

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

CRIMINAL APPEAL NO. 1019 OF 2003

Kondiba Yashwant Girigosavi	 Appellant
v/s.	
The State of Maharashtra	 Respondent

Mr. Ganesh Gole for the Appellant.
Mr. S.V. Gavand, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 25th NOVEMBER, 2021.

ORAL JUDGMENT :-

. This Appeal is directed against the judgment dated 25/07/2003 in Special Case No.11/2001.

2. By the impugned judgment, the learned Special Judge, Kolhapur has held the Appellant guilty of offences under sections 7, 13(1)(d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act'). The Appellant has been sentenced to undergo rigorous imprisonment for one year with fine of Rs.2,000/- in default to undergo rigorous imprisonment for one month in respect of offence punishable under section 7 and rigorous imprisonment for two years with fine of Rs.3,000/- in default to

undergo rigorous imprisonment for two months for offence punishable under section 13(1)(d) r/w. 13(2) of the PC Act.

3. The Appellant (hereinafter referred to as 'the accused') is a Police Constable attached to Bambawade outpost which comes within the local jurisdiction of Shahuwadi Police Station. On 28/03/2001, the accused had filed a challan against the Complainant – Shivaji Chandrappa Patil (PW1) under section 66 r/w. 192 of Motor Vehicles Act, 1988 for plying the vehicle without permit. The Complainant was produced before the Court and in view of plea of guilt, he was held guilty and sentenced to fine of Rs.1,100/-.

4. It is the case of the prosecution that on 29/03/2001, the accused demanded illegal gratification of Rs.200/- from the Complainant to allow him to ply the vehicle without permit. When the Complainant expressed his inability to pay the money, the accused threatened to file a fresh challan which would lead to payment of fine of Rs.700/-. The Complainant requested for some time to pay the illegal gratification of Rs.200/-. The accused acceded to his request and instructed him to make the payment within two days at Bambawade Police outpost. The Complainant was not inclined to pay the illegal gratification, as

demanded by the accused. Hence, on 31/03/2001 he went to the ACB office at Kolhapur and lodged a complaint against the accused for demanding illegal gratification.

5. PW4 – Manohar Patil, D.Y.S.P, ACB, Ratnagiri recorded the complaint and told the complainant to come to the office on 02/04/2001. In the meantime, he secured presence of pancha witnesses. The complainant and pancha witnesses remained present in the ACB office on 02/04/2001. PW4 explained the contents of the complaint to the panchas. They were explained the details of trap. PW4 applied anthracene powder to the notes in the denomination of one note of Rs.100/- and two notes of Rs.50/- each and gave demonstration of anthracene test. The said notes were placed in the shirt pocket of the complainant. Necessary instructions were given to the Complainant and the panchas and upon completing all other formalities, pre-trap panchanama was drawn in presence of the panchas.

6. The Complainant, pancha witnesses and the raiding party proceeded to Bambawade outpost. They reached the Bambawade outpost at about 11:30 a.m. The Complainant and the pancha

witnesses (PW2) entered the outpost whereas, the other members of raiding party waited outside the outpost. It is the case of the prosecution that the accused demanded the bribe amount. The Complainant paid the said amount and soon after the accused accepted the bribe, the Complainant gave the pre-determined signal to the raiding party. Immediately thereafter, PW4 - Manohar and others entered the outpost, held the hands of the accused and recovered the tainted notes from his pant pocket. The hands of the accused, the trousers and the money recovered from the accused were placed under the ultra violet lamp and the same showed traces of anthracene powder. The serial number of these notes tallied with the serial number of the notes recorded in the pre-trap panchanama. After complying with the other formalities, post-trap panchanama was drawn. The accused was apprehended and taken to the police station. Crime was registered against him. After completion of the investigation, charge sheet was filed against the accused for offences under sections 7, 13(1)(d) r/w. Section 13(2) of the PC Act.

7. The accused pleaded not guilty to the charge and claimed to be tried. The prosecution in support of its case, examined five witnesses. The statement of the accused was recorded under section 313 of Cr.P.C.

The defence of the accused was of total denial and false implication for having filed challan against the Complainant for violating the provisions of MV Act.

