

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

CRIMINAL APPEAL NO.9 OF 2005

Shrikrishna Vinayak Wadinkar
age 43 years, Occ. Service,
R/o Police Head Quarter, Ahmednagar
Tq. & Dist. Ahmednagar

... APPELLANT

VERSUS

The State of Maharashtra
(copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)

... RESPONDENT

.....
Shri V.R. Dhorde, Advocate for appellant
Shri R.B. Bagul A.P.P. for respondent

.....

WITH

CRIMINAL APPEAL NO.48 OF 2005

Balu Fulaji Sable,
Age 41 years, Occu. Service,
R/o Police Head Quarter, Ahmednagar
Tq. & Dist. Ahmednagar

... APPELLANT

VERSUS

The State of Maharashtra
(copy to be served on
Public Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)

... RESPONDENT

.....
Shri S.S. Wagh, Advocate for appellant
Shri R.B. Bagul, A.P.P. for respondent

.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 5th January, 2022

Date of pronouncing judgment : 2nd May, 2022

J U D G M E N T :

Both these appeals are being decided by this common judgment since the challenge therein is to one and the same judgment of conviction and order of sentence, dated 23/12/2004, passed by Judge, Special Court, Ahmednagar in Special Case No.7/1999. The appellants herein have been convicted for the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (P.C. Act for short) and, therefore, sentenced to suffer rigorous imprisonment for two years on both counts and to pay fine of Rs.500/- and Rs.1000/- respectively, with in default sentence of simple imprisonment for two months and three months respectively.

2. Facts giving rise to the present appeals are as follows :-

P.W.1 Sharad Gaikwad (complainant) was resident of Ahmednagar. He was President of Republican Party of India

(R.P.I.), Ahmednagar. There was a quarrel between one Sunil Bansode and his relatives on one hand and Dinesh Padale and his two brothers on the other. Padale brothers would reside in the neighbourhood of the complainant. Although the complainant was serving as a Security Guard, he would do social work as well. Sunil Bansode had lodged a complaint at Topkhana Police Station against Padale brothers. Dinesh Padale had, therefore, been to the residence of the complainant late in the evening on 19/1/1999 with a request to intervene in the matter. On the complainant's request, Padale brothers came to his residence the following morning. The complainant was informed that the police were in search for Padale brothers and he (complainant) should, therefore approach Mangal Gate Police Chowki to act as a go between. The complainant, therefore, went to Mangal Gate Police Chowki by 10.45 a.m. on 21/1/1999. One Shashikant Kamble, an R.P.I. Member had accompanied the complainant. Both the appellants Wadinkar and Sable, Head Constable and Writer Constable respectively were present at the Police Chowki. The complainant requested them not to arrest Padale brothers. He tried to convince them that they were good persons with no antecedents. Thereupon, the appellant Wadinkar told the informant that he would not arrest Padale

brothers provided he pays Rs.1500/-. The complainant informed the appellant Wadinkar their (Padale's) inability to pay the money. The appellant Sable intervened to say that he would have to cough up Rs.1500/- to them. On the complainant's request, appellant Wadinkar asked the complainant to first pay Rs.1000/- and balance of Rs.500/- to be paid on release of Padale on bail. Since the complainant did not have money with him that time, the appellant Wadinkar, therefore, asked him to come on the next day with money and arrange for bail. He also told that he will have to change date on the file of the Chapter case. Appellant Wadinkar also asked him to secure presence of Padale brothers for their nominal arrest.

3. Since the complainant did not want to pay bribe, he approached the Anti-Corruption Bureau (ACB), Ahmednagar on 21/1/1999 itself. He lodged the complaint (Exh.22). Deputy Superintendent of Police (Dy.S.P.) Shri Khaire recorded the same. He desired to lay a trap, asked the complainant to come to ACB on the following day by 7.30 a.m. The complainant accordingly went to ACB. Two persons by name Sunil Rokade (P.W.2) and Balu Gaikwad were present to act as panch witnesses. Dy. S.P. Khaire gave all the

