

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Appeal No. 128 / 2005

Rajendra S/o Suryakant Kapile,
Age 40 years, Occu. Service,
R/o. Plot No.24, Behind Ayyappa Mandir,
Sai Nagar, Beed Bie-Pass Road,
Aurangabad.

...Appellant

Versus

The State of Maharashtra,
Copy to be served on Public Prosecutor
High Court of Judicature at Bombay,
Bench at Aurangabad.

...Respondent

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Mr. V. D. Sapkal, Senior Advocate i/by Mr. S. R. Sapkal, Advocate for
the Appellant

Mr. S. W. Mundhe, APP for Respondent/State

- - -

CORAM : KISHORE C. SANT, J.

RESERVED ON : 17th OCTOBER, 2022.

PRONOUNCED ON : 15th DECEMBER, 2022.

JUDGMENT :

1. This appeal is against the judgment and order dated 22.02.2005 passed by the learned Special Judge, Aurangabad in Special Case No.23/2001, whereby the present appellant/accused is held guilty for the offence punishable under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (P.C. Act for short). He is sentenced to suffer Rigorous Imprisonment (R.I.) for six months and to pay fine of Rs.600/- in default to suffer Simple Imprisonment (S.I.) for fifteen days for the offence under Section 7 of P.C. Act. He is further sentenced to suffer Rigorous Imprisonment (R.I.) for one year and to pay fine of Rs.600/- in default to suffer Simple Imprisonment (S.I.) for fifteen days for the offence under Section 13(1)(d) read with 13(2) of P.C. Act. Both the substantive sentences are directed to run concurrently.

2. The story of the prosecution in short is as below:

The present appellant/accused was working as a Senior Clerk in the office of Sub-Regional Provident Fund, CIDCO, Aurangabad. The Complainant namely Dharamchand Meher wanted advance of Rs.40,000/- from his Provident Fund account and for that purpose,

he met the appellant on 18.06.2001. It is alleged that this appellant demanded Rs.1500/- for doing the work of getting the advance sanctioned. The Complainant therefore approached the office of ACB, Aurangabad and lodged a complaint. On receipt of the complaint, ACB decided to lay a trap on the same day. It is alleged that the trap was successful and appellant was found having accepted amount of bribe. The prosecution is launched after investigating and obtaining a sanction.

3. The defence of the appellant is that he had no concern with the work of the Complainant. He did not demand any amount towards bribe. At the time of alleged incident, the Complainant thrust something in the pocket of appellant, when the appellant took out the said thing from the pocket of his pant, he found that it was money and thus his fingers came in contact with anthracene powder.

4. The prosecution in its support examined four witnesses. The first witness is Complainant namely Dharamchand Phulchand Meher. In his deposition, he stated that he was serving as a clerk

in agricultural department in the office of Badnapur Section of Ramnagar Sahakari Sakhar Karkhana, Jalna. From his salary, every month amount is credited to his Public Provident Fund (PPF) Account bearing No.MH 36194167. He required a loan/advance from G.P.F. for construction of a house and therefore he made an application in form no.31 on 31.05.2001 for advance Rs.40,000/- and gave it to the appellant. He stated that it is for this work, the appellant demanded an amount of Rs.1500/-. The Complainant met the appellant again on 18.06.2001 on that day again there was a demand of bribe, this witness lodged a report with Shri. Thorat, P.I., ACB, Aurangabad against the appellant. On lodging of the complaint, ACB decided to lay a trap by following usual procedure. Panchas were called, procedure was explained to them and a trap was arranged. At 03:55 pm., Complainant with one of the panchas entered the office, where appellant was sitting in his chair. Complainant shown him form no. 31 and requested him to grant advance at the earliest. The appellant thereupon asked as to whether the Complainant has brought money? Complainant said 'yes' and told that he has brought only Rs.1200/-. Appellant told Complainant to stay out of the office and he would come there.

Complainant with panch came out of the office and stood near one tea stall. After sometime, appellant came out of the office. Appellant, Complainant and panch had a tea at a tea stall. Complainant paid the bill for tea and requested appellant to attend his work and collect Rs.1200/-. From there, appellant went towards north side and while going towards one corner, this witness/Complainant took out the tainted notes and held the same before the appellant. It is stated that the appellant collected notes with his left hand and kept it in the pocket of his pant. Complainant transmitted the agreed signal upon which the raiding party came there and caught hold of the appellant. Complainant was directed to stay off. After sometime, he was called and his hands were examined under ultra violet lamp and fingers of his right hand reflected blue shining. This witness proved a complaint lodged with the ACB.

