

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

**CRIMINAL APPEAL NO.440 OF 2002**

Shaikh Fajal s/o. Shaikh Farid,  
Age : 26 years, Occ. Service,  
r/o. Talathi Office, Kaij,  
Dist. Beed ..Appellant

Vs.

The State of Maharashtra ..Respondent

-----  
Mr. Satej S. Jadhav, Advocate for appellant  
Mrs.G.L.Deshpande, APP for respondent  
-----

**CORAM : R.G. AVACHAT, J.**  
**RESERVED ON : JULY 10, 2019**  
**PRONOUNCED ON : JULY 18, 2019**  
**JUDGMENT :-**

Assailed in this appeal is the judgment and order dated 30.07.2002 passed by learned Special Judge, Ambajogai, Dist.Beed (appointed for trial of the offences under Prevention of Corruption Act) in Special Case No.5 of 2001. By the impugned judgment and order, the appellant came to be convicted for the offences 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 three years and to pay a fine of Rs.3,000/- on each count. Both the sentences were directed to run concurrently. He is, therefore, in appeal before this Court.

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

Namdeo (PW 2 – complainant) is a resident of Chincholi-Mali, Tq. Kaij, Dist. Beed. Agricultural lands, being survey nos.47, 67 and 70, were purchased in his name by his mother during his minority. In the 7/12 extract, therefore, his mother's name appeared as a guardian. As he attained majority, he wanted to have his mother's name deleted from the records of rights of the agricultural lands. On 02.01.2001, complainant – Namdeo had, therefore, been to the office of Talathi, at Kaij. He met Talathi – Shaikh (the appellant herein). The complainant preferred an application to the Talathi for deletion of his

mother's name from the 7/12 extract. He requested the appellant to do the needful. The appellant, in turn, made a demand for Rs.500/- as a consideration for the work. The complainant expressed his inability to spare that much amount. The appellant, thereupon, scaled down the demand to Rs.300/-. The complainant had with him Rs.150/-. He paid that much amount to the appellant on 02.01.2001 itself. He thought that his work would be done immediately. The appellant, however, told him that unless the balance amount is paid, the work would not be done. The complainant, therefore, returned his village.

3. Again on 08.01.2001, the complainant went to Talathi's office and requested the appellant about his work. The appellant, however, insisted for balance amount. Since Namdeo did not want to pay the appellant, he approached the Anti Corruption Bureau (A.C.B.), Beed. Shri.M.G.Bhokare (PW 3), Deputy Superintendent of Police was the in-charge of A.C.B. He recorded the complaint (Exh.34) lodged by the

complainant and asked him to come next morning. The complainant went to A.C.B. on 09.01.2001. PW 3 – Bhokare had already secured presence of two Government servants, to act as panch witnesses. It was decided to lay a trap. PW 3 – Bhokare, therefore, gave instructions to the complainant and panch witnesses. Anthracene powder was applied to the currency notes (three notes of Rs.50/- each). Pre-trap panchnama (Exh.18) was drawn. As planned, all of them headed for Kaij in a jeep. As instructed, the complainant and PW 1 – Ramesh (shadow witness) went to the office of Talathi. The appellant was not available in the office. There was no likelihood of the appellant visiting his office that day. The raiding party, therefore, had to return. Again all of them came to the office of A.C.B. on 12.01.2001. The exercise, as stated in pre-trap panchnama was again done and all of them left for the office of Talathi, at Kaij in a Jeep. As planned, the complainant and PW 1 – Ramesh (shadow

witness) went ahead. The other members of the raiding party remained around. It was about 1.00 p.m., the appellant was not in the office. It was, however, informed that the appellant would come by 03.00 p.m. All the members of the raiding party, therefore, remained around.

4. The appellant came to his office by 03.00 p.m. The complainant inquired with the appellant, whether his work was done. The appellant, thereupon, questioned him, whether to have brought the balance amount. On the complainant giving him the nod, the appellant asked him to give him the amount. The complainant took out money from his shirt pocket and gave it to the appellant. The appellant received the same and kept in his shirt pocket. The complainant went out of the office and gave the pre-determined signal. Thereupon, the raiding party entered the office of appellant, took search of him and seized the bribe money under the panchnama drawn then and there.

