IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.119 OF 2012

Shankar Bhojraj Bari
Age 48 years, Occu. Service,
R/o Shirsoli, P.B. Tq. &
District Jalgaon … APPELLANT

VERSUS

The State of Maharashtra
Through Dy. S.P., Anti -
Corruption Bureau, Jalgaon,
District Jalgaon
(Copy to be served through
Public Prosecutor, High Court
of Bombay, Bench at Aurangabad … RESPONDENT

…….
Shri Satej S. Jadhav, Advocate for appellant
Shri R.B. Bagul, A.P.P. for respondent – State
…….

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 18th April, 2022

Date of pronouncing judgment : 15th November, 2022

J U D G M E N T :

The challenge in this appeal is to the order of conviction and sentence dated 10/2/2012, passed by learned Ad-hoc District Judge and Additional Sessions Judge, Jalgaon in Special Case No.05/2011. By the said order, the appellant was convicted for the offences punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (P.C. Act for short) and, therefore, sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.2000/- on both counts, with default stipulation.

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

P.W.1 Raju Kumavat (complainant) was a resident of Indira Nagar, Mhasawad, Taluka and District Jalgaon. He has purchased a house site under a registered sale deed dated 6/11/2009. His friend Balu Mistari had also purchased adjoining house site for Rs.18,000/- same day. The complainant was Mason by profession. He had been out of town on account of his work. The complainant then collected a certified copy of Index-II of the sale deed whereunder he had purchased the plot. When he went to Talathi Office of village Mhasawad and preferred application for mutation of his name in the revenue record of the house site, the appellant was the then Talathi of village Mhasawad. Fifteen days before 17/7/2010, the complainant happened to meet the appellant at the village. The complainant reminded the appellant of having preferred an application for taking mutation entry. The appellant, in turn, told him that such work could not be done without he spending anything. The appellant told him that he would be required to spend therefor. On further enquiry, the appellant, with the gestures, informed the complainant that it will require Rs.400/- to be paid to him as illegal gratification. The complainant again went to Talathi Office on 13/7/2010 and asked him for issue of 7/12 extract in his favour. The appellant enquired with him as to whether he has brought a sum of Rs.400/- as was directed to bring. The complainant, in turn, requested the appellant to issue him 7/12 extract and assured to pay him the amount on the next Monday. The appellant did not listen. He did not issue the complainant 7/12 extract. The complainant, therefore, returned from Talathi Office. He approached the Anti-Corruption Bureau (A.C.B.), Jalgaon on17th July and lodged the report (complaint).

3. P.W.4 Mahendra Deshmukh (investigating officer), P.I., A.C.B., Jalgaon recorded the complaint (Exh.14). He decided to lay a trap. He, therefore, made communication to secure presence of two State Government employees to act as panch witnesses. He asked the complainant to come to his

office on 19th July in the morning. The complainant accordingly went to A.C.B., Jalgaon on 19th July. Both the State Government employees also attended the A.C.B. and agreed to act as panch witnesses. P.W.4 Mahendra gave the complainant and panchas all the requisite instructions. Anthracine powder was applied to four currency notes of Rs.100 denomination. Pre-trap panchanama (Exh.17) was drawn. It is also the case of prosecution that, the complainant, accompanied by P.W.2 Virendra (shadow witness), went to the appellant's office by 11.00 in the morning of 19th July. The appellant enquired with the complainant as to whether he brought the money. The complainant held before the appellant the bribe money. The appellant accepted the same and kept it in his trouser pocket. The complainant then gave pre-determined signal. The trap party entered the Talathi Office. The bribe money came to be seized from the appellant under the trap panchanama (Exh.18). He recorded statements of the persons acquainted with the facts and circumstances of the case. All the papers of investigation were submitted to P.W.3 Ravindra Rajput, Deputy Collector, who in turn, accorded sanction (Exh.23) for prosecution of the appellant. The appellant then came to be proceeded against by filing charge sheet.

4. Learned Additional Sessions Judge-cum-Special Court constituted for trial of offences under the Prevention of Corruption Act, 1988 framed the Charge (Exh.8). The appellant pleaded not guilty. His defence was of false implication. According to him, one Arvind Naval was in the business of providing TV Cable connections and Dish Antena as well. There were number of subscribers to his cable connection. Arvind Naval was required to pay the State Government some tax in that regard. He was in arrears thereof. Tahsildar had, therefore, issued an order to the Talathi (appellant) to collect DTH tax from the subscribers. The name of the complainant was in the list of the persons from whom subscription was due. The appellant had asked the complainant to pay that amount. It was not a demand of illegal gratification.

