

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 53 OF 2007**

The State of Maharashtra

....Appellant
(Orig. Complainant)

V/s.

Vijay Anant Ayare
Age about 23 years,
Occu. : Service,
Resident of Vartak Nagar
Building No.58-B, Room No.2723,
Police Line, Thane.

....Respondent
(Orig. Accused)

Ms. Anamika Malhotra, APP for State.

CORAM : K.R.SHRIRAM, J.
DATED : 21st DECEMBER 2020.

ORAL JUDGMENT :

1. This is an appeal impugning an order and judgment dated 5th August, 2004 passed by the Special Judge, Raigad, Alibag acquitting respondent (hereinafter referred as accused) of offence punishable under Section 7 (*Public servant taking gratification other than legal remuneration in respect of an official act*), Section 13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988.

2. It is prosecution's case that accused was a police constable in the Detection Branch of Taloja Police Station. On 09/11/1998 a tempo owned by one Ramvilas Hullu Rajbhar and driven by Ramdayal Hullu Rajbhar (P.W. 3), both residents of Dombivali, was stopped by accused. The

tempo owner Ramvilas was having business of sale and purchase of scrap for the last four years. Ramvilas used to sell scrap to one Brijlal and Company at Taloja. On 09/11/1998 two persons stopped the tempo, one of them informed Ramdayal (P.W. 3) that he is a policeman and enquired about the scrap material in the tempo and also demanded papers of the tempo. When P.W. 3 showed and handed over all the papers to accused, accused demanded Rs.15,000/- from P.W. 3 for returning the papers. Accused, it is alleged also slapped P.W. 3. Accused informed P.W. 3, who told accused that he was only a driver, to bring the owner with the money and until then the papers will not be returned. Ramvilas, owner of tempo came to Taloja, met accused and requested for returning the vehicle papers but accused refused to return until the amount was paid. Accused also threatened to involve Ramvilas and Ramdayal (P.W. 3) in some false case. Subsequently, amount was negotiated and brought down to Rs.3,000/-.

3. Two weeks later, on 23/11/1998, Ramvilas and Ramdayal (P.W. 3) met accused and requested him to hand over the papers but again there was a demand of Rs.3,000/- from the accused and accused informed them to bring amount at 11.00 a.m. on 25/11/1998 to Putti Bhangarwala near Pendhar Phata where after the amount was paid he would return the papers. No explanation could be found anywhere for the gap of two weeks between 09/11/1998 and 25/11/1998. Therefore, P.W. 3 and Ramvilas who was owner of the tempo went to Anti Corruption Bureau Office, reported

the matter and after completing pre-trap formalities, a trap was laid. On 25/11/1998, P.W. 3, along with panch witness P.W. 1, came with the money and were waiting near Pendhar Phata. Accused came to the spot at about 12.00 noon in an auto rickshaw and stopped near a tea stall. Accused asked P.W. 3 about money and when P.W. 3 told him that he has brought money with him, accused demanded money. P.W. 3 told him that unless the papers are handed over he would not pay over the money. Therefore, accused left the place in the same auto rickshaw and came back within ten minutes with the papers. After P.W. 3 handed over money, accused gave the papers to P.W.3. Thereafter, raiding party, which was spread near about and were keeping watch on the happenings, after receiving signal from the complainant, rushed ahead and caught hold of accused in the auto rickshaw. When the hands of accused were checked under ultra-violet lamp, traces of anthracene powder was found on the hands of accused. Post trap panchanama was drawn. Investigation commenced. After investigation, sanction to prosecute accused was obtained and then charge-sheet was filed.

4. To bring home the charge, prosecution led evidence of five witnesses namely P.W. - 1 Yogesh Vishwanath Sangade, Panch, P.W. - 2 Sudhakar Mukund Ambedkar, Sanctioning Authority, P.W. - 3 Ramdayal Hullu Rajbhar, Complainant, P.W. - 4 Baburao Kisanji Gavane, Police Inspector of Taloja Police Station and P.W. - 5 Bharat Maruti Saravade, Investigating Officer.

5. P.W. 4 was called to depose only to find out whether on 09/11/1998 when the tempo was stopped by accused whether there was any offence recorded. He has answered in the negative. Of course, P.W. 4 has confirmed that Putti Bhangarwala outside whose shop the alleged demand and acceptance happened was a police informer.