5. In the cross-examination, this witness accepted that the application form no. 31 was not given to the appellant till he was caught hold. Appellant was not having power to grant the advance. He stated that he had gone to the office of appellant for about 6 to

7 times. He had asked for such advance for the first time. He had sought the information as how the application is to be submitted in inward section. The appellant was not working in inward outward section. In 2001 itself, he was owning a house at Badnapur and the appellant had enquired with this witness, the purpose of advance. He had told the appellant that he required advance for agricultural expenses and appellant had told him that if Complainant takes advance on a false pretext, P.F. office would take an action against him. A suggestion was given that because of this reason, a false complaint was lodged by the Complainant, which naturally, is denied. He further stated that after fifteen days of his report, he got the loan of Rs.40,000/-. He accepted that few other clerks were sitting in the office of appellant on the date of trap and appellant was accompanied by one or two persons while coming out of the office upto the tea stall. It was appellant, who got up from the tea stall and started going towards north side, then Complainant followed him. Two members of Squad also accompanied them.

6. The second witness is Haribhau Pundlik Pawar (PW-2), who

acted as a panch. He was working as a Junior Clerk in Municipal Corporation, Aurangabad. In his evidence, he stated that on 18.06.2001, P.I., ACB, Aurangabad requested him to act as a panch. In the office, he was introduced to the Complainant, he was apprised of a complaint. This panch was directed to accompany the Complainant and to see the appellant and keep a watch on their activity. He proved pre-trap panchnama. About the actual incident, he stated that he went with Complainant in the office of appellant. Complainant produced form no. 31 before the appellant and told him to grant advance. The appellant thereafter asked Complainant, as to whether he has brought Rs.1500/-? Upon which, Complainant told him that he has brought only Rs.1200/-. Then, appellant told him to stay out of the office. Complainant and this panch came out of the office and stayed at a tea stall. After sometime, appellant came out of the office and joined them. Thereafter they went to the another Canteen. The charges of tea were paid by this panch. Complainant told the appellant that he has brought Rs.1200/-, but appellant told him to give Rs.1500/-. Complainant told appellant to attend his work soon. Upon which, appellant said 'okay'. This panch with Complainant came back

towards the office. While coming back to the office, the Complainant took out the tainted notes and held those before the appellant. The appellant collected those notes and kept in the left side pocket of his pant. On accepting money, Complainant gave a signal to raiding party, which came there and caught hold the appellant. Mr. Thorat, P.I., ACB told the Complainant to stay out of the office. Thereafter the fingers of both the hands of appellant and notes were tested under ultra violet lamp after putting off the lights in the office. Fingers of both the hands and notes reflected blue shining.

7. In the cross-examination, this witness told that when they entered the office, appellant was found busy in his work. Complainant talked with the appellant. Appellant asked him what was his work and why he has come again. On which, Complainant told that he has to submit the application for advance. Complainant produced form no. 31 before the appellant, who told him to submit the same in inward section. This witness with Complainant came out of the office and stayed at tea stall. Thereafter, appellant came with 2/3 colleagues and they all went at

tea stall. After having a tea, this panch followed the Complainant. He had seen the Complainant transmitting the signal to a raiding party.

8. The third witness is Investigating Officer, namely Rameshwar Thorat (PW-3). He was serving as Police Inspector in A.C.B. Aurangabad. Pursuant to receipt of the complaint, he called two panchas for laying a trap. He explained them about the procedure of trap. He proved pre-trap and post-trap panchnama. He stated as to how examination was conducted under ultra violet lamp etc. He stated that he has not come across any application for advance. He had instructed Complainant to submit form no. 31 in inward-outward section. After that, Complainant told him that appellant did not accept his form no.31 and told him to submit it in inward section. He did not find it necessary to resort to a verification process. Complainant never had told this witness that appellant had called him with money on any specific date. This witness further stated that the office of appellant comes under Central Government and he had no idea as the appellant being a Central Government Employee, the powers of trap lies with C.B.I.

