

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.687 OF 2000
ALONG WITH
CRIMINAL APPLICATION NO.430 OF 2017

1. Ramesh Maruti Shinde,]
R/o. Shinde Mala, Dahiwadi, Tal. Man,]
District Satara.]

2. Bhimrao Dinkar Pawar,]
P.C.B. No.454, Dahiwadi Police Station.]

3. Haribhau Nivrutti Shinde]
(Since deceased through legal heirs)]

- 3(a) Smt. Mangal Haribhau Shinde,]
R/o. Bopegaon Post at Pande, Tal.]
Vai, District Satara.]

- 3(b) Mrs. Jayshree Ajit Gawali,]
R/o. Post at Badutha, Dist. Satara.]

- 3(c) Mrs. Poonam Dattatraya Yadav,]
R/o. Post at Sonave, Dist. Satara.]

- 3(d) Manoj Haribhau Shinde,]
R/o. Bopegaon Post at Pande, Tal.]
Vai, District Satara.] ... Appellants

Versus

The State of Maharashtra] ... Respondent

Mr. Rajiv Patil with Mr. Santosh Jadhav for the Appellants.

Ms. S.S. Kaushik, A.P.P. for the State.

...

CORAM : MRS. BHARATI DANGRE, J.

RESERVED ON : 05TH APRIL, 2021.

PRONOUNCED ON : 09TH APRIL, 2021.

JUDGMENT:-

1. Being aggrieved by the judgment and order dated 21/09/2000 passed by the Special Judge, Satara in Special Case No.7 of 1994, all the three accused persons have preferred the present Appeal.

2. The case of the prosecution, which resulted in the Appellants being charged under the provisions of the Prevention of Corruption Act, 1988 (for short, “**the P.C. Act**”) and further being convicted on the said charge can be, briefly, narrated as under:

On 22/06/1993, the Complainant attended the Dahiwadi Police Station when he was summoned there in response to a complaint being lodged by his brother, Gopal alleging that the Complainant is not allowing him to fetch water from the common well and, threatening him with dire consequences.

3. The case of the prosecution is that prior to the said incident, a complaint was filed by the Complainant against his brother and his wife which had resulted into registration of FIR, which was pending. The animosity between the two was on account of a field being purchased by the Complainant from one third person and, his brother, who had also expressed his interest in purchase of the same field. The existing field of the Complainant and the field of his brother and the new piece of land purchased by the Complainant stand adjacent to each other.

4. A fortnight before, when the complainant reported to the police station, on being summoned, Appellant No.2 (A-2) had visited the house of the Complainant and sought his presence in the police station, however, since the Complainant was not present in town, he did not abide by the said directions for about 10-12 days. On 22/06/1993, A-2 Pawar, a Police Constable attached to Dahiwadi Police Station came to his field and asked him to accompany him to the police station since he was summoned by Appellant No.3 (A-3) Shinde, the Police Head Constable attached to the same Police Station. Accordingly, he went to Dahiwadi Police Station and was made to wait as A-3 Shinde, was not present. After sometime, he entered in the room of the A-3 Shinde and expressed his greetings. At this juncture, A-3 Shinde, abused him and slapped him and made to sit him on the bench for about 2½ hours. When the Complainant sought his permission to leave as he

had to attend to his farming activity, A-3 demanded an amount of Rs.200/- for not effecting an arrest in the dispute between himself and his cousin brother and he asked to pay the money by 6.00 p.m. On enquiry, the Complainant was informed that his cousin brother Gopal has made an oral complaint against him.

5. The Complainant approached the office of Anti Corruption Bureau, Satara on the next day and his complaint was reduced into writing by Dy. Superintendent of Police (for short, “**Dy. S.P.**”) Mr. Ajari. He was asked to hand over the amount of Rs.200/-, which he complied with and handed over four notes of Rs.50/- denomination. The currency notes were smeared with anthracene powder and after completing the necessary formalities, they were put in the pocket of the shirt of the Complainant and after recording the pre-trap panchnama, the raiding party including the panch, proceeded to Dahiwadi Police Station, where A-2 Pawar and A-3 Shinde were to be found. When they entered the police station, A-3 Shinde made the Complainant sign some papers and demanded the amount for attending to his grievances inspite of his busy schedule. A-3 Shinde asked A-2 Pawar to accompany the Complainant for a cup of tea and to collect the money and the Complainant was guided to a canteen viz. Ashok Hotel situated near the Southern gate. A-1 Ramesh Shinde was handling the counter in the said hotel/canteen and after the tea was served, A-2 Pawar enquired with the Complainant about the money. When he

expressed that he would hand over the money as per the demand, to A-3 Shinde, A-2 Pawar told him that the two are together and he asked him to pay the amount to A-1 Ramesh Shinde. Accordingly, the amount of Rs.200/- was handed over to A-1 Ramesh Shinde. A-2 Pawar asked him to count the money and on counting the currency notes, A-1 Ramesh Shinde put the amount in the left pocket of his shirt. After giving signal as decided in the pre-trap, the raiding party arrived at the spot and the amount was recovered from A-1 Ramesh Shinde. An unsuccessful attempt was made by A-2 Pawar to flee from the spot but the raiding party caught hold of him and arrested him.