5. The raiding party then went to the Guest House at Kaij, did some further work there and then returned to the A.C.B., Beed. PW 3 - Bhokare then lodged the FIR at the Police Station against the appellant herein. Offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Act came to be registered against the appellant. Bhokare himself took up the investigation of the crime. He recorded statements of the persons acquainted with the facts and circumstances of the case. The papers of investigation were submitted to the Sub Divisional Officer, Ambajogai, for obtaining his sanction for prosecution of the appellant. The Sub Divisional Officer (PW 4) accorded sanction. The appellant, thereafter, came to be proceeded against by filing charge-sheet before learned Special Judge, Ambajogai. Learned Special Judge framed Charge. The appellant pleaded not guilty. It was the defence of the appellant that a sum of Rs.245/- was due from the appellant towards arrears of the land revenue. The

appellant made part payment thereof. The receipt towards arrears of the land revenue of Rs.245/- was prepared, but not issued. The appellant agreed to pay the balance amount of land revenue within a few days. The name of the complainant's mother was already deleted from the 7/12 extract on 02.01.2001 itself.

6. To establish the Charge, the prosecution examined four witnesses and let in some documents in evidence. The appellant examined himself in his defence. On appreciating the evidence in the case, learned Special Judge was pleased to convict and sentence the appellant, as aforesaid.

7. Heard Mr.Jadhav, learned Counsel for the appellant and Mrs.Deshpande, learned APP for the respondent.

8. Mr.Jadhav, learned Counsel for the appellant, took me through the relevant evidence in the case, to submit that the amount of Rs.245/-

towards land revenue was due from the complainant. The appellant, therefore, asked the complainant to clear the dues. The complainant did not have that much amount. He paid him Rs.90/- and agreed to pay the balance amount within a few days. Learned Counsel also took me through the receipt prepared by the appellant in that regard. According to learned Counsel, the offence has to be proved beyond all reasonable doubt. The findings recorded by learned Special Judge are inconsistent with the evidence in the case. Learned Counsel, ultimately, urged for allowing the appeal.

Mrs.Deshpande, learned APP, would, on the other hand, submit that to prove the offence the appellant was charged with, four ingredients are necessary namely, (i) Demand of gratification by public officer for doing any work; (ii) Acceptance of bribe; (iii) Trap is successfully completed; and (iv) Sanction of authority. Learned APP then took me through the evidence of PW 1 - Ramesh (shadow

witness) and the complainant to submit that the appellant did make demand of bribe for deleting the name of the complainant's mother from 7/12 extract. The post-trap panchnama would indicate that the bribe money was found in the pocket of the appellant. There was anthracene powder to the currency notes accepted by the appellant. The trap was successful in all respects. The description of the currency notes seized from the appellant, match with the description of the currency notes given in the pre-trap panchnama. In view of learned APP, sanction for prosecution of the appellant had also been duly proved. Learned APP invited this Court's attention to paragraph nos.56 to 58, 63, 64, 66, 67, 69 to 71, 73, 75, 78, 79 and 83 of the impugned judgment, to submit that learned Special Judge has elaborately discussed the evidence in the case and rightly rejected the defence version.

9. The Hon'ble the Supreme Court in the case of **P. Satyanarayana Murthy Vs. District Inspector of**

**Police, State of Andhra Pradesh and anr., (2015) 10 SCC 152**, observed that mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, *ipso facto*, reiterated, would not be sufficient to bring home the charge under Sections 7 and 13 of P.C. Act.

