

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

CRIMINAL APPEAL NO. 166 OF 2003

Vinayak S/o Raghunath Wakle
(Deceased through L.Rs.)

1. Sandip S/o Vinayak Wakle,
Age: Major, occu: Service,
2. Rudip S/o Vinayak Wakle,
Age Major, Occu: Service,
3. Anuradha Balsaahab Nikam,
Age: Major, Occu: Household,
All R/o Bhilpalatan Galli, Kannad,
Tq. Kannad, Dist. Aurangabad. ...APPELLANTS

VERSUS

State of Maharashtra ...RESPONDENT

...
Mr. A.H. Kasliwal, Advocate for appellants
Mr. K.D. Munde, Advocate for respondent -State
...

CORAM : K.K. SONAWANE, J.

RESERVED ON : 14th MARCH, 2019.

PRONOUNCED ON : 25th APRIL, 2019.

JUDGMENT

1. The present appeal is directed against the impugned Judgment and order of conviction and resultant sentence passed by the learned Special Judge, Aurangabad, in Special Case No. 8 of 1998, thereby appellant-accused Vinayak Raghunath Wakle was held guilty for the offence punishable under sections 7, 13(1)

(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short "Act of 1988") and he was asked to suffer substantive sentence of simple imprisonment for six months and to pay a fine of Rs.300/- in default to suffer simple imprisonment of one month for the offence punishable under Section 7 of the Act of 1988 and Rigorous Imprisonment for one year and to pay a fine of Rs.500/- in default to suffer simple imprisonment of two months for the offence under Section 13(1)(d) read with Section 13(2) of the Act of 1988.

2. Being aggrieved by the impugned findings of conviction and resultant sentence, the appellant taking recourse of remedy under section 374 of the Code of Criminal Procedure (for short "Cr.P.C.) preferred the present appeal to redress his grievance.

3. Unfortunately, pending the present appeal the appellant-convict breathed his last. However, the legal representative of the deceased appellant-convict substituted themselves as an appellant in this appeal in a bid to purge their father the deceased appellant, of the stigma of conviction for the charges of bribery in this case.

4. The prosecution story, sans unnecessary details, in short compass is that, the complainant - Shri Dadasaheb Karbhari Dongre r/o Ladgaon was in need of documents of NOC and domicile certificate to get financial assistance from Social Welfare

Office to erect the Pan Kiosk for some sort of business to his physically disable younger brother. Therefore, on 25-06-1997 he met with an deceased appellant Vinayak Wakle at is residence in Vaijapur town. The deceased appellant was the public servant employed as an "Gramsevak" at village Ladgon, Tq. Vaijapur. The complainant Dadasaheb requested the deceased appellant-accused to issue requisite documents of NOC and domicile certificate of his physically disabled brother. But, the deceased -appellant Gramsevak placed demand of bribe of Rs.300/- to him. He further asked the complainant Dadasaheb to bring Rs.300/- on 30-06-1997 i.e. on Monday the Bazar day at his residence in Vaijapur town. The complainant Shri Dadasaheb Dongre was not willing to pay the bribe to appellant - Gramsevak for getting requisite documents of NOC and domicile certificate of his brother. Therefore, he approached to the ACP Sleuth, Aurangabad and lodged the report.

5. The Police Personnel of ACB Sleuth reduced into writing his report. The presence of two panchas were secured for further process. The panchas get themselves verified the contents of the report/complaint for demand of bribe by the accused from the complainant. The procedural formalities of pre-trap panchnama were completed. The aunthracene powder was applied to the three currency notes of Rs.100/- denomination each. The tainted currency notes were given in custody of the complainant. The

trap was laid at the residence of deceased appellant - Gramsevak in Vaijapur town. As per direction, the complainant Dadasaheb and Panch witnesses Shri Sonar visited to the accused Gramsevak at his room. In the meeting, the appellant-accused made it confirm whether the complainant has brought the bribe amount with him and then asked him to bring same documents of forms from nearby press (printing press). After bringing the blank forms by the complainant, the appellant - accused prepared the documents of NOC etc. and put his signature and seal on it. Thereafter, he demanded the bribe and pursuant to demand, the complainant Dadasaheb delivered the tainted currency notes in custody of deceased appellant. After receipt of pre-determined signal, the members of raiding party barged into the room of deceased - appellant and caught him raid handed while accepting the bribe.

