

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.44 OF 2000

Vasant Dattatraya Pawar	.. Appellant
Versus	
The State of Maharashtra	.. Respondent

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Mr.Aniket Nikam with Mr.Piyush Toshniwal and Mr.Ashish Satpute for the appellant.
Ms.Veera Shinde, APP for the State.

CORAM: BHARATI DANGRE, J.

RESERVED: 23rd MARCH 2021

PRONOUNCED : 28th APRIL 2021

JUDGMENT :-

1 The appellant is aggrieved by the judgment and order dated 5th January 2000 passed by the Special Judge, Pune in Special Case No.12 of 1994, by which the appellant is convicted for an offence punishable under Section 7 and under Section 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act (for short 'P.C. Act'). On conviction under Section 7, he is sentenced to suffer Simple Imprisonment for six months and to pay a fine of Rs.500/-, in default to suffer SI for two months. On conviction under Section 13(1)(d) read with 13(2), he is

sentenced to suffer SI for one year and pay fine of Rs.1,000/-, in default to suffer SI for three months. Both the sentences have been directed to run concurrently. The appellant has already deposited the fine and is presently on bail.

2 Heard Mr.Aniket Nikam with Mr.Piyush Toshniwal and Mr.Ashish Satpute for the appellant and Ms.Veera Shinde, learned APP for the State. With the assistance of the learned counsel for the parties, I have perused the Record and Proceedings along with paper book of the Appeal for appreciation of the counter contentions raised in the Appeal.

3 The case of the prosecution can be briefly summarized as under :-

 The complaint in the present case was lodged by one Arun Shinde (P.W 1) According to him, his wife Kalyani was running Typewriting and shorthand classes, named and styled as “Reliable Classes” since 1988. According to him, she had got permission for registration of the said classes from the Deputy Director of Education Department (Government Education Board) The said permission was for a limited period and was being renewed from time to time.

 It is alleged in the complaint, that in June 1993 the complainant’s wife applied for permission and registration for conducting Marathi Shorthand Classes. On 10/09/93, they

received the permission but there was some mistake in the said order, therefore they prepared an application under the signature of his wife for the correction of the said order. On 13/9/93, along with the application, the complainant allegedly went to the office of the Dy. Director of Education and he found himself in the office of the Controlling Officer Shri Nagine, who endorsed the said application to one "Shri Pawar" and according to the prosecution, that person is the present Appellant who was working as the Assistant Superintendent, Deputy Director of Education, Pune Division, Pune. The complainant, therefore, approached him and as directed by him, waited till 5.00 p.m. It is alleged by the complainant that the appellant demanded Rs. 300/- for getting his work done, but the complainant told him that he did not have the amount and he was told to bring it on the next day.

It is further alleged that the complainant's wife advised him to approach the Anti Corruption Bureau. Accordingly he approached ACB on the next day i.e. 14./9.1993. The officers took down his complaint, called two panchas and made necessary arrangements for conducting a raid. The characteristics of Anthracene powder were explained to the complainant and panchas and the pre-trap panchanama was prepared.

Thereafter the raiding party allegedly went to the office of the Appellant. One of the panchas i.e P.W.2 Desai accompanied the complainant and it is further alleged that, on demand, the complainant handed over Rs. 300/- as bribe to the Appellant. On being signaled, the scam reached the spot and the bribe amount was found with the Appellant. Thereafter the post-trap panchanama was prepared. It was noticed that the Appellant's hands and hip pocket of the his pant showed traces of anthracene powder. Thereafter the officer A.P.I Shri Thivte gave his complaint to Police Station for registration of offence, which was registered, vide C.R. No 332/93. The investigation was carried out and the appellant faced the trial as mentioned above.

