

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 18 OF 2013

Bajrang S/o Pralhadrao Bhosle

Age : 45 years, Occu. : Nil,

R/o. At – Khardewadi, Post. Yellamghat,

Tq. & Dist. Beed

.. Appellant

Versus

The State of Maharashtra

.. Respondent

Mr. S. J. Salunke, Advocate for the Appellant.

Smt. P. V. Diggikar, APP for Respondent/State.

CORAM : KISHORE C. SANT, J.

Date on which reserved for judgment : 12th October, 2022.

Date on which judgment pronounced : 22nd November, 2022.

JUDGMENT :-

1. This is an appeal filed by the accused who is convicted for the offence punishable under Sections 7, 13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the Act”). He is sentenced to suffer rigorous imprisonment for two (02) years and to pay fine of Rs. 10,000/- (Rs. Ten Thousand only) in default to suffer rigorous imprisonment for six (06) months for the offence punishable under Section 7 of the Act. He is directed to suffer rigorous imprisonment for three (03) years and to pay fine of

Rs. 10,000/- (Rs. Ten Thousand only) in default to suffer rigorous imprisonment for six (06) months for the offence punishable under Section 13 (1) (d) r/w Section 13 (2) of the Act. He is held guilty and convicted by the judgment and order dated 27.12.2012 passed by the learned Additional Sessions Judge, Majalgaon in Special (ACB) Case No. 01/2010.

2. The accused was working at the relevant time as Police Constable at Police Station Majalgaon on the establishment of Superintendent of Police, Beed. It appears that, he demanded an amount of Rs. 5,000/- (Rs. Five Thousand only) from the informant – PW-1 namely Hanumant Bhumre as a gratification for not filing a chapter case against brother-in-law of the informant. It is the complaint filed by the complainant Hanumant Bhumre that there was a compliant lodged against brother-in-law namely Dnyanoba Kandure. On getting the information he went to Majalgaon Police Station. He found Dnyanoba sitting outside the Police Station. The investigation in that matter was given to this accused. On 29.08.2009, the informant requested the accused not to file a chapter case whereupon the accused asked whether he has brought any amount and demanded Rs. 5,000/- (Rs. Five Thousand only) for bail of Dnyanoba. Upon this, the informant told that he would bring an amount on 31.08.2009. On the same day, he went to the office of Anti Corruption Bureau (ACB) and lodged a

complaint against the accused. This informant was accompanied by his friend namely Sawant. The informant narrated the incident in the office of ACB, Beed to Dy.S.P Mr. Pujalwar. On 31.08.2009 two panchas were called by the Dy.S.P and in their presence the complaint was given. On receiving complaint it was decided to lay a trap on the very day. The raiding party reached to the Government Rest House, Majalgaon at around 3.00 p.m. The informant was asked to contact the accused on a mobile phone by switching it on speaker mode. From the conversation it was verified that there was demand of Rs. 5,000/- (Rs. Five Thousand only). After this verification, the raiding party proceeded to the Police Station at 5.00 p.m. The informant and one panch went in the Police Station where allegedly the amount was demanded by the accused. On demand the amount was paid and signal was given to the raiding party. The raiding party on receiving the signal immediately went in Police Station and further procedure was completed.

3. It is the defence of the accused that he has not demanded and accepted the amount. He has been falsely implicated by the informant as the accused was making investigation in the offence wherein brother-in-law of the informant was an accused.

