IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 580 OF 1998

Dinkar Laxman Patil
Age 34 years, R/o. R.S. No. 1219/1,
Mirabaug, Kolhapur. ..Appellant
V/s.
The State of Maharashtra ..Respondent

Mr. Kuldeep S. Patil, for the Appellant.
Mr. Y. Y. Dabke, APP for the Respondent/State.

CORAM : C.V. BHADANG, J.

RESERVED ON : 28 OCTOBER 2021

PRONOUNCED ON : 17 DECEMBER 2021

JUDGMENT:

1. By this Appeal, the Appellant/accused is challenging the judgment and order dated 4 June 1998 passed by Learned Special Judge at Kolhapur, in Special Case No. 11 of 1992. By the impugned judgment, the Appellant has been convicted for the offence punishable under Section 7 read with Section 13(2) of the Prevention of Corruption Act, 1988 and has been sentenced to suffer rigorous imprisonment for 2 years with fine. The Appellant, however has been acquitted of the offence under Section 13 (1) (d) r/w Section 13 (2) of the said Act.

2. The prosecution case may be briefly stated thus:

The Appellant at the relevant time, was working as a clerk in the office of the Tahsildar, Kagal, District Kolhapur. The Appellant was looking after the applications for mutation entries in record of rights and 7/12 extracts etc.

3. There were about 16 pieces of agricultural lands held by Bhaurao Hirugade (since deceased) apart from land Gut No.371 which was in possession of Bhaurao Hirugade and which was belonging to one *Devstan*. Bhaurao Hirugade had two sons namely Shripati and Ganpati and four daughters. The complainant Balasaheb Hirugade-(PW 1) happens to be the son of Shripati. It is the material prosecution case that somewhere in February 1992, Shripati and Ganpati had decided to get all these agricultural lands recorded separately in their names, which were recorded in the name of their father Bhaurao. The Complainant (PW 1) was looking after the Court/official work of his father and uncle Ganpati. On 18 February 1992 (PW 1) went to the office of the Tahsildar, with an application (Exh. 22) for mutation and met the Appellant when the Appellant is alleged to have demanded an amount of Rs. 200/- to PW 1 as expenses for issuing notices to the concerned parties. PW 1 is alleged to have put an amount of Rs. 60/- in the drawer of the table of the Appellant when the Appellant is alleged to have asked PW 1 to bring the balance amount of Rs. 140/- after which notices could be issued.

4. On 21 February 1992, PW 1 paid an amount of Rs.140/- to the Appellant and the notices were prepared and handed over to PW 1 for service. By the said notices Shripati and Ganpati were required to appear in the office of Tahsildar on 16 March 1992. On that day, the Appellant is alleged to have asked PW 1 to bring the consent letter of his four aunts (Daughters of Bhaurao Hirugade). The consent letters were given prior to 16 March 1992 when the Appellant demanded further amount of Rs.100 which was paid.

5. On 16 March 1992 statement of Shripati and Ganpati was recorded by the Appellant and again a demand of Rs. 1000/- was made out of which Rs.400/- was paid by Shripati and Rs. 100/- by Mahadeo Kholambe his cousin. The Appellant then asked PW 1 to come after some days.

6. On 9 April 1992, PW 1 went to the office of the Appellant and inquired about the progress of his application, when the Appellant is alleged to have demanded an amount of Rs. 2000/- assuring PW 1 that he will get the work done through his Superior Officer. PW 1 expressed his inability to arrange the amount of Rs. 2000/- which, after negotiation, was reduced to Rs.1500/-. PW 1 states that on 9 April 1992 he was accompanied with his friend Chandrakant B. Powar. In short, accordingly to the complainant-PW 1, the Appellant was not willing to do the work without payment of Rs. 1500/-.

7. On 20 April 1992, PW 1 accompanied with Chandrakant Powar again went to the house of the Appellant at Kolhapur when PW 1 again expressed his inability to arrange the amount of Rs.1500/- and the Appellant was told that PW 1 would arrange for an amount of Rs.600/- within two days. The Appellant asked PW 1 to pay the amount of Rs.600/- on the next day while the balance on or before 30 April 1992.

8. After this, the complainant approached the Anti-Corruption Bureau (ACB), Kolhapur and lodged the complaint, which was reduced into writing by PW 5-Mr. Govind Mirashi. PW 5, who is the raiding officer arranged for Panchas from Animal Husbandry Department of Zilha Parishad, Kolhapur and the formalities and procedure was explained to the complainant and the panchas. A pre-trap panchnama was drawn and trap was scheduled on 21 April 1992. On that day, the complainant accompanied with the panchas and the members of the raiding party proceeded to Kagal. It is the material prosecution case that PW 1 alongwith the panch Dr. Bhagawan Shinge (PW 2) went to the office of the Appellant when he was not found there and was found taking lunch in Dilip Tea Canteen, which is in the compound of the Tehsil office. PW 1 and PW 2 went to the Appellant when the Appellant asked PW 1 as to whether he has brought the amount of Rs. 600/- and also asked for payment of an additional sum of Rs. 100/-. The Appellant alongwith PW 1 and PW 2 took tea and thereafter the tainted currency notes were

