

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

CRIMINAL APPEAL NO.288 OF 2002

Dr. Prakash s/o. Rambhau Solanke,
Age : 44 years,
Occ. Private Practitioner,
D.H.M.S., r/o. Hingani,
Tq. Dharur, Dist. Beed ..Appellant

Vs.

The State of Maharashtra ..Respondent

Mr. V.D.Salunke, Advocate for appellant
Mr. S.D.Ghayal, APP for respondent

CORAM : R.G. AVACHAT, J.

DATE : JULY 10, 2019

JUDGMENT :-

The challenge in this appeal is to the judgment of conviction and order of sentence dated 29.04.2002 passed by the Special Court, Ambajogai, Dist. Beed (appointed for trial of the offences under Prevention of Corruption Act) in Special Case No.4 of 2001. By the impugned judgment and order, the appellant came to be convicted of the offence punishable under

Section 12 of the Prevention of Corruption Act, 1988 (for short, "P.C. Act") and sentenced to suffer rigorous imprisonment for one year with fine of Rs.1000/-. He is, therefore, in appeal before this Court.

2. The facts leading to the present appeal are as follows:-

Abhiman Sapkal (PW 1 - complainant) is resident of village Hingani (Bk.), Tq. Wadwani, Dist. Beed. The Central Government had promulgated a scheme to provide finance to a group of persons for doing milk business. The financial assistance under the scheme was to the extent of Rs.1,25,000/-. The scheme was being implemented through Taluka Panchayat Samiti. To take advantage of the scheme, PW 1 - complainant had formed a group of ten persons by and under the name, "Saraswati Samuh". It was September, 1999, PW 1 - complainant moved a proposal for grant of financial assistance under the scheme. The

proposal was pending with the office of Panchayat Samiti, Dharur. PW 1 – complainant's son namely, Ashok, was Chairman of the group. The complainant and other eight persons were members of the group. Since PW 1 – complainant was in the know of the scheme, he was pursuing the proposal.

The Extension Officer of Panchayat Samiti, Dharur, was the authority to sanction financial assistance. Shri Deshmukh (accused no.1) was the Extension Officer. There were three Clerks to assist him. The complainant had paid money to all three Clerks to ensure smooth passage to his proposal. On 08.11.2000, PW 1 – complainant met the Extension Officer – Deshmukh (A-1) in his office. It was about 11.30 a.m.. He requested Deshmukh (A-1) for sanction of the proposal. Deshmukh (A-1) asked PW 1 – complainant to pay him Rs.5,000/- (Rs.500/- per member) for sanction of the proposal. The day on which PW 1 – complainant met Deshmukh (A-1) was in the week observed as 'Eradication of Corruption

Week'. The complainant found Deshmukh (A-1) to be adamant and insistent for the bribe. The complainant, therefore, paid him Rs.1,000/-. Deshmukh (A-1), thereupon, asked PW 1 - complainant to pay the balance amount of Rs.4,000/- and then only, the proposal could be sanctioned. On request of PW 1 - complainant, Deshmukh (A-1) agreed to receive the balance amount by installments of Rs.500/- each. Since PW 1 - complainant and the members of group did not wish to pay money to Deshmukh (A-1), PW 1 - complainant approached Anti Corruption Bureau (A.C.B.), Beed.

M.G.Bhokare (PW 3) was Deputy Superintendent of Police, A.C.B. He recorded the complaint lodged by PW 1 on 10.11.2000. Since the next two days were holidays, being Saturday and Sunday, PW 3 - Bhokare asked PW 1 - complainant to come to the office of A.C.B. on 13.11.2000 by 09.30 a.m. PW 1 - complainant, accordingly, went to A.C.B. It was decided to lay a trap. Two persons were present to

act as panch witnesses. The complainant had with him Rs.500/- (Five notes in the denomination of Rs.100/-). The currency notes were applied with anthracene powder. Pre-trap panchanama (Exh.15) was drawn. PW 3 - Bhokare gave instructions to PW 1 - complainant and panch witnesses. One of the panch witnesses was asked to act as shadow witness. He was PW 2. Thereafter, the raiding party headed by PW 3 - Bhokare went to Dharur Panchayat Samiti's office. PW 1 - complainant and PW 2 - shadow witness were asked to go ahead. The other members of the raiding party remained around the office.

