

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

CRIMINAL APPEAL NO.91 OF 2016

Godavari Nivrutti Sonkamble,
Age : 33 years, Occ. Service,
r/o. Ambedkar Nagar, Loha,
Dist. Nanded

..Appellant

Vs.

The State of Maharashtra,
Through Police Station, Biloli,
Tq. Biloli, Dist. Nanded

..Respondent

Mr.R.S.Deshmukh, Senior Advocate with Mr.G.A.Kulkarni, Advocate i/b.
Mr.S.P.Urgunde, Advocate for appellant

Mr.R.B.Bagul, APP for respondent

**CORAM : R.G. AVACHAT, J.
DATE : MAY 04, 2022**

JUDGMENT :-

The challenge in this appeal is to the judgment of conviction and order of sentence dated 06.02.2016 passed by learned Addl. Sessions Judge, Biloli, Dist. Nanded, in Special (ACB) Case No.4 of 2013. Vide impugned judgment and order, the appellant herein has been convicted for the offence punishable under Section 7 read with Section 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988 ("the Act", for short) and therefore, sentenced to suffer

rigorous imprisonment for two years and to pay a fine of Rs.5,000/-. In default of payment of fine, he has been directed to suffer simple imprisonment for three months.

2. The facts, leading to the present appeal, are as follows:-

PW 1 – Mallu Gorgalle (complainant) was resident of village Kotgayal, Tq Biloli, Dist. Nanded. The Government had sanctioned him a house under *Gharkool* scheme, i.e., a house at concessional rate, for which a sum of Rs.68,500/- was granted by the Government. The amount was not paid to the complainant. He was supposed to make construction on his own under the *Gharkool* scheme. He was to receive the Government grants in phase manner. He had commenced construction of his house. The construction was completed upto basement level. The *Gharkool* scheme was being implemented by Panchayat Samiti Office, Biloli. The appellant was serving as a Gramsevak with Biloli Grampanchayat. It was she, who was dealing with the matter. The proposal for release of grants was to be routed through her. The complainant, therefore, met her many a time for release of first installment of the grants. The appellant made a demand of Rs.3,000/- as a consideration to do the needful. The complainant paid her Rs.500/- initially. In the next meeting, he

paid her Rs.1,000/-. Still, the appellant did not do the complainant's work. She insisted for payment of the balance amount of Rs.1,500/-. As the complainant was not willing to pay the appellant the illegal gratification, he approached the office of Anti Corruption Bureau (A.C.B.), Nanded.

3. PW 4 – Aruna Sugave, Police Inspector attached to the A.C.B. office, Nanded, recorded Mallu's statement-cum-complaint (Exh.13) on 18.04.2012. She decided to lay a trap. It was also decided, first, to have verification of the demand of gratification. PW 4 – Sugave, therefore, secured presence of two Government officials to act as panch witnesses. The complainant accompanied by PW 2 – Vasant Chavan, shadow witness, had a talk with the appellant through a phone-call. The talk was in relation to the demand of bribe. The conversation was tape recorded. PW 4 – Sugave, *prima facie*, found it to be a case of demand of illegal gratification. She, therefore, decided to lay a trap. The demand verification panchnama (Exh.19) was drawn on 19.04.2012. Again, the complainant accompanied by PW 2 – Vasant, shadow witness, went to the office of Panchayat Samiti, Biloli. The appellant was busy in meeting. Both of them, therefore, came back. Both of them again went back to the office of Panchayat Samiti after half an hour.

They met the appellant there. The complainant initiated talks regarding his proposal. The appellant thereupon inquired with him whether he had brought money. He replied that he had not brought money on account of sad demise of his relative. She, therefore, asked them to come tomorrow. They, therefore, came back to Nanded.

