

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 135 OF 1997

Nathaji Tukaram Lohakare

Age- 49 years, Resident of

Pimpri, Taluka Malshiras,

District- Solapur, since deceased

through his legal heir

Saraswati Nathaji Lohakare,

Age 66 yrs. Occ. Housewife,

At & Post Khandali, Taluka Malshiras,

Dist. Solapur 413113.

..Appellant.

v/s.

The State of Maharashtra.

..Respondent.

Ms. S.D. Khot, advocate for appellant.

Mr. S.R. Agarkar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : SEPTEMBER 26, 2019.

JUDGMENT :

1 The appellant herein is convicted for the offence punishable under section 7 of Prevention of Corruption Act, 1988 and is sentenced to suffer R.I. for the period of six months and to pay fine of Rs. 500/- in default to suffer R.I. for four months. The appellant is further convicted for the offence punishable under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 and is sentenced to suffer

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R.I. for a period of one year and to pay fine of Rs. 1,000/- I.d. to suffer R.I. for six months, by the Special Judge, Solapur vide Judgment and Order dated 11th February, 1997 in Special Case No. 13 of 1993. Hence, this appeal.

2 Such of the facts necessary for the decision of this appeal are as follows :

(i) The appellant herein was working as Talathi, Sajja Pimpri, Taluka Malshiras, District Solapur. That one Bhanudas Kharche (P.W.4 complainant) had executed oral partition with his two other brothers and three sisters.

(ii) Thereafter, he had approached Talathi i.e. the present appellant and asked him to give effect to the oral partition in 7/12 extracts. There were 8 pieces of land which were to be distributed amongst the siblings.

(iii) That he had approached the Talathi on 10th March, 1993 with a request for effecting entries in the 7/12 extracts. The appellant had informed him that since there are about 8 pieces of land, he would have to pay Rs. 3,200/- towards gratification/bribe for getting his work done. P.W. 4 complainant had negotiated with the appellant and the amount was reduced to Rs. 1,800/-.

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(iv) The appellant had further informed the complainant that he has to begin with the work and therefore, the complainant would have to pay some advance to him. Accordingly, the complainant had parted with Rs. 500/-. The appellant had then asked the complainant to get the claimants i.e. his brothers and sisters to his office in order to obtain their signatures and consent for effecting entries in 7/12 extracts.

(v) On 11th March, 1993, the complainant had been to the office of the appellant alongwith his mother and two sisters. The appellant had obtained their thumb impression on blank sheets of paper. The complainant had visited office of the appellant on more than 2 occasions thereafter.

(vi) On 21st April, 1993, the appellant had taken his third sister to the office of the appellant who had obtained her signatures and reminded the complainant that he has to pay a remainder of Rs. 1300/- towards illegal gratification. It was agreed between them that the complainant would pay Rs. 300/- on 28th April, 1993.

(vii) On 27th April, 1993, the complainant felt that the amount was excessive. He had realised that he was not liable

to pay single farthing to the appellant and that the said amount would be illegal gratification and therefore, the complainant had approached the office of Anti-Corruption Bureau, Solapur on 27/4/1993.

(viii) On 28/4/1993 the complainant was called at about 7 a.m.. P.I. Anti-corruption Bureau had arranged for two panchas who were public servants and working in the office of Environment Engineering Department. The P.I. had drawn pre-trap panchanama (Exh. 18) and had given specific instructions to the complainant as well as panchas.

(ix) On 28th April, 1993, they had reached the house of the appellant at about 12 noon. The complainant was accompanied by P.W.1 Mr. Hanmant Sangte. After exchanging greetings, the complainant had asked the appellant as to whether his work was completed, upon which, in response the appellant had asked him as to whether he had brought the remainder amount alongwith him. Upon receiving answer in the affirmative, he had demanded the said amount, the complainant had parted with it. At the request of the appellant, complainant had counted said amount. Thereafter, the appellant had accepted the same and placed it below gunny bag on which he was seated. The complainant went out of the house under the pretext of placing

an order of tea and had given pre-determined signal. The raiding party had entered into the said room.

