IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 4 OF 2016

Sampat Bhausaheb Kharpude	]	
Age : 42 years, Occu. : Service	]	
R/o at Sai Kripa Niwas, S. No. 38/1/A	]	
Eknaath Pathare Vasti, Chandanagar,	]	
Pune.	]	
(Now in Yerwada Central Jail, Pune.	]	… Appellant

Versus

State of Maharashtra	]	
Through Loni Kalbhor Station,	]	
Dist. Pune.	]	… Respondent.

Mr. Abhishek Avchat for Appellant.
Mr. S. S. Hulke, A.P.P. for Respondent – State.

CORAM : A. S. GADKARI, J.
RESERVED ON : 14th DECEMBER 2020.
PRONOUNCED ON : 23rd FEBRUARY, 2021.

JUDGMENT :

The appellant is convicted for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (for short, *"P.C. Act"*) and sentenced to suffer rigorous imprisonment for 3 (three) years and to pay fine of Rs.2,000/-, in default of payment of fine, to further suffer simple imprisonment for 3 (three) months and under Section 13(1)(d) read with Section 13(2) of the P.C. Act and sentenced to suffer rigorous imprisonment for 4 (four) years and to pay fine of Rs.2,000/-, in default of payment of fine, to further suffer simple imprisonment for 3 (three) months, by the Special Judge (Under P.C. Act), Pune in Special Sessions Case No.15 of 2015 by its Judgment and Order dated 31st December 2015. The learned Special Judge has directed that, both the substantive sentences imposed upon the appellant shall run concurrently. The said Judgment and Order dated 31st December 2015 passed by the learned Special Judge (Under the P.C. Act), Pune is impugned herein.

2. Heard Mr. Avchat, learned counsel for the appellant and Mr.Hulke, learned A.P.P. for Respondent-State. Perused entire record.

3. The prosecution case in brief is as under :-

(i) The complainant, Mr. Ratikant B. Yadav (PW-1) was a developer of immovable property by profession. He had agreed to develop a plot of land bearing gut No. 184, admeasuring 27 ares situated at Urali-Kanchan owned by Shri Mahadeo Kanchan and others. An Agreement was accordingly executed between the parties and was registered with the Sub-Registrar, Haveli-6 Pune. After obtaining permission from the Grampanchayat of Urali-Kanchan, he constructed four storied building, comprising of 49 tenements/flats. From the year 2010, Grampanchayat Urali-Kanchan assessed the said flats for tax purpose and the complainant was paying tax of the said flats. As the complainant had sold out flats in the said building, the purchasers of the said flats had applied with the Grampanchayat to record their individual names in revenue record of Grampanchayat along with their respective sale-deeds. Appellant was Village Development Officer at the relevant time and was having the authority to effect the said transfer. The complainant and other flat owners were pursuing their Applications for transfer of the said flats in their respective names in the record of Grampanchayat, however the appellant used to avoid it for some or the other reasons.

(ii) On 16th September 2014, at about 7.00 p.m., complainant met appellant and requested him for transferring the said flats in the names of respective purchasers. Appellant told him that, he would have to pay Rs. 1 lakh to the appellant for transferring the said flats and if the complainant did not pay the said amount, the appellant would not transfer the said flats in the record of Grampanchayat Urali-Kanchan. After negotiations, the appellant agreed to accept Rs.50,000/-. On 20th September 2014, the complainant again met appellant and requested him for recording names of flat owners, when the appellant told complainant to arrange amount as stated by him within two days. The complainant realized that, unless and until he pays the said amount to the appellant, the appellant would not record names of the respective flat owners. As the complainant was not ready and willing to pay the said amount demanded by appellant, he decided to lodge a complaint with Anti-Corruption Bureau.

(iii) The complainant went to the office of the Anti-Corruption Bureau on 23rd September 2014 and met Superior Officer there. The Superior Officer directed him to meet Police Inspector Shri Prakash M. Shinde (PW-6), the Investigating Officer of the present crime. P.I. Prakash Shinde (PW-6) recorded complaint of the complainant as per his say. The complainant singed the said complaint (Exh.9). P.I. Shinde (PW-6) thereafter called two panch witnesses, namely, Shri Rajendra Pisal and Shri Rahul Khedkar. The said complaint was read over to them. The panch witnesses after reading, signed the said complaint. It was thereafter decided to lay a trap. The complainant produced Rs.50,000/-, consisting 100 notes of Rs.500/- denomination. Necessary legal formalities of pre-trap panchanama (Exh.14) were complied with.