4. Again, on the next morning by 07.00 a.m., the complainant and two panchas came to the A.C.B. office, Nanded. All the concerned had already been given requisite instructions. Pre-trap panchnama (Exh.20) was drawn. Then, the raiding party proceeded for Biloli at 08.30 a.m. They reached Biloli. The complainant accompanied by the shadow witness, PW 2, went to the office of Panchayat Samiti. The members of the raiding party remained some distance away from the office. The appellant was not present in the office. The complainant, therefore, contacted her on cell-phone. The appellant informed him to have been coming shortly. By 12.30 noon, the appellant arrived. On having seen her, the voice recorded was switched on. On meeting with the appellant, the complainant bargained with her to reduce the bribe amount. The appellant was, however, insistent. She refused to reduce the

quantum of amount. The complainant, therefore, paid her a sum of Rs.1,500/- and came outside of the office and gave the pre-determined signal. The raiding party arrived. Bribe money came to be recovered from the appellant under the panchnama. Then, all of them went to the rest house. Rest was followed there. A post trap panchnama (Exh.21) was also drawn. PW 4 – Aruna Sugave lodged the FIR. She recorded statements of the persons acquainted with the facts and circumstances of the case. The papers of investigation were submitted to the Chief Executive Magistrate, Zilla Parishad, Nanded, for obtaining sanction to prosecute the appellant. He, accordingly, accorded sanction (Exh.30) for prosecution. The tape recorded conversation was sent to C.F.S.L. after obtaining voice samples of the complainant and the appellant as well. The report of C.F.S.L. was received. The appellant came to be proceeded against by filing the charge sheet.

5. Learned Addl. Sessions Judge framed Charge (Exh.6). The appellant pleaded not guilty. Her defence is that she received the amount as was due towards making mutation entries in 'Form No.8-A'. Learned Judge, on appreciation of the evidence in the case, convicted and sentenced the appellant, as stated above.

6. Heard learned counsel for the parties.

7. Mr.R.S.Deshmukh, learned Senior Counsel for the appellant, would submit that the complainant and the shadow witness, PW 2, in his cross-examination, admitted the defence version. Even before filing of the charge sheet, the complainant had written to the Chief Executive Officer, Zilla Parishad, informing to have had incorrectly lodged complaint against the appellant. According to learned Senior Counsel, it is a case of either no evidence against the appellant or whatever has been deposed to in the examination-in-chief by both the witnesses, has been proved to be untrue in response to the questions put to them in their cross-examination. He, therefore, urged for allowing the appeal.

8. Learned APP would, on the other hand, submit that the demand verification panchnama (Exh.19) and the tape recorded version would, undoubtedly, indicate the appellant to have had made a demand of illegal gratification. The report of C.F.S.L. indicates that the voice in the conversation was similar to the voice of the appellant. The complainant and the shadow witness, PW 2, in their examination-in-chief, gave evidence consistent with the complaint

and the panchnamas drawn. Their partially not supporting the prosecution in their cross-examination would, therefore, be of no avail for the appellant. According to learned APP, the trial Court has rightly convicted the appellant. He, therefore, urged for dismissal of the appeal.

9. Considered the submissions advanced. Perused the entire evidence in the case. Gone through the documents relied on.

10. The appellant was serving as a Gramsevak at the relevant time. The Chief Executive Officer, Zilla Parishad, was her appointing authority. The sanction (Exh.30) for the prosecution of the appellant was accorded by PW 3 – Sumant Bhange, the then Chief Executive Officer, Zilla Parishad. The appellant has rightly not taken exception to the validity of the sanction (Exh.30) for prosecution of the appellant, on the ground of incompetency of the sanctioning authority. PW 3 – Sumant Bhange has categorically deposed that after having gone through all the police papers, he accorded sanction for prosecution.

11. PW 1 - Mallu (complainant) gave his evidence in examination-in-chief very much consistent with his complaint

(Exh.13). I do not propose to reiterate his oral evidence, since reference thereto has already been made herein above. In short, it was a case of the prosecution that the complainant was sanctioned a house, i.e. *Gharkool* under Indira Awas Yojana. He, therefore, started construction of a house on his plot. A sum of Rs.68,500/- was to be received by him from the Government as grant therefor. The Block Development Officer (B.D.O.) was to issue the cheque. The complainant's proposal for release of money/grant was to be placed before the B.D.O. by the appellant herein. He had, therefore, met her many a time. She had demanded a sum of Rs.3,000/- as illegal gratification to do the needful. She was paid Rs.1,500/- in advance. The complainant, therefore, approached the A.C.B. office and lodged the complaint.