concerned requisite instructions. It was specifically instructed not to pay bribe money unless a demand was made. The pre-trap panchanama (Exh.32) was drawn. Accordingly, the complainant along with shadow witness Sunil Rokade (P.W.2) went to Mangal Gate Police Chowki. Both the appellants were present. The anthracine power was applied to the currency notes to be paid as bribe. The complainant greeted appellant Wadinkar with folded hands. Wadinkar in turn asked him to give him Rs.1000/- as agreed and produce Padale brothers to nominally arrest them. The complainant, in response, to the demand made by appellant Wadinkar, paid him Rs.1000/-. Appellant Wadinkar retained Rs.200/- with him and handed over balance 800/- rupees to appellant Sable. In response to a pre-determined signal, the raiding party arrived. The bribe money came to be seized from both the appellants. The trap panchanama (Exh.33) was drawn. Post trap panchanama was also thereafter drawn. Dy.S.P. Khaire lodged First Information Report (F.I.R.). All the papers of investigation were submitted to the Superintendent of Police (S.P.), Ahmednagar for obtaining sanction for prosecution of the appellants.

4. P.W.5 Himmanshu Roy (S.P.), in turn, granted sanction (Exh.42) for prosecution of the appellants. The

charge sheet, therefore, came to be filed against both the appellants.

5. The trial Court framed the charge (Exh.11). The appellants pleaded not guilty. Their defence was of false implication. It is the case of appellant Wadinkar that he has received the money for being handed over to appellant Sable. It is also his case that one Dr. Ashok Kamble is nephew of Shashikant Kamble. Dr. Ashok Kamble had lodged complaint against one Nandkumar Bhosale and his family members. That matter was investigated by appellant Wadinkar. Shashikant Kamble wanted appellant Wadinkar to arrest Bhosales. Appellant Wadinkar, however, did not ask for police custody remand of Bhosales. Since then, Shashikant Kamble was not happy with the work of the appellant Wadinkar. At his instance, therefore, a false trap has been laid. Whereas it was the defence of appellant Sable that he did not make any demand of bribe nor was he any way concerned with the matter of chapter case. On 19th, it was a day of Eid. Both the appellants were given round the clock duty at fixed points. As such, both of them were not present at Mangal Gate Police Chowki.

6. The prosecution examined 5 witnesses and

produced in evidence certain documents to bring home the charge. On appreciation of the evidence in the case, the trial Court convicted and sentenced the appellants as stated above.

7. Heard learned counsel representing the respective appellants. Also heard learned A.P.P.

It was submitted by learned counsel appearing for the appellant Wadinkar that, when complaint was lodged at Topkhana Police Station, the complainant had no reason to meet the appellant at Mangal Gate Police Chowki. On the given day, both the appellants were assigned round the clock duty to different fixed points on account of it being Eid on that day. Shashikant Kamble was instrumental in all the happenings. Appellant Wadinkar did not have authority to initiate chapter proceedings. Some omissions appearing in the complaint have also been brought to the notice of this Court. Padale brothers were no way in the picture. The bribe money was made available by the complainant himself. This indicates his personal interest in the matter to ensure the appellants to be falsely trapped. The initial demand has not been verified. Had the appellant Wadinkar made a demand of bribe, he would have retained with him the entire amount.

Only small part of 200 rupees out of the bribe money of Rs.1000/- was retained by him with the consent of appellant Sable. On the question of sanction for prosecution accorded by S.P., Ahmednagar, he would submit, the investigating officer had forwarded the S.P. a draft of the sanction. The sanction accorded by the S.P. is a replica of the draft sanction provided to him by the A.C.B. In support of his contentions, the learned counsel has relied on the judgment of this Court in case of **Dilip s/o Gangadhar Sonar Vs. State of Maharashtra [2021 All M.C.R. (Cri) 3930]**. He ultimately urged for allowing the appeal.