(iv) The complainant, Shri Rajendra Pisal (PW-2) and other officers of Anti-Corruption Bureau thereafter proceeded to village Urali-Kanchan and halted their vehicle. P.I. Shinde apprised complainant about use of voice recorder. The voice of complainant and Shri Rajendra Pisal (PW-2) was recorded in D.V.R. The said D.V.R. was kept in the left side shirt pocket of the complainant by switching in on. The complainant and Mr. Rajendra Pisal (PW-2), thereafter proceeded in the car of the complainant to the office of Grampanchayat Urali-Kanchan. The appellant was present there. The complainant and PW-2 met appellant. The complainant told that, he could arrange for Rs.40,000/- and Rs.10,000/- would be provided by his brother-in-law and he would come back after arranging the said amount. The appellant approved the same and asked the complainant to bring the amount. The complainant and PW-2 then went back to the place where the raiding party was stationed. D.V.R. was taken out and conversation recorded in it was heard. Thereafter, it was decided to further proceed for the trap.

(v) The complainant and panch witness No.1 then went to the office of the Grampanchayat Urali-Kanchan. The appellant met them outside the office of the Grampanchayat. Appellant told complainant and PW-1 to go inside the office and accordingly they went. The appellant also came inside his office and asked the complainant whether the amount is arranged to which the complainant told him ‘yes’. The appellant asked him, how much amount was arranged, to which complainant answered ‘Rs.50,000/-’. The appellant told ‘ok’ to the complainant and thereafter the complainant took out tainted notes by his right hand and gave it to the appellant. The appellant accepted the said amount by both his hands and put it in his right side trouser pant pocket. The complainant asked the appellant, when his work would be completed to which the appellant told him that, by tomorrow his work would be done. The complainant came out of the office and gave predetermined signal to the raiding party.

The raiding party immediately accosted appellant. The Digital

Voice Recorder, which was placed on the person of the complainant was put off. Anthracene powder was noticed on the right hand and right side pocket of the appellant.

(vi) After completion of investigation and obtaining necessary sanction from the Sanctioning Authority (PW-3) to prosecute the appellant, charge-sheet came to be filed before the Trial Court.

The Trial Court framed charge below Exh. 2 under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C. Act, 1988 against the appellant, to which the appellant pleaded not guilty and claimed to be tried.

To bring home guilt of the appellant, prosecution examined in all 6 witnesses namely (i) Shri. Ratikant B. Yadav, (PW No.1), the complainant; (ii) Shri. Rajendra T. Pisal (PW No.2) panch witness to demand and trap of the appellant; (iii) Shri. Kantilal B. Umap (PW No.3), the Sanctioning Authority; (iv) Shri. Kailas G. Koli (PW No.4), Village Development Officer; (v) Shri. Sandeep N. Kohinkar (PW No.5), Enquiry Officer pertaining to the receipt (Exh.22A) prepared by the appellant and; (vi) Shri. Prakash M. Shinde (PW No.6) Dy.S.P., the Investigating Officer of the present crime.

(vii) The Trial Court recorded evidence of aforestated witnesses and the statement of the appellant under Section 313 of the Code of Criminal Procedure, 1973 (for short, *'the Cr.P.C.'*) below Exh.39. The appellant also filed his written statement below Exh.40.

It is the defence of the appellant that, he did not demand and accept any bribe. The appellant has stated that, there were arrears of tax of flats constructed by the complainant and the complainant paid Rs.50,000/- towards part payment of arrears of tax in respect of the said flats. That, the complainant was having pressure of payment of tax due to issuance of notice and the appellant had sought guidance from the Senior in respect of transferring the flats. Therefore, the complainant was having grudge in his mind against the appellant and while making part payment of tax amount, the complainant gave colour of bribe to the said advance tax of Rs.50,000/- and falsely implicated appellant in the present crime.

