

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.116 OF 1997

Gopal Arjun Randive)
(since deceased) through his legal heir)
Smt.Akubai Gopal Randive)
Age 67 years, Occ. Household,)
R/at-Station Road, Akkalkot,)
District Solapur.) .. Appellant

Versus

State of Maharashtra) .. Respondent

Mr.Viresh V. Purwant a/w Mr.Jay S. Patil for the appellant.
Mr.Arfan Sait, APP for respondent-State.

CORAM : P.N. DESHMUKH, J.
(Vacation Court-Special Bench)
DATE : 6th May 2019

Oral Judgment :-

. This appeal takes exception to the judgment and order passed by learned Special Judge, Solapur in Special Case No.1 of 1992 dated 29th January 1997 by which appellant is convicted for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and he is sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.750/-, in default, to suffer further rigorous imprisonment

for four months. Appellant is further convicted for the offence punishable under Section 13(1)(d) read with Section Section 13(2) of the said Act and he is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/-, in default, to suffer further rigorous imprisonment for the period of six months. Both the substantive sentences are directed to run concurrently.

2. Record reveals that pending appeal, original appellant died on 11th January 2006, his widow, therefore, filed an application for allowing her to prosecute the appeal on behalf of her deceased husband. This Court by an order dated 22nd June 2006 allowed said application, accordingly appeal is heard.

3. In brief, it is the case of the prosecution that on the day of incident, original appellant (hereinafter referred to as “accused”) was attached as Head Constable to Taluka Police Station, Solapur. Complainant Ramchandra Dhotre was owner of two wheeler i.e. Bajaj-m-50 moped which on 6th September 1991 was given by him to one Shahabuddin, a mechanic for repairs, however, while taking trial of said moped, same met with an accident on which offence was registered against Mechanic vide C.R. No.193 of 1991.

4. Complainant was informed of such accident and therefore, on 7th September 1991, complainant along with his cousin Kisan and his friend Prabhakar Waghmode-PW3 went to Taluka Police Station and contacted accused at Police Station, after complainant introduced himself as owner of moped, accused enquired with him about papers and on going through the papers produced by complainant, told him that complainant's license was not renewed and thus, he will have to be arrested.

5. It is the case of prosecution that though complainant informed that he was not driving moped and he was not required to be arrested, accused asked him to pay Rs.2,000/- as bribe to not to arrest him and for returning back two wheeler. Since complainant was not having money on that day, he was directed to pay bribe amount on the following day.

6. It is further case of prosecution that on 8th September 1991, amount of Rs.2,000/- was negotiated and was reduced to Rs.1,500/-. On 9th September 1991, since negotiated amount was also not arranged by complainant, he along with PW-3 met accused who was present in Police Station when complainant was directed to pay Rs.1,500/- on the

following day i.e. 10th September 1991. Complainant thus arranged the demanded amount by pledging his gold ornaments to Sanba Pawar and arranged for some amount but he could not raise Rs.1,500/-. Complainant, therefore, contacted accused in Police Station on 10th September 1991 along with PW-3 Prabhakar and his cousin Kisan (not examined) and informed his inability to arrange for Rs.1,500/- upon which accused directed complainant to pay bribe money in the same evening i.e. on 10th September 1991 or on 11th September 1991 in the morning in the Police Station or by visiting in his house at Keshavnagar Police Lines. On the same day, complainant arranged balance amount and after raising Rs.1,500/-, visited to Anti Corruption Bureau (ACB) office, Solapur and lodged his complaint (Exhibit-36) which was recorded by PW-10 P.I. Shaikh who then instructed complainant to attend ACB office on 11th September 1991.

7. On complainant's attending ACB office, on that day, he was introduced to two persons who were clerks in the office of Sales Tax, Solapur to whom, complainant narrated his complaint. After both these persons agreed to act as Panch witnesses, they read complaint (Exhibit-36) and found same to be recorded as orally stated by complainant. Thereafter, complainant produced bribe amount of Rs.1,500/- before

Panchas. Complainant was then shown demonstration of effect of ultra violet lamp from which he learnt when light is put on anthracene powder, it gives shining gloss. Staff of ACB office thereafter applied anthracene powder on the currency notes of complainant by cotton gauze and kept in the left side shirt pocket of complainant. At that time, complainant was instructed to not to touch currency notes and to pay only on demand by accused. PW-1 Vishnu Shinde was instructed to accompany complainant and to observe conversion whatsoever would take place between complainant and accused. Panch No.2 (not examined) was instructed to watch proposed signal, given by complainant after payment was made. Pre-trap panchnama of all these facts was drawn as per Exhibit-18.