6. The charge was framed against the three accused persons. Accused Nos.2 and 3, who were attached to the Dahiwadi Police Station as Police Constable and Police Head Constable respectively, both being public servants, came to be charged under Section 7 of the PC Act and also under Section 13(1)(d) read with Section 13(2) of the PC Act for obtaining pecuniary advantage of Rs.200/- by corrupt and illegal means from the Complainant by abusing their position. A-1 Ramesh Shinde was charged under Section 12 of the PC Act for abetting A-2 and A-3, the public servants in commission of offence punishable under Section 7 of the PC Act by accepting an amount of Rs.200/- on behalf of them from the Complainant.

7. This, concisely is the case of the prosecution and to establish its case, the prosecution examined four witnesses; the Complainant as PW-1, the panch witness Mahesh Shete as PW-2, the Investigating Officer Dilip Mane as PW-3 and the Sanctioning Authority, Dy. S.P. Ashok Kamte as PW-4. Apart from the depositions, the prosecution has also relied upon the trap panchnamas and the sanction order to establish the charges against the accused persons.

8. On appreciation of evidence, the Special Court convicted the three accused for the offences with which they have been charged. A-1 Ramesh Shinde is convicted under Section 12 of the PC Act and sentenced to suffer SI for six months and to pay fine of Rs.500/-, in default to undergo SI for two months. A-2 Pawar was convicted under Section 7 of the PC Act and sentenced to suffer SI for six months and to pay fine of Rs.500/-, in default, to undergo SI for two months and was also convicted under Section 13(1)(d) of the PC Act and sentenced to suffer SI for one year and to pay fine of Rs.500/-, in default, to undergo SI for two months. Similarly, Accused No.3 is convicted under Section 7 of the PC Act and sentenced to suffer SI for six months and to pay fine of Rs.500/-, in default, to undergo SI for two months and he is also convicted under Section 13(1)(d) of the PC Act and sentenced to suffer SI for one year and to pay fine of Rs.500/-, in default, to undergo simple imprisonment for two months. The substantive sentences are

directed to run concurrently. The present Appeal challenges the said judgment of the Special Judge, Satara, convicting and sentencing the Appellants.

9. Heard Mr. Patil, the learned senior counsel appearing for the Appellants and Ms. Kaushik, the learned A.P.P. appearing for the State.

10. Mr. Patil, the learned senior counsel would submit that the Appellant No.3 (A-3 Shinde) has expired during the pendency of the Appeal and, the Appeal is being prosecuted by his legal heirs. He also submit that A-2 Pawar has retired from service on attaining the age of superannuation. Mr. Patil, the learned senior counsel would urge that the prosecution has failed to prove its case and the judgment passed by the Special Court and resultantly the sentence imposed upon the appellants is erroneous since the evidence on record has not been properly appreciated. It is the submission of Mr. Patil that the case is highly improbable since the prosecution has not even brought on record the details of any case, which was instituted by his cousin brother Gopal against the Complainant and, therefore, there was no question of the Complainant being called to the police station and being arrested. According to him, therefore, the case of gratification being accepted for not arresting the Complainant is merely an assumption. As per the case of prosecution, A-3 Shinde had demanded the amount from the

Complainant for not arresting and the amount was directed to be brought to the police station on the same day before 6.00 p.m. but admittedly, he did not report to the police station nor was he arrested and, therefore, there was no reason for the Complainant to approach the police station for offering Rs.200/- to A-3 Shinde. The whole case of the prosecution, according to the learned senior counsel is highly improbable. Mr. Patil would also submit that it is the case of the Complainant that he had borrowed the amount of Rs.200/-, to be paid as bribe from his brother-in-law, who is a resident of next village but, neither the said person is examined nor anything is brought on record to reflect that the brother-in-law advanced the amounts for paying the same to A-3 Shinde. The evidence led by the prosecution, according to learned senior counsel, do not inspire any confidence as PW-2 Pawar has contradicted PW-1 the Complainant, in his evidence and the contradiction is material one, which has created a dent in the case of prosecution.