8. The learned Judge, after appreciating and analyzing the evidence on record, held the accused guilty of offence and convicted and sentenced him as stated above. Being aggrieved by the said conviction and sentence, the accused has filed this Appeal under section 374 of Cr.P.C.

9. Heard Mr. Ganesh Gole, learned counsel for the Accused and Mr. S.V. Gavand, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

10. The evidence on record reveals that the accused was a Constable attached to Bambawade outpost, Kolhapur and hence, a public servant within the meaning of section 2(e) of Prevention of Corruption Act. It is the case of the prosecution that PW1 – Shivaji owns a jeep bearing no.MH-09/J-7113. He was plying the said jeep as a passenger vehicle without a valid permit. PW1 – Shivaji has deposed that on

29/03/2001, the accused demanded an illegal gratification of Rs.200/- to allow him to ply the vehicle without permit. When he expressed his inability to make the payment, the accused threatened to prosecute him and further told him that he will have to pay a fine of Rs.700/- in the Court. PW1 has deposed that he requested for some time to make the payment. The accused told him to pay the amount within two days at Bambawade outpost. Since, the Complainant was not inclined to make the payment, on 31/03/2001, he went to the office of ACB at Kolhapur and lodged the complaint (Exhibit - 11) against the accused for demanding illegal gratification.

11. The evidence of PW1 indicates that he was called by the Anti Corruption Officer on 02/04/2001 with an amount of Rs.200/-. Accordingly, he attended the office and handed over the money to the Investigating Officer – PW4 – Manohar Koli in presence of pancha witnesses. The evidence of PW2 – Shashikant Chougule who is one of the pancha witnesses also indicates that he was called to the police station on 02/04/2001 and that PW4 had explained to him the contents of the complaint. PW1 and PW2 have deposed that the said notes were smeared with anthracene powder. The demonstration of anthracene test was given and after giving necessary instructions and

completing all the other formalities, a pre-trap panchanama was drawn. These witnesses have further deposed that thereafter the raiding party proceeded to Bambawade outpost. They reached the outpost at about 11:35 a.m. PW1 and PW2 entered the outpost while the other members waited outside. The accused was present at the outpost. He asked PW1 whether he had brought the money. When PW1 answered in the affirmative, the accused told him to handover the money immediately as he was in hurry to attend his duty. PW1 removed the tainted notes from his shirt pocket and handed over the same to the accused. The accused kept the same in his pant pocket. Immediately, thereafter, PW1 went outside and made a pre-determined signal after which the raiding party entered the outpost and caught hold of the hands of the accused. PW1 and PW2 have deposed that the tainted notes were recovered from the accused and when placed under ultra violet lamp, the notes showed traces of anthracene powder. They have deposed that the serial number of the said notes tallied with the serial number of the notes recorded in the pre-trap panchanama.

12. PW4 – Manohar Koli – the Investigating Officer also confirms that PW1 had lodged the complaint against the accused for demanding illegal gratification. He had secured presence of panchas and arranged

a trap. He has confirmed the contents of pre-trap panchanama. He has further deposed that they had reached the outpost at 11:35 a.m. The Complainant and PW2 entered the outpost while they waited outside. He has deposed that at about 11:45 a.m., PW1 came out of the outpost and gave a pre-determined signal. Immediately thereafter, he and the other members of the raiding party, entered the outpost and caught held the hands of the accused. The currency notes of Rs.200/- recovered from the accused showed traces of anthracene powder and the serial number of the said notes tallied with the serial number recorded in the pre-trap panchanama. He has confirmed the contents of the post-trap panchanama.

13. The evidence on record thus indicates that PW1 had complained that the accused had demanded illegal gratification of Rs.200/- to allow him to ply his vehicle without permit. The said demand was made on 29/03/2001. The accused had acceded to the request of the complainant to give him time to make the payment and had instructed him to pay the amount within two days. The records reveal that PW4 had arranged a trap without verifying the demand. A trap was laid on 02/04/2001 when as per the instructions of the accused, money was to be paid by 31/03/2001. It is not the case of the PW1 that there was