8. Trap was accordingly laid near police station when complainant along with PW-1 Vishnu entered into Police Station and met accused who after meeting them directed to come at back side and demanded bribe money. Complainant accordingly removed Rs.1,500/- from his left side shirt pocket and handed over to accused which he accepted. Complainant, thereafter, gave proposed signal upon which members of raiding team along with 2nd panch arrived at spot. Investigating officer introduced himself and other members of raiding

team, 2nd panch to the accused and recovered bribe money which was found covered with handkerchief by the accused from his left hand. Serial numbers of currency notes were verified from the numbers mentioned in the pre-trap panchnama and were found tallying. Right hand fingers of accused when checked under ultra violet lamp rays, it showed gloss of blue colour. Similarly, handkerchief and currency notes recovered from person of accused were also shown gloss of blue colour when checked under the ultra violet lamp rays. Post trap panchnama of all these facts was drawn. On the basis of report (Exhibit-63) lodged by PW-10 P.I. Shaikh- Investigating officer, offence came to be registered vide C.R. No.547 of 1991 by Taluka Police Station, Solapur which was further investigated by him.

9. During the course of investigation, relevant documents establishing posting of accused at concerned Police Station and his investigation in the crime registered against Mechanic Shahabuddin, who met with an accident involving complainant's two wheeler were collected. After recording statements of material witnesses and on obtaining sanction from competent authority, charge-sheet came to be filed against accused before Special Court at Solapur.

10. Charge is framed against accused for the offences punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 to which accused denied and claimed to be tried. The defence of accused is of total denial and of false implication and has, filed his written statement to the effect that he is falsely involved in the case on the Say of Mr.Pumnani Dy.S.P. whose brother died of accidental death and during the course of said investigation, inspite of his requesting accused to not to get dead body of his brother subjected to post mortem, said request was turned down by accused and thus, he is falsely involved.

11. To establish the charges levelled against accused, prosecution has in all examined 10 witnesses and commenced their evidence by examining PW-1 Vishnu Shinde, Panch witnesses who has proved pre-trap panchnama (exhibit-18) and post trap panchnama (exhibit-41), PW-2 Ramchandra Dhotre, complainant who has proved his report (exhibit-36) lodged before ACB authorities, PW-3 Prabhakar Waghmode on circumstance who had accompanied complainant to Police Station during the period between 7th September 1991 and 11th September 1991, PW-4 Nitin Apte, PW-5 Sonba Pawar from whom complainant arranged for Rs.1,500/- after pledging gold ornaments with him, PW-6

Madhukar Ohal, Police Head Constable who had partly investigated accidental case involving complainant's two wheeler, PW-7 Himmatsinha Ghadge, Police Inspector, PW-8 Ahnayankumar Holkar, Head Constable to establish presence of accused in Police Station on material dates, PW-9 Prakash D. Pawar, Superintendent of Police, Pune Rural, sanctioning authority who has proved sanctioned order (exhibit-55) and concluded evidence on examining PW-10 Mohamed Yunuus Ismail Shaikh who has proved his report (exhibit-63).

12. In support of his case, accused examined DW-1 Shivaji Atpadkar and DW-2 Dr. Sharadkumar Patil who had examined Mechanic who was involved in the accidental case. After considering evidence of above witnesses and documents, trial Court convicted accused as aforesaid, hence this appeal.

13. Heard learned counsel for appellant and learned APP for State. It is submitted that evidence led on record is full of doubts and as such, it does not establish appellant's involvement in the present case but probabilities, case put forth on behalf of accused being more convincing, as from the evidence of defence witnesses, it is established that accused is falsely involved on the Say of Mr. Pumnani Dy. S.P. as his request

was turned down by accused to not to get dead body of his brother subject to post mortem. It is also submitted that since PW-3 Prabhakar as well as Kisan are friend and cousin respectively of complainant and are businessmen, could have easily arranged for bribe money for complainant and as such case of prosecutor of complainant arranging same by pledging gold ornaments itself creates doubts. It is also submitted that evidence of Investigating Officer is silent on his offering personal search before bribe amount is recovered from the hands of accused. It is therefore contended that if above factual evidence are considered, involvement of accused since established to be doubtful, appeal be allowed.