4 In the backdrop of the aforesaid case of the prosecution, the appellant came to be charged on 13th February 1998 by the Special Judge, and accused of being demanded and attempted to obtain and accepting Rs.300/- from the complainant as a gratification other than legal remuneration for himself as a motive or reward for showing favour in exercise of his official function, in the matter of correction of typing mistake, in the renewal of establishment of 'Reliable Classes' an institute of Typing and Shorthand belonging to the complainant's wife. The appellant is charged being a public servant, working as Assistant Superintendent, Deputy Director of Education, Pune Division and the demand is alleged to be made to the complainant on 13th

September 1993, thereby committing an offence punishable under Section 7 of the P.C. Act. Further, being a public servant, the appellant is charged for abusing his position as such, for obtaining a pecuniary advantage of Rs.300/- on 14th September 1993 from the complainant and thereby committing an offence punishable under section 13(1)(d) and 13(2) of the P.C. Act.

5 The appellant pleaded not guilty and chose to be tried. In order to establish the guilt of the accused, the prosecution examined 9 witnesses. The complainant Arun Shinde (PW 1), the panch witness Pramod Desai (PW 2), Shri Suresh Jagtap – Sanctioning Authority (PW 3), Shri Nagine – an employee in the office of the accused as PW 4 and the Investigating Officer as PW 5. On the basis of the evidence of the aforesaid witnesses, along with the documents proved by the said witnesses, the appellant has been held guilty of the charges levelled against him and came to be convicted and sentenced as mentioned above.

6 The learned counsel Mr.Aniket Nikam submit that the judgment of conviction suffers from broad illegality and perversity for more than one reason. He would submit that there is no prior verification of the demand which is mandatory and in absence of which the prosecution case must necessarily fail. He further submit that the appellant was not an authority to grant or

renew the permission and the application which is the anchor sheet of the prosecution case, which according to the complainant, was made on 13th September 1993, itself is a suspicious document as according to Mr.Nikam, as an application (Exhibit-22) was not produced at the time when the complainant approached to ACB for lodging his complaint and even the panch witness (PW 2) admit that he has not been shown the said application. Mr.Nikam would submit that the inconsistency in the version of the witnesses examined by the prosecution, qua Exhibit-22, raise a doubt about the prosecution case and the benefit of which must accrue to the appellant.

Relying upon the inconsistency in the testimony of the witnesses, Mr.Nikam would submit that the application if carefully perused, seek permission for certain course and it is not as what has been projected by the complainant to be merely a typing error and for grant of the application vide Exhibit-22, the applicant is not a competent authority at all. By referring to the wording contained in Section 7 of the P.C. Act, Shri Nikam would urge that since the accused was not the competent authority to grant the permission as sought for, and therefore, he cannot be charged with accepting the bribe for discharge of the duty which he is officially bound to discharge. The whole controversy, according to Mr.Nikam, revolve around Exhibit-22 which was not produced by the complainant when the pre-trap

panchnama was drawn. The learned counsel submit that he has specifically given a suggestion to the complainant that he did not meet the accused on 13th September 1993 and except the bald statement of the complainant that he met the accused on the said date, there is no corroboration about the meeting and necessarily, the demand raised for getting the work done. Though Mr.Nikam would accept the case of the prosecution to the extent that the acceptance of the amount of Rs.300/- and its recovery is proved by the prosecution, but according to him, mere recovery of the amount is not sufficient to prove a charge under Section 7 read with 13(1)(d) and 13(2) and the twin requirement of the demand and acceptance of bribe money must be conclusively established by the prosecution and proving of one alone but not the other, was not sufficient and therefore, the appellant is entitled for acquittal from the charges framed against him under the Prevention of Corruption Act.