10. Let us appreciate the evidence in the case in the light of the statutory requirement. The evidence of the complainant is to the effect that he holds agricultural lands at village Chincholi-Mali, Tq. Kaij, Dist. Beed. His mother had purchased these lands in his name during his minority. His mother's name, therefore, appeared in 7/12 extract as his guardian. On his attaining majority, he wanted to have his mother's name deleted from the record of rights. He, therefore, approached the appellant, who was Talathi of Kaij and requested him to do the needful in this regard. He also preferred an application therefor. It was 02.01.2001. It is,

further, in his evidence that the appellant made a demand of Rs.300/- as a consideration for doing the work. Since Rs.150/- were with the complainant, he paid that much amount to the appellant and then went to A.C.B. office and lodged the complaint (Exh.34). The evidence of the complainant further indicates that his complaint was recorded by PW 3 – Bhokare (Investigating Officer). PW 3 – Bhokare asked him to come to A.C.B. office on 09.01.2001 by 08.00 in the morning. He, accordingly, went there. PW 3 – Bhokare had already secured two persons to act as panch witnesses. Pre-trap panchnama was drawn there. PW 3 – Bhokare gave the complainant and PW 1 – Ramesh necessary instructions and then headed for Kaij. The evidence further indicates that since the appellant was not present at his office on 09.01.2001, the raiding party had to return. Again on 12.01.2001, after doing all the exercise that was done under the pre-trap panchnama at A.C.B. office, the raiding party went to the office of the appellant, at Kaij.

The appellant was not at his office. He was to come by 03.00 p.m. The complainant and PW 1 – Ramesh (shadow witness), therefore, remained at the office of Talathi and the other members of the raiding party remained around. The appellant came to his office. The complainant and PW 1 – Ramesh were already there. The complainant inquired with the appellant, whether his work was done. The appellant, in turn, inquired with him, whether he brought money. Thereupon, the complainant took out the amount of Rs.150/- (three notes in the denomination of Rs.50/-) and gave it to the appellant. Thereafter, the appellant came out of the office and gave the pre-determined signal. PW 3 – Bhokare and his staff, thereafter, entered the office of the appellant. PW 1 – Ramesh told him that the bribe money was with the appellant. PW 3 – Bokare, thereupon, took search of the appellant. The amount was found on his person. It was seized under the panchnama drawn then and there.

11. Almost on the same lines, is the evidence of the PW 1 – Ramesh (shadow witness). The evidence of this witness is, however, not helpful as regards the demand of bribe made by the appellant to the complainant on 02.01.2001, since PW 1 – Ramesh was not with the appellant that time. The evidence of PW 1 – Ramesh indicates that he attended the A.C.B. on the directions of his superior. The complaint lodged by the complainant was read over to all present. The pre-trap panchnama (Exh.18) was drawn at the A.C.B. The complainant was instructed to pay the bribe money only if demand was made by the appellant. The evidence of PW 1 – Ramesh further indicates that that anthracene powder was applied to the bribe money. The appellant could not be trapped on 09.01.2001, as he was not available in his office. They, therefore, again went to the office of the appellant on 12.01.2001. The appellant was not there. He came by 03.00 p.m. The complainant and PW 1 – Ramesh met the appellant in his office. The complainant inquired

with the appellant, whether his work was done. The appellant, in turn, inquired, whether the remaining amount was brought. The complainant told him in the affirmative. The appellant, thereupon, asked the complainant to give him money. The complainant, thereafter, gave him the amount and the rest followed i.e. the raid was effected. The appellant was found in possession of the bribe money. The currency notes were found smeared with anthracene powder. A panchnama in this regard was drawn. PW 1 – Ramesh did not give in to any of the questions put to him in the cross-examination conducted by learned APP.

12. The evidence of the complainant itself suggests that in the examination-in-chief itself he did not stand by the prosecution in some particulars. It is in his evidence that after he gave the pre-determined signal on coming out of the office of Talathi, Kaij, he did not enter the office for about half an hour. He, therefore, claimed ignorance about further happenings (post-trap panchanama) thereat.

