

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.171 OF 2006**

The State of Maharashtra) ..Appellant

V/s.

Bhagwan Pandurang Patil)
Section Engineer, Construction)
Department, Panchayat Samiti,)
Wada, Dist: Thane) ..Respondent
(Orig. Accused)

Mrs. M. M. Deshmukh, APP for State
None for Respondent

**CORAM : K.R.SHRIRAM, J.
DATED : 18th JUNE 2021**

ORAL JUDGMENT:-

1 This is an appeal impugning an order and judgment dated 28th July 2004 passed by Learned Special Judge, (Anti corruption) Thane, acquitting respondent of the offence punishable under Section 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988.

2 Complainant PW-1 had formed a Co-operative Society and Co-operative society was undertaking contracts from Public Works Department for various works in Wada Division. In May 2001, the works which were awarded to the society had been completed and there were bills pending. After 6 months, when the defect liability period was over PW-1 approached accused on 26th December 2001 at about 10.00 a.m for preparing and clearing his bills and forward the same to the concerned authority for

payment. Accused at that time, stated that it will be done provided P.W.-1 gave him Rs.35,000/- which was a bribe. When P.W.-1 told accused that he is in financial difficulty, accused agreed to receive the amount in installments. P.W.-1 was instructed to bring Rs.10,000/- between 11.00 a.m to 2.00 p.m. on 28th December 2001 with an assurance that the bills will be signed and sent for sanction provided the amount of Rs.10,000/- is paid and the balance should be paid soon after receipt of the payment. P.W.-1 thereafter approached ACB and on 28th December 2001 at around 8.00 a.m., P.W.-1 with the panch witnesses were present in the office of ACB. Pre-trap formalities were completed and armed with 20 currency notes of Rs.500/- (marked currency notes), the raiding team with P.W.-1 and P.W.-2 (the shadow panch), at about 12.00 noon went for the raid.

3 It is alleged that when P.W.-1 and P.W.-2 reached the office of accused, P.W.-1 greeted accused but accused who was busy with other work, gave him a blank look. P.W.-1 and P.W.-2 thereafter approached the desk of accused, P.W.-2, the panch witness, took the chair in front of the table of accused, while P.W.-1 was standing. P.W.-1 mentioned about pending bills and accused asked him whether he has brought the amount of Rs.10,000/- as instructed. When P.W.-1 answered in the affirmative, accused demanded the money. P.W.-1 took out the marked currency notes from his pocket and handed over to accused, who accepted the same between his right hand fingers and thumb and put it on a sheet of paper lying on the table. Accused thereafter covered the same with another sheet of paper and then he signed

the bills. Immediately, P.W.-1 went out of the office and gave agreed signal, raiding party entered and accused was nabbed. On search, the marked currency notes were found on the table covered under the white paper sheet. The marked currency notes were examined and tallied with the pre-trap panchnama and on examination of right hand finger tips and as well as right hand thumb tip of accused, traces of anthracene powder was found. Thereafter, post trap procedures were completed and a report was sent to Wada Police Station for registering the offence. Offence was registered, investigation commenced, statements were recorded and after obtaining sanction, charge sheet was filed in the Special Court. Accused pleaded not guilty and claimed to be tried.

In his defence it is the case of accused that he never demanded any bribe. Accused stated that infact the works of P.W.-1 when supervised by accused was found below than the standard and P.W.-1 was withdrawing the cheques against the works of the other society and as accused was raising objection, P.W.-1 decided to trap him. On the day of trap, when P.W.-1 came to his office with P.W.-2, accused even ignored him and, therefore, P.W.-1 place the bills before accused and asked him to sign. Accused refused to sign the bills without verification of the site of works done and defects. As accused was busy with other office files, P.W.-1 has quietly placed the amount under the paper sheet and left the office. When the raiding party came into the office, accused was busy with his regular work and when he came to know from the raiding party about the bribe, he started searching

the same on the table, at which time, when he lifted the papers, he found the marked currency notes and hence, the traces of anthracene powder was found on the finger tips and tip of thumb. According to accused, there is no demand and no acceptance of bribe and he was being implicated in a false case.

4 To drive home the charge, prosecution led evidence of 4 witnesses. Sudhakar Pathare, complainant as P.W.-1, Afroz Siddiki, shadow witness as P.W.-2, A. Y. Rajedhirke, I. O. as P.W.-3 and Narendra Kawade, Sanctioning Authority as P.W.-4.