6. P.W. 1 has deposed in detail what transpired pre-trap and post-trap. He has narrated what transpired at the time of trap. P.W. 1 has deposed that when P.W. 1 and P.W. 3 went to the meeting place and were waiting for accused near the tea stall, at about 12.00 noon, accused arrived in the auto rickshaw and he was wearing blue jeans. On arrival accused called P.W. 3 over to him and P.W. 1 with P.W. 3 went near the auto rickshaw. P.W. 3 informed accused that he has come prepared as instructed by accused and asked him to hand over the papers of the tempo to him. Accused told P.W. 3 that he should first pay over the money to him. But P.W. 3 refused and told to hand over papers to him first. Accused informed P.W. 3 that he has not brought papers and instructed P.W. 3 to wait there, left the spot and came back in ten minutes with the papers. Panch again states similar conversation happened and accused handed over the papers which P.W. 3 took in his left hand. Accused asked P.W. 3 for Rs.3,000/- and P.W. 3 by his right hand gave the amount to accused which accused took and kept the same in the right side pocket of his pant. Here comes the difference between evidence of P.W.1 and P.W. 3. P.W. 1 says that thereafter P.W. 3

moved his hand on his head to give signal to the raiding party and P.W. 1, one Mhatre have seen the amount was received by accused. At that time, all of them gathered near them. Then P.W. 5 came near auto rickshaw, caught hold of both the hands of accused and accused was dragged out from the auto rickshaw. All of them introduced themselves. Accused tried to get his hands released and said that P.W. 3 has given the amount willingly. Then P.W. 5 asked tea stall owner to give him permission to use the backyard of tea stall and accused, raiding party and panch witness were taken inside the tea stall while P.W. 3 complainant was asked to wait outside. Thereafter, P.W. 5 showed his hands as well as hands of panch witness and raiding party in the day light to accused and made him ascertain that there is no application of anthracene powder on their hands. Under ultra-violet lamp hands of accused was checked and anthracene powder was found on right hand of accused. Then the currency was removed by panch Patil who has not been examined. Thereafter, P.W. 5 called P.W. 3 who was standing outside and the hands of P.W. 3 was examined for traces of anthracene powder etc. Very detailed narration has been given by P.W. 1 as a professional. I am using the expression professional because P.W. 1 who was working as clerk in the RTO, Thane, in his cross-examination, admits that he has acted as a panch in four to five cases of Anti Corruption Bureau. So he is a habitual panch witness.

Per contra, P.W. 3,, however does not say about the trap so elaborately. He only says that accused came to the meeting point in a rickshaw, asked him whether he has brought the money, when he answered

in the affirmative, accused went to the police station to bring papers and came back and asked P.W. 3 to first pay money to him otherwise he would not hand over the papers of the vehicle and driving license to P.W. 3. Then P.W. 3 handed over money to accused and then accused handed over the papers to P.W. 1. Then P.W. 3 states "At that time Sangade, Patil and police officer caught hold of Shri. Ayare and then took Ayare to the police station, Accused was arrested, then he went back to Dombivali". P.W. 3 is totally silent about what transpired after he handed over the marked currencies and P.W. 5's arrival at the spot. P.W. 3 does not talk about any signal given by him to P.W. 5 but P.W. 1 says so. P.W. 3 also does not even mentioned about accused and others being taken to tea stall or to the back side of the tea stall to check for anthracene marks etc.

7. P.W. 1 in his deposition states that pant of accused was attached as it had signs of anthracene powder and another pant was given to accused. P.W. 3 is silent about that. P.W. 1 thereafter says amount of Rs.3,000/- which was kept with Shri. Patil, the other panch witness, was taken from him, kept in a packet, sealed and signature of both panchas were taken on it. P.W. 3 is totally silent about these things. In his cross-examination P.W. 1 admits that the rickshaw driver was present since the beginning on the spot till the entire episode was over. P.W. 3 does not say this and in any case rickshaw driver is not called to depose. P.W. 1 also admits that in the panchanama it is not mentioned that after receiving

signal from Ayare, i.e., accused, P.W. 1 accompanied P.W. 3 upto the auto rickshaw. P.W. 1 also admits that panchanama does not state that accused asked P.W. 3 to pay money first when he came back with the papers. P.W. 3 states that when accused stopped tempo, cleaner was also with him. He then says accused told him to go to the owner of the vehicle and bring money from the owner. So he went to Dombivali and accused took papers of the vehicle in his custody. But P.W. 5 Investigating Officer says that accused told P.W. 3 that he should pay Rs.10,000/- to him and also physically assaulted complainant. P.W. 3 complainant in his deposition does not mention about this physical assault. P.W. 3 complainant says at Navada phata his tempo was stopped by the police and the said police asked him to pay money, whereas, P.W. 5 says that two persons stopped tempo and demanded papers of the vehicle. P.W. 5 says that when accused told P.W. 3 to pay bribe amount of Rs.15,000/- and instructed him to call his employer/ owner of the tempo, complainant sent his cleaner by name Giri to Dombivali but P.W. 3 says he went to Dombivali to fetch the owner. However, this Giri has not been examined.

Another major point which has not been explained by prosecution is that after stopping of tempo and demand of Rs.15,000/- which was later reduced to Rs.3,000/- happened on 09/11/1998 but the complaint to the Anti Corruption Bureau has been lodged only on 24/11/1998.