8. Shri Wagh, learned counsel for the appellant Sable would submit that, appellant Sable was a very junior police constable. He did not have any role in the matter nor had he made any demand of money. The initial demand had not been verified. Appellant Sable also did not make any demand on the day of trap. According to learned counsel, the mere recovery of tainted money from the possession of appellant Sable without there being any evidence of having been received the same pursuant to his demand or knowing it to be a bribe money, no offence under the P.C. Act could be said to have been committed by appellant Sable. This appellant was

not in the know of the transaction between the other appellant and the complainant. He, therefore, even could not be held to have abetted the commission of the crime. According to the learned counsel, the charge was also defective. Sanction for prosecution was not accorded on application of mind. He also adopted the submissions made by the learned counsel for appellant Wadinkar, which are relevant to his (Sable's) case. In support of his submissions, the learned counsel has relied on following authorities :

- (1) N. Sunkanna Vs. State of Andhra Pradesh
2015 AIR SCW 6764
- (2) M.R. Purushotham Vs. State of Karnataka
2014 AIR SCW 5740
- (3) Malan w/o Rama & ors. Vs. State of Bombay & anr.
1960 CRI.L.J. 1189
- (4) Shri Madan M. Behi & anr. Vs. National Small Scale
Industries Corporation [1971 CRI.L.J. 1378]

9. The learned A.P.P. would, on the other hand, submit that, the trial Court has passed a well reasoned order. Although a draft sanction was supplied, the sanctioning authority, an I.P.S. Officer, testified on oath to have had accorded sanction after having gone through all the police papers. Application of mind for according sanction is evident from the sanction order itself. According to learned A.P.P., no

prejudice is shown to have been caused to any of the appellants. He relied on the judgment in the case of **State of Haryana Vs. V.K. Sehgal [AIR 1999 SC 3706]**.

10. Considered the submissions advanced. Perused the evidence and citations relied on.

Let us appreciate the evidence in the case. Dy.S.P. Khaire could not be examined as a witness as he had passed away before the trial commenced. The complainant gave his evidence very much consistent with the complaint (Exh.22). It is in his evidence that he is resident of Ahmednagar. He was President of Republican Party of India (R.P.I.), Ahmednagar. There was a quarrel between one Sunil Bansode and his relatives on one hand and Dinesh Padale and his two brothers on the other. Padale brothers would reside in the neighbourhood of the complainant. Although the complainant was serving as a Security Guard, he would do social work as well. Sunil Bansode had lodged a complaint at Topkhana Police Station against Padale brothers. Dinesh Padale had, therefore, been to the resident of the complainant late in the evening on 19/1/1999 with a request to intervene in the matter. On the complainant's request, Padale brothers came to his residence the following morning. The

complainant was informed that the police were in search for Padale brothers and he (complainant) should, therefore approach Mangal Gate Police Chowki to act as a go between. The complainant, therefore, went to Mangal Gate Police Chowki by 10.45 a.m. on 21/1/1999. One Shashikant Kamble, an R.P.I. Member had accompanied the complainant. Both the appellants Wadinkar and Sable, Head Constable and Writer Constable were present at the Police Chowki. The complainant requested them not to arrest Padale brothers. He tried to convince them that they were good persons with no antecedents. Thereupon, the appellant Wadinkar told the informant that he would not arrest Padale brothers provided he pays Rs.1500/-. The complainant informed the appellant Wadinkar their (Padale's) inability to pay the money. The appellant Sable intervened to say that he would have to cough up Rs.1500/- to them. On the complainant's request, appellant Wadinkar asked the complainant to first pay Rs.1000/- and balance of Rs.500/- to be paid on release of Padale on bail. Since the complainant did not have money with him that time, the appellant Wadinkar, therefore, asked him to come on the next day with money and arrange for bail. He also told that he will have to change date on the file of the Chapter case. Appellant Wadinkar also asked him to secure

presence of Padale brothers for their nominal arrest. Since the complainant did not want to pay bribe, he approached the Anti-Corruption Bureau (ACB), Ahmednagar on 21/1/1999 itself. He lodged the complaint (Exh.22).