The learned Special Judge, (under PC Act), Pune by its impugned Judgment and Order dated 31st December 2015 has convicted and sentenced the appellant, as noted hereinabove.

4. Mr. Avchat, learned counsel for the appellant submitted that, the panch witness (PW No.2) did not hear talks at the time of verification and therefore the prosecution has failed to prove the demand made by the appellant. That, the appellant is successful in rebutting presumption as contemplated under Section 20 of the P.C. Act. That, the transcript of the conversion recorded at the time of trap, cannot be read in evidence as the said Micro SD card was not produced and proved in the Court by the prosecution. He submitted that, without examining expert from the Forensic Science

Laboratory, its report has been accepted by the Trial Court. That, the prosecution has not examined any of the flat owners in support of its case that, they really intended to transfer their flats in their own name. He submitted that, the Trial Court has committed an error in holding that, the appellant had demanded bribe amount on 16th September, 2014. In support of his contention, he relied on two decisions of this Court viz. *(i) Ramdas Waman Tadge Vs. State of Maharashtra reported in 2019 ALL MR (Cri) 1833 and; (ii) Vinayak s/o. Raghunath Wakle (d) thr. L.Rs. Vs. State of Maharashtra, reported in 2019 ALL MR (Cri) 2200.*

By relying on a decision of the Hon'ble Supreme Court in the case of *Vinubhai Haribhai Malaviya and Ors. Vs. State of Gujarat & Anr. Reported in AIR 2019 SC 5233,* he submitted that, the Trial Court has committed an error in directing further investigation by its Order dated 5th December, 2015 under Section 173(8) of the Cr.P.C., on an application filed by the prosecution on 2nd December, 2015, which was filed after the trial began with framing of charges.

He further submitted that, a receipt (Exh.22A) was in fact prepared by the appellant, however before he could hand it over to the complainant, the raiding party accosted him. He therefore, prayed that, the impugned Judgment and Order may be quashed and set aside by allowing present Appeal.

5. Per contra, learned APP vehemently opposed the Appeal and submitted that, on 23rd September, 2014 i.e. at the time of trap, there were 3 other clerks present in the office of the appellant and it was their duty to prepare the receipt. That, the appellant has prepared a receipt by taking a new receipt book, though earlier receipt books were in operation, and has prepared the said receipt (Exh.22A) subsequently, to develop his defence. He submitted that, immediately at the time of trap after accosting the appellant, his statement (Exh.37) was recorded by the Investigating Officer (PW-5) wherein, the appellant has not stated about preparation of the said receipt. The Investigating Agency also did not find the said receipt at the time of trap. He submitted that, the conclusion drawn by the Enquiry Officer (PW-5) is correct. He submitted that, there are no merits in the matter and therefore, it may be dismissed.

6. The facts pertaining to demand by and trap of appellant as narrated hereinabove in paragraph No.4-(i) to 4-(v) are culled out from the examination-in-chief of Shri. Ratikant Yadav (PW-1) complainant and repetition of the same is avoided for the sake of brevity. Except an omission that, *'I do not remember whether I have stated to ACB that panch No.1 accompanied me to the office of Grampanchayat Urali; the accused was there; we met the accused; accused asked me whether I have arranged the money; I told that I could arranged Rs.40,000/- and Rs.10,000/- is less; I told that my*

brother-in-law will provide me Rs.10,000/- and I will come back with entire amount; the accused told me 'ok' and asked me to bring the amount' nothing beneficial to the appellant in the elaborate cross-examination of the said witness has been brought on record. PW-1 has denied all the suggestions given by appellant in his cross-examination and has reiterated that, it was not for the payment of tax but due to the demand of bribe of the appellant for transferring the said flats in the names of respective flat purchasers, the said amount was given.