11. Per contra, Mr. Kaushik, the learned A.P.P. appearing for the State invited my attention to the cogent and reliable evidence brought on record by the prosecution, which convincingly establish and lead to the guilt of all the three accused persons. By the positive evidence brought on record, learned A.P.P. state that the prosecution has established its case in unequivocal terms to the effect that the amount of Rs.200/- was demanded by A-3 Shinde

for not arresting the complainant on a complaint filed against him in Dahiwadi Police Station where A-2 Pawar and A-3 Shinde are discharging their duties as Police Constable and Police Head Constable respectively and that the said amount is found in the hands of A-1 Ramesh Shinde, who has been held guilty of abetting the commission of offence by A-2 Pawar and A-3 Shinde. Learned A.P.P. would, therefore, submit that the appeal deserves to be dismissed.

12. With the assistance of the respective counsel, I have perused the material on record, which has been appreciated by the Special Judge before recording a finding of guilt of the accused persons. PW-1 is the Complainant, who has lodged a complaint with Dy. S.P. Ajari, who has proved the complaint lodged by him on 23/06/1993. In the said complaint, he had specifically referred to the demand of the amount of Rs.200/- by A-3 Shinde, who was the Police Head Constable attached to Dahiwadi Police Station, for not arresting him in pursuance of a complaint filed by his cousin brother Gopal for not allowing him to fetch water from the common well and for intimidating him. In the complaint, it is alleged that A-3 Shinde recorded statement of Gopal and obtained his signature and demanded an amount of Rs.200/- by way of illegal gratification for not arresting him. With these allegations, the Complainant lodged the complaint.

The evidence of PW-1, the Complainant, is corroborated in

his testimony by PW-2, the panch witness, who was working as a clerk in the office of Dy. R.T.O. at Satara. The said witness has deposed about the Complainant lodging a complaint with Dy. S.P. Anjari about the amount being demanded by A-3 Shinde for not arresting him. PW-2, the panch witness, on carrying out the procedure, has drawn the pre-trap panchnama, which has been signed by him and accompanied the Complainant, who approached the Dahiwadi Police Station to tender the amount demanded by A-3 Shinde. They were accompanied by another panch witness and other persons in the raiding team and they followed the Complainant when he approached the canteen near Ashoka Hotel, where the Complainant was directed to pay the amount to A-1 Ramesh Shinde. The post trap panchnama bears the signature of PW-2. The witness has deposed before the court the procedure adopted while drawing the post trap panchnama and deposed before the court the details of the raid being conducted. The statement of the panch witness corroborates the version of PW-1, the Complainant on the aspect of the amount of Rs.200/- being paid to A-1 Ramesh Shinde, who collected the amount by his right hand and after counting, put the same in his shirt pocket. The said witness has spoken in synk with PW-1, the Complainant, about the words uttered by A-2 Pawar, about the amount being brought as per the demand of A-3 Shinde and, it was at the direction of A-2 Pawar that the amount was paid to A-1 Ramesh Shinde. There is no inconsistency in the testimony of the two witnesses and since

PW-2 the panch witness has proved the pre-trap and post trap panchnamas leading to recovery of the amount of Rs.200/- from the pocket of A-1 Ramesh Shinde, which corroborates the story of the prosecution. The currency notes smeared with anthracene powder on being examined in the ultra violet light fortified the prosecution case.

13. Further corroboration of the case of the prosecution is found in the testimony of PW-3, the Investigating Officer, who is the Inspector with Anti Corruption Bureau, Satara, who received the complaint and reduced it into writing and exhibited it as Ex-42, during the course of trial. The whole trap was supervised by PW-3, the Investigating Officer and since he was also present at 10 feet from the canteen where the Complainant gave the signal, he entered the canteen and on introducing, apprehended the accused persons and recovered the currency notes smeared with anthracene powder from the pocket of the shirt worn by A-1 Ramesh Shinde.