3. On reaching Panchayat Samiti office, Dharur, PW 1 - complainant found Deshmukh (A-1) to have gone to a nearby hotel. PW 1 - complainant and PW 2 - shadow witness, therefore, went to that hotel. They met Deshmukh (A-1). Deshmukh (A-1) was accompanied by present appellant - Dr. Prakash Solanke. Deshmukh (A-1) inquired with PW 1 - complainant, whether the amount was brought. PW 1 -

complainant replied in the affirmative and offered him the bribe money. Deshmukh (A-1) did not receive the same. He asked PW 1 – complainant to pay the money to the appellant. PW 1 – complainant paid the money to the appellant. Within a minute, the raiding party arrived there and nabbed both the appellant and Deshmukh (A-1). The bribe money came to be recovered from the appellant. Seizure panchanama (Exh.16) and post-trap panchama (Exh.18) came to be drawn. The appellant was arrested under the arrest Panchnama (Exh.17). The raiding party returned to the office of A.C.B. PW 3 – Bhokare lodged the report with Dharur Police Station. He himself took up the investigation of the crime.

4. During the investigation, statements of the persons acquainted with the facts and circumstances of the case came to be recorded. All the papers of investigation were sent to PW 4 – Shri. Devnikar for sanction to prosecute the Extension Officer – Deshmukh (A-1). After obtaining sanction order

(Exh.38), both Deshmukh (A-1) and present appellant came to be proceeded against by filing charge-sheet before learned Special Judge.

5. Learned Special Judge framed Charge (Exh.7). Both Deshmukh (A-1) and present appellant pleaded not guilty. To establish guilt, the prosecution examined four witnesses and produced in evidence some documents. Learned Special Judge, on appreciating the evidence in the case, convicted Deshmukh (A-1) and the appellant.

6. The appellant took exception to the impugned judgment and order by filing present appeal. Deshmukh (A-1) preferred separate appeal, being Criminal Appeal No.245 of 2002. The record indicates that pending the Criminal Appeal (No.245 of 2002), Deshmukh (A-1) passed away. The appeal, therefore, came to be abated. Instead of advertng to entire evidence in the case, it would be apposite to refer

to the incriminating evidence, if any, appearing against the appellant herein.

7. In my view, it is a case of no-evidence against the appellant. It was, in fact, an open and shut case against him. Result of this appeal may be helpful for the legal representatives of late Deshmukh (A-1) to revive his appeal or initiate appropriate proceedings.

8. The appellant has been convicted for having abetted offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C. Act, being an offence punishable under Section 12 of the P.C. Act.

9. Intention is an inseparable ingredient of the offence of abetment. The prosecution is, therefore, under obligation to prove beyond all reasonable doubt that the appellant had intentionally assisted Deshmukh (A-1) in accepting bribe.

10. Let us now advert to the relevant evidence in the case. It is in the evidence of PW 1 – complainant that as planned, he went to the office of Panchayat Samiti, Dharur. PW 2 – shadow witness was with him. He found Deshmukh (A-1) to have not been in his office. He learnt that Deshmukh (A-1) was in a nearby hotel. The duo, therefore, went to the hotel to find Deshmukh (A-1) in the company of the appellant.

