

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

CRIMINAL APPEAL NO.339 OF 2002

Dr. Tarachand Kadtuji Kambale,
Age : 50 years, Medical Officer,
at present residing at 157,
Dattatraya Nagar,
Nagpur

..Appellant

Vs.

State of Maharashtra

..Respondent

Mr. R.M.Deshmukh, Advocate for appellant
Mr. S.M.Ganachari, 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 15.06.2002 passed by the Special Court, Dhule, in Special Case No.74 of 1997. By the impugned judgment and order, the appellant came to be convicted of the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) 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.500/- and rigorous imprisonment for two years with fine of Rs.1,000/-, respectively. He is, therefore, in appeal before this Court.

2. The facts giving rise to the prosecution case are as follows :-

Subhash Potdar (PW 1 - complainant) was a medical practitioner. He would run his dispensary at village Jalgaon-Nimbayat, Tq. Malegaon, Dist. Nashik. His wife - Pushpa (maiden name - Pushpa Gajanan Thorat) was serving as a mid-wife with Cottage Hospital at Chopda. She did not report on duty since June, 1993 as she was not keeping good health. After having been recovered from ill-health, Pushpa went to report on duty. She was, however, not allowed to resume. PW 1 - complainant and Pushpa, therefore, went to Deputy Director (Health), Nashik Region, who, in turn, asked them to appear before a medical board at Dhule to obtain fitness certificate.

On 01.03.1995, PW 1 – complainant and his wife Pushpa went to Government Medical College, Dhule. Dr.Kamble (appellant/accused) medically examined Pushpa. The appellant, however, did not issue fitness certificate immediately. PW 1 – complainant had to visit the appellant a number of times for obtaining his wife's fitness certificate. On 24.04.1995, the appellant asked PW 1 – complainant to cough up Rs.2,000/- for medical fitness certificate. As PW 1 – complainant expressed his inability to pay that much amount, the appellant scaled down his demand to Rs.500/- and asked PW 1 – complainant to visit the appellant in his office on 27.04.1995 at 03.00 p.m. Since PW 1 – complainant did not want to pay the amount, he approached the Anti Corruption Bureau (A.C.B.), Dhule and lodged his report/complaint (Exh.20) Shri. Bapat (PW 5), Deputy Superintendent of Police, A.C.B., recorded the complaint lodged by PW 1 – complainant. He secured presence of two public servants to act as panch

witnesses. It was decided to lay a trap. PW 5 – Bapat gave necessary instructions to PW 1 – complainant and panch witness. PW 1 – complainant had with him Rs.500/- (five notes of Rs.100/- denomination). Anthracene powder was applied to the currency notes. Pre-trap panchnama (Exh.26) was drawn.

3. Then, PW 1 – complainant and PW 2 – shadow witness went to the office of the appellant and entered in his cabin. On a formal enquiry, the appellant asked for amount and directed to keep it in an envelope of marriage invitation card lying on his table. PW 1 – complainant did place the amount of Rs.500/- in the envelope kept on the table. The appellant asked PW 1 – complainant the name of his wife and noted it in his own handwriting on the envelope. PW 1 – complainant then came out of the cabin and gave the pre-determined signal. The raiding party thereupon entered the appellant's cabin and seized the currency notes, envelope, etc. A panchnama in this regard (Exh.27) was drawn then and there.

The specimen handwriting of the appellant was obtained. PW 5 – Bapat then lodged the report at Dhule City Police Station and took up the investigation.

4. PW 5 – Bapat recorded statements of the persons acquainted with the facts and circumstances of the case. All the papers of investigation were submitted to PW 3 – Shri.Bhupatiprasad Pande for obtaining his sanction to prosecute the appellant. PW 3 – Bhupatiprasad Pande accorded his sanction (Exh.33). The appellant was then came to be proceeded against by filing charge-sheet.

5. Learned Special Judge framed the Charge (Exh.14). The appellant pleaded not guilty. His defence was of false implication.

6. To bring home guilt of the appellant, the prosecution examined five witnesses and let in some documents in evidence. Learned Special Judge, on

appreciation of the evidence in the case, convicted the appellant, as aforesaid.

7. Heard. Minutely scrutinised the evidence in the case. Perused the the impugned judgment.

8. Mr.R.M.Deshmukh, learned Counsel for the appellant, read out the entire evidence in the case to ultimately submit that the impugned judgment of conviction and order of sentence, is incongruous with the evidence.

9. Mr.S.M.Ganachari, learned APP, would, on the other hand, reiterated the reasons given by learned Special Judge for convicting the appellant.

10. In case of **Mukut Bihari & anr. Vs. State of Rajasthan** reported in **AIR 2012 SC 2270**, the Apex Court observed :-

"8. The law on the issue is well settled that demand of illegal

gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act, 1988. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone

of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person.

11. The record indicates that PW 1 – complainant did not stand by the prosecution. He was declared to have been won over by the defence. PW 1 – complainant, therefore, was subjected to searching cross-examination. Nothing, however, could be elicited, which can be said to be helpful to the prosecution. The record indicates that learned Special Judge has issued notice to PW 1 – complainant

to show cause as to why action should not be initiated against him for giving false evidence.