14. The prosecution has, therefore, brought on record evidence which conclusively establish the case of the prosecution that A-3 Shinde and A-2 Pawar were working as Police Head Constable and Police Constable in Dahiwadi Police Station and had accepted the amount of Rs.200/- from the Complainant as a gratification other than legal remuneration as a motive or reward for not arresting the Complainant in exercise of official function and thereby committed

offence under Section 7 of the PC Act. Since the prosecution has proved the demand and acceptance of bribe at the hands of the three accused persons, the court was duty bound under Section 20 of the PC Act to raise statutory presumption for commission of offence under Section 7 of the Act, being that the deceased accepted the gratification as a motive or reward for doing or forbearing to do any official act. The prosecution proved that A-1 has accepted the amount at instance of A-2, on the demand being raised by A-3. The A-1 accepted the amount on the say of A-2, who acted in furtherance of the demand being raised by A-3. Once this is proved, the burden ought to have been discharged by Accused to revert the said presumption. In **M.Narsinga Rao Vs. State of Andhra Pradesh**¹, it is held that where receipt of illegal gratification was proved, the Court was under a legal obligation to presume that such gratification was accepted as reward for doing a public duty. It is held as under :-

“13. Before proceeding further, we may point out that the expressions “may presume” and “shall presume” are defined in [Section 4](#) of the Evidence Act. The presumptions falling under the former category are compendiously known as “factual presumptions” or “discretionary presumptions” and those falling under the latter as “legal presumptions” or “compulsory presumptions”. When the expression “shall be presumed” is employed in [Section 20\(1\)](#) of the Act it must have the same import of compulsion.

14. When the sub-section deals with legal presumption it is to be understood as in *terrorum* i.e. in tone of a command that it has to

¹ (2001) 1 SCC 691

be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption under [Section 20](#) is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act.

15. The word “proof” need be understood in the sense in which it is defined in the [Evidence Act](#) because proof depends upon the admissibility of evidence. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition given for the word “proved” in the Evidence Act. What is required is production of such materials on which the court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in *Hawkins vs. Powells Tillery Steam Coal Company, Ltd.* [1911 (1) K.B. 988] observed like this:

“Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion”.

16. The said observation has stood the test of time and can now be followed as the standard of proof. In reaching the conclusion the court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the court to presume the

existence of any fact which it thinks likely to have happened. In that process the court may have regard to common course of natural events, human conduct, public or private business vis-à-vis the facts of the particular case. The discretion is clearly envisaged in [Section 114](#) of the Evidence Act.

17. Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in Law of Evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the court can draw an inference and that would remain until such inference is either disproved or dispelled.”

15. Mr. Patil is justified in advancing a submission that in the entire testimony of prosecution witnesses, including PW-1, the Complainant, PW-2, the panch witness and PW-3, the Investigating Officer, the demand is attributed to A-3 Shinde and not to A-2 Pawar and, none of the witnesses have spoken about the demand being raised by A-2 Pawar and, hence, he cannot be indicted under Section 7 of the PC Act since the essential ingredients for conviction under Section 7 of the PC Act is proof of demand, and the demand in this case emanate from A-3.

16. I am in agreement with Mr. Patil, learned senior counsel to that effect. However, as far as A-3 Shinde is concerned, the prosecution has proved the demand of the amount by clinching

evidence and, therefore, the conviction of A-3 Shinde under Section 7 of the PC Act calls for no interference. As far as conviction of A-2 Pawar and A-3 Shinde under Section 13(1)(d) read with Section 13(2) of the PC Act is concerned, both the accused persons being public servants, have been held guilty of commission of offence of criminal misconduct by abusing their positions as public servants and obtaining for themselves pecuniary advantage of Rs.200/- and, this charge being proved by the prosecution, the conviction under Section 13(1)(d) read with Section 13(2) of the PC Act does not call for any interference. As far as A-2 is concerned, his conviction under Section 7 is liable to be set aside, as the prosecution has failed to prove the demand by A-2. Resultantly, the sentence imposed upon him, on being convicted for obtaining bribe is liable to be set aside.

However, the charge of criminal misconduct against A-2 is proved by the prosecution, since he has abused his position as a public servant and obtained the pecuniary advantage for himself and A-3, his conviction and the sentence imposed under Section 13(1)(d) read with Section 13(2) of the PC Act do not call for any interference.

17. Today, corruption stands as a greater evil and pose serious threat to the health of the nation. Pertinent to note that if the accused and the tendency to obtain illegal gratification by abusing the official position in discharge of day-to-day official functions is

not punished and it is allowed and pardoned, the said tendency will continue and one day, would engulf the whole system, causing dent in the robust democracy of the nation.

18. With the aforesaid modification, in the impugned judgment qua Appellant No.2, being acquitted under Section 7 of the PC Act, the judgment and order dated 21/09/2000 passed by the Special Judge, Satara in Special Case No.7 of 1994 is confirmed. The appeal is partly allowed in the aforesaid terms qua Appellant No.2 and it stands dismissed against Appellant No.1 and Appellant No.3.

19. In view of the disposal of the Appeal, Cri. Application No.430 of 2017 stands disposed of.

(BHARATI DANGRE, J.)