5. The prosecution examined four witnesses and produced in evidence certain documents. The trial Court, on appreciation of the evidence in the case, convicted and sentenced the appellant as stated above.

6. Heard. Perused the evidence relied on. Let us

advert to the evidence of the prosecution witnesses and then appreciate the same.

The complainant, in his examination-in-chief, gave evidence consistent with his complaint (Exh.14). In short, it is his case that, he had purchased a house site under a registered sale deed dated 6/11/2009. His friend Balu had also purchased the adjoining house site on the very day. Both of them had made applications to the Talathi for recording their names in the revenue record of the respective plot/ house site purchased by them. The appellant was the Village Talathi. The applications were made to him. It was his job to do the needful. It is further in his evidence that, fifteen days after the sale deed dated 6/11/2009, he had met the appellant, who in turn, asked him to pay a sum of Rs.400/-. His request to the appellant to reduce the amount was turned down. It is further in his evidence that, again on 13/7/2010, he met the appellant. The appellant asked him as to whether he had come with money. The complainant requested him to issue his 7/12 extract. He assured the appellant to pay the amount when he would come to collect 7/12 extract of his friend Balu. The appellant did not listen. The complainant, therefore, approached the A.C.B., Jalgaon and lodged the complaint (Exh.14).

7. P.W.4 Mahendra (investigating officer) recorded the complaint. The appellant had asked the complainant to come with money to his office on 19th. P.W.4 Mahendra, therefore, secured presence of two State Government employees to act as panch witnesses. P.W.2 Virendra, panch witness was one of them. The evidence of the complainant, P.W.2 Virendra, shadow witness and P.W.4 Mahendra undoubtedly indicates that the pre-trap panchanama (Exh.17) was drawn at A.C.B., Jalgaon. P.W.4 Mahendra gave the complainant and panchas due instructions. The currency notes of Rs.400/- were applied with anthracine powder. Then the complainant, accompanied by P.W.2 Virendra, went to the appellant's office. It was 11.00 in the morning. P.W.4 Mahendra and other members of his team kept themselves around the Talathi Office. In the office, the complainant requested the appellant to issue him the 7/12 extract. The appellant, in turn, asked him as to whether he had brought the money. The complainant held before the appellant tainted currency notes. He accepted the same and kept in his trouser pocket. The complainant then came out of Talathi Office and gave the pre-determined signal. P.W.4 Mahendra along with

the team members entered Talathi Office. The bribe money came to be seized from the appellant. The trap panchanama (Exh.18) was drawn.

8. P.W.2 Virendra gave evidence consistent with the evidence of the complainant. His evidence is, therefore, not adverted to in extenso. His testimony indicates that he attended the A.C.B. on the directions of his officers. Pre-trap panchanama (Exh.17) was drawn in his presence. He accompanied the complainant to the Talathi Office. The appellant made demand of bribe money from the complainant. The complainant, in turn, paid him Rs.400/- in his presence. The complainant then went out of the office and gave a pre-determined signal. The rest followed. Trap panchanama (Exh.18) was drawn.

9. P.W.4 Mahendra (investigating officer) gave evidence consistent with the prosecution case. P.W.3 Ravindra granted sanction (Exh.23) for prosecution of the appellant. The sanction has not been taken exception before this Court. Both, the complainant and the shadow witness were subjected to searching cross-examination. It appears that, the complainant tried to run with the hare and hunt with

the hounds. The complainant, during his cross-examination, admitted that, Arvind Naval was his friend. Arvind was doing TV cable Network business. He would also provide dish antena. He did have TV Cable connection. Subscription is required to be paid every month to the Cable Operator. The Cable Operators were having list of customers to whom they had provided cable connection. He did not have receipt to show to have paid every month's subscription to the Cable Operator. He admitted to have had told the appellant that he would deposit the tax towards the DTH (Dish) Tax. The complainant volunteered to state that the appellant had called him to the Talathi Office and asked him to deposit tax towards DTH. The appellant had made such demand twice or thrice. The complainant, however, did not remember as to whether the appellant had asked him to pay the tax due for two years. The complainant went on to state/ admit that, the appellant had told him that other DTH holders deposited the tax and he (complainant) should also deposit the same. The complainant even did not take objection regarding payment of said tax. The complainant then denied that the demand of money made by the appellant on 19th July 2010 was towards DTH tax and not illegal gratification.