14. Learned APP, on the other hand, by referring to evidence of PW-2 complainant Ramchandra Dhotre, submitted that his evidence goes unchallenged on all material aspects of demand and acceptance which evidence is further found materially corroborated by independent evidence of PW-1 Vishnu Shinde and is further corroborated with PW-3 Prabhakar who on the material dates, accompanied complainant to meet accused in the Police Station from 7th September 1991 to 11th September 1991 and has thus contended that as all material evidence if relied, appeal is liable to be dismissed.

15. In the background of submission advanced as aforesaid, evidence of PW-2 Ramchandra Dhotre would reveal that he is owner of two wheeler having Registration No.MFK-6935. On 6th September 1991, while same was in the custody of mechanic Shahabuddin, it met with an accident and therefore, on 7th September 1991, complainant along with PW-3 Prabhakar and his cousin Kisan visited Police Station and met accused where mechanic Shahabuddin was also present. He deposed that after disclosing his identity to accused as owner of moped involved in accident, he produced documents to accused. On perusing same, he was informed that as his driving license was not renewed, he was required to be arrested. In spite of complainant saying that he was not driving his two wheeler at any point of time and as such, there was no reason to arrest him, accused told him that if he wanted to avoid arrest, he should pay Rs.2,000/- to him. Thus according to evidence of complainant, first demand was of Rs.2,000/- made by accused on 7th September 1991 and since that amount was not available with complainant, he returned from Police Station as accused informed him that unless said amount is not paid, he cannot do anything.

16. Complainant has further deposed that on 8th September 1991, he along with PW-1 Prabhakar and his cousin Kisan again went

to Police Station to meet accused when accused demanded money upon which complainant replied that he could not raise Rs.2,000/-. When accused replied that if amount of Rs.2,000/- is not paid, he will be arrested complainant. After some times, said amount was negotiated to Rs.1,500/- and was agreed to be paid and accepted on the following day.

17. On 9th September 1991, complainant along with Prabhakar and Kisan went to Police Station where accused was found present to whom it was informed that said amount could not be raised by complainant when he informed to pay the same on the following day i.e. 10th September 1991 in Police Station or on 11th September 1991 in morning either in Police Station or by visiting his house at Keshavnagar Police Lines. It is also deposed by complainant that on that day, accused refused to accept Rs.1,000/-. In that view of the matter, complainant arranged for total amount of Rs.1,500/- on 10th September 1991 and since he did not want to pay bribe to accused visited office of ACB and lodged his report (Exhibit-36) to PW-10 P.I. Shaikh.

18. PW-2 complainant further deposed that as instructed, he attended office of PW-10 P.I. Shaikh on 11th September 1991 where he was introduced two persons to whom he narrated his complaint who

verified contents of Exhibit-36 and found same to be recorded as orally stated by complainant. His further evidence is about his producing bribe amount consisting of 12 notes of Rs.100/- in denomination and 6 notes of Rs.50/- in denomination, totalling to Rs.1,500/- of which serial numbers were recorded and as he was shown demonstration of effect of ultra violet lamp rays on anthracene powder from which they noticed that when rays of such light came in contact with anthracene powder, it showed gloss of blue colour. His further evidence is about Head Constable Jadhav from the office of ACB applying anthracene powder on currency notes and keeping same in complainant's left side shirt pocket with instruction to him to not to touch same and to pay only on demand. He then deposed of instruction given to him of proposed signal to be given after bribe amount was paid and of instruction to PW-1 Vishnu, 1st Panch who accompanied complainant to observe conversation between him and accused. According to his evidence, pre-trap panchnama of all these facts is drawn as per Exhibit-18 which is duly proved by PW-1 Vishnu Shinde.

19. According to his further evidence, he along with PW-1 Vishnu entered into Taluka Police Station where members of raiding team had already laid a trap. On their entering, accused was found

present there to whom complainant enquired about return of his moped upon which accused enquired money if brought by complainant. This material piece of evidence of complainant goes unchallenged and thus said evidence when considered directly corroborates with case of prosecution of accused demanding bribe money with a direction to complainant to pay same on 11th September 1991 in Police Station. According to the complainant after he replied in affirmative, accused removed one plain paper from his bag upon which he wrote some matter and obtained complainant's signature below the writing. Similarly, he further deposed that accused then asked name to PW-1 Vishnu, Panch No.1 and his address and also obtained his signature on back side of said document.