7 Per contra, the learned APP Ms.Veera Shinde stress on basis of the prosecution case which has been unfurled before the Special Judge and submit that the charges levelled has been sufficiently proved and the appellant, a public servant, holding the post of Assistant Superintendent in the office of Dy. Director of Education, Pune Division, has been proved to have accepted an amount of Rs.300/- from the complainant as a gratification other than legal remuneration as a reward for showing favour to

the complainant for effecting rectification of the order granting permission to run the Typing/Shorthand courses. Ms.Shinde would submit that by raising a demand and by proving acceptance of the said amount, by corrupt or illegal means, the prosecution has established that the appellant has abused position as a public servant by obtaining the pecuniary advantage and thus, has been held guilty of criminal misconduct under Section 13 of the P.C. Act and has been rightfully convicted and sentenced.

8 Perusal of the record reveal that a list of documents were produced by the Addl. Public Prosecutor before the Special Judge, Pune and some of the said documents came to be admitted by the accused. This includes the Muster Roll of Reliable Classes, Renewal order in favour of Reliable Classes dated 18th August 1992 (Exhibit-16), Renewal order dated 9th February 1993 (Exhibit-17) and Renewal order dated 9th March 1993 (Exhibit-20). The said documents bear relevance of the case of the complainant who had approached the Anti-Corruption Department with a complaint on 14th September 1993 alleging that his wife is running classes in Typing and Shorthand in English/Marathi and Hindi language under the label of 'Reliable Classes'. He submitted that the Institute running the classes have five English and one Marathi typing machine and total 32 students are imparted training of typing. He further averred that

for running the said classes, necessary permission has to be obtained from the Deputy Director of Education, Pune division and accordingly, an application preferred in the year 1988 was granted in October 1990 and thereby, every year the permission is renewed. Accordingly, the renewal is granted in the year 1991, 1992 and till May 1993. For obtaining renewal from October 1993 to May 1994, an application was made and on 13th September 1993, the complainant received the permission vide letter dated 10th September 1993. The said letter granting renewal was found to be defective as it granted permission in the Hindi Typing for speed of 60, 80, 100 w.p.m and it ought to have included 30, 40 wpm. Further, inadvertently, in the Shorthand column, 'wpm' has been typed conveying that Hindi typing subject does not have approval. On this error being noted, it is the case of the complainant that the application was preferred to the Deputy Director of Education and it is this application which was taken by the complainant himself to the Junior Administrative Officer – PW 4 who marked the same to the accused and for carrying out the necessary rectification in the said permission letter, the complainant's claim is that the accused demanded Rs.300/-. The complaint lodged by the complainant led PW 5 to proceed with the trap by preparing a pre-trap panchnama and post-trap panchnama which involve PW 2 as one of the panch witness.

9 The complainant (PW 1) on entering the witness box referred to the permission for registration received by the Institute run by his wife for conducting the classes. The permission is granted either for period of six months or one year and is renewed from time to time. PW 1, in 1993, his wife applied for conducting Marathi shorthand and on 13th September 1993, a permission letter was received by her, which was issued on 10th September 1993. On noticing that there is defect in the permission, an application was preferred on 13th September 1993 and the same is identified by him and exhibited as Exhibit-22. Exhibit-22, a communication addressed to the Dy. Director of Education require a reproduction. It read as under :-

*“To
Dy. Director of Education,
Pune Division,
Pune.*

Date : 13.09.1993

*Subject : Government Permission for the course
 of Marathi Shorthand 60 to 120 wpm in
 favour of the Institute.*

*Reference: (i) Proposal of the Institute for obtaining
 Approval for Marathi Shorthand
 Dated 6.7.1992.
 (ii) Letter dated 4.9.1992 and 30.1.1993
 from the Dy. Director of Education, Pune
 For inspection of the Institute.
 (iii) Your letter dated 10.9.1993 in form*

of renewal order addressed to the institute.

Sir,

In terms of the above subject and reference, inspection of the Institute has been carried out on 29th May 1993 by the Education Officer (Secondary) Zilla Parishad, Pune. Pursuant thereto, the permission in favour of the Institute has been renewed from October 1993 to May 1994. It is more than three years since the Institute has received permission from the State Government. Therefore, the renewals would be granted further for a period of three years. Further, in the said renewal, the permission for the subject 'Marathi Shorthand, 60, 80, 100 wpm, has not been granted. There is no reference for renewal of Hindi typing 30 and 40 wpm, which is a typing mistake. The same should be rectified.

