

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

CRIMINAL APPEAL NO.493 OF 2006

Vijay Parvatrao Salunkhe
Aged : 40 years, Occ.: Police Constable,
R/at : S. No. 23/9, Balaji Nagar,
Shivneri Apartment, Dhankawdi,
Pune – 411 043.

.... Appellant
(Original Accused)

Vs.

The State of Maharashtra
At the instance of Hadapsar
Police Station, Pune

.... Respondent

Ms. Nasreen S.K. Ayubi for the Appellant.
Ms. Pallavi Dabholkar APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 1st February 2019

JUDGMENT :

1 The appellant/original accused herein was convicted for the offence punishable under Sections 7 and 13(1)(d) and Section 13(2) of Prevention of Corruption Act, 1988 and sentenced to suffer six months and one year rigorous imprisonment, fine of Rs.500/- and

Rs.1,000/- in default to suffer rigorous imprisonment for one month and three months respectively. Hence, this appeal.

2 The appellant/accused has expired on 28th March 2011, as he was diagnosed with HIV+ve. The appeal is being prosecuted by the wife of the appellant/accused, who has also been diagnosed with HIV+ve.

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

 The appellant/accused was working as Police Constable (Traffic Branch), Hadapsar Police Station, Pune. On 12th August 2003, Malaba Rangrao Chinchole filed a written report to the Anti Corruption Bureau, Pune alleging therein that he is the owner of three wheeler Tempo, bearing RTO registration number MH-14 6974. He is having driving licence number 5798/15371. That on 11th August 2003, he was carrying the goods i.e. 6 TV sets to be delivered from Fursungi godown to Thermax Chowk. When he

reached Hadapsar Chowk, the appellant/accused had stopped his vehicle and had demanded his licence and other papers. It was seen that the passing limit of Tempo had expired 5 days ago. The appellant-accused had demanded Rs.3,200/- towards fine and he had retained the papers of vehicle including passing certificate, insurance certificate and fitness certificate and also asked the complainant to leave his tempo at the spot. The appellant-accused was not willing to reduce the amount. Thereafter the appellant-accused had reduced the amount of Rs.2,000/- for releasing the vehicle but since the complainant had expressed his inability, the appellant-accused had agreed to accept Rs.500/- and intimated the complainant that on receipt of the said amount, he would return his vehicle. He had agreed to pay money at about 5.00 pm. He had approached Anti Corruption Bureau. The Anti Corruption Bureau had reduced his report into writing and had agreed to lay a trap on the next day. Accordingly, pre-trap panchanama was conducted on 11th itself and thereafter on the second day, a trap was laid. The complainant had met the appellant/accused. They had been to

Gajendra Hotel. The complainant had allegedly demanded the licence. The appellant-accused enquired as to whether the agreed amount was brought. Upon receiving the answer in the affirmative, the complainant had handed over the tainted notes to the appellant-accused, which he had accepted and placed in left side pocket of his shirt and soon thereafter, the Anti Corruption Bureau had laid the trap. After the trap had succeeded, Nandkumar Jaywant Pinjan, Police Inspector of Anti Corruption Bureau, Pune had lodged a report on behalf of the State.

4 On the basis of report under Section 154 Code of Criminal Procedure, Crime No.3237 of 2003 was lodged at Hadapsar Police Station. After completion of investigation, charge-sheet was filed on 16th March 2004. The case was committed to the Special Court and registered as Special Case No. 8 of 2004.

5 The prosecution has examined four witnesses to bring home the guilt of the appellant-accused. The case rests upon the evidence of PW-1, 2 and 3.

6 PW-1 Malaba Rangrao Chinchole is the defacto complainant. In the examination-in-chief itself, he has deposed before the Court as follows :

“The passing limit of the Tempo had expired 5 days ago. The accused asked me to pay Rs.3,200/- as fine. He had retrained the passing certificate, insurance certificate and fitness certificate. The amount was negotiated to Rs.2,000/-. The accused had returned the papers of vehicle but had retained the licence”.

According to PW-1, the amount was negotiated to Rs.500/-. In the cross-examination, the PW-1 has candidly admitted that on the earlier occasion also, action was taken against him for breach of traffic rules and fine was recovered from him by Faraskhana police. That action was taken against him on three occasions and most of the times the accused was present. He has given an evasive answer to the suggestion as to whether the appellant/accused- Salunkhe had taken action for breach of traffic rules against him on two occasions. He has further admitted that Rs.3,200/- was demanded towards fine and that the vehicle would have to be detained. It is also admitted that the said amount was demanded towards fine. It is also admitted

that after verifying the vehicle papers, the accused had taken notes in his diary. The witness was aware that he would have to pay a fine since the fitness certificate and passing had expired. It is also admitted that besides demanding fine of Rs.3,200/-, there was no other talk between the accused and the complainant. The accused had asked him to deposit the fine and seek return of licence. The accused had also asked him to keep his tempo in the police station, however, on persistent requests, he had allowed the complainant to deliver the goods. The accused had handed over the licence to PW-1 in the hotel. The accused had not issued receipt of received amount of Rs.500/-. The pre-determined signal was given to the raiding party, almost 10 minutes after passing of the tainted notes in favour of the accused. Upon query made by the Anti Corruption Bureau, the accused had instantly replied that the amount was accepted towards fine. It appears from the records that just two days before the accused was transferred to Hadapsar from Faraskhana police station, he had taken action against PW-1 and the Court had imposed fine of Rs.4,500/-.