20. Perusal of Exhibit-19 forming part of record and proceedings corroborates with above evidence of complainant. On point of incident, complainant had specifically deposed that accused then directed him to come at backside. Accordingly he went with PW-1 Vishnu where accused demanded bribe money which complainant removed by his right hand from his left side shirt pocket and offered to accused which he accepted by his right hand and kept same in white handkerchief which was in his left hand. He further deposed that they

then came in verandah and accused informed him to collect his vehicle which was parked below Neem tree, when complainant gave proposed signal by his left hand upon which investigating officer and other members of raiding team arrived at spot. According to his evidence, he was directed to remain outside and was then called inside police station, when his right hand fingers were checked under rays of ultra violet lamp, which gave gloss in blue colour. Similar gloss was also given when his left side shirt pocket was checked and post trap panchnama of all these facts was drawn as per Exhibit-41.

21. In his cross-examination, though complainant had admitted that PW-3 Prabhakar and cousin Kisan are his friends and businessmen running readymade garment shop and grocery shop respectively and also admitted that financial condition of his above named friend and cousin is sound, this itself does not create any doubts on his case of his arranging for Rs.1,500/- by pledging gold ornaments and not asking this amount from any of them. In that view of the matter, complainant appears to have rightly denied suggestion put to him that both of his above named friend and cousin were in position to lend him Rs.1,500/-. In fact, it has come in his evidence that he has not demanded any money from them.

22. Though it is also argued that as complainant was not involved in the accident but his two wheeler only was involved and thus there was no reason for his arrest by accused, complainant denied above fact having no knowledge of possibility of his arrest. He denied that since he was not driving moped, he was not aware that he was required to be arrested or not. In that view of the matter, there appears no substance when it is contended that as complainant was not involved in accident case, there was no question of his arrest but in view of complainant's evidence as aforesaid, having no knowledge of said aspect, on having apprehension of his arrest as put forth to him by accused to pay him bribe money, as he did not want to pay the same lodged report in the office of ACB. Complainant had denied all suggestions put to him with regards to his evidence from 7th September 1991 till 11th September 1991 during which period he met accused on all the dates and finally contacted accused on 11th September 1991 after lodging report with ACB on 10th September 1991. Complainant had specifically denied of accused demanding bribe of Rs.2,000/- and reducing his demand to Rs.1,500/-. Though he had admitted to have not asked Shahabuddin, the Mechanic, who was involved in accident case to arrange for bribe money demanded by accused, there appears no reason for him to ask for the same as according to his evidence, it is the accused who made

complainant to understand that if bribe money is not paid to him, complainant would be arrested. Rest of the suggestion is put forth to complainant that he did not see P.I. Shaikh while holding both hands of accused and not asking him about bribe money did not appear to be relevant in view of the fact that after he gave the proposed signal, complainant did not enter Police Station for long time and as such, there is no reason from him to witness any such acts. He had denied that no bribe money was recovered from the possession of accused and also denied that P.I. Shaikh did not ask accused of bribe money or that no bribe amount was recovered from accused. He has also denied that he removed money from his pocket and handed over to P.I. Shaikh. It is denied that post trap panchnama Exhibit-41 was drawn in the office of ACB. In fact considering above evidence, it is found that complainant's evidence is not shattered in any manner and as such, there is nothing to disbelieve in his evidence nor there is any reason for him to falsely implicate accused. Case put forth on behalf of accused when considered with case of prosecution, as stated aforesaid does not appear to be convincing at all, moreover alleged incident of accidental death of brother of Mr. Pumnani Dy.S.P. is about six months before incident involved in this case.