P.W. 3 says that he went to Dombiviali and told the employer

Ramvilas about demand of Rs.15,000/- by accused and thereafter employer and himself came to Taloja, met accused and in the discussion amount was reduced to Rs.3,000/-. Strangely, owner of the vehicle Ramvials has not testified. In his cross-examination, P.W. 3 says when the tempo was stopped on 09/11/1998 only one police was there, whereas, P.W. 2 says two persons had stopped. P.W. 3 complainant further states on the date of the incident, i.e., on 25/11/1998 his brother Ramvilas who is also owner of the tempo was with him throughout. But none of the other witnesses had stated so and Ramvilas has not testified.

8. P.W. 5 says on 25/11/1998 when P.W. 3 complainant with his brother met accused at about 11.00 a.m. and enquired about papers, accused demanded Rs.15,000/- from P.W. 3 and also threatened that if money was not paid, he will file a case against him. But P.W. 3 himself does not say anything about this. P.W. 5 then says that when P.W. 3 complainant told accused that he was not having sufficient money, accused reduced the amount to Rs.3,000/- and P.W. 3 complainant told accused that he will pay amount after getting his salary. Once again P.W. 3, complainant, does not say any of these things. Moreover, when owner of the tempo Ramvilas was there on 09/11/1998 where is the question of P.W. 3 complainant, who was only a driver, telling accused that he will pay Rs.3,000/- after he gets his salary.

9. In his testimony, P.W. 5 has deposed that he gave instructions that once complainant handed over Rs.3,000/- to accused, he should give signal to the raiding party with his left hand. P.W. 3 complainant does not say any of these things. P.W. 3 does not, even in his examination-in-chief, give any detail of the pre-trap panchanama. He only says he informed panch witness that the papers of vehicle were taken by accused and he demanded Rs.3,000/- and then the concerned officer spread powder on the currency notes which were in denomination of Rs.500/- and Rs.100/-. P.W. 3 is totally silent about the fact that his pocket was searched and panch found Rs.3,050/- in his pocket and applied anthracene powder on the currency notes. P.W. 3 says that after money was handed over to accused, he gave signal by moving his hand over his head.

10. Even the tea stall owner has not been examined. P.W. 5 says that there was small room annexed to the tea stall. The room was closed from inside by curtains and he examined hands of accused under ultra-violat lamp. P.W. 1 says hands of accused were checked under ultra-violat lamp and existence of anthracene powder was found. But he does not mention anything about the room in the tea stall or closing of the room with curtains. P.W. 3 complainant does not say anything of these things. P.W. 5 has also not explained from where he brought curtains, which was used for darkening the room. P.W. 5, in his cross-examination, admits that panchanama does not mention about raiding party. P.W. 5 also states that he

recorded statement of Putti Rajbhar Malla in front of whose shop trap incident happened. P.W. 5 further admits that cleaner Giri Rajbhar, Ramvilas Hullu Rajbhar owner of the tempo or the rickshaw driver have not been examined, though their statements have been recorded.

11. Now, coming to the sanction, P.W. 5 says in his cross-examination that he had not sent a format of the sanction order along with other papers. But P.W. 2 who is the sanctioning authority says that he came across the draft of sanction order along with confidential letter. I have to also note that the Maharashtra State Anti Corruption and Prohibition Intelligence Bureau has issued a manual of instructions. At the request of the court, learned APP gave a copy of the revised 2nd edition of 1976. Learned APP is not aware whether any later edition has come. I am informed, the website does not indicate any later edition. Chapter-12 of this manual deals with prosecution. On the sub-head of sanction to prosecute, it expressly provides, “.....It should, however, be remembered that the question has to be formed and content of the sanction is matter within the discretion of the competent authority. It should not be requested to accord sanction in any particular form nor should draft sanction be sent to it.....”. Therefore, the manual expressly provides a draft sanction should not be sent to the competent authority. In this case admittedly a draft sanction was sent. In my view, therefore, the sanction itself will get vitiated because it is contrary to the manual of instructions.

12. I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra, learned APP.

13. In view of the above, I cannot accept the case of the appellant that there was any error in the conclusion arrived at by the trial court. In view of the above, in my view the appeal requires to be dismissed. It will be safe to conclude that appellant has failed to prove beyond reasonable doubt that accused is guilty of the charge framed against him.

14. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court rightly observed that the prosecution had failed to prove its case.

15. In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, need not be interfered with.

16. Appeal dismissed.

17. The Government/Appropriate Authority shall pay over to respondent, within a period of 30 days from the date of receiving a copy of this order, all pensionary or other benefits/dues stalled, in view of pendency of this appeal. If during the service, in view of this matter, the promotions or increments of accused have been affected, the concerned Authority/Department will pay, proceed and calculate on the basis that there was no such matter ever on record against the accused and will factor in all promotions and increments that the accused would have been entitled to and all the amounts shall be accordingly paid within 30 days.

After 30 days interest at 12% p.a. will have to be paid by Government/Appropriate Authority to respondent.

No authority shall demand certified copy for reimbursing the benefits/dues as directed above. All to act on authenticated copy of this order. Certified copy expedited.

(K.R. SHRIRAM, J.)