4. Initially, the informant who is examined as PW-1 deposed that he

received information from his nephew that offence is registered against brother-in-law of the informant in Majalgaon Police Station. Therefore, he went to Majalgaon Police Station. He found his brother-in-law Dnyanoba and other two persons sitting outside the Police Station. The nephew told that the investigation is assigned to the accused and upon that the informant met the accused in the Police Station. The accused asked him whether he has brought anything for bail of Dnyanoba and demanded Rs. 5,000/- (Rs. Five Thousand only). The informant told the accused that he will bring the amount on 31.08.2009. He immediately went to ACB office and lodged the report. There he met Dy.S.P (ACB) Mr. Pujalwar. The informant was also accompanied by his friend namely Sawant who narrated the entire facts to Mr. Pujalwar. Mr. Pujalwar obtained his signature on a complaint. The contents were read or explained to the informant. He stated that he is illiterate, however, accepted his signature on the report. Thereafter, he did not support the case of prosecution and he was declared hostile. Coming to cross-examination of this witness, it is seen that he gave answers which support the case of prosecution to large extent. He further deposed that the accused made a demand of Rs. 5,000/- (Rs. Five Thousand only). The accused asked as to whether the informant has brought an amount of Rs. 5,000/- (Rs. Five Thousand only). The informant replied in affirmative. The accused asked the informant to hand over the

amount to him, but later he specifically stated that it is not correct to say that the informant took out the amount and the accused accepted the amount and further giving of signal etc. To a suggestion, that the informant thereafter has compromised with the accused, he accepted the same. This witness was further cross examined by the accused as well.

5. PW- 2 – Bhagwant Dabhade acted as a panch witness. He deposed that he was called to ACB Office and was asked to act as a panch. After explaining the procedure he was directed to accompany the informant. The raiding party went to Majalgaon at the Government Rest House. From there complainant made a phone call from his brother's mobile phone to accused by switching it on speaker mode. From the said conversation, the accused asked complainant as to whether the amount is brought and complainant answered in affirmative. The Dy.S.P thereafter shown the demonstration of the anthracene powder etc. This witness went to the Police Station alongwith the complainant and then to Tahsil office. The raiding party stood around the Tahsil office. This witness alongwith complainant and his brother entered in the room where they found that accused was sitting on a cot. The complainant took out the cash amount of Rs. 5,000/- (Rs. Five Thousand only) and offered to accused who accepted

the said amount with his left hand and then by his right hand he kept that amount in the right side back pocket of his pant. Thereafter, panchanama was drawn by following procedure. The Dy.S.P asked the accused about the amount which was found in his pocket of Rs. 6,000/- (Rs. Six Thousand only). He stated that it was his salary amount which he had kept for purchasing grocery items etc. This witness proved the trap panchanama and demand verification panchanama in which it does appear that when there was communication between accused and the complainant on a mobile phone from Majalgaon Rest House, the accused told him to come to old Police Station in the premises of Tahsil office. The complainant asked whether he would release Dnyanoba and his nephew on which the accused said as "Ok" and asked whether the complainant has brought amount of Rs. 5,000/- (Rs. Five Thousand only) and further said that if the amount is brought immediately his work would be done. The accused thereafter stated that he is waiting for the complainant. He also further proved the spot panchanama where this witness shown the amount that was accepted by the accused.

6. Next witness is one Mirza Athar Baig, a Police Head Constable working in the Majalgaon Police Station. He stated that on 29.08.2009 he was on duty as Lock-up room guard. The accused was also on duty posted as Gangamasala bit. On that day the accused brought two

persons at around 9-10 a.m. and put them in Lock-up, but did not make entry about the same in Lock-up register and asked this witness to keep those persons in Lock-up for some time. On asking the details about their crime, the accused did not tell anything. In the cross, he stated that it was Police Constable Mr. Chema who put those persons in Lock-up.

7. Thereafter, PW-4 – nephew of the complainant is examined who is son of Dnyanoba. He stated about the incident wherein his mother was assaulted by Radhakisan, Khandu and Barkya. However, the report was lodged only against Gangadhar and his family members. They have also lodged report against other persons. He stated that, the accused asked them to pay him Rs. 5,000/- (Rs. Five Thousand only) on Monday and he will release the persons in Lock-up. Then, on Monday Gangadhar and his father went to Police Station. This accused thereafter contacted his maternal uncle Hanumant Bhumare and called him to Tahsil office. After Hanumant Bhumare came to Police Station and went to Tahsil office this witness and his father were released. He accepted that he was arrested by the accused. Certain omissions are brought on record from his deposition about the accused asking those witness to bring Rs. 5,000/- (Rs. Five Thousand only) and that the accused had contacted Hanumant Bhumare.