(x) The appellant seemed to be frightened. Upon query made by P.W. 6 Md. Yunnus Ismail Shaikh, the appellant had informed him that there are no dues to be recovered from the complainant. The tainted currency notes were found below gunny bag on which he was seated. The statement of P.W. 1 was recorded by PI and was reduced into writing in the post trap panchanama, which is at Exh. 24. Traces of anthracene powder were seen on the fingers of the appellant as well as under the portion of the gunny bag, where the tainted currency notes were concealed.

(xi) P.W. 6 had then filed FIR (Exh. 38) on behalf of the State, on the basis of which Crime No. 25 of 1993 was registered against the appellant for the offence punishable under section 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. Investigation was set in motion.

(xii) P.W. 2 Kishore Rajenimbalkar who was officiating as Sub-Divisional Officer, Pandharpur Region, Pandharpur has accorded sanction for prosecution. The sanction order is at Exh. 27. The case was registered as Special Case No. 13 of

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1993.

3 The prosecution examined 6 witnesses to bring home the guilt of the accused. P.W.1 Mr. Hanmant Sangate is panch No. 1 who had accompanied the complainant at the time of parting with the tainted currency in favour of the appellant. P.W.2 Kishore Rajenimbalkar is the Sub-Divisional Officer who accorded sanction. P.W. 3 Vilaas Bhat who is circle inspector who had drawn scene of offence panchanama. P.W. 4 Kharche, the de-facto complainant who had set the law into motion. P.W. 5 Hanmant Karande, a relative of the complainant who is a witness to the first demand extended by the appellant on 10th March, 1993 and P.W. 6 Md. Yunnus Shaikh, the investigating officer. The appellant has examined one Hardas Kharche as defence witness.

4 The case mainly rests on the evidence of P.W. 4 Mr. Bhanudas Kharche, P.W. 1 Hanmant Sangate and P.W. 6 Md. Yunnus Shaikh.

5 P.W. 1 has given the narration of events dated 28/4/1993 which is reduced into writing ad-verbatim, by P.W. 6 in the post-trap panchanama, which is at Exh. 24. The defence could not create any dent by way of cross-examination.

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6 The learned Counsel for the appellant has made an attempt to draw attention of this court to paragraph-10 of the cross-examination. According to the learned Counsel, entire narration of events is an omission. Upon perusal of Exh. 24, it is more than clear that there is no omission at all and the statement of P.W. 1 was recorded at the time of post trap panchanama which has highlighted each and every gesture of the complainant and the appellant as well as conversation between two, prior to demanding gratification, accepting the same and retaining it and thereafter, concealing the same by the appellant below the gunny bag on which he was seated. P.W. 4 has substantiated his contentions as raised before the PI, Anti-Corruption Bureau and the execution of the demand has been sufficiently proved. P.W. 6 has categorically stated that he had fairly asked the appellant as to whether the complainant was liable to pay any dues, the appellant had answered in the negative. The said conversation is also substantiated by P.W. 1.

7 The accused has examined defence witness only to prove that, before the complainant visited the room of the accused alongwith P.W. 1, the appellant was having some conversation with defence witness No. 1 and an issue of ration card was being discussed. However, D.W. 1 has also admitted

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that upon arrival of P.W. 1 and P.W. 4 he had left the room. It therefore, cannot be said that D.W. 1 was present in the room when the complainant had parted with the tainted currency notes in favour of the appellant upon being demanded.

8 In view of the above discussion, it can be safely inferred that the conviction and sentence imposed upon the appellant is justified. Any interference with the Judgment and Order of the Special Court, Solapur is unwarranted. The prosecution has proved the offence beyond reasonable doubt. Although an opportunity was given to the accused by P.W. 6, the appellant had failed to give any plausible explanation or any valid reason for accepting an amount of Rs. 1300/- from the complainant. There was no preponderance of probabilities demonstrated by the appellant and hence, the Judgment and Order of conviction call for no interference by this Court. Hence, following order is passed :

ORDER

- (i) The appeal is dismissed and disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]