handed over to the Appellant, which he accepted. Upon a pre-determined signal being given other members of the raiding party came and the Appellant was apprehended and the tainted currency notes were recovered from his person and a post trap panchnama was drawn. PW 4 lodged formal report with Police Station Kagal on the basis of which offence under Section 7 read with 13 (1) (d) and Section 13 (2) of the said Act was registered. The investigation was carried out by PW 5- PI Govind Mirashi. He recorded statement of the witnesses and effected seizure of case papers and after completion of the investigation, a charge-sheet was filed.

9. The learned Special Judge framed charge against the Appellant for the aforesaid offences. The Appellant pleaded not guilty to the charge and claimed to be tried. The defence is one of total denial and false implication. The Appellant claimed that he never made any demand and the amount was thrust on him.

10. At the trial, prosecution examined in all five witnesses namely the complainant Balasaheb Hirugade (PW 1), Panch Dr. Bhagwan Shinge (PW 2), Tahsildar Mr. Vishnu Kulkarni (PW 3), Sanctioning Authority Ajitkumar Jain (PW 4) and PI Govind Mirashi (PW 5) and produced the record of the investigation. The Appellant did not lead any evidence in defence.

11. Learned Special Court by the impugned judgment has found the Appellant guilty for the offence under Section 7 read with 13 (2) of the Act. Hence, this appeal.

12. I have heard Mr. Patil learned counsel for the Appellant and Mr. Dabke Learned Additional Public Prosecutor for the Respondent-State. With the assistant to the learned counsel for the parties. I have gone through record.

13. It is submitted by the learned counsel for the Appellant that PW 4 was not competent officer to grant sanction as he was not the appointing authority. It is submitted that it was the Government, which had appointed the Appellant and was the authority to remove him from service. It is next submitted that the sanction is also invalid on account of non-application of mind by PW 4. The learned counsel in this regard has taken me through the evidence of PW 4 in order to submit that it does not demonstrate that PW 4 had consciously granted the sanction after application of mind. Learned counsel submitted that grant of sanction is not an empty formality and the prosecution stands vitiated in the absence of a proper and valid sanction. Reliance in this regard is placed on the decision of this Court in Shri Anant Murlidhar Salvi Vs. State of Maharashtra (Criminal Appeal No.1107 of 2004 decided on 23 February 2021).

14. It is submitted that the Appellant was not the competent authority to sanction or certify the mutation entry. It is submitted that it is within the powers of the circle officer or the Tehasildar to certify and sanction the mutation. It is submitted that the Special Court has also not accepted the prosecution case as to the demand allegedly made by the Appellant from 18 February 1992 to 16 March 1992. It is submitted that the Investigating officer has not verified the aspect of demand which is *sine qua non* for the offence under Section 7 of the Act. It is submitted that in the absence of the establishment of the demand, mere recovery of the tainted currency notes is inconsequential. He submitted that the Appellant has probabilised the defence about the amount being thrust on him by the complainant/PW 1 and therefore is entitled to be acquitted.

15. The learned APP has supported the impugned judgment. It is submitted that the demand and acceptance on the date of the trap has been established and that is sufficient to raise the presumption under Section 20 of the said Act, which has not been displaced. It is submitted that the Appellant was entrusted with the work of processing of the application/file for mutation and undisputedly was handling the application filed by PW 1. It is submitted that there is independent evidence of PW 2 on the point of demand and acceptance and there is no reason to discard the same. He therefore, submitted that the Appeal be dismissed.

16. I have considered the submissions made. First with reference to the order of sanction PW 4 has stated that from July 1991 to September 1994, he was acting as Collector, Kolhapur. He states that Collector is the Appointing Authority of all clerks in his office and therefore, he has the power to remove the Class-III employees from office. He has produced the order dated 18 April 1998 (Exhibit-59), appointing the Appellant amongst others as clerk. Thus, the contention that the PW 4 was not the Appointing Authority or the Authority competent to remove the Appellant from service, cannot be accepted. Thus, the contention about competence of PW 4 to grant the sanction, cannot be accepted. This takes me to the next question as to whether the sanction order was issued on due application of mind. It is now well settled that the grant of sanction is not an empty formality and has a specific object to be achieved, namely to screen and guard the employees from spurious and unwanted prosecution, at the instance of disgruntled elements. PW 4 has been cross-examined at length, in which he has stated that he does not remember whether the original papers of the investigation or the true copies were forwarded to him. He states that draft order (Exh-64) was annexed with the noting prepared by his office on which he put his initials approving the same. He states that the draft was prepared after discussion with the staff. He states that the order at Exhibit 64 is the office copy of the order Exhibit 61 and alongwith letter Exhibit 62, the ACB also