7 PW-2, Anil Chintaman Wagh is the panch, who had accompanied the complainant at the time of raid. He has categorically stated that initially the appellant-accused had asked the complainant to bring the tempo and deposit it in the police station, in the meanwhile they had been to the hotel for having tea. The appellant-accused had asked the complainant as to whether his work is done and upon answering in the affirmative, the complainant had handed over the amount to the appellant-accused. It is admitted in the cross-examination that at the relevant time another Police Inspector had accompanied the appellant-accused. There was heavy traffic. The complainant and the panch had to wait for half an hour. The witness has denied the suggestion that upon query made by the Investigating Officer, the appellant-accused had stated that the complainant has admitted to have thrust the amount in his pocket. The suggestion is denied.

8 PW-3, Nandkumar Jaywant Pinjan is the Investigating officer. According to him, he has laid a trap on the basis of the

report filed by PW-1. He has relied upon the statement of the panch that the appellant/accused had demanded the amount and the complainant had handed over the amount. According to PW-3, there were traces of anthracene powder on the hands and shirt of the appellant/accused. PW-3 has admitted in cross-examination that when raiding party had gone to the spot, the accused was doing work of controlling traffic. The complainant was with the accused at that spot for about 20 minutes. It is also admitted that when the complainant talked to the accused at the chowk and till the accused and complainant went in the hotel, the accused was doing his work of traffic controlling. It is pertinent to note that PW-3 had enquired with Chincholikar, another traffic police as to whether the accused had registered any case against Salunke regarding breach of traffic rules. Except copy of the duty register, no other papers seized from Hadapsar traffic police office. It is also admitted that the accused had taken charge at Hadapsar only four days prior to the incident.

9 It is a matter of record that soon after the trap, the accused had disclosed to the police that the money was recovered towards fine. This has to be read in consonance of admission of PW-1 that accused had demanded Rs.3,200/- towards fine and had also detained the vehicle on the spot and had retained the licence.

10 Upon perusal of the original records of this case, it would be seen from the records of 12th August 2003 that at about 5.50 pm., vehicle number MH-14 6974 was stopped by the police. The driver did not possess the registration papers and that the fitness and passing certificate had expired. That there was a minor accident while detaining the said vehicle MH-14 6974. The traffic was then regularised and the police had approached for an amicable settlement between drivers of truck No. MTD- 6750 and MH-14 6974 and auto rikshaw No.MH-12 FA 2785. It is also mentioned in the record that the driver of MH-14 6974 had taken advantage of the situation and had fled from the spot alongwith the vehicle. By producing the said record, the accused has in fact established the

preponderance of probability of false implication and has rebutted the presumption to be drawn under Section 20 of the Prevention of Corruption Act. It is unfortunate that although the said record was seized by the police, it was not put to the witness at the time of the trial, however, the accused cannot be punished for the same. Section 20 of the Prevention of Corruption Act, 1988 contemplates as follows:

20. Presumption where public servant accepts gratification other than legal remuneration.—

(1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-Section (1) of Section 13, it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under Section 12 or under clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the

contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-Sections (1) and (2), the Court may decline to draw the presumption referred to in either of the said sub-Sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.

11 In the case of Syad Akbar Vs. State of Karnataka, reported in 1980 (1), Supreme Court Cases, page 30 OR 1979 A.I.R. Supreme Court, page 1848, the Hon'ble Apex Court has held that:

“Presumptions of fact merely affect the "burden of going forward with the evidence." 'Presumptions of Law', however, "go so far as to shift the legal burden of proof so that, in the absence of evidence sufficient to rebut it on a balance of probability, a verdict must be directed”.

12 The presumption of law is a rebuttable presumption. The complainant has also not disputed that the amount was demanded towards fine. There is an entry to that effect. Witnesses may lie, however, circumstances speak for themselves. The evidence in this regard, which leads to an inference that the amount was accepted towards fine is both oral and documentary. It is the case of

prosecution also that the licence was returned to PW-1 in the hotel. There was no time for the accused to issue receipt of the amount received. In any case, the vehicle was detained at the police station. In the eventuality that the amount was accepted as illegal gratification for releasing the licence, the accused would not have made entry in the case diary regarding the seizure of the licence, the detention of the vehicle etc. The said document being a public document, would necessarily be admissible in evidence. In any case, law does not require that the accused has to necessarily give evidence to rebut the presumption. It is sufficient that the presumption is rebutted by demonstrating the preponderance of the probabilities. It cannot be laid down as an absolute rule that in rebutting the presumption, he must adduce evidence *aliunde* and that his explanation should be considered with the other circumstances. His explanation right from the threshold was that the money was accepted towards fine. The same is corroborated by documentary evidence as well as the evidence of PW-1 who has categorically admitted that there was demand of fine. It is, in these

circumstances that mere recovery of money divorced from the circumstances under which it was accepted, the presumption cannot be raised.

13 Learned counsel for the appellant has submitted that the appellant has expired. The appeal is being prosecuted by the bereaved wife. She would be entitled to the post retirement benefits and any other amount, which would be payable to the accused, in the eventuality he had survived.

14 In view of above discussion, the appeal is allowed and the accused deserves to be acquitted of the charges levelled against him. The fine amount if paid, be refunded to the wife of the appellant.

(*Smt. Sadhana S. Jadhav, J*)