7. Mr. Rajendra T. Pisal (PW-2) is the panch witness to pre-trap panchanama and trap dated 23rd September 2014. He has deposed that, he was serving as a Professional Tax Officer in Sales Tax Department, Pune. On the directions of his Superior Officer on 23rd September 2014, he along with Mr. Rahul Khedkar attended A.C.B. Office. The A.C.B. Officers informed him about the proposed trap and the formalities to be complied with before it. This witness has proved pre-trap panchanama (Exh.14). He has further deposed that, he along with complainant and Mr. Chinchkar proceeded in the car of the complainant to Urali-Kanchan. The members of raiding party proceeded in a Government vehicle. They halted near Yashoda Garden, Koregaon. A digital voice recorder was kept in the left side shirt pocket of complainant (PW-1). They thereafter went inside the office of Grampanchayat Urali-Kanchan. Complainant initially went inside the cabin of

appellant and after some time came back. The conversation recorded in voice recorder was heard there and it was confirmed that, the appellant has demanded bribe from the complainant. He along with complainant again went to the office of the Grampanchayat by walk. At that time, the procession of bulls on the occasion of 'Pola' was going on. The appellant had came out from the office and was watching the said procession. PW-2 along with complainant (PW-1) went in the office of appellant. Appellant came in his cabin. Initially, general talks took place about the procession. Thereafter, appellant asked complainant 'how much?'. The complainant told him '50'. Appellant told there was no problem, it's ok. Thereafter, complainant took out the tainted currency notes by his right hand and handed it over to the appellant who took it by his right hand and kept it in his right side trouser pocket. The complainant (PW-1) came out of the cabin, out of the office and gave predetermined signal to the raiding party. The members of the raiding party immediately apprehended appellant. P.I. Shinde (PW-6) introduced himself. As per the directions of P.I. Shinde (PW-6), panch witness No.2 Mr. Rahul Khedkar took out notes from the right side trouser pocket of the appellant. They were 50,000/- consisting of 100 notes of denomination of Rs.500/-. The number of notes after verification were found tallying with the pre-trap panchanama. Anthracine powder was noted on the right hand and right side trouser pocket of the appellant under the ultra-violet light and post trap panchanama (Exh.15) was drawn. This witness has also proved the transcription of conversation panchanama (Exh.18).

In the detailed cross-examination of this witness, certain admissions detrimental to the interest of the appellant have been brought on record. At the time of verification, in the conversation he did not hear discussion about tax. At that time, the complainant (PW-1) told that, he was possessed of only Rs.40,000/- and Rs.10,000/- was less with him. He has denied the suggestions that, at the time of trap, a bottle of anthracine powder was also taken with them. At that relevant time, four to five employees were working and one or two visitors were present in the office of the appellant. This witness has categorically denied the suggestion that, he did not hear conversation of verification of demand. That, at the time of trap, apart from the appellant, there were four to five staff members in the office. In the rest of the cross examination, nothing beneficial to the appellant, has been elicited from this witness.

8. Mr. Kantilal B. Umap (PW-3) was working as a Chief Executive Officer of Zilha Parishad, Pune. He was appointing and removing authority for the post of Village Development Officer on which the appellant was working. This witness has deposed that, on 29th November 2014, he received proposal from A.C.B. Office, Pune for sanction to prosecute the appellant. After reading entire proposal minutely along with other documents, he came

to the conclusion that, it was a fit case for granting sanction of prosecution and accordingly he issued sanction Order (Exh.20). He has admitted that, Village Development Officer was having authority to issue bill towards tax. Apart from that, only general suggestions are given to this witness in his cross-examination.

9. Mr. Kailas G. Koli (PW-4) was serving as Village Development Officer and was posted at Grampanchayat Urali-Kanchan, Taluka Haveli, since 26th January 2015 (i.e. after the appellant was apprehended by A.C.B. on 23rd September 2014). He has deposed that, there were five clerks to collect Grampanchayat tax and to issue receipts. That, on 23rd September 2014, the appellant was working as Village Development Officer at Grampanchayat Urali-Kanchan. That, prior to his joining a receipt of Rs.50,000/- was already prepared. The receipt-book produced by this witness has been marked as Exh.22. He has identified signature of the appellant from the said receipt (Exh.22A). The said receipt was for property No.618 for flat Nos.1 to 50. This witness has explained that, out of the said 50 flats, three persons namely, Mr. Shelar, Mr. Badhekar and Mr. Degade had paid the property tax of their flats and names of those three persons were already recorded as owner of their flats. That, as per the general practice adopted by the Grampanchayat, the clerk used to issue receipts of taxes. He has categorically stated that, except receipt (Exh.22A), all receipts were prepared by clerk.