11. It is further in his evidence that, as planned on 22nd January, P.W.2 Sunil (shadow witness) went to Mangal Gate Police Chowki. Both the appellants were present. He greeted appellant Wadinkar with folded hands. It was about 10.00 in the morning. The appellant Wadinkar asked him to give Rs.1000/- as agreed earlier and produce Padale brothers. He also told the complainant that Padale brothers would be arrested nominally. He would file chapter case. He again asked him as to whether he had brought money. In response thereto, the complainant took out the bribe money from his shirt pocket and gave it to the appellant Wadinkar. Appellant Wadinkar retained with him Rs.200/- and paid balance 800 rupees to appellant Sable, who counted the notes and kept in his shirt pocket. The complainant then came out of the Police Chowki and gave a pre-determined signal. The raiding party arrived. The bribe money came to be recovered from both the appellants (Rs.200/- and Rs.800/- respectively).

12. In cross-examination of the complainant, it has

come on record that :

“The talk between me and accused No.2 about the demand and acceptance of bribe amount took place on 21/1/99 at Mangalgate Police Chowki. Accused No.2 has at that time made demand of bribe amount for himself. Accused No.2 has directly demanded the amount of Rs.1000/- to me. Accused No.2 said to me that if the amount of Rs.1000/- is paid to him he will send a nominal chapter case. I have stated so at the time of lodging the complaint. I can not say why it is not mentioned in my complaint that constable Sabale accused No.2 said to me that if I pay Rs.1000/- to him, he will send a nominal chapter case. The contents in the last para of the complaint that on 22/1/99, I was going to Mangalgate Police Chowki to pay the amount of Rs.1000/- to Police Head Constable Wadinkar as per his demand, are correct.”

13. It has also come in the evidence of the complainant that, Shashikant Kamble was a senior party leader. He would take his advice in party work. Dr. Ashish Kamble is nephew of Shashikant Kamble. Dr. Kamble had lodged F.I.R. against Nandkumar Bhosale and his brothers in November 1998. The complainant, however, expressed ignorance whether the appellant Wadinkar had investigated the said crime and did not ask for police custody remand of Bhosale brothers. He, however, admitted that, Shashikant Kamble has strained relations with appellant Wadinkar since

then. It is also in his evidence that, before approaching the A.C.B., he had discussed with Shashikant Kamble over the present matter.

14. P.W.2 Sunil (shadow witness) was Junior Clerk with District Industries Centre. It is in his evidence that on 21/1/1999, he along with his colleague Balu Gaikwad were called to A.C.B., Ahmednagar. Dy.S.P. Khaire was present. Both of them agreed to act as panch witnesses. They were asked to come again by 7.30 a.m. next day. Both of them accordingly attended the A.C.B. Office. The complainant was present there. Dy.S.P. Khaire introduced the complainant to both the panchas. The complaint lodged by the complainant was read over to them. Both of them signed the same. It is further in his evidence that a pre-trap panchanama was drawn. Dy.S.P. Khaire gave necessary instructions to all of them. Thereafter they set out for a trap. It is further in his evidence that he had accompanied the complainant to the Mangal Gate Police Chowki. Both the appellants were present. The complainant greeted appellant Wadinkar. Appellant Wadinkar enquired with him that they were supposed to come the previous day. He then asked the complainant whether he had brought the money. The complainant thereupon told him

to have brought the amount. The appellant Wadinkar then asked him to pay him the money and come after one and a half hour. Till then, he would change the date on the chapter case paper. The complainant then held the bribe money before appellant Wadinkar. He (Wadinkar) received the same, retained Rs.200/- with him and paid remaining amount to appellant Sable. Appellant Sable counted those notes and kept in his shirt pocket. Appellant Wadinkar then asked them to go and come with Padale brothers, by that time he would prepare the papers. Both of them, therefore, came out of the Police Chowk. A pre-determined signal was immediately given. The raiding party arrived. The bribe money came to be seized from both the appellants under the trap panchanama (Exh.33).

15. I do not propose to refer to the further evidence since it is not in dispute that the amount recovered from both the appellants tallied with the description of the bribe money appearing in the pre-trap panchanama. It is also not in dispute that hands of both the appellants and the bribe money were tested in ultra violet light to find greenish sign thereon.

