbraj Police Station. The applicant met the Respondent No. 1. The applicant was asked to wait for some time. Accordingly, the applicant and the panchas waited near a tea stall. After about five minutes, Respondent No. 1 came there and demanded Rs.2,200/-. The applicant gave him that amount. The Respondent No. 1 counted that money with both hands and then kept it in the pocket of his shirt. The applicant gave the pre-arranged signal. The raiding party came there and caught the Respondent No. 1. Post trap panchanama was conducted. Dy. S.P. Mr. Mane lodged his F.I.R. vide C.R. No. 3010/2001 under Section 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act at Umbraj Police Station. After the investigation was completed, the charge-sheet was filed. During the trial, charge under Sections 13(1) (d) r/w Section 13(2) of Prevention of Corruption Act was framed against the Respondent No. 1. The applicant was examined as PW 1. Panch Mr. Prakash Jadhav was examined as PW 2. The Superintended of Police Mr. Ramrao Pawar who was the sanctioning authority was examined as PW 3 and Dy. Superintendent of Police Mr. Mane was examined as PW 4.

5. The Respondent No. 1 took a specific defence that the applicant had supplied him material worth of Rs.5,000/-. Out of which

he had kept the material worth only Rs.2,800/- and had not accepted remaining material and thus an amount of Rs.2,200/- was due from the applicant to him. It was the case of the Respondent No. 1 that the amount which he had accepted was that amount of Rs.2,200/- and it was not the bribe amount. He clarified that he had never demanded bribe from the applicant.

6. The applicant in his deposition explained that the Respondent No. 1 had demanded Rs.2,200/- as bribe amount and had not demanded Rs.5,000/- which was negotiated to make it Rs.2,200/-. The applicant offered an explanation that such statement was made in the complaint at the instance of PW 4 Dy. SP Mr. Mane. According to the applicant, he was informed by Mr. Mane that unless such case is made out, the prosecution would not succeed. Mr. Mane on the other hand in answer to the question put by the Court denied having made any such statement or suggestion to the applicant. The learned Trial Court took note of this fact and concluded that the applicant had deliberately given false and fabricated evidence and hence issued notice under Section 344 of Code of Criminal Procedure. While giving his reasoning, the learned Trial Judge made certain observations in paragraph 36 and 37 of his judgment as follows :-

“36) In the beginning itself I must mention here that on going through entire evidence of the

complainant Chavan it is crystal clear that Police Station or the working of the same or the manner in which the same goes on in the Police Station was not new affair for him. All the while he was having his shop abutting to the Police Station Umbraj and on many occasions as per his own version has helped police in supplying cement etc. For the purpose of construction of hall styled as "Pratisad". In an unequivocal terms he has admitted in his cross-examination that he helped police for the purpose of construction of the Police Station and temple near it. Many police officers are personally known to him. He admits that for once or twice previous to this incident, he came into contact with accused Nangare. Vide para 14 of his testimony he also admits that in accident cases he helped number of persons involved in the same especially from the area of Rajasthan in all respects. He has added that in many cases he has appeared as surety and helped those persons.

37) With this background of the complainant it is highly improbable to believe that he is not aware about the section under which case was filed against his brother. He was aware that these sections are bailable and it is not at all necessary to effect arrest in such cases and one may get released by filing surety against concerned accused."

7. Learned Trial Judge had also observed that the

complainant had deliberately not mentioned in the complaint regarding the transaction of sale and purchase of material between the applicant and Respondent No.1. Finally the learned Judge concluded that because of the attitude of the applicant, the prosecution had failed to prove the charges levelled against the Respondent No. 1. The learned Judge further observed that the applicant had to be dealt with iron hands as he had used the police machinery as a tool for his personal grievances. The learned Judge concluded that the applicant had led false and fabricated evidence and therefore, issued notice to the applicant under Section 344 of Code of Criminal Procedure.

8. In this background it is necessary to consider whether it would be expedient in the interest of justice to resort to taking action under Section 344 of Cr. P.C. against the applicant. The entire factual matrix and the evidence led during the trial show that, according to the applicant, the Respondent No. 1 demanded money for completing procedural formalities. The demand of Rs.2,200/- was the amount which the applicant had kept for himself and material worth Rs.2,200/- was not supplied. On the other hand, the applicant's case is that the transaction was already over and it had nothing to do with the demand of bribe. The applicant had not resiled from his statement that the Respondent No. 1 had demanded and accepted bribe for completing procedural formalities in respect of accident caused by his brother. The

only variance in his deposition and his complaint before the Anti-Corruption was that, in the deposition from the beginning he had categorically stated that, the bribe amount was fixed at only Rs.2,200/- whereas, in the complaint it is mentioned that bribe amount was negotiated to Rs.2,200/- and initially the Respondent No. 1 had demanded Rs.5,000/-.