11. In the hotel, PW 1 – complainant greeted Deshmukh (A-1). Deshmukh (A-1) inquired with him what happened with his demand. PW 1 – complainant told him to have brought the amount of Rs.500/-. Deshmukh (A-1) inquired with him as to why he did not bring the balance amount. PW 1 – complainant, thereupon, told Deshmukh (A-1) that the remaining amount would be paid on receipt of the same from the members of the group. Deshmukh (A-1) told him that his work would not be done unless entire amount is paid. Deshmukh

(A-1) thereupon demanded the money. PW 1 - complainant took out the Rs.500/- and held it before Deshmukh (A-1). Deshmukh (A-1) did not take the same. The appellant was near the counter of the hotel. Deshmukh (A-1) called the appellant and asked PW 1 - complainant to give him the bribe money. It is further in the evidence of PW 1 - complainant that he was not ready to give the money to the appellant. Deshmukh (A-1), however, insisted to pay the money. PW 1 - complainant thought that if he did not pay money to the appellant, the police may do anything with him. He, therefore, paid money to the appellant. Thereafter, the raiding party arrived and nabbed the appellant and Deshmukh (A-1). Thereafter, further procedure was followed.

12. PW 1 - complainant in his cross-examination testified that the appellant hailed from his village. The appellant was a practicing Doctor. He was village Sarpanch as well. It is further in his evidence that he had received Rs.1,000/- as a hand loan from the

appellant and the amount of Rs.500/- was paid to the appellant. It is further in his evidence that when the appellant came from the counter of the hotel, he immediately paid money to the appellant. The appellant was not ready to accept money. Still, he gave it.

13. Aforesaid evidence of PW 1 – complainant, undoubtedly, indicates that he paid money to the appellant herein not as a bribe to be paid to Deshmukh (A-1). There is no evidence to indicate that the appellant accepted the money knowing fully well it being bribe money to be passed on to Deshmukh (A-1). True, PW 2 – shadow witness testified that both Deshmukh (A-1) and the appellant were together in hotel. On meeting them, Deshmukh (A-1) inquired with PW 1 – complainant whether he brought the money. PW 1 – complainant replied in affirmative. Deshmukh (A-1) also inquired with him as to how much money he brought. It is further in his evidence that on having learnt that PW 1 – complainant brought only Rs.500/-,

Deshmukh (A-1) told the appellant herein that the persons always bring inadequate money and it is, therefore, difficult to do their work. Then Deshmukh (A-1) and the appellant went to the hotel. PW 1 – complainant and PW 2 – shadow witness followed them. Deshmukh (A-1) asked PW 1 – complainant to give the money to the appellant herein. Even PW 1 – complainant inquired with Deshmukh (A-1), as to how he could give money to the appellant. Deshmukh (A-1), however, insisted and thereupon, PW 1 – complainant had to pay the amount to the appellant herein.

14. Even if we accept this evidence as it is, the same indicates PW 1 – complainant to have paid money (bribe) to the appellant herein out of compulsion. It appears that what has been stated by PW 2 – shadow witness in his examination-in-chief, is an afterthought. The aforesaid evidence has not been reflected in his statement recorded under Section 161 of the Code of Criminal Procedure or even post-trap

panchnama. As such, the evidence in the case, undoubtedly, suggests that the appellant herein did not receive money knowing it to be a bribe money and with a view to facilitate to pass it on to Deshmukh (A-1).

15. For the aforesaid reasons, it is difficult for me to uphold the impugned judgment of conviction as against the appellant herein.

16. In the result, the appeal succeeds in terms of the following order :-

- (i) The Appeal is allowed.
- (ii) The judgment of conviction and order of sentence dated 29.4.2002, passed by learned Additional Sessions Judge/Special Judge, Ambajogai in Special Case No.4/2001, is hereby quashed and set aside so far as regards the present appellant is concerned.

- (iii) The appellant is acquitted of the offence punishable under sections 12 of the Prevention of Corruption Act, 1988.
- (iv) Bail bonds of the appellant shall stand cancelled.
- (v) Fine amount, if paid, be refunded to the appellant.

[R.G. AVACHAT, J.]