

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

CRIMINAL APPEAL NO. 588 OF 2011

The State of Maharashtra through
N.T. Patil, Police Inspector
Anti Corruption Bureau
Aurangabad.

... APPELLANT
(Original Accused No. 1)

V E R S U S

Kaduba S/o Sampatrao Gaikwad,
Police Head Constable B. No. 410,
Police Station, Pishor,
Aurangabad Rural.
RESPONDENT
(Original Accused)

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Mr. A.A. Jagatkar, APP for Appellant - State
Mr. R.S. Deshmukh, Advocate for respondent-accused.

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CORAM : K.K. SONAWANE, J.

DATE : 8th NOVEMBER, 2019

JUDGMENT :-

The appellant-State of Maharashtra preferred present appeal against impugned Judgment and order of acquittal or respondent-accused for the offence punishable under Sections 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988 ("Act of 1988") passed by the learned Special Judge, Aurangabad, in Special Case (PC) No. 09 of 2008, on 24-12-2010.

2. According to prosecution, respondent-accused- Kaduba S/o Sampatrao Gaikwad, was the public servant at the relevant time, employed as Police Head Constable B.No. 410 attached to Police Station, Pishor, Ta. Kannad, District Aurangabad. It has been alleged that the complainant-Devidas Annarao Bhosale and his brother Shivdas owned the agricultural land within the vicinity of Adgaon, Ta. Kannad. The agricultural land of his cousin brother was also located adjacent to

his ancestral agricultural land. It has been contended that on 10-11-2007, in the noon hours there was quarrel occurred in between Shivdas - brother of complainant and his cousin brother-Uttam Bhosale on account of *Bandh* of the agricultural land. Thereafter, the cross-complaints were filed against each other to the Police of Pishor Police Station. According to prosecution, on 12-11-2007 respondent-accused visited to Shivdas, brother the complainant, when he was in his agricultural land and disclosed that there was criminal complaint filed against them and he accompanied with his wife, brother, brother's wife etc. all should remain present in the Police Station for the purpose of chapter case to be filed against them. Accordingly, on 13-11-2007 the complainant and his brother had been to Pishor Police Station to see respondent-accused - PHC Gaikwad. It has been alleged that respondent-accused disclosed that chapter case was required to be filed against them and their family members. They have to secure their presence before the concerned Tahsildar for bail. The respondent-accused PHC Gaikwad made demand of bribe of Rs.500/- for not raising any objection to the bail of complainant and his family members in the chapter case. The respondent-accused further added that in case bribe of Rs.500/- is not paid then complainant and his family member all would have to go to prison. The hapless complainant agreed to pay Rs.500/- as bribe to respondent-accused for not opposing the bail and for release of the complainant and his family members on bail in the chapter case. The respondent-accused asked the complainant to come to the Police Station with bribe amount of Rs. 500/- in the morning on 15-11-2007.

3. The complainant - Devidas Bhosale was not willing to pay the bribe to respondent-accused. Therefore, on following day i.e. on 14-11-2007 he approached to ACB Sleuth, Aurangabad and filed the report. Thereafter, ACB Personnel procured the presence of two panchas for further process. The formalities of pre-trap panchnama was carried out in the office on 15-11-2007. Thereafter, the complainant, panch witnesses and other members of raiding party started proceeding towards premises of Pishor Police Station in Government vehicle. The trap was laid and respondent-accused was caught raid handed, while accepting the tainted currency note of Rs.500/- from complainant - Devidas Bhosale. Thereafter, ACB Personnel PI Mr. Patil drawn post trap panchanma. He recorded the statement of respondent-accused and thereafter, he filed the First Information Report (FIR) in Pishor Police Station, Taluka Kannad, District Aurangabad for penal action against respondent - accused.

4. Pursuant to FIR of PI Mr. Patil, the concerned PSO registered crime No. II-31-2007 under Sections 7, 13(1)(d) read with section 13(2) of the Act of 1988 and set the penal law in motion. Investigating Officer (IO) recorded the statements of witnesses acquainted with the facts of the case. He collected the relevant documents and also obtained prosecution sanction from the competent authority of respondent-accused. After compliance of procedural formalities, IO preferred the charge-sheet against respondent-accused for the charges of bribery under Prevention of Corruption Act, 1988 bearing Special Case(PC) No. 09 of 2008.