8. Next witness namely Babasaheb Kisanrao Bhumare, brother of the complainant who stated that he alongwith complainant and one more person went to the Police Station. On reaching to the police station this accused made a demand and accepted the amount from the complainant. Thus, there are two witnesses related to the complainant who are examined in support of the prosecution case.

9. Next witness namely Sanjay Pujalwar, Dy.S.P, ACB who conducted the raid and carried some investigation. He deposed that the trap was successful on receiving the signal from the complainant at about 05.10 p.m. He told panch as to whether the accused accepted the amount. Panch No. 2 took out the amount from the accused and the same was verified. A search was taken in which the amount of Rs. 6,000/- (Rs. Six Thousand only) was found alongwith other material and also a proposal of chapter case. He thereafter went to Majalgaon Police Station to lodge a complaint against the accused. The portion mark "A" from the statement of the complainant is proved. Exh. 48 is the statement of complainant Hanumant Bhumare. Portion mark from "A" to "D" is proved from the statement of Hanumant Bhumare. In the cross-examination he could not assign any reason as to why the conversation on mobile in between the complainant and the accused was not recorded by voice recorder. Further, he stated that the

complainant told that he is not able to handle the voice recorder and therefore, he could not record it and therefore recorder was not given to the complainant. However, he could not assign any reason as to why the same was not given to panch or brother of the complainant. This witness handed over further investigation to Dy.S.P Bhimrao Shingade i.e. PW-7. On 02.09.2009 after handing over the investigation to Bhimrao Shingade he obtained call detail records in respect of conversation of the accused with the informant from the Department and included them in the papers of investigation. He proved the C.D.R. and conversation. He thereafter submitted a proposal seeking sanction to prosecute the accused and thereafter filed the charge-sheet in the Court. He is not cross examined much except giving suggestion that he did not record the statement of the witnesses and that he has filed frivolous charge-sheet against the accused. Both the suggestions are denied by him.

10. Last witness is PW-8 who accorded sanction to prosecute the accused. He received communication dated 16.11.2009, a proposal to prosecute the accused alongwith the documents pertaining to the prosecution. He stated that he perused the documents sent with the proposal and after applying his mind he granted sanction to prosecute the accused. He proved the sanction order (Exh. 64). In the cross he

accepted that he did not peruse the documents in respect of the custody of the accused as those were not a part of the papers supplied to him. He stated that he had perused the copies of the case diary in respect of Crime No. 140/2009 at Majalgaon Police Station. He accepted the suggestion that the investigation of Crime No. 140/2009 was with the accused. Thus, this is the evidence laid by the prosecution. The prosecution has proved the panchanama and the sanction order through the evidence of the prosecution witnesses.

11. Learned advocate for the appellant submits that this is a case where the prosecution has utterly failed to prove the offence against the accused beyond reasonable doubt. He submitted that as the brother-in-law and his son came to be arrested the informant developed enmity against the accused. He submitted that PW-1 has no nexus with any of the offences which were investigated by the accused. He was of the view that only because of that brother-in-law is falsely implicated by the accused and therefore, he lodged a report against the accused and therefore present appellant is falsely implicated. On the point of sanction, he submits that the sanction is accorded without proper application of mind and when all the papers were not placed before the sanctioning authority, sanction cannot be said to be a valid sanction. He raised a doubt that when there was allegedly

communication on the mobile phone between the complainant and the accused why same was not recorded. By raising a doubt he submits that there is no demand of the amount. PW-2 has specifically stated that it is the complainant who offered the amount and thrusting the same on the accused. The presence of the anthracene powder on the fingers of the accused is only because of the fact that he was told by Mr. Pujalwar to take out the amount from the pocket. He submits that, the defence is corroborated by the map. He placed his reliance in support of this case on the following judgments :

(I) **Union of India Through Inspector, CBI Vs. Purnandu**

Biswas reported in **(2005) 12 SCC 576**. The learned advocate specifically relied upon paragraph Nos. 29, 30, 31 and 37 of the said judgment to show that the complainant developed a grudge against the accused and therefore there is possibility of false implication. In the present case, it is submitted that as the brother-in-law of the informant was arrested by the accused there was grudge in the mind of the informant.