9. The last witness is the sanctioning authority (PW-4), namely Mr. Amrendra Nath Ray, who was working as Regional Provident Fund Commissioner (I) in the State of Maharashtra. He stated that he has powers to appoint a person as Upper Division Clerk and also to remove such person. He further stated that he studied the papers and by applying his mind he found that it was a fit case to prosecute the appellant. In the cross-examination, he stated that the Assistant Commissioner in Sub Regional Office at Aurangabad was competent to grant advance. He stated that his mother tongue is Bangali and he was not well versed with Marathi language. About form Exhibit-15, he was asked as to whether it was forwarded with the papers of investigation to him? He answered that he does not remember as to whether application filed by the Complainant was also sent with the papers. He accepted that he did not verify the balance in the G.P.F. account of the Complainant. He proved the sanction order.

10. On going through the evidence, Mr. Sapkal, learned Senior Counsel submitted that the entire things have taken place on 18.06.2001 itself. The charge is also in respect of the things that

happened on 18.06.2001. Though, PW-1 stated that the first demand was on 31.05.2001, however there was no report made by him till 18.06.2001. The application form filled up by the Complainant bears a date as 02.06.2001, which is not referred in the entire evidence of PW-1. From the evidence of PW-2, specifically from the cross he points out that on the date of trap there was a conversation and the appellant had asked the Complainant, as to why he has come again? He submits that this clearly shows that there was no reason for the Complainant to go again to the appellant or at-least the appellant was not expecting Complainant there. There is nothing on record that sufficient amount was there in the account of the Complainant so as to apply for advance. From the evidence of PW-4, it is clear that he has not applied his mind before granting sanction. The sanctioning authority was not knowing Marathi and the documents were in Marathi. It was necessary for the prosecution to show that the authority understood the contents of the documents produced before it. He submits that no case is made out to prove the guilt of the appellant. He relied upon the judgment in the case of **C.B.I. Vs. Ashok Kumar Aggarwal**, 2014 Cr.L.J. 930, to show that it was

necessary for the prosecution to prove that sanction was validly granted. Paragraph No.8 of the said judgment is reproduced below.

8. In view of the above, the legal propositions can be summarised as under:
- (a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/ document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.
 - (b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.
 - (c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.
 - (d) The order of sanction should make it evident that the authority had been aware of all

relevant facts/materials and had applied its mind to all the relevant material.

- (e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

11. Learned APP submits that there is evidence on record to prove the guilt of the appellant. PW-1 has clearly stated about the demand and the reason for demand of amount. It has come in the evidence of Complainant that the appellant accepted the amount and kept the said amount in pocket and the same is corroborated by the evidence of panch witness. The contradiction is very minor. He submits that left side pocket of the pant of appellant shown blue shining which proves that the amount was accepted and kept by the appellant in his pant. From the evidence of PW-3, it is clear that he has followed the entire procedure and he has made the trap successful. The notes were found with anthracene powder. He submits that PW-4 has rightly accorded the sanction. By reading of the order, it is clear that the sanctioning authority has applied its

mind. So far as the submission of the appellant that a case being in respect of State investigating authority had no power to investigate an offence, learned APP by relying upon the judgment reported in 1973 AIR 913, 1973 SCR (3) 477 in the case of **A.C. Sharma Vs. Delhi Administration** submits that the State authority very much have the power to investigate into the offence under the Corruption Act even in respect of the employees of the Central Government.

12. The Hon'ble Apex Court considered a question that was raised in respect of legality of the investigation by the State authority i.e. by the Anti-Corruption Branch, Delhi. It was contended that it is only Delhi Special Police Establishment has jurisdiction to investigate into the allegations, as the appellant was an employee of Central Government. In answer to this submission, the Hon'ble Apex Court held that the investigation by the Deputy Superintendent of Police cannot be considered to be contrary to law. It is further held that the function of investigation is merely to collect evidence and any irregularity or even illegality in the course of collection of evidence can scarcely be considered by itself to

affect the legality of the trial by an otherwise competent court.