Learned APP in-charge of the case, therefore, extensively cross-examined the complainant. Nothing, however, could be elicited during his cross-examination. The answers given by the complainant to the questions put to him by the defence in the cross-examination, deflated the prosecution case. The complainant testified that when he had applied for deleting the name of his mother from the record of rights, a sum of Rs.245/- was due from him towards payment of land revenue. The appellant, therefore, demanded him the amount of land revenue. Since he did not have that much amount with him, he paid Rs.90/- to the appellant. The appellant, in turn, made entry of receipt of the amount in the concerned register. After 2-3 days, he again gave Rs.80/- to the appellant towards the dues of land revenue. The appellant again took entry thereof. On 02.01.2001 itself, the appellant gave him 7/12 extract of his lands. The name of his mother was found to have been deleted therefrom. Again on 12.01.2001, when he had

been to the office of Talathi, the appellant inquired with him, whether he brought money. He told to have brought money. When the appellant made demand therefor, he paid that amount to the appellant.

13. The evidence of the complainant, thus, undoubtedly, indicates that he did not stand by the prosecution as to his own claim of the appellant demanded him bribe for doing the work and in turn, he paid the same.

14. During the raid, a receipt-book was seized. The book contained a receipt in the name of the complainant towards receipt of Rs.245/- as land revenue. On the back of the receipt, there were entries indicating receipt of Rs.90/- and Rs.80/-. There is further evidence to indicate the appellant to have credited the amount to the Government Treasury along with the amounts of land revenue received from the other land-holders. The appellant examined himself in proof of his defence version.

Needless to mention that the accused is not expected to make out his defence upto the hilt. He can make out his case on the basis of preponderance of probabilities. There was further evidence to indicate the appellant to have had similarly received part payments from other land-holders towards land revenue due from them. The evidence of PW 4 – Bhokare (Investigating Officer) does not lead any further, since he came on the scene after the alleged demand was made and the amount was accepted by the appellant. True, the currency notes smeared with anthracene powder with the specific numbers, were found on the person of the appellant. The evidence of the complainant further indicates that in the presence of PW 1 – Ramesh (shadow witness), the appellant only inquired with the complainant, whether he brought the money and on his demand, he paid the amount. As such, the evidence of PW 1 – Ramesh and the complainant, as regards the alleged demand in the office of Talathi on 12.01.2001, do not pertain to

the demand of bribe. As per the version of the complainant, the demand of illegal gratification was made on 02.01.2001. There is no evidence to corroborate the complainant's version in this regard. Admittedly, on lodging of the complaint, the demand had not been verified. The Court is conscious of the fact that the complainant appears to have consciously helped out the appellant in the case. Needless to mention, the law does not countenance moralistic conviction.

15. The witnesses may be categorised as under :-

- (i) Wholly reliable witness;
- (ii) Neither reliable nor un-reliable witness;
- (iii) Un-reliable witness

The evidence of the complainant indicates that he does not fit in category (i). Except his bare words about the demand of bribe, there is no corroborative evidence in the face of his own further evidence

stating to have paid the amount towards arrears of land revenue. During the trap itself, the receipt-book came to be seized along with the demand register. The demand register, undoubtedly, suggests the complainant to have paid Rs.90/-, Rs.80/- and Rs.75/- towards the land revenue. These documents are in the nature of contemporaneous record. It would be far fetched to infer that the entries in the demand register and the receipt book have been made so as to make out a defence. The 7/12 extract also indicates the name of the complainant's mother to have been deleted therefrom on 02.01.2001 itself. I have minutely read the impugned judgment to find most of the observations therein to have been based on surmises and conjectures. It is reiterated that except a single sentence of the complainant that the appellant made him demand of Rs.300/- for deleting the name of his mother from revenue record of his agricultural lands, as against the complainant's further evidence about he being in arrears of the

land revenue and the appellant made demand therefor and payment made by him was towards the land revenue, lead me to observe that interference with the impugned judgment and order is called for.

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 30.07.2002, passed by learned Special Judge/Additional Sessions Judge, Ambajogai, Dist. Beed, in Special Case No.5 of 2001, is hereby quashed and set aside.
- (iii) The appellant is acquitted of the offences punishable under sections 7 and 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.]**

kbp