10. What the shadow witness P.W.2 Virendra testified was that the appellant had asked the complainant as to whether he had brought the money as was asked by him. The evidence of the shadow witness does not state in so many words that the appellant had made the demand as illegal gratification for making mutation entry and issue of 7/12 extract. Before the trial Court itself the appellant has placed on record certain documents along with Exh.C-4. The appellant, in his written statement, submitted under Section 313 of the Criminal Procedure Code, came with a case that, on 9/3/2010, the then Tahsildar, Jalgaon had issued him three reminder letters, asking him to recover entertainment duty tax due towards DTH/ Dish Antennas. The Tahsildar had also directed him to recover the tax within seven days and deposit the same with Government Treasury. A compliance report in that regard was also called for. A copy of the letter of the Tahsildar, dated 9/3/2010 was brought to the notice of this Court. This Court has no reason to doubt genuineness of the said communication. Along with the said communication, there was a list of subscribers of Cable Network/ Dish TV. Name of the present complainant figures at Sr.No.14. A sum of Rs.180/- was shown to be in arrears from the complainant as on 24/4/2006. In case of **Punjabrao Vs. State of**

Maharashtra (2002) 10 SCC 371, the Apex Court has observed:-

> "Illegal gratification – Where accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established – The accused can establish his defence by preponderance of probability – If the explanation offered by him under S. 313 Cr.P.C. is found to be reasonable, then it cannot be thrown away merely on the ground that he did not offer the said explanation at the time when the amount was seized."

11. In the case in hand, the demand of illegal gratification appears to have not been duly verified by P.W.4 Mahendra before deciding to go for laying a trap. The Tahsildar, Jalgaon, by his communication in writing, had asked the appellant to recover the entertainment tax that was due from the Cable Operators, from the subscribers and cable connection/ Dish Antenna holders. Admittedly, the complainant was one of such subscribers. He admitted in no uncertain terms that the appellant twice or thrice had asked him to pay the entertainment duty tax. The name of the complainant figures in the list of subscribers from whom such tax was due for the relevant year. In response to the demand made by the appellant, the complainant had even assured the

appellant to clear the tax towards DTH. The complainant did not recollect as to whether he had paid such tax with the revenue authorities earlier. Mr. Arvind Naval, who was in cable network business, was admittedly a friend of the complainant. The appellant told him that other DTH holders had deposited tax amount and he should also deposit the same. The shadow witness simply testified that the appellant had enquired with the complainant as to whether he had brought the money as was directed to bring. It needs no mention that, an accused can make out his defence even based on preponderance of probabilities. It is true, the demand was for Rs.400/-. Where, as per the list of the defaulters, a sum of Rs.180/- was due from the complainant. But that amount was due for the year 2006. The Tahsildar had made a communication in March 2010. It is the case of the appellant that the complainant was in arrears of such tax for two years namely 2006-2007 and 2007-2008. The appellant has placed on record a Treasury Challan indicating to have credited a sum of Rs.3420/- to the Government Treasury in 2006. It is further the case of the appellant in his statement under Section 313 of the Criminal Procedure Code that, the sum of Rs.360/- was due from the complainant. The complainant paid him Rs.400/- towards DTH tax. The appellant was supposed to pay the complainant Rs.40/- back while he was about to make the mutation entry in respect of a sale deed of the complainant's friend, the A.C.B. officials entered his office and the rest followed. In view of this Court, the appellant has made out his defence of having received the amount not as a bribe but towards DTH entertainment tax for two years. It is reiterated that, for want of demand verification and the fact that the complainant supporting the defence version, coupled with the fact that the shadow witness (independent witness) did not state in so many words that the appellant had made demand of bribe money to do the needful in favour of the complainant, necessarily a benefit of doubt is required to be extended to the appellant herein.

12. For all the aforesaid reasons, this Court is not at one with the findings recorded by the trial Court. Interference is, therefore, warranted with the impugned order.

In the result, the appeal succeeds. Hence the order :

O R D E R

(i) The Criminal Appeal is allowed.

(ii) The impugned order of conviction and sentence dated 10/2/2012, passed by learned Ad-hoc District Judge and Additional Sessions Judge, Jalgaon in Special Case No.05/2011 is hereby set aside. The appellant is acquitted of the offence punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act. Bail bonds of the appellant are cancelled. Fine amount, if paid, be refunded to the appellant.

(R. G. AVACHAT, J.)

fmp/-