12. After lodging the complaint, PW 4 – Aruna Sugave, P.I. attached to A.C.B. office, Nanded, had decided to lay a trap. She decided to have the demand verified. Accordingly, for that purpose, she secured presence of two Government officials to act as witnesses. Both the complainant and the shadow witness, PW 2, met the appellant. From the recorded conversation between the appellant and the complainant, PW 4 – Sugave was convinced that

the appellant had made a demand of illegal gratification. It was, therefore, decided to lay a trap on the following day. Accordingly, both the complainant and the shadow witness, PW 2, met the appellant in Panchayat Samiti office. On the demand of the appellant, the complainant paid her Rs.1,500/-. He then gave the predetermined signal. The raiding party arrived. The bribe money came to be recovered from her. Rest of the things followed.

13. On the same lines is the evidence of the PW 2 – Vasant, shadow witness.

14. Both PW 1 – Mallu, complainant and PW 2 – Vasant, shadow witness, in their cross-examination, did not stand by the prosecution. The complainant admitted that a sum of Rs.1,500/- that was paid by him to the appellant earlier, was tendered towards outstanding amount of property tax. Said amount was adjusted towards the property tax. At the time of the demand verification, the appellant had demanded the amount not for her but for office. She has already issued a receipt therefor. The demand verification panchnama is at Exh.19. From the transcript of the recorded conversation, it is evident that the appellant is stated to have had

received the amount towards property tax (घरपट्टी). The appellant went on to state that she had made the demand also by issuing a notice to the complainant. She had talked with the complainant regarding transfer of the property, first in the name of his father and then, in his own name. The amount was to be paid towards two mutation entries to be effected in this regard. The notice issued by the appellant on the very day of the trap is at Exh.55. The complainant admits the same to have been received. He also put his signature thereon acknowledging receipt thereof. A copy of the resolution of the Grampanchayat from the proceedings book of the Grampanchayat was also placed on record to indicate that it was decided to charge Rs.750/- for per mutation entry. In the case in hand, the property on which *Gharkool* (house) was to be constructed, was first to be mutated in the name of the father of the complainant and then, in his own name. As such, the complainant was supposed to pay Rs.1,500/- for effecting such mutation. According to the complainant himself, the appellant made a demand of Rs.1,500/- towards those charges. He has also admitted to have had made a communication to the Chief Executive Officer on 24.04.2012, informing that the appellant had first made demand of money towards clearance of the property tax. He has also stated in the said communication that when he paid the appellant a sum of Rs.1,500/-

towards the charges for effecting mutation entry, the A.C.B. officials effected raid. It was his contention in the said communication that the appellant be not subjected to any kind of action pursuant to the trap.

15. The PW 2 - Vasant, shadow witness, although deposed consistent with the prosecution case, he admitted in his cross-examination that during the conversation between the appellant and the complainant, the appellant had told that she demanded money not for herself but for the office. The appellant had even assured the complainant to forward his file to the concerned Engineer. He went on to state that the appellant asked the complainant as to whether he had brought the money to be paid towards fee for effecting mutation entries. The complainant was informed that two mutation entries are required to be effected, first in the name of his father and then, in his name. A Government Resolution to that effect was also shown to the complainant. It is in his evidence that the appellant did not make any demand of illegal gratification for sending the complainant's file to her higher-ups. The amount initially paid by the complainant was adjusted towards the Grampanchayat property tax.

16. The evidence of PW 4 - Aruna Sugave, P.I. attached to A.C.B. office, is not of much assistance for the prosecution since she

was not a witness to the demand of illegal gratification and payment thereof.

17. When both the complainant and the shadow witness, PW 2, themselves admitted the case of defence that the appellant had made a demand of money towards the fee for effecting mutation entries and earlier amount paid was towards property tax, the trial Court ought not to have convicted the appellant based on such evidence.

18. For all these reasons, this Court is not at one with the impugned judgment and order of conviction and resultant sentence. The appeal, thus, succeeds.

19. In the result, the following order :-

- (i) The appeal is allowed.
- (ii) The impugned judgment of conviction and order of sentence dated 06.02.2016 passed by learned Addl. Sessions Judge, Biloli, Dist. Nanded, in Special (ACB) Case No.4 of 2013, is set aside.
- (iii) The appellant is acquitted of the offence punishable under Section 7 read with Section 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988.

- (iv) Her bail bonds stand cancelled.
- (v) Fine amount deposited by the appellant, if any, be refunded to him.

[R.G. AVACHAT, J.]

KBP