13. The paragraph No.15 of the said judgment is quoted below.

“15. As the foregoing discussion shows the investigation in the present case by the Deputy Superintendent of Police cannot be considered to be in any way unauthorised or contrary to law. In this connection it may not be out of place also to point out that the function of investigation is merely to collect evidence and any irregularity or even illegality in the course of collection of evidence, can scarcely be considered by itself to affect the legality of the trial by an otherwise competent court of the offence so investigated. In H. N. Rishabud & Inder Singh v. State of Delhi(1) it was held that an illegality committed in the course of investigation does not affect the competence and jurisdiction of the court for trial and where cognizance of the case has in fact been taken and the case has proceeded to termination the invalidity of the preceding investigation does not vitiate the result unless miscarriage of justice, has been caused thereby. When any breach of the mandatory provisions relating to investigation is brought to the notice of the court at an ,early stage of the trial the court will have to consider the nature and extent of the violation and pass appropriate orders for such. reinvestigation as may be called for, wholly or partly, and by such officer as it consider appropriate with reference to the requirements of s. 5A of the Prevention of Corruption Act, 1952. This decision was followed in Munna Lal v. The State of U.P. (2) where the decision

in State of Madhya Pradesh v. Mubarak Ali (3) was distinguished. The same view was, taken in the State of Andhra Pradesh v. M. Venugopal (4) and more recently in Khandu Sonu Dhobi v. State of Maharashtra (5). The decisions of the Calcutta, Punjab and Saurashtra High Courts relied upon by Mr. Anthony deal with different points : in any event to the extent they contain any observations against the view expressed by this Court in the decision just cited those observations cannot be considered good law.

. Thus, there is no manner of doubt that the State Investigating Authority had very much a power to investigate into the offences. This Court further proceeds that now the case requires to be considered on the basis of the evidence i.e. laid by the prosecution in the trial. Learned APP further submits that the appellant is rightly convicted by the Court below and no interference is called for.

14. On going through the evidence of the Complainant, it is seen that he submitted an application on 31.05.2001 with the appellant. Though, PW-1 stated that the first demand was on 31.05.2001, however there was no report made by him till 18.06.2001. It appears that there is variance between the version of PW-1 and PW-2. So far as going to the canteen. The Complainant states

that after having tea, appellant, Complainant and panch went to north side of canteen while going the Complainant held an amount before the appellant. Whereas the panch witness has stated that after having tea, Complainant, appellant and he himself came back towards the office and while coming back, the Complainant took out the tainted notes and held the same before the appellant. Then, appellant collected notes and kept the same in the left side pocket of his pant. So far as keeping of the amount, material variance is that as per complaint, amount was paid, while passing towards corner, whereas as per panch witness it was given while coming back to office. Further variance is seen in the evidence of Complainant, he stated that the appellant accepted the amount with the left hand and kept the said amount in his pant. Then Complainant transmitted the signal to the raiding party. Whereas the panch in his evidence stated that fingers of both the hands of the appellant reflected blue shining, when appellant has taken amount only by one hand. The question is as to how the fingers of both hands show blue shining ? This raises doubt about the case of the Prosecution about acceptance of the amount by the appellant.

15. Further in none of the statements of the witnesses, it has come that the appellant demanded the amount from the Complainant. On the contrary, it has come in the evidence of both the witnesses that it is the Complainant, who held the notes in front of appellant, thus there is no demand at the time of trap. This important aspect needs to be considered in view of the fact that the Prosecution has not taken any steps to verify as to whether there was actually any demand by the appellant or not before laying a trap. It is always desirable that before a trap verification panchnama is drawn so as to see that there is no unnecessary harassment to the Government Officer.

16. Further in the evidence of Investigating Officer, it has come that the application, form no.31 was found in possession of the Complainant. Thus, there was no question of demand, when the application itself was not filed for advance. It has clearly come in the deposition of the Investigating Officer that he did not come across any application for advance prior to the date of trap. Even he had instructed the Complainant to submit form no.31 in the inward and outward Section on the date of trap. In the cross, he

clearly answered that he did not find it necessary to resort to verification process. It has also come that the Complainant never had told that appellant had called him with money on any specific date. Thus, it is very doubtful as to whether there was really any demand by the appellant from the Complainant.

17. The submission of learned Counsel for the appellant that the appellant happens to be employee of Central Government and therefore the State ACB had no power to lay trap and to carry out investigation. In cross-examination, a question was asked to PW-3 i.e. Investigating Officer that accused being Central Government Employee, the powers of trap lies only with CBI. This witness further specifically stated that he was empowered to lay a trap and to do investigation. There is no further cross on this point. Nothing is produced on record by the accused in support of this submission. The learned Sessions Court has also observed that no impediment was shown for the State Authorities to conduct a trap against the Central Government Employee. Learned Advocate for the appellant pointed out on the point of pre-trap verification panchanma that there is already a circular dated 28.06.2004, which

requires that before a trap, verification panchnama should be drawn so as to see that there is no unnecessary harassment to the Government Officer.