In the institute, the subject Marathi Shorthand is being taught since July 992 and therefore, most of the students are ready to appear for the examination. In the vicinity of 15 sq.km of the institute, no other institute is having permission for Marathi Shorthand. Therefore, in order to avoid academic loss to the students in the said session, the Institute should be granted permission for Marathi Shorthand from October 1993. The Inspection Report of the Education Officer (Secondary) Zilla Parishad, Pune in respect of the inspection carried out on 27th August 1993 has been received by the office.

The true copy of the Original letter

*Sd/-
For Reliable Classes"*

Pertinent to note that except the underlined portion, the letter is typed one, the last sentence is written with a ball pen.

10 The document exhibited as Exhibit-22 clearly reveal

that the grievance raised as about the permission granted by the letter dated 10th September 1993, as it did not grant permission for Marathi Shorthand, which was sought by the Institute from July 1992. By the application, what was therefore, sought was permission for Marathi Shorthand, 60, 80, 100 wpm as a new subject, as the Institute was conducting training in the said subject, but no permission was granted by the Deputy Director of Education. The rectification/typographical error which was sought to be corrected was qua Hindi typing as 30 and 40 wpm, was not included. The Special Court has completely ignored the said aspect of the matter and how it becomes relevant can be revealed from the documents which are at Exhibit-19 and Exhibit-20. The document Exhibit-19 reveal the permission in favour of the institute granted on 18th August 1992 on temporary basis for the following subjects :

- 1) English Typing 30, 40, 50 and 60 wpm
- 2) Marathi typing 30, 40 wpm
- 3) Hindi typing 30, 40 wpm

11 On 9th March 1993 (Exhibit 20), the permission granted in favour of the Institute on 31st October 1990 is renewed till May 1993, which include the subject “English Shorthand 60, 80, 100, 120 wpm”. It is thus apparent that the Institute was not granted permission for Marathi Shorthand and an application was made on 6th July 1992 seeking permission for the new curriculum

in Marathi Shorthand, though the Inspection for the said course was carried on 4th September 1992 and 30th January 1993. It is thus evident that the letter dated 10th September 1993 which granted renewal did not contain permission for Marathi Shorthand, which was sought by the Institute and request was made that the said permission should be granted from October 1993. This, in no way, can be considered as a typing mistake since if a permission for running a particular course was to be granted, based on the inspection report, a decision ought to have been communicated in form of an order granting such an authorization by the Dy. Director of Education, who is competent to accord the permission.

12 The complainant received a renewal letter/order by post on 13th September 1993, which is marked as Article 'A'. The complaint was made since it was defective in respect of mention of Hindi typing, though permission was sought for Marathi Shorthand. Accordingly, an application was forwarded for carrying out relevant correction and the same is addressed by the wife of the complainant to the Dy. Director of education, which is exhibited as Exhibit-20. The complainant approached the Controlling Officer, PW 4 along with the said application which was endorsed by him in the name of Shri Pawar (accused). It is the version of the complainant that with the said application, he approached the accused and he was asked to wait till 5.00 p.m

and then the accused asked him to pay Rs.300/- since the work was urgent and the money was directed to be brought till 12 noon on the next day. In this background, the complainant approached the ACB and the trap came to be laid under supervision of PW 5.