any further communication between him and the accused as regards extension of time to make the payment. There is nothing on record to indicate that the accused had called the complainant at Bambawade outpost on 02/04/2001 with the bribe amount or that PW1 and the Investigating Officer were aware that the accused would be available at the outpost on 02/04/2001. This assumes significance as PW3, Arjun Sakunde, the Police Inspector attached to Shahuwadi Police Station has deposed that on 02/04/2001, the accused was on bandobast duty at Supatre in view of wrestling game. He has deposed that he had also visited the place where wrestling was to take place. Since there was no crowd and wrestling had not yet started, he returned to Bambawade outpost at about 11:00 a.m. On reaching the outpost, he learnt that the accused was accosted by the officers of the ACB for accepting bribe from PW1 - Shivaji Chandrappa Patil. In his cross-examination, he has stated that he was not present at the time of the trap. He has stated that he learnt about the payment and acceptance of bribe after the trap.

14. The evidence of this witness thus clearly indicates that on the date of the trap, the accused was deputed on bandobast duty at Supatre. Hence, the presence of the accused at the outpost at the time

of the alleged trap appears to be doubtful. The evidence of PW3 further indicates that he had returned to the outpost at about 11:00 a.m. and learnt about the trap. This witness does not refer to the presence of the raiding party at the outpost or completion of post-trap formalities after his return to the outpost. The evidence of this witness thus suggests that the entire process of trap was concluded before he had reached the outpost at 11:00 a.m. This statement negates the case of the prosecution that the trap was laid at about 11:30 a.m. This contradictory evidence casts a serious doubt and raises suspicion with regard to the trap having been laid at 02/04/2001 at 11:30 a.m.

15. The evidence on record reveals that several vehicles were plied as passenger vehicles in contravention of the provision of MV Act. PW3 has deposed that instructions were issued to take action against the persons violating provisions of the MV Act. The evidence of PW1 reveals that about 3 and ½ years prior to lodging of the complaint, he was prosecuted for using his vehicle as passenger vehicle in breach of the provisions of MV Act. About two years later, he was once again prosecuted for a similar offence. It is also on record that a day prior to lodging of the complaint (Exhibit – 11), the accused had filed a challan against PW1 for contravening provisions of the MV Act and that he was

convicted and sentenced to pay fine of Rs.1,1,00/- in respect of the said offence. The Complainant has admitted in his cross-examination that he was using the vehicle as a passenger vehicle without permit. He has admitted that several other persons from the said village are also engaged in similar activity. He has also admitted that the other vehicle owners were also prosecuted for plying the vehicles in breach of the provisions of the MV Act. He has admitted that even after his conviction and sentence, he continued plying the vehicle in breach of the provisions of the MV Act.

16. It is evident that despite conviction PW1 was plying his vehicle in contravention of the provisions under MV Act. PW1 was certainly not a law abiding citizen. The accused had filed a challan against PW1 for which he was convicted and sentenced. PW1 had lodged the complaint (Exhibit - 11) against the accused a day after his conviction for offence under section MV Act. Hence, the possibility of PW1 falsely implicating the accused for taking action or to prevent him from taking further action under MV Act, cannot be ruled out. In this backdrop, no implicit reliance can be placed on the evidence of the complainant. The conduct of the complainant probabalizes the defence of false implication and thus rebuts the presumption under section 20 of the PC

Act.

17. At this juncture, it would be relevant to refer to the decision of the Apex Court in ***State of Maharashtra v/s. Dnyaneshwar Laxman Rao Wankhede, (2009) 15 SCC 200*** wherein the Apex Court has observed thus :-

“ 16. Indisputably, the demand of illegal gratification is a sine qua none for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-a-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the

touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. ”

18. In the instant case, the entire story of demand and acceptance of illegal gratification appears to be doubtful. The trap is bristled with suspicious circumstances and it is difficult to base conviction on such evidence which is highly suspicious. The prosecution having failed to prove the foundational facts of ‘demand’ and ‘acceptance’, the impugned judgment and order cannot be sustained.

19. Under the circumstances and in view of discussion supra, the Appeal is allowed. The impugned judgment dated 25/07/2003 in Special Case No.11/2001, is quashed and set-aside. The accused is acquitted of offences under sections 7, 13(1)(d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988. Bail bonds stand discharged. Fine amount, if deposited, be refunded to the Accused. The accused to furnish bonds before the Trial Court under Section 437(A) of Cr.P.C. within the reasonable time.

(SMT. ANUJA PRABHUDESSAI, J.)