18. So far as considering the question of sanction, sanctioning authority has not stated specifically which documents he has gone through. In evidence of sanctioning authority (PW-4), he stated that he studied the papers and by applying his mind sanction is granted and nothing more is stated by him. He could not satisfy as to what made him to come to conclusion that it was a fit case for grant of sanction to prosecute. In the cross, he accepted that he is not well versed with Marathi language. Then the question is as to how he could carefully go through the documents, whether he understood the contents of documents. There is no case of Prosecution that the documents sent to the sanctioning authority, were translated in English, complaint, panchnama, all other material documents are in Marathi.

19. Thus, considering the evidence that is brought on record by the prosecution and considering the cross-examination, the

appellant has succeeded in bringing on record that there was no demand by the appellant at the time of trap. It is further clear that there is variance between evidence of PW-1/Complainant and PW-2/shadow panch.

20. From the map produced on record, it is seen that there are two tea stalls. The prosecution could not also prove the exact spot or exactly at which canteen the appellant and the Complainant had gone. It is seen that near office of P.P.F., there are two tea stalls, one at north east corner of the office and another at north west corner. It is not clear as to which was the tea stall, where the Complainant, appellant and panchas had gone for tea.

21. It is further clear that form no.31 was not even given to the appellant and therefore there was no question of demand of any amount by the appellant. The appellant has specifically brought on record that the application seeking advance was not even filed in the inward outward section prior to the day of trap. He was not the authority to sanction the advance. The story of the Complainant

that he wanted advance Rs.40,000/- itself is falsified for the reason that for getting the advance of Rs.40,000/-, he has to show that there was amount standing in his credit in the account. The Prosecution has also not proved this fact. Though this argument is advanced by the appellant however this Court does not find any merit in this submission. In cross-examination of PW-3, it was taken that an advance was sanctioned after some days of the trap clearly shows that sufficient amount was standing to his credit. Therefore this Court finds that there is no substance in this submission. So far as the submission about the authority of the Investigating Officer to investigate is concerned, this Court has already discussed that in view of the judgment in the case of A.C. Sharma (supra), the State Investigating Authority had a power to investigate into an offence and no illegality is found in the same. Moreover, there is no doubt about the jurisdiction of the Court to try the offence.

22. So far as sanctioning authority is concerned, the sanctioning authority has accepted that his mother tongue is Bangali and he is not well versed with Marathi. Most of the documents sent to him,

were in Marathi language and thus there is question as to how he understood the contents of documents. It is necessary for the person to know the language of documents sent to him, so as to show that he applied his mind. Unless the person is in position to understand the language he would not be in position to appreciate the documents placed before him. There is no question of person applying mind by reading the papers in the language, which he does not know well. Thus the sanctioning authority has to show that the documents were explained to him by someone or those were properly and correctly translated into a language he knows. Thus, it will have to be concluded that for want of sufficient knowledge of Marathi language, the sanctioning authority would not understand the contents of the documents and in absence of knowing the contents of the documents, it cannot be said that he has applied his mind properly. Otherwise also he has not stated in his evidence as to what exact documents were placed before him.

23. Thus, on all the counts that there is no demand by the appellant at the time of trap. There was no work pending with the appellant as the form no.31 itself was not submitted till the time of

trap and therefore there was no question of appellant taking any action on such application. On the point of sanction, it is clear that the order granting sanction suffers from non-application of mind. This Court finds that it is difficult to conclude that the Prosecution has proved its case beyond reasonable doubt. Hence, the following order.

ORDER

- (i) Criminal Appeal is allowed.
- (ii) The judgment and order passed by the learned Special Judge, Aurangabad in Special Case No. 23/2001 dated 22.02.2005 is quashed and set aside.
- (iii) The appellant is acquitted of the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.
- (iv) Amount of fine deposited in the Trial Court be refunded to the appellant.
- (v) Bail bonds of the appellant stand cancelled.

- (vi) Appellant to furnish fresh bail bonds with sureties as per Section 437-A of the Code of Criminal Procedure, 1973.

24. With this, the Criminal Appeal is disposed off.

[KISHORE C. SANT, J.]

NAJEEB/..