13 The first ingredient to be established by the prosecution is the demand at the instance of the accused for getting the work done i.e. for rectification of Article 'A', which is a renewal order dated 10th September 1993. The application, Exhibit-22, however, seek not only rectification in respect of Hindi typing, but also seek permission for Marathi Shorthand, which the Institute did not possess earlier. The complainant has admitted that it is the Dy. Director of Education who is authorized to give permission for any new curriculum and accordingly, the earlier sanction in favour of the Institute are granted by the Dy. Director of Education, Pune Division. The order dated 10th September 1993 marked as Article 'A' do not confer any permission for running course in Marathi Shorthand. There was a technical error in the column of Hindi typing for which permission was granted by the Deputy Director of Education on 10th September 1993, where the typing speed 40, 60 wpm has been missed and this was a typing error since in the earlier order, issued by the Dy. Director of Education on 18th August 1992, permission was granted to the institute for conduct

of Hindi typing classes with speed 30, 40, wpm. It is clearly discerned that the authority granting permission for a new curriculum was the Dy. Director of Education.

14 PW 3 – the Sanctioning Authority, the Dy. Director of Education has granted sanction in the backdrop of the allegation of the accused receiving gratification other than the legal remuneration as a motive or reward for showing favour or for... bearing to show favour in exercise of his official functions to the complainant, in the matter of correction of typing mistake in the renewal of establishment from October 1993 to May 1994. However, perusal of the earlier permission in favour of the Institute coupled with the renewal granted on 10th September 1993 and the application preferred by the applicant's wife, it is clear that for a new curriculum to be started, the power vest in the Dy. Director of Education and the previous permissions/renewal order would clearly reflect that permission is granted by the Dy. Director of Education himself. The accused is holding the post of Assistant Superintendent and none of the approval orders are signed by him, since it was the jurisdiction of the Dy. Director of Education to grant permission/renewal for running of various Shorthand/typing courses by the institute of the complainant's wife. The complainant as well as his wife were aware of the said fact and therefore, addressed the communication dated 13th September 1993 to the Dy. Director of Education, seeking not

only rectification in the mistake qua the Hindi typing but seeking approval for Marathi Shorthand stream, for which the application was pending since July 1992 and the inspection for the said purpose was already carried out by the Education Officer. A course which has to be granted permission for the first time was, therefore, required to be granted by the Dy. Director of Education and not the Accused.

The said aspect will have to be then considered as regards the charge attributed to the applicant being accepting illegal gratification for discharge of his official duties. The complainant himself has deposed that the permission and registration granted in favour of 'Reliable Classes' came from the Dy. Director of Education. The applicant who is working as Assistant Superintendent, had no authorization to refuse or grant the said permission which was sought, being to start a curriculum in Marathi Shorthand.

15 Evidence of PW 4 – the Junior Administrative Officer Babubhai Nagine disclose that any application received by him will go to the accused to enter into the Inward Register. The case of the prosecution is that after the application (Exhibit-22) was received by PW 4 Nagine, he marked it to the accused. From the cross-examination of PW 4, it is clear that it went to the accused for entering into the inward register. The PW 4 categorically state that he was not aware whether the application

was given to the accused on 13th September 1993. The complainant has deposed that he had submitted the application which was endorsed with the name of the accused by Mr.Nagine (PW 4) to him on 13th September 1993 and he read the application and told him to wait, and made him wait till 5.00 p.m, when the demand was raised for doing his work. Prosecution has not brought on record as to what work was within the jurisdiction of the Accused. Further, what happened to the application submitted by the complainant is a mystery, since the complainant do not state that the application was returned to him on 13th September 1993 but while narrating the chronology of events which took place on 14th September 1993, after entering the office of the accused along with the panchas, it is the version of the complainant that he submitted the application which was returned to him on 13th September 1993. It is then stated that the accused saw the application and inquired from the complainant whether he has done his work which was told to him yesterday. However, when PW 2, the panch witness is confronted with Exhibit-22, he state that he had not seen the application himself. The application (Exhibit-22) was returned to the complainant by the accused, as per his version, then he ought to have taken the application while he filed a complaint with PW 5. However, PW 5 is also conspicuously silent about the application (Exhibit-22) being brought by the complainant at the time when the complaint was lodged. On the other hand, as per

the said witness, the application was seized during the trap, and was lying on the table of the accused along with other three documents i.e. renewal order of 1993, 18th August 1992 and 9th March 1993, being the xerox copies. The complainant has also dithered, when cross-examined on the said aspect and the following statement has been extracted in his cross-examination.