5. After compliance of procedural formalities, the learned Special Judge framed the charge against respondent-accused for allegation of demand and acceptance of illegal gratification for showing favour to the complainant in the matter of chapter case. But, the respondent-accused pleaded not guilty and claimed for trial. In order to bring home guilt of the respondent-accused, the prosecution examined in all four witnesses in this case. The learned Special Judge also recorded statement of respondent-accused under Section 313 of Code of Criminal procedure. After hearing both sides and appreciating the entire evidence adduced on record, the learned trial Court arrived at the conclusion that the prosecution miserably failed to prove the charges levelled against respondent-accused beyond all reasonable doubt. Therefore, the learned trial Court was pleased to exonerate the respondent-accused from the charges pitted against him and passed the impugned Judgment and order, which is the subject-matter of present appeal.

6. Learned APP vehemently submits that the impugned Judgment and order of acquittal of respondent-accused is erroneous, illegal and contrary to provisions of Law. The learned trial Court did not appreciate the evidence adduced on record in its proper perspective and committed error in acquitting the accused in this case. The evidence of PW - 2 Complainant and PW-3 Shadow Panch categorically established that the respondent-accused made demand of bribe of Rs.500/- to show favour to the complainant and his family members in chapter case. The tainted currency notes accepted by the respondent-accused as bribe were recovered from his possession in presence of panchas.

There were no any explanation on the part of respondent-accused for recovery of bribe amount from his custody. The evidence of PW-2 complainant cannot be disbelieved as he failed to verbalize the events occurred in sequence. Therefore, learned Prosecutor fervidly contends that there was demand of bribe of Rs.500/- on the part of respondent-accused and these circumstances were proved by the prosecution in the evidence of PW-2 complainant and PW-3 panch witness. The tainted currency notes were also recovered from possession of the respondent-accused. In such circumstances, learned trial Court ought to have held respondent-accused guilty for the charges pitted against him. But, the learned trial Court erroneously acquitted respondent-accused in this matter.

7. Learned counsel for respondent-accused explained the circumstances in detail and submitted that PW-2 complainant did not support the prosecution case on the material aspect of demand and acceptance of demand by respondent-accused. The evidence of PW-2-complainant found ambiguous and slender in nature. There are material admission on the part of PW-2 complainant. He was intending to lodge the complaint against another Police Officer, namely, Jamadar Bhosle. But, ACB Personnel implicated the present-respondent-accused in this case. The learned counsel for respondent-accused drawn attention of this Court towards the cross-examination of PW-2 Devidas Bhosale, in which the complainant has categorically admitted that there was no demand of bribe by respondent-accused nor he had accepted the same from him. The learned counsel for respondent - accused further added that PW-3 Unhale was the habitual panch of ACB Sleuth.

He had acted as panch witness on behalf of ACB Sleuth in two/three proceedings prior to present trap. Therefore, it would hazardous to keep reliance on the version of PW-3 panch witness for any adverse inference against the respondent-accused.

8. Having given anxious consideration to the arguments advanced on behalf of both sides and after delved into the oral and circumstantial evidence adduced on record, it appears that arguments advanced on behalf of respondent-accused appears more formidable and appreciable one. Admittedly, the charges pitted against respondent-accused are serious in nature. According to prosecution, respondent-accused being public servant as Police Head Constable made demand of illegal gratification of Rs.500/- to show favour to complainant PW-2 Devidas Bhosale in the matter of his chapter case. It is not in dispute that prosecution has examined in all four witnesses in this case to bring home guilt of respondent -accused.

9. PW-1 Amiteshkumar Shrijugalkishor Prasad was the Superintendent of Police, Aurangabad during the relevant period and being competent authority, he had accorded prosecution sanction (Exhibit-9) against respondent-accused. It appears from record that the factum of prosecution sanction was not seriously put into controversy on behalf of respondent accused in this case. Therefore, there is no impediment to draw inference that the prosecution sanction in this case was valid and legal one.

10. The learned trial Court appreciated the evidence of complainant PW-2 Devidas Bhosale and arrived at the conclusion that prosecution failed to prove the basic aspect of demand of bribe by respondent-

accused in this case. Admittedly, the evidence of PW-2 Devidas Bhosale appears to be very cryptic and slender in nature. The complainant PW-2 Devidas adduced his evidence in a very casual manner. His conduct and demeanour at the time of evidence before the learned trial Court demonstrate that he was reluctant to cast allegation of bribery against respondent-accused. In the examination-in-chief he has deposed that at the time of trap respondent-accused i.e Gaikwadsaheb made demand of money and they had given the same to him. Thereafter, he has given predetermine signal to the member of raiding party. In the cross-examination, PW-2 complainant venture to divulge that he did not know for what purpose accused had taken money from him. There was no demand at all on the part of respondent-accused. He disclosed that when money was given to the respondent-accused at that time, PW-3 panch witness was at some distance. Moreover, there were two/three Police Personnel standing surrounding the accused, at the time of alleged trap, which was conducted in Courtyard of the Police Station. PW-2 Devidas Bhosale further denied that there were any threats on the part of accused to sent them in jail, if the bribe was not given to him.