In his elaborate cross-examination, general suggestions are given to this witness by the defence, pertaining to the procedure for payment of property taxes of houses situated in the jurisdiction of the said Grampanchayat and with respect to some of the Applications made by the flat purchasers from the building of the complainant. Nothing beneficial to the appellant, has been brought on record by the defence.

10. Mr. Sandip N. Kohinkar (PW-5) has deposed that, he was serving as Block Development Officer since 5th August 2013 at Panchayat Samittee, Haveli. Grampanchayat Urali-Kanchan was under his supervision. That, on 23rd September 2014, the appellant was working as Village Development Officer. He has deposed that, by a letter dated 9th February 2014 (2015), the Chief Executive Officer, Zilha Parishad, Pune had directed him to conduct preliminary enquiry. Accordingly, he asked explanation from the appellant and conducted enquiry. In the enquiry, he found that, inspite of having current receipt book, the appellant had prepared a receipt in new receipt book. During the enquiry, he also found that, all the receipts were being issued by the clerk and the appellant had prepared only receipt in respect of amount of Rs.50,000/- which is at Exh.22A. The said receipt was in the receipt book itself and was not given to the property owner. He found that, the said receipt (Exh.22A) is prepared after the trap of A.C.B. He accordingly prepared preliminary report (Exh.28).

In his cross-examination, certain admissions detrimental to the interest of the appellant have been brought on record. This witness has admitted that, on 23rd September 2014 only one new receipt book (Exh.22) was started. He has admitted that, there was no mention of receipt (Exh.22A) in trap panchanama of A.C.B, therefore he came to the conclusion that, the said receipt book was prepared later on. This witness has volunteered that, apart from it, the said conclusion was drawn by him from the available record at the Grampanchayat. That, receipt (Exh.22A) is prepared for arrears. That, the notice for compromising the dispute regarding tax was being issued by him for pre-litigation Lok-adalat. He could not tell without seeing record, whether notice for settlement in Lok-adalat was sent to complainant.

11. Mr. Prakash M. Shinde (PW-6) was the Investigating Officer of the present crime. On 23rd September 2014, he was attached to A.C.B. as a Dy.S.P.. He has deposed about the facts from lodgement of complaint by the complainant (PW-1) till laying of trap and arrest of appellant. In his elaborate cross-examination, he has denied all the suggestions given by the appellant and reiterated that, the appellant had demanded bribe amount from the complainant towards transfer of flats in the said building in the name of their respective purchasers. He has denied that, there was conversation between appellant and the complainant with regard to arrears of tax and therefore he purposefully deleted the said contents from the micro SD card. He has denied

that, inspite of preparing receipt of Rs.50,000/- towards tax by the appellant, he purposefully did not seize the said receipt at the time of post trap panchanama.

12. This leads me to first deal with the contention of the learned counsel for the appellant that, the Trial Court has committed an error in directing further investigation by its Order dated 2nd December 2015 after the trial begun with framing of charges. It is to be noted here that, the said order dated 2nd December 2015 was not challenged by the appellant and in fact has accepted it. Appellant therefore has acquiesced his right to challenge the said Order and at such a belated stage it cannot be questioned. The record indicates that, in furtherance of Order dated 5th December 2015, the prosecution recorded statement of PW-5 to verify the alleged claim of appellant, that, on the date of trap, i.e. on 23rd September 2014, he had prepared a receipt of Rs.50,000/- towards receipt of advance tax from the complainant (PW-1). As noted earlier, PW-5 in his evidence has categorically stated that, the said receipt (Exh.22A) was prepared by the appellant after the trap by opening a new receipt book. If the appellant was having apprehension that the complainant would falsely implicate him in any crime, the appellant would have been more cautious in dealing with the complainant. A man with common prudence ought to have gave receipt to the complainant there and there only. It is to be noted here that, the appellant did not give the said

receipt (Exh.22A) to the complainant immediately after receipt of the said payment and kept it in the said newly opened receipt book.