16. True, both the complainant and the shadow witness were subjected to a searching cross-examination. It

has come on record that, on the day of trap, appellant Sable did not make any demand of bribe money. It, however, appears that during the cross-examination, both the appellants put up blame on each other. It was suggested on behalf of appellant Wadinkar that he has received the amount for being paid to appellant Sable. While it is the case of appellant Sable that on receipt of the entire bribe money by appellant Wadinkar, he asked him to give hand loan of Rs.800/- and appellant Wadinkar paid him that much amount. While it is the case of appellant Wadinkar that the complainant paid him Rs.1000/- for being paid to appellant Sable. It was also suggested that, appellant Wadinkar was in need of Rs.200/- and, therefore, with the consent of appellant Sable, he retained with him Rs.200/- and paid Rs.800/- to appellant Sable. While it was suggested on behalf of appellant Sable that he received Rs.800/- from appellant Wadinkar that amount was due from him.

17. It is true that, Padale brothers were not in the picture. There is, however, nothing unusual therein as they were apprehensive of arrest. The complainant and one of Padale brothers were friends and members of RPI. The complainant being President of RPI and a social worker, took

interest in the matter on the request of Padale brothers, cannot be said to be unusual. In the complaint (Exh.22) itself it has been narrated by the complainant that Shashikant Kamble had accompanied him to Mangal Gate Police Chowki on 21/1/1999. The same suggests that the complainant did not hide anything in that regard. He had categorically admitted to have had discussed the matter with Shashikant Kamble before approaching the A.C.B. True, Shashikant Kamble had a grudge against the appellant Wadinkar. There is, however, nothing to suggest that the trap was laid at his instance. Admittedly, Sunil Bansode had lodged a report at Topkhana Police Station against Padale brothers. Mangal Gate Police Chowki comes under Topkhana Police Station. When the appellant Wadinkar was overpowered soon after receipt of bribe money, his bag was taken charge of. The chapter case papers were found therein. When the tainted money was seized from both the appellants, they got confused and did not offer any reasonable or true explanation. Both of them put a blame on each other. True, the first demand has not been verified. Demand verification is not a condition precedent in each and every case. Here, the evidence of the complainant is found to have a ring of truth. When he had been to Mangal Gate Police Chowki on 19th January itself, the

appellant Wadinkar had made a demand of illegal gratification. It was a demand for Rs.1500/-. When the complainant expressed inability to pay that much amount, the appellant Sable intervened to say that, in no case the amount of Rs.1500/- could be scaled down. It was at Mangal Gate Police Chowki appellant Sable was a writer constable. His position as a writer itself indicates that he was concerned with the complaint lodged against Padale brothers although his detailed role in the matter has not surfaced. The complainant gave the graphic details in that complaint (Exh.22) of all the happenings at Mangal Gate Police Chowki on 19/1/1999. Nothing has been brought to the notice of this Court to suggest the complainant to have any reason to grind an axe against appellant Sable. The complainant's evidence before the Court was reinforced by the averments in his complainant (Exh.22) that appellant Sable too joined with the appellant Wadinkar in demanding illegal gratification. It is true that, on receipt of a sum of Rs.1000/-, appellant Wadinkar retained with him only Rs.200/- and paid balance amount of 800 rupees to appellant Sable. The explanation offered by both of them in this regard is grossly inconsistent with each other and even unpalatable. The fact remains that, both the appellants had made a demand of bribe and shared the same. It is best

known to the appellants themselves as to why the amount was not equally shared. Since the tainted money was found in possession of both the appellants, presumption under Section 20 of the P.C. Act comes into play. It is a statutory presumption. No doubt it can be rebutted on preponderance of probabilities. Nothing of that sort has, however, been let in in rebuttal of the presumption. There can be no two views over what has been submitted by learned counsel Shri Wagh relying on the authorities referred to hereinabove. Each case has its peculiar facts and circumstances. The evidence in the case undoubtedly indicates that, at the instance of one Bansode, a report was lodged at the police station against Padale brothers. Although both the appellants were assigned the fixed duty point on 19th January, there is nothing unusual for them to be present at Mangal Gate Police Chowki. In fact no evidence has been let in to show that both of them were present at their fixed assigned point for bandhobast. Non-examination of Shashikant Kamble is not prejudicial to the case of the appellants. Since the complainant himself has admitted presence of Shashikant Kamble with him at Mangal Gate Police Chowki on 19th, the same has also been reflected in the complaint. P.W.2 is an independent witness. His evidence reinforces the case of the prosecution that the

appellant Wadinkar had made a demand of Rs.1000/- and received the same in his presence. As such, the demand and acceptance of bribe by both the appellants was duly proved. This Court has no reason to take a different view.

