

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

CRIMINAL APPEAL NO. 196 OF 2005

The State of Maharashtra
Through Police Station,
Mukundwadi, Aurangabad

... **Appellant**
(Ori. Complainant)

Versus

Subhash Ganpatrao Gunde
Age: 42 years, Occu. Service,
Binder, High Court Bench at
Aurangabad r/o High Court Colony,
Satara Parisad, Aurangabad

... **Respondent**
(Ori. Accused)

....
Smt. Geeta L. Deshpande, APP for the appellant
Mr. N. S. Ghanekar, Advocate for the respondent
....

CORAM : R. G. AVACHAT, J.

DATED : 28th FEBRUARY, 2022

J U D G M E N T :-

The respondent was prosecuted for having committed offence punishable under Section 7, 13(1) (d) and 13(2) of the Prevention of Corruption Act, 1988 (for short 'PC Act').

2. The learned Judge of the Special Court, on appreciation of evidence in the case, acquitted the respondent. The State has therefore preferred the present appeal.

3. The case of the prosecution before the trial Court was as under:

PW2 – Anandkumar Gaikwad (complainant) was a social worker. He was the Secretary of Rural Non-Agricultural Co-operative Society. He had filed some Public Interest Litigation (P.I.L.) petitions in the High Court of Bombay, Bench at Aurangabad. He had not engaged any Advocate to represent him in any of the petitions. He wanted to prosecute all those petitions as ‘Party-in-Person’. He had, therefore, been to the High Court at Aurangabad on 01.01.2001. The respondent met him and introduced himself as a Clerk in Writ Section. He apprised the complainant how the petitions were presented. The respondent also assured to assist him and asked to pay him some money therefor. The complainant agreed. The complainant had again been to the High Court on 28.02.2001. He met one lady official in Writ Section. That lady referred him to the respondent. The respondent told him that he would not do his any work for free. He reminded the complainant of having not been paid any amount, last occasion. The complainant, in turn, assured to pay his charges at once next time. The respondent, therefore, attended

his work. Meanwhile, on 27.08.2001, the complainant received one letter from the High Court Registry in connection with Writ Petition Stamp No.4617 of 2001. He, therefore, came in the High Court on 03.09.2001. The respondent met him there and reminded of having not been paid any amount last time, nor has he made any arrangement for tea charges. The respondent, therefore, demanded him money for tea. The complainant asked him to join for tea. The respondent, in turn, informed the complainant that he just had tea. Respondent suggested the complainant to pay him Rs.100/- or 150/-. The complainant bought some time to pay him under the pretext to have no that much money with him. He, however, assured him to pay next time in the presence of other villagers who were supposed to accompany him for some work. It is also the case of the prosecution that the complainant did not want to pay respondent bribe. He, therefore, approached Anti Corruption Bureau (ACB), Aurangabad and lodged complaint (Exh.21). Police Inspector Shri Mandar Naik (PW4) asked him to come next day. The complainant accordingly went to the ACB, Aurangabad. Shri Naik (PW4), then introduced him to the panchas. He gave them instructions as to how the trap has to be laid. As per the instructions, the complainant

along with panch witness Shri Satyabhushan Gosavi (PW3), went to the High Court. PW4 Shri Naik and his staff remain at certain place. In the Court premises, the complainant along with panch witness met the respondent. There were exchange of greetings between the complainant and the respondent. The complainant told him to have arranged for tea charges. He, therefore, asked him to join for tea. The respondent informed him to have taken tea a while ago. The complainant then told him to have brought Rs.150/-. The respondent then demanded the same. The complainant held a currency note of Rs.100/- denomination and told that he would retain Rs.50/- for his own expenses. The respondent took the currency note of Rs.100/-. He, however, returned the very note to the complainant as he apprehended that the complainant may make complaint/grievance against him for having obtained money. The complainant, in turn, told the respondent to have only come to pay him money. He assured him of not making any complaint against him. The respondent, thereupon, received the currency note.