11. It is strange to appreciate that when the PW-2 complainant-Devidas Bhosale found reluctant to support the prosecution case on the material issues of demand and acceptance of tainted currency notes as bribe by the accused, the prosecution did not pain-stake to declare him hostile nor there was any cross-examination to PW-2 complainant - Devidas Bhosale on behalf of prosecution to elicit the truth. The hostility on the part of complainant PW-2 Devidas Bhosale proved

detrimental to the credibility of his version for adverse inference against the respondent-accused in this case. Moreover, prosecution did not take care to adduce evidence of any other Police Personnel, who were present in the Courtyard at the time of trap to bring on record the incriminating circumstances against respondent-accused. Obviously, the alleged raid was conducted by ACB Sleuth during broad day light in noon hours on 15-11-2007. The Police Personnels attached to Pishor Police Station on duty and other on-lookers present nearby the spot of raid must have received opportunity to watch the spectacle. But, the prosecution did not examine any of the witness for corroboration to the evidence of complainant PW-2 Devidas Bhosale. As referred above, the entire evidence of complainant PW-2 Devidas Bhosale found incredulous, suspicious and not free from blemish. His evidence on record was ambiguous, slender in nature and not sufficient to draw any adverse inference against respondent - accused for demand of illegal gratification and its acceptance for showing favour to the complainant in his chapter case.

12. Moreover, the evidence of PW-3 Panch witness also seems to be suspicious and dubious one. He has admitted in the cross-examination that prior to the present trap, he had acted as panch in two to three cases on behalf of ACB Sleuth. At this juncture, it is to be noted that the learned trial Court correctly appreciated the legal ratio delineated in the case of *State of Gujrat through CBI Versus Kumudchandra Pranijivan Shah* reported in *1995 Cri.L.J. 3623*, in which it has been held that, "*whenever the witness has acted as panch witness in number of cases and prosecution has tried to suppress the fact, then*

the evidence of such panch witness cannot be relied upon." I find that inference drawn by the learned trial Court appears to be just and proper to discard the evidence of PW-3 Panch witness in this case.

13. It is profitable to make a reference that the Honourable Apex Court in the case of *Ghurey Lal Versus State of Uttar Pradesh* reported in *2009(1)Mh.L.J.(Cri)(SC) 6* described the scope of exercise of powers by the Appellate Court against Judgment of acquittal under Sections 378 and 386 of the Cr.P.C. It has been held that, "the Appellate Court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973 and the powers of reviewing evidence is wide and the Appellate Court can re-appreciate the entire evidence on record. It is also essential for the Appellate Court to take into consideration that accused is presumed to be innocent until proven guilt and due or proper weight and consideration must be given to the trial Court's decision. It has also delineated that when witnesses credibility is matter in issue then it is not enough for the High Court to take different view of the evidence. But, there must also be substantial and compelling reasons for holding that the trial Court was wrong.

14. Keeping in mind the aforesaid principles, after due scrutiny of the evidence adduced on record on behalf of prosecution, in matter in hand, it reveals that there is no substantial evidence available on record to prove that respondent-accused made an demand of bribe to the complainant which is *sine-quo-non* to constitute offence under Sections 7, 13(1)(d) read with Section 13(2) of Act of 1988, Moreover, the evidence of complainant PW-2 Devidas Bhosale found incredulous

and dubious to ascertain the circumstances that tainted currency notes came to be recovered from the custody of respondent-accused. The credibility of shadow panch PW-3 Unhale was not free from blemish. In absence of corroboration from other source, it would hazardous to draw adverse inference against respondent-accused on the basis of cryptic and slender evidence of complainant PW-2 Devidas Bhosale as well as shadow panch PW-3 Unhale. Moreover, the hostile conduct and demeanour of complainant PW-2 Devidas Bhosale devastated the entire gravity of allegations nurtured on behalf of prosecution against respondent-accused.

15. In the above premise, I do not find any error or infirmity in the findings of acquittal of respondent-accused from the charges pitted against him, expressed by the learned trial Court. In contrast, it reveals that the learned trial Court has correctly appreciated the entire oral and circumstantial evidence adduced on record. There is no perversity or illegality in the impugned Judgment and order of acquittal of respondent-accused. Therefore, interference in the impugned judgment and order of acquittal respondent-accused at the instance of prosecution is unwarranted and unjustifiable one. The approach of learned trial Court for acquittal of respondent - accused is liable to be upheld and maintained. Hence, appeal being devoid of merit deserves to be dismissed. Accordingly, the Criminal Appeal stands dismissed. The rest of the order of trial Court about muddemal property shall remain as it is.

[K. K. SONAWANE]
JUDGE