6. The procedural formalities of post-trap panchnama etc., came to be complied with and the Senior Police Personnel Shri More, proceeded to lodge the FIR for registration of Crime No. II-18 of 1997 under section 7(13)(1)(d) read with section 13(2) of the Act of 1988 against the Gramsevak - deceased appellant. The offence under Section 12 of the Act of 1989 was also registered against one Shri Bhausahab Laxman Gaikwad for abetment of offence of bribery by the Gramsevak. The investigation was set in motion. The Investigating Officer recorded statements of

witnesses acquitted with the facts of the case. He has also collected relevant documents and also procured prosecution sanction from Zilla Parishad authority, Aurangabad. After completion of investigation, IO preferred the charge-sheet against both the accused including deceased-appellant Shri Wakle being Special Case No. 8 of 1998.

7. The learned Special Judge framed the charges against both the accused. However, they pleaded not guilty and claimed for trial. In order to bring home guilt of the accused, prosecution adduced the evidence of P.W.1 Shri Bhaskar Munde, Chief Executive Officer of Zilla Pariahad, Aurangabad for prosecution sanction, P.W. 2 complainant Shri Dadasaheb Dongre, P.W. 3 Babulal Sonar, Panch witness, P.W. 4 IO Shri More. The learned Special Judge recorded the statement of accused under section 313(1)(b) of the Cr.P.C. The appellant -accused denied the allegations and claimed his false implication in this case.

8. The learned trial Court evaluated the entire evidence adduced on record on behalf of prosecution and held the deceased appellant Shri Wakle guilty for an offence of demand and acceptance of gratification other than legal remuneration, as motive or reward for issuing NOC and domicile certificate in favour of physically disabled brother of complainant punishable under section 7, 13(1)(d) read with section 13(2) of the Act of

1988. But, the learned trial Court did not come across with any incriminating circumstance against accused No.2 Shri Bhausaheb Gaikwad. Therefore, he was exonerated for the charge of abetment of bribery by the deceased Gramsevak as envisaged under Section 12 of the Act of 1988. In the result, the learned trial Court acquitted the accused No.2 Shri Gaikwad for the charges pitted against him. The deceased appellant Gramsevak Shri Walke was convicted for the offence levelled against him and the resultant sentence of imprisonment and fine as indicated above was imposed upon him. Accordingly, the learned trial Court passed the impugned Judgment of conviction and sentence of imprisonment, which is the subject-matter of present appeal.

9. The intense scrutiny of the entire oral and circumstantial evidence adduced on record reflects that most of the theory propounded on behalf of prosecution was not put into controversy on behalf of appellant-accused in this case. It was an admitted fact that the appellant-accused during the relevant period was employed as "Gramsevak" at village Ladgaon, Tq. Vaijapur and as such he was the public servant as defined under section 2(c) of the Act of 1988. It was not denied that the accused was discharging his official duties under the supervision of Chief Executive Officer of Zilla Parishad, Aurangabad being his appointing and removal authority. It was also an admitted fact that at the relevant time of trap, the complainant Dadasaheb and

Panch Shri Sonar visited to the appellant - accused at his residence in Vaijapur town. The appellant-accused made demand of money and accordingly the complainant Shri Dadasheb put the tainted currency notes of Rs.300/- on the floor to pay it to the appellant-accused. Meanwhile, one person came there (i.e. accused No.2-Shri Gaikwad) and the appellant-accused told him to keep the two currency notes in the pocket of his pant. It was also not put into controversy that appellant-accused returned one currency note of Rs.100/- denomination to the complainant and kept two tainted currency notes with him. Thereafter, the appellant-accused was caught raid handed by the ACB Sleuth.

10. The learned counsel Mr. Anil Kasliwal for appellant-accused vehemently submitted that the learned trial Court did not appreciate the evidence of prosecution witnesses in its proper perspective and committed error by convicting the innocent accused in this case. The learned counsel contends that when the complainant - Dadasaheb approached to the appellant - Gramsevak for documents of NOC and domicile certificate for his physically disabled brother, the appellant - Gramsevak asked him to pay the amount of Rs.330/- towards arrears of his house tax. The amount of Rs.300/- paid to the appellant-accused by the complainant, was towards part payment of house tax and not the bribe amount. The learned counsel Mr. Kasliwal further gave much more stress on the circumstances that the appellant -

Gramsevak also returned one currency note of Rs.100/- to the complainant. According to learned counsel, the complainant Dadasaheb demanded Rs.100/- to the appellant - accused for going to Aurangabad, and therefore, one currency note of Rs. 100/- was returned to him. He further explained that had there been any demand of bribe for issuing some documents, there would not have any cause for accused return Rs.100/- to the complainant. But, the amount was returned to the complainant at his instance, which demonstrate the innocent conduct and demeanour of the appellant-accused. The learned counsel added that there was arrears of Rs.330/- towards complainant on account of house tax. He had also carried the same amount of Rs. 330/- with him. But, he paid only Rs.300/- to the appellant - accused and also taken back Rs.100/- from him. The learned counsel explained the attending circumstance on record in detail. He has also pointed out some legal infirmity in the prosecution sanction accorded in this case. According to learned counsel, the impugned findings of conviction and resultant sentence of imprisonment imposed by the learned trial Court are erroneous, perverse and liable to be upset.