13. The appellant while answering question numbers 42 and 43 put to him while recording his statement under Section 313 of Cr.P.C. by the Trial Court, has adopted a defence that, at that relevant time, no clerk was present in the office and had gone by taking away key of the cup-board and therefore the appellant opened a new book and prepared the said receipt. He has stated that, the complainant did not take the receipt and therefore it remained in the book. The said defence adopted by the appellant has been falsified by cogent evidence of Mr. Sandip Kohinkar (PW-5). The record indicates that, the appellant has produced on record muster roll of the employees of Grampanchayat, Urali-Kanchan. It reveals that, there were seven employees in the said Grampanchayat. As per the evidence of Mr. Kailas Koli (PW-4), there were five clerks present on the said date in the Office. Even if, two clerks were on leave and one was out of office, still there were two clerks present in the office to collect tax. The appellant has not examined any witness in his defence to substantiate his claim that, Smt. Chhaya K. Mhaske was not available at the time of trap and she had locked receipt books in her cupboard.

14. The record discloses that, three to four receipt books were being used for collecting tax simultaneously, because the collection of tax work was

assigned to various clerks. If, there were three to four receipt books in use then question remains to be answered that, why the appellant opened a new book and issued receipt himself, which is against the practice adopted by the said Grampanchayat. As per the record, after handing over the said tainted amount of Rs.50,000/- to the appellant, the complainant (PW-1) went outside the office and gave signal. If, the defence of the appellant is to be accepted that, when he had prepared receipt towards tax amount immediately, then a simple question arises for determination is that, then why the said receipt was not given to the complainant immediately before leaving Grampanchayat office by him and why it remained in the receipt book, found un-detached by the Investigating Agency. The appellant has failed to offer plausible explanation for the same. It has come on record that, after accepting the said amount, the appellant kept it in his right side pocket of trouser. If, as per the appellant, the said amount was towards taxes, then why the appellant kept it with him in his trouser pocket. The explanation given by the appellant that, before the receipt could be handed over to the complainant, police accosted him, is a palpably sham and bogus defence adopted by him.

15. The Trial Court in para 47 of the impugned Judgment and Order has observed that, the defence of the appellant does not appears to be probable, particularly when the receipt book (Exh.22) was in his charge even after trap and it is the reason, on the overleaf of carbon copy of the said

receipt (Exh.22A) on 1st October 2014 (i.e. after about seven days of trap), the appellant has written "amount is deposited with A.C.B.". It therefore clearly appears to this Court that, the appellant as and by way of an after-thought prepared the said receipt (Exh.22A) only to camouflage the acceptance of bribe. The record further discloses that, immediately after the trap, the statement (Exh.37) of appellant was recorded by the investigating agency wherein also the appellant has not mentioned about the receipt allegedly prepared by him immediately after receipt of payment from complainant and therefore, the defence of the appellant can not be accepted. This Court is of the considered view that, the appellant has failed to rebut the presumption under Section 20 of the P.C. Act. The two decisions relied by the learned counsel for the appellant, namely, *Ramdas Waman Tadge (Supra)* and *Vinayak s/o. Raghunath Wakle* (supra) are of no avail to the appellant as the facts therein defer from the facts in present case.

It is to be noted here that, micro SD card, on which the first conversation i.e. the trap verification was recorded was not produced by the prosecution in Court, at the time of recording of evidence of P.I. Prakash Shinde (PW-6) and therefore, its transcription even if on record, has been kept aside from consideration while deciding the present Appeal.

16. The evidence of complainant (PW-1), Mr. Rajendra Pisal (PW-2) panch witness and Mr. Sandeep Kohinkar (PW-5), enquiry officer is cogent,

fully reliable and trustworthy. PW-2, an independent panch witness has clearly stated about the demand by the appellant (though in cryptic language) and acceptance of it by the appellant. As noted earlier, the version by complainant (PW-1) and PW-2 regarding demand and acceptance of bribe amount by the appellant is unshaken in their elaborate cross-examination.

17. Taking into consideration the evidence of all the witnesses together, it has to be held that, the prosecution has successfully and beyond reasonable doubt, proved the fact that, the appellant demanded bribe from the complainant for recording names of flat purchasers in their respective names and accepted it on 23rd September 2014 in presence of panch witness Mr. Rajendra Pisal (PW-2).

18. There are no merits in the Appeal. Appeal is accordingly dismissed.

19. Appellant is directed to surrender before the Trial Court within a period of eight weeks from today, for undergoing sentence.

(A.S. GADKARI, J.)