(II) **P. Satyanarayana Murthy Vs. Dist. Inspector of Police**

reported in **2015 AIR SCW 5263** to submit that mere recovery of the amount by itself would not prove charge against the accused in absence of any other evidence and in absence of proof of

demand. It appears from the said case that the proof of demand is an indispensably essential. In absence of proof of demand the presumption under Section 20 does not arise.

(III) Last is the judgment in the case of C. M. Girish Babu Vs. CBI, Cochin, High Court of Kerala reported in (2009) 3 SCC 779 wherein it is held that the presumption under Section 20 can be rebutted by the accused through the cross-examination of the witnesses and by adducing reliable evidence.

12. The learned APP supported the judgment of the learned Additional Sessions Judge, Majalgaon. She submits that in this case there is clear evidence to show that to release the brother-in-law of the complainant the accused had made a demand of Rs. 5,000/- (Rs. Five Thousand only). PW-5 has clearly deposed that the accused had put two persons in Lock-up without making any entries in the register. This shows that the accused has gone out of the way and arrested the brother-in-law of the informant and his son without taking entry in the register. She submits that when a call was made from Majalgaon Rest House, there appears a clear demand by the accused. She submitted that the conversation is proved by brother of the informant also which is sufficient to prove the demand at the hands of the accused. When the conversation was heard as the mobile phone was put on speaker

mode, there is no requirement that such conversation must be recorded. She lastly submits that all the necessary facts are proved and as such presumption under Section 20 can rightly be invoked in this case as the amount is found in the pocket of the accused pursuant to the demand.

13. Heard the learned advocates for both the parties. It is the case under Corruption Act. The evidence needs to be looked into carefully. It is the case where PW-1 - the informant himself has turned as hostile. Considering his evidence, it is seen that though he supports the case of prosecution to large extent however, on the material point of demand of the amount by the accused he is not supporting the case of the prosecution. PW-2 panch witness in his deposition though has stated everything that supports the prosecution case, however, on the point of acceptance he deposed that it is the complainant who offered the amount on his own. Appellant on this point has rightly relied upon case of **P. Satyanarayana Murthy (Supra)**. Thus, assuming that earlier demand is proved, but it is required to be proved that there was a demand even at the time of alleged acceptance of the amount. This vital ingredient to prove an offence under Section 7 of the Act is lacking in this case. What is further material to see is that PW-4 and PW-5 who are related to the informant also do not wholeheartedly

support the case of prosecution. If their depositions are seen, it does not support the case of prosecution so far as demand by the accused is concerned. PW-5 brother-in-law of the complainant also though accompanied the informant and panch has not specifically stated anything about the demand at the time of trap.

14. On the point of sanction, the sanctioning authority has proved the sanction. He has stated that he had gone through the papers which were sent alongwith the proposal. He has gone through all the papers. In the cross-examination he states that no material in respect of Crime No. 140/2009 registered with Majalgaon Police Station was sent alongwith proposal. It was hardly necessary for him to go through the papers on that crime. What was required to be seen by him was the papers in respect of the present crime registered against the accused. There is no suggestion in the cross that the papers of the present case were not sent to the sanctioning authority. This Court, thus, holds that sanction was validly granted. It only needs to think is whether other ingredients of the offence are proved by the prosecution so as to hold the accused guilty of the offences for which he is prosecuted.