11. Having given anxious consideration to the rival submission, I find much more substance in the arguments advanced on behalf of appellant – accused. As referred above, the circumstance of visits of complainant Dadasaheb to appellant – Gramsevak for

documents of NOC and domicile certificate of his brother was not denied. It was also admitted that there was demand of money by the appellant - Gramsevak for issuing required documents. Now, the pivotal issue to be ponder over as to whether the demand and acceptance of money by the appellant - Gramsevak from the complainant - Dadasaheb was towards illegal gratification as motive or reward for showing favour to issue required documents or whether the appellant - Gramsevak made demand and accepted the tainted currency notes for recovery of Government dues of arrears of house tax from the complainant - Dadasaheb. It would facilitate this Court to accept or deny the explanation offered by the accused in this case.

12. As per version of P.W.1 Shri Bhaskar Munde, Chief Executive Officer of Zilla Parishad, Aurangabad, the concerned Gramsevak has an authority to collect the cess from the property owners of the area. The recitals of post-trap panchnama (Exhibit-27) also indicate that during the course of raid, the IO proceeded to take search of some of the official documents including registers found at the spot of raid i.e. in the room of appellant - Gramsevak. There were cash book, Tax recovery receipt book, Tax assessment and demand register, etc. in the room. IO verified it in presence of panchas and put their signatures on it. It was revealed from the tax assessment register that there was an arrears of house tax against the property of complainant

Dadasaheb and his family members. Obviously, whenever the Government Personnel received the opportunity for recovery of property tax or Government dues, etc. they have to take endeavour to recover it from the concerned person.

13. In the matter in hand, when the complainant visited to the appellant - Gramsevak for document of NOC, etc., that time there were arrears of Rs.330/- in lieu of property tax against the complainant and his family members. In such circumstances, it was but natural that the appellant should insist for recovery of arrears of Government dues from the complainant, prior to issuing documents in his favour. Therefore, the explanation offered by the appellant - Gramsevak that the amount paid by the complainant -Dadasaheb was not by way of illegal gratification, but, it was paid towards arrears of Government dues of property tax by the complainant, appears most convincing and sustainable one. At this stage, it would significant to note that if the appellant - Gramsevak was bent upon to obtain illegal gratification as motive or reward to show favour to the complainant for issuing relevant documents, he would have not exhibit humanitarian approach towards complainant by returning the currency note of Rs. 100/- to him for going to Aurangabad. The said currency note was lateron shown recovered from the pocket of complainant during post trap panchnama. This sort of factual score, fortify the explanation offered by the appellant

accused during the investigation as well as in his statement recorded under section 313 of the Cr.P.C. that he had accepted the amount of Rs. 300/- from the complainant, towards property cess and not in pursuance of any demand of illegal gratification. It has brought on record that there was receipt book, on the spot of raid and the accused – Gramsevak was about to issue receipt of Rs. 200/- recovered as a part of arrears of Government dues from complainant, but he was intercepted by the ACB Personnel at the time of raid. Therefore, he could not issued receipt of house tax of Rs. 200/- recovered from complainant. The explanation tendered by the appellant appears probable, reasonable and plausible one, under the facts and circumstances of the present case.

14. In this context, it would be apposite to make a reference of judicial precedent in the case of ***Punjabrao Vs. State of Maharashtra*** reported in ***AIR 2002 Supreme Court 486***, In paragraph No. 3 of the the judgment their Lordship elucidated as under:-

"3. We have examined the judgment of the learned Special Judge as well as that of the High Court. It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of

probability. It is undisputed that from 24th to 26th the Patwari was collecting loans in a collection campaign. It is, of course, true as observed by the High Court that when the Investigating Officer seized the amount from the Patwari - accused, he did not offer the explanation that it was in relation to a collection of loan, but that by itself would not be sufficient to throw away the explanation offered by the accused in his statement under Section 313 when such explanation could be held to be reasonable under the facts and circumstances of the case, as indicated by the learned Special Judge while acquitting the accused."