9. I was informed by both the parties that the impugned judgment of acquittal is not challenged before this Court in any appeal and thus, acquittal of the Respondent No. 1 has attained finality. However, the applicant has made a prayer in his Revision Application for setting aside the judgment of acquittal. So far as the said prayer is concerned, in my opinion sufficient doubt was created in the prosecution case and therefore, the acquittal of Respondent No. 1 need not be interfered with. The next question is whether such acquittal and the observation of the learned Judge would justify initiation of proceedings under Section 344 of Cr. P.C. For that purpose it is necessary to refer to Section 344 of Cr. P.C. which reads thus :-

**“344. Summary procedure for trial for giving false evidence.—**

(1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class

expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

(3) Nothing in this section shall affect the power of the Court to make a complaint under section 340 for the offence, where it does not choose to proceed under this section.

(4) Where, after any action is initiated under sub-section (1), it is made to appear to the Court of Session or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that sub-section has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision.”

10. The learned Trial Court has recorded a finding that the applicant had led false and fabricated evidence and therefore, had issued notice under Section 344 of Cr. P.C. It is important to note that, apart from the discrepancy in respect of the demand of Rs.5,000/-, the applicant has stuck to his story. The applicant in his evidence was consistent that that Respondent No. 1 had demanded bribe for completing procedural formalities. He has not resiled from his version of demand and acceptance of bribe. The pre-trap and post trap panchanama also show that the trap was laid and the amount was found with the Respondent No. 1. It is also important to note that the

applicant was not declared as a hostile witness. Even the learned prosecutor did not find it necessary to cross examine him. In this view of the matter, it was not proper for the learned Trial Court to conclude that the applicant had given false and fabricated evidence. The learned Trial Court was also not right in observing that since the applicant was a frequent visitor of Umbraj Police Station, it must be presumed that he was aware of the consequences as to whether such offences were bailable.

11. The learned Judge was right in giving benefit of doubt to the original accused by acquitting him. But it was not proper to hold that the applicant's evidence was false and fabricated. The Code of Criminal Procedure as well as the evidence Act lay down the manner in which the contradictions in the previous statement of the witnesses are to be brought on record. It is necessary to see the over all effect and impact of such contradictions in the entire case. Just because there is inconsistency in the deposition and previous statement of a witness, it cannot be always concluded that the witness has given false evidence. The language of Section 344 itself suggests that such action can be taken if the Court is satisfied that it is necessary and expedient in the interest of justice that the witnesses should be tried for giving false and fabricated evidence. It may result in opening of the entire trial itself because, such a witness has a right to defend himself in the

proceedings. The Court is required to follow the procedure prescribed for summary trials. To avoid all such anomalous situations and complications, the Court has to be very cautious in taking action under Section 344 of Cr. P.C. In a given case the Court may be justified in taking action under Section 344 of Cr. P.C., however, every contradiction brought on record from the previous statement will not automatically mean that the Court should resort to taking action under Section 344 of Cr. P. C. Such approach would deter genuine complainants from setting Criminal Law in motion if they are apprehending possible prosecution against themselves in case of acquittal of the accused. In my opinion, in the factual matrix of the present case, the version of the applicant was of not such a nature that it can be termed as false or fabricated evidence. Though, the Respondent No. 1 is entitled for benefit of doubt, it is difficult to conclude that the entire case was false and fabricated just because there was a controversy regarding initial demand of Rs.5,000/-. In this view of the matter, I am inclined to partly allow this revision. Hence, the following order.

**ORDER**

- i) The Rule is made absolute only in terms of prayer clause (d) .
- ii) The acquittal of the Respondent No. 1 in

Special Case No. 6 of 2001 on the file of Learned Special Judge for Anti-Corruption Case, Satara is not interfered with.

lii) The notice dated 29<sup>th</sup> January, 2003 issued under Section 344 of Cr. P.C. 1973 against the applicant by the Learned Special Judge for Anti-Corruption Cases, Satara in Special Case No. 6/2001 is quashed and set aside.

**[ SARANG V. KOTWAL,J.]**