15. Since the point of sanction is not much debated, this Court holds that the prosecution has proved sanction.

16. Now what needs to be seen is that whether the complainant lodged the complaint without any enmity or grudge against the accused. In this case there is evidence which shows that brother-in-law and nephew of the complainant were arrested by the accused. Thus, the complainant had a grudge to implicate or to file a complaint against the accused. So far as the material aspect that needs to be seen in the matter i.e. whether there was a demand by the accused of the bribe amount at the time of trap. Considering the evidence of complainant and the panch witnesses, it is seen that there is no demand by the accused. The complainant in his evidence had stated that who himself has turned hostile. He has said in the cross-examination by the Public Prosecutor that he has compromised with the accused. However, unfortunate it may be that the complainant compromised with the accused. It was for the prosecution to take proper care to see that it does not happen and once happened to take proper action against this witness. The prosecution is therefore, left with no option but to prove the case on the basis of other evidence and the deposition of other witness. From the cross-examination of this witness and therefore it is now necessary to see the depositions of other witnesses.

17. So, thus, we need to see the evidence of PW-2. In his evidence, this witness states that after going to police station this witness

alongwith the complainant went to police station. They went in a room where the accused were found sitting on the cot. He clearly stated that the complainant took out the cash amount of Rs. 5000/- and offered the said amount to the accused. It is thereafter the accused accepted the amount with his left hand and then by his right hand kept the amount in the right side backside of his pocket thereafter raiding party caught hold both the hands. Thus, material point i.e. demand is absent in this case. In the chief this witness further stated that when the accused was asked about the amount of Rs. 6000/- found in his pocket the accused told that it was an amount of his salary which he had kept for purchasing grocery items. Thereafter the bribe amount of Rs. 5000/- was also seized. From the cross what appears is that he admitted the omissions in the panchanama. In the panchanama the vital part that the accused asked the complainant whether he has brought amount is not mentioned. It clearly affects the case of the prosecution. He submitted that looking to the evidence it is clearly seen that evidence does not inspire confidence about spot of incident. From the deposition of PW-3 it is seen that this accused had kept two persons in the lockup and defence of the accused that because of this fact the complainant developed grudge against the accused certainly raises a doubt about intention of the complainant to falsely implicate the accused. From his evidence also certain omissions are taken on

record. He also accepted that the Investigating Officer did not record his statement till 12.10.2009 that is after sufficient long gap after the incident. PW-4 happens to be a nephew of the complainant. In his cross the Investigating Officer did not record the statement.

18. PW-5 is brother of the complainant as he has not a witness of the alleged demand and acceptance of the amount. His evidence is not consistent about his meeting the complainant on 29.08.2009 and also that he was called to rest-house from where telephone call was made. Thus, his evidence is also of no help to the prosecution.

19. Considering the all above evidence it is clearly seen that the prosecution has failed to bring on record the sufficient evidence to connect the accused with the alleged incident. The prosecution has also failed to establish the guilt of the accused with sufficient evidence. It is trite that the prosecution has to prove the guilt of the accused beyond the reasonable doubt. In this case not only there is a doubt about the prosecution story, but also the prosecution has also not proved the fact of voluntary demand of the amount by the accused. Earlier demand made on the phone call is not proved by the prosecution. So it clearly makes out a case that there was no demand about the amount. So, therefore, merely acceptance without demand cannot be said to be sufficient to prove the guilt of the accused. Hence, this court has come

to a conclusion that the case is clearly made out for acquittal of the accused. Hence the following order:

ORDER

- (i) The appeal stands allowed.
- (ii) The accused is acquitted of the offences punishable under Sections 7, 13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act.
- (iii) The judgment and order dated 27.12.2012 passed by the learned Additional Sessions Judge, Majalgaon in Special (ACB) Case No. 01/2010 is quashed and set aside.
- (iv) The fine amount be refunded to the appellant, if any.
- (v) The appellant to comply with Section 437-A of the Code of Criminal Procedure and furnish P.R. bond and solvent surety in the sum of Rs. 15,000/- (Rs. Fifteen Thousand only) till the appeal period is over.

(KISHORE C. SANT, J.)

PS.B.