18. On the question of sanction for prosecution of the appellants are concerned, it is to be stated that, competence for the sanctioning authority to accord sanction is undisputed. P.W.5 Himanshu Roy, an I.P.S. Officer was the S.P., Ahmednagar at the relevant time. He testified on oath to have had received all the police papers. He further testified to have had gone through all the police papers and then accorded sanction for prosecution (Exh.42). Perusal of the sanction order does indicate the sanctioning authority to have applied his mind. Only at one place a figure 1500/- is appearing instead of 1000/-. The same could also be explained since the demand was for Rs.1500/-. Rs.1000/- was paid as part thereof and the balance was to be paid on release of Padale brothers on bail. It is true that, draft sanction was supplied along with police papers. The investigating officer could not be examined as he is no more. Granting of sanction for prosecution is not a routine work. In almost all the cases under the P.C. Act, wherever sanction is

required for prosecution, the investigating officer forwards a draft of sanction along with all the police papers. It does not mean that the sanctioning authority signs on dotted line. It would depend on facts and circumstances of each case. In the case in hand, although the sanction accorded by P.W.5 Himanshu Roy corresponds with the draft sanction supplied by the investigating officer, a responsible officer i.e. P.W.5 Himanshu Roy has testified on oath to have had perused all the police papers and then accorded sanction. The sanction order reflects application of mind. There is nothing to indicate the appellants to have been prejudiced.

19. In case of V.K. Sehgal (supra), the Apex Court observed :-

“A Court of appeal or revision is debarred from reversing a finding (or even an order of conviction and sentence) on account of any error or irregularity in the sanction for the prosecution, unless failure of justice had been occasioned on account of such error or irregularity. For determining whether want of valid sanction had in fact occasioned failure of justice the aforesaid sub-section (2) enjoins on the Court a duty to consider whether the accused had raised any objection on that score at the trial stage. Even if he had raised any such objection at the early stage, it is hardly sufficient to conclude that there was failure of justice. It has to be determined on the facts of each case. But an accused who did not raise it at the trial stage cannot possibly sustain such a

plea made for the first time in the appellate Court. In *Kalp Nath Rai V. State through CBI* (1997) 8 SCC 732 : (1997 AIR SCW 4166 : AIR 1998 SC 201 : 1998 Cri.LJ 369), this Court has observed in paragraph 29 thus :

Sub-section (2) of S.465 of the Code is not a carte blanche for rendering all trials vitiated on the ground of the irregularity of sanction if objection thereto was raised at the first instance itself. The sub-section only says that 'the Court shall have regard to the fact' that objection has been raised at the earlier stage in the proceedings. It is only one of the considerations to be weighed but it does not mean that if objection was raised at the earlier stage, for that very reason the irregularity in sanction would spoil the prosecution and transmute the proceedings into a void trial."

20. In view of the aforesaid observations of the Apex Court, the reliance on the judgment of this Court in case of *Dilip Sonar* (supra) is of no consequence.

21. On appreciation of the entire evidence in the case, this Court is at one with the impugned judgment and order. This Court has, therefore, no reason to interfere therewith. The appeals, therefore, fail. Hence the order :-

ORDER

(i) Both the Criminal Appeals are dismissed.

(ii) Both the appellants shall surrender to their bail bonds and submit themselves within a period of 15 days to undergo the sentence.

**(R. G. AVACHAT)
JUDGE**

At this stage, learned counsel Mr. V.R. Dhorde prays for granting two months time for the appellants to surrender. Two months time is granted to the appellants to surrender to their bail bonds.

**(R. G. AVACHAT)
JUDGE**

fmp/-