“It is true that by my application Exhibit-22, we asked for correction in respect of speed of Hindi Typing. It is true that I have not mentioned in my complaint that on 13th September, when I submitted that application to accused on the same day, he returned it to me. Before I submitted that application to Mr.Nagine, I had taken its xerox copy. Only original copy of my application was submitted to Mr.Nagine. Thereafter, when Mr. Nagine returned the application with endorsement by putting name of accused on it, on the same day in the evening, I again took a xerox copy of it. I did not produce the xerox copy of the original application submitted to Mr.Nagine and the order dated 10th September 1992 to ACB office at the time of complaint. I did not produce the xerox copies at that time. Portion marked ‘A’, in my complaint is also correct. Witness volunteers that xerox copy of the application were brought by persons in the office itself which was produced. It is not true that on 13th September 1993, I did not meet the accused. It is not true that I did not submit my application to accused on that day and after submitting my application to Nagine, I returned with the application to my home”.

Portion marked 'A' in the complaint reads thus :-

मान्यता दूरुस्त करणे करते, दिलेल्या अर्जाची व चूकीची मान्यता मिळाली आदेशाची झेरॉक्स प्रत मी हजर करीत आहे.

16 The complainant, apparently did not approach the ACB with the application in original and no justification is offered as to why he kept that application to himself. The application which is seized during the raid and exhibited before the Court, bear the endorsement from Shri Nagine and there is also a handwritten note at the end of the application, which makes a reference to the inspection report of the Education Officer (Secondary) Zilla Parishad. Who is author of the said scribed portion is not brought on record by the prosecution. The whole case of the prosecution and an attempt on the part of the complainant, to state that it was only an error which had occurred in the permission dated 10th September 1993 which was sought to be rectified and for the said purposes, illegal gratification was sought by the accused, is not a correct and true version, as per the application Exhibit-22, referred by the complainant is read. Apart from the technical correction, the complainant was seeking permission for a new course i.e. Marathi Shorthand and the proposal in respect of the said permission was pending with the Dy. Director of Education and it could have been granted only by him as the authority competent to grant permission. The accused

who was merely working as Assistant Superintendent was no authority to grant approval/permission for new curriculum. The story of demand raised by the accused on 13th September 1993, therefore, becomes doubtful and particularly barring the statement of the complainant, even PW 4 do not support the complainant to establish that on 13th September 1993, the complainant visited the accused who raised demand. In the absence of the demand raised by the accused from the complainant, by way of illegal gratification for carrying out the correction/rectification in the renewal order dated 10th September 1993, when in fact, that was not the prayer in Exhibit-22 and the accused not being an authority to grant permission for a course/curriculum in Marathi Shorthand, the case of the prosecution become dubious, in absence verification of the demand and any corroboration except the statement of the complainant that a demand was raised. The demand, as alleged, cannot be said to be conclusively proved by the prosecution and one arm of the twin test for attracting the rigors of sub-section (7), Section 13 read with Section 13(1)(d) being the demand, the appellant is entitled for the benefit since mere acceptance of bribe money, is not sufficient to sustain the conviction of the appellant. The Special Court fail to consider the said aspect of the matter and has held the accused guilty of the charge under Section 7, 13(2) read with 13(1)(d) of P.C Act and has sentenced him on being found guilty which judgment calls for interference, in

exercise of the appellate powers of the High Court.

17 Appeal is allowed.

19 Judgment and order of Conviction dated 5th January 2000 in Special Case No.12 of 1994 is set aside.

19 The appellant is acquitted of the charge framed against him. Bail bonds stands cancelled.

SMT. BHARATI DANGRE, J