23. In the background of above discussed evidence, evidence of PW-1 Vishnu Shinde, an independent witness when perused finds fully corroborating with evidence of complainant, when he had deposed that on 11th September 1991, he visited the office of ACB on instructions of his superior officer, where he was introduced to complainant, who orally narrated his complaint and read the written complaint and further deposed of complainant producing bribe money, demonstration of effect on anthracene powder when seen under ultra violet lamp, instructions given to him and complainant etc. On point of incident dated 11th September 1991, he had deposed that on instructions given by investigating officer, he accompanied complainant to police station and went to room near lock-up where complainant offered Namaskar to accused and he reciprocated same. One police constable was present there. He had deposed that complainant asked accused about two wheeler to which complainant answered in affirmative. He had corroborated with conversation of complainant and accused which took place at the time of incident. It is further deposed that thereafter accused removed one plain paper from his bag upon which he wrote some matter and obtained his signature and of complainant. He further stated that on direction of accused, they went to backside of room where accused demanded bribe money which was paid by complainant after removing same by his right

hand from his left side shirt pocket, which according to evidence of panch, was accepted by accused by his right hand and was kept in white handkerchief which was in his left hand. He thereafter deposed that accused instructed complainant to take away his moped which was parked below Neem tree. Complainant then left verandah and gave proposed signal.

24. Evidence of PW-1 Vishnu Shinde further corroborates with evidence of complainant of raiding party appearing on spot and of recovery of bribe money of Rs.1,500/- from the person of accused along with his handkerchief from his left hand consisting of 12 notes of Rs.100/- in denomination and 6 notes of Rs.50/- in denomination, of which serial numbers mentioned with the numbers mentioned in the pre-trap panchnama. Perusal of cross-examination of PW-1 Vishnu Shinde would reveal that nothing incriminating is brought on record to create doubts on his evidence. In fact there is absolutely no reason for him to falsely implicate accused whose evidence finds to be fully corroborated with the evidence of complainant on all material aspects.

25. Though one of points canvassed by accused is that investigating officer had not offered his personal search before obtaining

his search does not appear to be sufficient to create doubts in case of prosecution, more particularly when it has come in evidence of PW-1 Vishnu that before accused was subjected to his personal search, P.I. Shaikh offered him to his personal search which he declined and was thus subjected to his personal search.

26. Considering evidence of complainant as well as PW-1 Vishnu Shinde as same is found fully corroborated with each other, on all material particulars and with the contents of pre-trap panchnama (Exhibit-18), post trap panchnama (Exhibit-41) along with documents at Exhibit 19 bearing signature of complainant and PW-1 Vishnu, and at Exhibit 29, by which complainant was informed of involvement of his two wheeler in accidental case which was investigated by accused with further information to complainant that during the course of said enquiry, if he is found involved in any manner, he will be likely to be prosecuted. Case of prosecution is found substantiated. Moreover, issuance of the document on 7th September 1991 to complainant by accused established case of prosecution of accused demanding bribe of Rs.2,000/- from complainant on 7th September 1991 to not to effect his arrest. In view of contents of Exhibit-29 and facts discussed as aforesaid thus, do not have any reason to rely upon case of accused that if he admittedly was

not involved in accidental case, there was no reason for him to apprehend his arrest in such a case. From registration of particulars bearing No.MFK-6935, same is registered in the name of complainant Ramchandra Dhotre.

27. In the light of above discussed evidence on record, case of complainant of his arranging amount of Rs.1,500/- by pledging gold ornaments with PW-4 Nitin Apte, PW-5 Sonba Pawar further demonstrates his efforts to raise bribe money, complainant had to arrange by pledging his gold ornaments. Similarly, evidence of PW-7 Ghadge and PW-8 Holkar establish that at the material time, accused was attached to Taluka Police Station, Solapur and was on duty on these dates from 7th September 1991 to 11th September 1991, which aspect even otherwise is not disputed. Moreover, from evidence of PW-9 Prakash Pawar, sanctioning authority, it is found that on application of his mind, since applicant's involvement is found in the present case, he accorded sanction to prosecute accused as per Exhibit-55 which order thus, does not appear to be granted mechanically or without application of mind which suggestion even otherwise is duly denied by PW-9 Prakash Pawar who has also denied that no draft of sanction was sent to him by office of ACB. Exhibit-55 as such is held to be valid sanction, granted by

competent authority upon which accused came to be prosecuted and the trial Court on considering evidence as well as defence evidence is found to have rightly appreciated the same and arraigned conviction. Appeal is thus devoid of merits. Hence the following order :-

- (i) Appeal is dismissed.

P.N. DESHMUKH, J.