15. In the light of aforesaid legal dictum, it is manifestly clear that it is not imperative for the accused to establish his defence by proving beyond reasonable doubt. It is sufficient to establish it by preponderance of probability. In the matter in hand, it is not in dispute that the appellant- Gramsevak had an authority to collect the cess. There were arrears of Government dues towards complainant and his family members. The circumstances of availability of documents of tax receipt book, assessment demand register, etc. also buttress the explanation offered by the appellant.

16. It is the rule of law that that the demand of illegal gratification is sine-qua-non to constitute the offence under the Act of 1988. The factum of mere recovery of currency notes does not itself sufficient to draw adverse inference for offence under the Act of 1988 unless it is proved beyond all reasonable doubt that the appellant - accused voluntarily accepted the

money knowing it to be an bribe amount. In the facts of present case, both the ingredients to bring the act of appellant-accused within the mischief of Section 7, 13(1)(d) of the Act of 1988 are not satisfied. It cannot be inferred that the appellant-accused made demand of bribe and voluntarily accepted it with knowledge that it was the amount of illegal gratification as motive or reward to show favour to the complainant while doing official act.

17. In recapitulation, it is evident from the aforesaid circumstances on record that the complainant – Dadasaheb Dongre was in need of documents of NOC and domicile certificate for his physically disabled brother to avail benefit of Government Scheme to get erected the Pan Kiosk for business purpose. The complainant – Dadasaheb approached to the appellant – Gramsevak and requested him to issue requisite documents. It has been alleged on behalf of prosecution that the appellant-Gramsevak made demand of illegal gratification of Rs.300/- to issue document in favour of complainant -Dadasaheb. Therefore, the report was lodged to the ACB Sleuth, as the complainant was not willing to pay bribe to the appellant – Gramsevak. Thereafter, the trap was laid and appellant-accused was caught raid handed while accepting the tainted currency notes from the complainant -Dadasaheb. In such back-drop, the explanation offered on behalf of appellant – Gramsevak assumes more significance. The appellant-accused explained that there was an arrears of

Rs.330/- towards complainant in lieu of property tax. Therefore, the complainant was asked to pay the arrears of property tax for the required documents. Taking umbrage of the same, the complainant filed report to ACB Sleuth. According to appellant-Gramsevak, there was no demand of illegal gratification as a motive or reward for official work. The amount was accepted not as an bribe, but, towards recovery of Government dues.

18. As referred above, it was not put in question that the recovery of Government dues was also one of the part of official duty of the appellant -Gramsevak. P.W. 1 Mr. Munde, Chief Executive Officer conceded that the Gramsevak used to collect the property tax from owners of the concerned property. During the post-trap panchnama, the members of raiding party came across with the document of tax assessment register, tax receipt book, etc. at the spot of raid. It is also not seriously contested that there were arrears of Government dues towards the complainant in lieu of property tax. In such circumstances, the explanation offered by the appellant-accused that the tainted currency notes were accepted not by way of illegal gratification, but towards the recovery of Government dues seems to be plausible and acceptable in this case.

19. Moreover, the humanitarian kind of gesture on the part of appellant – Gramsevak to return the currency note of

Rs.100/- to the complainant for going to Aurangabad, was also one of the mitigating circumstance favourable to the accused. It would be reiterated that if there was any demand of bribe by the appellant- accused, there would have no any favourable gesture on the part of the accused towards complainant by returning Rs.100/- to him. In such circumstances, it is unsafe to fasten guilt on the appellant - accused for the charges of demand of illegal gratification and its acceptance as motive and reward for showing favour to the complainant for issuing official documents to him.

20. In view of aforesaid factual score, I am of the opinion that, the findings expressed by the learned trial Court, for adverse inference against the appellant -Gramsevak, appear erroneous, perverse and not within the ambit of law. The conclusion drawn by the learned trial Court to discard the explanation offered by the appellant/accused was seen based on the misconception and mis-reading of evidence adduced on record. Therefore, there is no impediment to cause interference in the impugned findings of conviction expressed by the learned trial Court. The appeal filed on behalf of deceased appellant – Gramsevak lateron persuaded by his legal representative, after his death deserves to be allowed. The impugned finding of conviction and resultant sentence imposed on the deceased appellant- Gramsevak, is required to be set aside and quashed.

21. In sequel, the appeal stands allowed. The impugned conviction of the deceased-appellant- accused under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, as well as resultant sentence of imprisonment stands set aside and quashed. The deceased-appellant-accused is hereby acquitted for the offence punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The muddemal property i.e. pant, being worthless, be destroyed after the appeal period is over. However, the order about tainted currency notes credited to the Government Treasury is hereby maintained.

22. Accordingly, appeal stands disposed of in above terms. No order as to costs.

[K. K. SONAWANE]
JUDGE

MTK.