sent draft order of sanction, which is not with the file. He does not remember whether the copy of the charge-sheet was sent by the ACB. He also admitted that there is no specific mention to show that he had gone through the panchnama. Significantly, there is a document (Exh.-65) which is referred to as "leafing" which in all probability is prepared by the office of PW 4 and which contains the possible question and answers which the PW 4 may face during the evidence/cross-examination. I have compared the draft/noting of the order and the final order. The final order is a copy of the draft order. Interestingly the leafing of (Exh.65) indicates that PW 4 was briefed well in advance, about the nature of the question and answers in the cross examination. Considering the overall circumstances, I do find that there is no sufficient evidence, to indicate that there was conscious and due application of mind to the facts and circumstances of the case before grant of sanction. The sanction therefore cannot be held to be valid.

17. This takes me to the merits of the prosecution case, on the trap and the alleged demand and acceptance of the amount by the Appellant. The learned Special Judge had framed the following point No.3.

> "Whether it is proved that the accused accepted the following amounts from the complainant by way of bribe i.e., illegal gratification otherwise then his legal remuneration?

(a) On 18.2.1992 Rs.60/-
(b) On 21.2.1992 Rs.140/-
(c) Between 28.2.1992 to 15.3.1992 Rs.100/-
(d) On 16.3.1992 demanded Rs.1000/- and had received Rs.500/-
(e) On 20.4.1992 in view of the earlier demand made on 9.2.1992 and 16.2.1992 made final demand of Rs.1500/-
(f) On 21.2.1992 received the amount of Rs.600/- from complainant in presence of Dr. Shinge?

18. The learned Special Judge has found that the alleged demand on 18 February 1992, 21 February 1992, 28 February 1992 to 15 March 1992, 16 March 1992 and 20 April 1992 have not been proved. Thus, the learned Special Judge has found that the demands at serial no. (a) to (e) above have not been proved and only the receipt of the amount of Rs.600/- on 21 February 1992 has been held to be proved. The learned Sessions Judge framed point No.4 and has refused to accept the defence of the amount of Rs. 600/- being thrust on the Appellant. It is now well settled that the demand, other than legal remuneration, for showing official favour is the *sine qua non* for the offence under Section 7 of the said Act. It is further well settled that the mere recovery of the tainted currency notes in the absence of proof of demand is inconsequential. As noticed earlier, the alleged demand right from 18 February 1992 to 20 April 1992 have been held to be not-proved by the learned Special Judge and only finding is against the issue No.3 (f) about 'acceptance' of the

amount of Rs. 600/-, on 21 February 1992. There is no finding of any demand as such on 21 February 1992. The learned Special Judge has even refused to accept the submission on behalf of the prosecution based on section 20 of the Act about presumption. The learned Special Judge has held that, as the Appellant had kept the record/ notices/intimation ready, he must have made the demand earlier, which cannot be accepted.

19. It has come in the prosecution evidence that on the day of the trap the Appellant was not found in the office, but was found taking lunch in the canteen in the compound of the Tehsil office. It was in the canteen where the complainant PW 1 and panch PW 2 went and met the Appellant. Before that, it is necessary to note that the Appellant in his capacity as a clerk was not competent or authorize to sanction or certify mutation entries. The Appellant was only entrusted with the ministerial task of processing the application and putting it before the competent officer for approval/certification. It is not in dispute that it is the Circle Officer or the Tahsildar, who alone can sanction or certify mutation entries. At no point of time the Complainant had made any grievance to the Superior Officer about the repeated demands allegedly made by the Appellant with the Complainant. Mr. Chandrakant Powar, who had twice accompanied the complainant and in whose presence the alleged demand was made, has not been examined. PW 3 Vishnu Kulkarni, who is the Tahasildar in whose office the Appellant was working has also

admitted that neither the Complainant nor anybody from his family made any complaint in respect of the mutation case. He also admitted that whatever proceedings took place in respect of the mutation i.e. SR case No.18 of 1992 (which was registered on the basis of the application exhibit 22) filed for mutation were as per his instructions. The notices were also issued under his signature and even the statements were recorded as per his instructions. It can thus be seen that it was the Tahasildar, who was in-charge of the case and competent to sanction/certify the mutation. PW 3 states that the RTS case was disposed of by him in June 1992.

20. Considering the overall evidence and particularly when the learned Special Judge has not accepted any of the demands allegedly made prior to 21 February 1992, mere recovery of the tainted currency notes establish the offence under Section 7 of the said Act. For this reason, I find that the Appellant has probablised the defence of the amount being thrust on him. In the result, the Appeal deserves to be allowed. Hence, the following order.

ORDER

1. The Appeal is allowed.
2. The conviction and sentence awarded to the Appellant is hereby set aside.

3. The Appellant is acquitted of the offences, as charged.

4. The bail bonds of the Appellant stand cancelled.

(C.V. BHADANG, J.)