12. It is in the evidence of PW 1 – complainant that his wife, Pushpa, was not keeping well since June, 1993. Pushpa, therefore, remained absent from duty as mid-wife at Cottage Hospital, Chopda. In August, 1994, Pushpa recovered from her ill-health. She, therefore, went to her service place to resume the duty. She was, however, not allowed to resume. PW 1 – complainant and Pushpa, therefore, approached the Deputy Director of Health, Nashik, who, in turn, asked Pushpa to appear before the medical board at Dhule to obtain fitness certificate to resume duty. PW 1 – complainant and Pushpa, accordingly, went to Civil Hospital, Dhule. Pushpa was medically examined by medical board consisting of four-five Medical Officers. The appellant, was one of them. Pushpa was not issued fitness certificate immediately. PW 1 – complainant met one Patil, Clerk in the Civil Hospital. Shri. Patil told PW 1 – complainant that

unless he pays the bribe to the medical board members, he would not be issued Pushpa's fitness certificate. Shri. Patil further informed PW 1 – complainant that he may either pay the amount to the appellant or Dr.Lanjewar. PW 1 – complainant further testified that as he was frustrated due to illness of his wife (Pushpa), he lodged complaint against the appellant. It is further in his evidence that he met the appellant on two-three occasions, but of no avail. Again, he met Shri. Patil to again hear from him that he should pay the amount to the board members and take medical certificate. It is further in the evidence of PW 1 – complainant that he, therefore, approached Anti Corruption Bureau and lodged the complaint. The evidence of PW 1 – complainant further indicates that his complaint was recorded by PW 5 – Bapat. The pre-trap panchanama (Exh.26) was drawn. PW 1 – complainant and PW 2 – shadow witness, accompanied by the raiding party, proceeded to the Civil Hospital. PW 1 – complainant

and PW 2 – shadow witness entered the appellant's cabin. The raiding party remained around the hospital premises. The evidence of PW 1 – complainant further states that the appellant was busy in a meeting. PW 1 – complainant recalled what was stated to him by Patil. PW 1 – complainant thought that unless and until he pays Rs.500/-, his work would not be done. He, therefore, placed the bribe money in the envelope lying on the table of the appellant.

13. It is reiterated that PW 1 – complainant did not give in to any of the questions put to him in the cross-examination conducted by learned APP. As such, the evidence of PW 1 – complainant indicates that it was he himself, who placed the bribe money in the envelope lying on the table of the appellant. PW 1's evidence is conspicuously silent to state the appellant to have made him demand of bribe money and accepted the same.

14. The evidence of PW 2 – shadow witness does not lead the prosecution case any further. He testified consistent with the case of the prosecution. It is in his evidence that he attended the A.C.B. on 27.04.1995. The pre-trap panchnama (Exh.26) was drawn in his presence. PW 1 – complainant reiterated his grievance against the appellant. PW 5 – Bapat gave them some instructions. PW 2 – shadow witness testified to have had accompanied PW 1 – complainant to the cabin of the appellant. It is further in his evidence that the appellant inquired with PW 1 – complainant, whether he had brought the amount. PW 1 – complainant replied in the affirmative. On the appellant's demand, PW 1 – complainant took out the amount of Rs.500/- from his shirt-pocket and held it before the appellant. Instead of receiving the amount by his hands, the appellant asked PW 1 – complainant to keep the amount in the envelope of marriage invitation card lying on his table. PW 1 – complainant, therefore, upon

keeping the amount in the envelope, came out to give the determined signal. In no time, the raiding party entered. PW 5 – Bapat inquired with the appellant where the appellant's money was. The appellant was frightened. PW 2 – shadow witness himself told PW 5 – Bapat that the amount was in the envelope. The envelope with the amount therein came to be seized under the panchnama then and there.

15. On the same lines is the evidence of PW 5 – Bapat. Evidence of this witness also does not lead even closer to the establishment of the Charge against the appellant since this witness came on the scene from the trap onwards, although he had recorded the complaint lodged by PW 1 and prepared pre-trap panchnama. The evidence further indicates the specimen handwriting of the appellant so obtained and sent to PW 4 – handwriting expert for examination to find, whether it was the appellant, who had written the name of PW 1's wife on the envelope. The evidence of PW 4 – handwriting expert, though indicates that

it was in the handwriting of the appellant, the fact remains that the evidence of PW 1 – complainant gave jolt to the prosecution case. I do not, therefore, propose to dwell at length on the remaining evidence.

16. It is reiterated that PW 1 – complainant voluntarily placed the bribe money in the envelope lying on the table of the appellant. There is no evidence of demand of bribe and acceptance thereof pursuant to said demand. The evidence of PW 2 – shadow witness only suggests that the appellant inquired with PW 1 – complainant, whether he had brought the money and then asked to keep the money in the envelope. Considering the above evidence, by no stretch of imagination, one can jump to the conclusion that the appellant had made demand of bribe money. It is a criminal trial. The offence has to be proved beyond all reasonable doubts. Perusal of the impugned judgment indicates learned Special Judge to have reached the conclusion about the factum of demand of bribe to have been proved on

the basis of PW 1's statement about demand recorded in pre-trap panchnama and the panchanama having been proved by the evidence of Pw 2 - shadow witness and PW 5 - Bapat. I am not in agreement with the findings recorded by learned Special Judge on the basis of such type of evidence.

17. Since the evidence of the prosecution fails short to prove the appellant to have made demand for bribe and accepted the same, interference with the impugned judgment and order is called for.

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

(i) The Criminal Appeal is allowed.

(ii) The judgment of conviction and order of sentence dated 15.6.2002, passed by learned Additional Sessions Judge and Special Judge, Dhule in Special Case No.74/1997 is hereby quashed and set aside.

- (iii) The appellant is acquitted of the offences punishable under section 7 and Section 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988.
- (iv) Bail bonds of the appellant stand cancelled.
- (v) Fine amount, if paid, be refunded to the appellant.

[R.G. AVACHAT, J.]