4. As planned, a signal was given once the respondent accepted the amount. PW4 Shri Naik and his assistants came there. PW3 Shri Gasavi told him the sequence of events. The respondent

was overpowered. A currency note of Rs.100/- denomination, came to be seized from him. The entire procedure was followed. The investigation was made. PW4 Shri Naik, lodged the First Information Report (Exh.35) on behalf of the State. The respondent, thus, came to be charge-sheeted and acquitted by the trial Court.

5. Heard.

The learned APP for the appellant – State would submit that the demand of bribe money and acceptance thereof was duly proved. The learned Senior Judge of the High Court of Bombay, bench at Aurangabad, was informed of the proposed raid/trap. She, therefore, urged for allowing the appeal.

6. The learned Advocate for the respondent would, on the other hand, submit that the complainant was appearing as party-in-person in five PILs filed by him. He did not want to have of a legal practitioner. The respondent was admittedly a Binder. The petitions had already been filed and given registration numbers. The demand has not been verified. It was a complainant, who, on his own, offered the respondent a sum of Rs.100/-. According to the learned Advocate, it is an appeal from acquittal and when two views are

possible from the evidence obtainable in the case, the one beneficial to the respondent should prevail.

7. Considered the submissions advanced. Perused the entire evidence in the case. Gone through the impugned judgment. In support of the prosecution, four witnesses were examined. PW1 was the Additional Registrar. He was examined in proof of sanction for prosecution. His evidence is not taken exception to. Evidence of PW4 Naik is as to pre-trap and post trap happenings as he was admittedly not present at the time of demand and acceptance of bribe. As such, for deciding this appeal, the relevant evidence is that of PW2 Anandkumar and shadow witness, PW3 Gosavi.

8. The complainant gave his evidence as has been adverted to in para 3 above. With a view to avoid repetition, his evidence in examination in chief is not again adverted to. An independent witness, namely PW3 came on the scene only at the time of alleged demand of bribe and acceptance thereof. Evidence of PW2 is admittedly a social worker. He filed five PIL petitions. He was appearing as party-in-person. He did not want to have assistance of legal practitioner. He was nothing a short of whistle-blower. His

evidence needs to be tested with a pinch of salt. There is no independent verification of the demand allegedly made by the respondent to the complainant when he had been to the Court premises on 2 – 3 occasions before the trap in question. As such, the complainant's evidence as regards pre-trap happening is uncorroborated. This Court is not inclined to accept his evidence as gospel truth.

So far as regards the demand and acceptance of the bribe at the relevant time is concerned, it has to be stated that the complainant himself met with the respondent just some time before the trap, opened the talk and said the respondent that he had arranged for his tea charges. The respondent, thereupon told the complainant that he had taken tea a while ago. Thereupon the complainant told him to have brought Rs.150/-. Then the respondent demanded the same. The complainant held out a currency note of Rs.100/-. The respondent received the same. He immediately returned it to the complainant with a say that he (complainant) might make complaint against him. Then, both of them came in the varanda. The complainant then asked the respondent not to get annoyed. He also informed him to have come

to pay him money. He assured that he would not make any complaint. Thereupon only the respondent accepted a sum of Rs.100/-, which came to be seized from him under the trap panchanama.

If we appreciate the aforesaid evidence, it is crystal clear that it was the complainant who had himself opened up the talk to have arranged for tea charges. It is he, who on his own paid the respondent Rs.100/-. The respondent returned the same as he did apprehend that complainant may inform higher up. The complainant induced the respondent to accept the money as the complainant said him to have come only to pay him money and he would not make any complaint thereof. Admittedly, the respondent was a Binder. No work of the complainant was pending with him nor has he performed his official duty as a Binder in favour of the complainant. Based on such evidence, the trial Court has rightly acquitted the respondent. This Court is of the view that evidence of the complainant is not to be accepted without there being corroboration so far as regards the demand of bribe made a few days before the trap in concern. The demand was not verified. It is reiterated that evidence as regards the happenings just before the trap in question

would undoubtedly indicate that the respondent had not opened up a talk nor has he made any demand. It was the complainant who asked him to have arranged for tea charges. It was the complainant who offered the money and made him to receive the same as a result of pep talk. The trial Court on appreciation of the evidence has rightly acquitted the respondent. This Court sees no reason to take different view.

9. The appeal therefore fails. The same is dismissed.

[R. G. AVACHAT, J.]

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