5 Though defence raised issues about defects in sanction order, P.W.-4 the sanctioning authority admitted that he has received the draft sanction order, in which, he only filled up the blanks by hand and signed the same. Trial court has not given any finding that it was invalid. I should say though, P.W.-4 has admitted that he has received the draft of the sanction order but also states he has studied the investigation papers and after studying the papers and applying his mind he came to the conclusion that it is a fit case to accord the sanction. This has not been dented by the defenece.

6 I must note that there are contradictions in what P.W.-1, P.W.-2 and P.W.-3 state. P.W.-1 states when he reached the office of accused on the date of raid, accused was doing his work at the table and panch witness occupied the chair while he stood in front of the table. But panch witness P.W.-2 states that they both occupied the chair in front of the table of accused. P.W.-1 says that when he asked accused whether he has signed the bills,

accused answered in the negative and asked P.W.-1 whether he has brought Rs.10,000/- as instructed and when P.W.-1 replied in the affirmative accused said it is alright and he will see after two days. Again, when P.W.-1 informed accused that he was in financial difficulty, accused said alright we will see it and asked P.W.-1 to give Rs.10,000/- which he had brought. After this, P.W.-1 took out the marked currency notes and held it before accused in folded condition. Accused accepted it with his right hand fingers and thumb and put it on the table. Accused also put up a blank paper over the marked currency notes, after which P.W.-1 gave signal to the raiding party. Panch witness P.W.-2 says that when they reached the table of accused, he and P.W.-1 both occupied the chair. At that time accused was searching something in his table drawer at which time, P.W.-1 asked accused as to what happened to his work and accused replied that Saheb has signed but his own signatures are remained and thereafter, accused asked P.W.-1 about Rs.10,000/-. Accused told P.W.-1 that unless he pays the amount, accused will not forward the bills, which is not what P.W.-1 has stated. Accused thereafter accepted the amount, placed it on the paper sheet, which was on the table and then covered the marked notes with another paper sheet and P.W.-1 left the office for giving agreed signal. These are, therefore, two different versions of P.W.-1 and P.W.-2 in their depositions.

7 P.W.-1 states that the papers regarding his bills were signed in his presence but after the trap. P.W.-1 also states that accused signed the papers including his bills when his hands were released by the raiding party and it

was in his presence. This, even I.O. (PW-3) states in his evidence when the trap was completed it was found that the bills which were attached were not signed by accused and after the hands of accused was checked under ultra violet light, accused was asked to wash his hands and after that accused signed the bills. But panch witness (PW-2) denies that accused signed the bills after the trap. PW-2 has testified that after acceptance of the bribe amount, accused signed the bills and then PW-1 left the office.

8 According to PW-2, accused received the marked currency notes and placed it on the table and covered it with the paper sheet but PW-1 does not say that it was kept on another paper sheet and then covered with a paper. Learned APP in fairness concedes that papers on the table were not checked for traces of anthracene marks.

9 Investigating Officer (PW-3) is unable to even identify the spot on the table where the marked currency was found and he only says it was in the front of accused on the table. I.O. was unable to give the exact location whether on corner of the table or left side or right side of the table. Accused also admits that there was a heap of files on the table. This is very relevant because it is the case of defence that accused was busy in his work and complainant might have slipped the notes under the papers on the table, when accused not even being aware of what has happened. Also, admittedly, all along accused was seen busy in his official work and he did not even pay much attention to PW-1 and PW-2.

10 It has also come in the evidence of PW-1 that even earlier the bills have been cleared by accused but never had he demanded any money at any time.

11 I have perused the impugned judgment, considered the evidence and also heard Ms Deshmukh. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the evidence available on record, there is nothing to substantiate the charge leveled against accused.

12 There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless they are proved guilty by a competent court of law. Secondly, accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court rightly observed that the prosecution had failed to prove its case.

13 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, need not be interfered with.

14 Appeal dismissed.

15 The Government/Appropriate Authority shall pay over to respondent, within a period of 30 days from the date of receiving a copy of this order, all pensionary or other benefits/dues stalled, in view of pendency of this

appeal. If during the service, in view of this matter, the promotions or increments of the accused have been affected, the concerned Authority/ Department will pay, proceed and calculate on the basis that there was no such matter ever on record against the accused and will factor in all promotions and increments that accused would have been entitled to and all the amounts shall be accordingly paid within 30 days.

After 30 days interest at 12% p.a. will have to be paid by Government/Appropriate Authority to respondent.

No authority shall demand certified copy for reimbursing the benefits/ dues as directed above. All to act on authenticated copy of this order. Certified copy expedited.

(K.R. SHRIRAM, J.)