

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.228 OF 2005

Amrut s/o Gajmal Chavan
age 55 years, Occu. Police-Sub-
Inspector, At present residing at :
Ramnagar Police Colony,
BlockNo.243, Old Lane, Jalna,
District Jalna,
Deceased, through L.R.
Kashibai Amrut Chavan,
Age 67 years, Occu. Household,
R/o Ram Nagar, Police Colony,
Jalna, Tal. & Dist. Jalna

... APPELLANT

VERSUS

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

... RESPONDENT

.....
Shri K.C. Sant, Advocate for appellant
Shri R.B. Bagul, A.P.P. for respondent – State
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 26th April, 2022

Date of pronouncing judgment : 17th June, 2022

J U D G M E N T :

The challenge in this appeal is to the order of
conviction and resultant sentence dated 28/3/2005, passed by

Special Judge, Aurangabad in Sessions Case No.22/2001. Vide impugned judgment and order, the original appellant was convicted for the offences punishable under Sections 7, 13(1) (d) read with 13(2) of the Prevention of Corruption Act, 1988 and, therefore, sentenced to suffer rigorous imprisonment for six months and one year respectively with direction to pay fine of Rs.250/- on each count. In default of payment of fine, he was directed to undergo simple imprisonment for one month.

The original appellant/ passed away pending the appeal. His widow has, therefore, come on record to pursue the appeal.

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

P.W.1 Inayatkhan (complainant) was in construction business. One Dr. Abdul Hameed, residing at Samta Nagar, Aurangabad had engaged him for some construction work. The complainant completed the construction work during 27/11/2000 to 6/12/2001. A sum of Rs.13,880/- was said to have been due from Dr. Hameed to the complainant. In spite of repeated demands, the amount

was not paid. Dr. Hameed had come to the house of the complainant on 4/4/2001. The complainant was not home. His wife Kalimabi was there. Dr. Hameed abused and threatened her with dire consequences. Kalimabi had, therefore, lodged a report with Mahanubhav Ashram Police Chowki on 5/5/2001. It is also the case of the complainant that, again on 6/5/2001 Dr. Hameed came his home along with 4 – 5 persons. The complainant was not home. All of them abused and gave threats to the life of Kalimabi. The complainant and Kalimabai again went to the Kranti Chowk Police Station, Aurangabad. Kalimabi lodged the report. Since no action was taken on the report, the complainant had to meet the Commissioner of Police.

3. It is also the case of the prosecution that the complainant again went to Mahanubhav Ashram Police Chowki on 29/5/2001. The original appellant (since deceased) was present there. He recorded the statements of two persons named in the complaint as witnesses. He made a demand of Rs.1000/- to act upon the police report and arrest Dr. Hameed. The complainant's friend Raju Khotkar and Nasiroddin were in his company. Again on 30/5/2001, the complainant went to the Police Chowki. The original appellant

again made a demand. The complainant told him that he could pay only Rs.500/-. He, therefore, asked the complainant to come with money. Since the complainant did not want to pay bribe, he approached Anti-Corruption Bureau. The officer there recorded the complaint (Exh.17). It was decided to lay a trap. Presence of two Government officials was secured to act as panch witnesses. Pre-trap panchanama (Exh.22) was drawn. The complainant and the witnesses were duly instructed.

4. The complainant and shadow witness Rahimkhan (P.W.2) went to the Police Chowki. The original appellant questioned the complainant as to whether the amount was brought. The complainant, in turn, paid the original appellant 5 currency notes of Rs.100 denomination, smeared with anthracine powder. The original appellant received the amount and kept in left pocket of his trouser. The complainant then came out and gave a pre-determined signal. The trap party arrived. The amount received by the original appellant was taken charge of. A panchanama to that effect was drawn. The statements of persons acquainted with the facts and circumstances of the case were recorded. Post-trap panchanama (Exh.23) was also drawn. All the papers of

investigation were submitted to the Special Inspector General of Police, Aurangabad for obtaining sanction for prosecution of the original appellant. P.W.3 Sudhakar (Spl. I.G.), in turn, granted the sanction for prosecution vide Exh.28. The original appellant thus came to be proceeded against by filing a charge sheet.

5. The Special Court framed the charge (Exh.8). The original appellant pleaded not guilty. His defence was of false implication. It was his case that, for police welfare programme of known singer Udit Narayan was scheduled. Officers of the original appellant had asked him to sell tickets. The complainant was given 5 tickets worth Rs.500/-. The complainant paid him that much amount with a false complaint of the same being paid as a bribe. It is also the case of the original appellant that mastermind of the trap was one Raju Khotkar, against whose brother he had filed a chapter case.

6. The prosecution examined 4 witnesses and produced in evidence certain documents. On appreciation of the evidence, the Special Court convicted the appellant and consequently sentenced him to imprisonment as stated above.

7. Heard. Learned counsel for the appellant would submit that, there was no verification of the demand. The complainant owed the original appellant a sum of Rs.500/- towards the tickets of the programme of singer Udit Narayan. One Raju Khotkar, against whose brother chapter proceedings were initiated by the original appellant was the mastermind. At his behest a false complaint was lodged. According to learned counsel, the original appellant had examined his officer as defence witness. There was overwhelming evidence to indicate the complainant was issued 5 tickets and a sum of Rs.500/- was due from him. According to him, the appellant's defence evidence makes out his case even on preponderance of probabilities. Although the defence was led at belated stage, the same could not be branded as an afterthought since the same is supported with documentary evidence. The learned counsel ultimately urged for allowing the appeal.

8. The learned A.P.P. would, on the other hand, support the impugned judgment and order. According to him, the defence raised by the appellant was afterthought. Soon after the trap was successful, the original appellant gave an altogether unconvincing explanation. Had he really sold the tickets to the complainant and the amount was due from the

complainant, the same would have been reflected in the explanation offered by the original appellant soon after the trap. In view of the learned A.P.P., there is no reason for interference with the impugned judgment and order.

9. Considered the submissions advanced. Perused the evidence in the case and the documents relied on. Let us appreciate the evidence.

The original appellant at the relevant time was a Police-Sub-Inspector. The Spl. I.G. was his appointing authority. P.W.3 Sudhakar (Spl. I.G.) testified to have granted sanction for prosecution of the original appellant after going through all the papers of investigation. The sanction for prosecution is at Exh.28. Nothing could be elicited from his cross-examination so as to suggest that the sanction was granted mechanically. P.W.3 Sudhakar (Spl. I.G.), however, admitted that, some functions were arranged by Police Commissioner's office to raise funds for police welfare scheme. The police officials were instructed to exert to raise the funds.

10. The complainant Inayatkhan (P.W.1) gave his evidence consistent with the complaint (Exh.17). It is in his

evidence that he was in construction business. One Dr. Abdul Hameed, residing at Samta Nagar, Aurangabad had engaged him for some construction work. The complainant completed the construction work during 27/11/2000 to 6/12/2001. A sum of Rs.13,880/- was said to have been due from Dr. Hameed to the complainant. In spite of repeated demands, the amount was not paid. Dr. Hameed had come to the house of the complainant on 4/4/2001. The complainant was not home. His wife Kalimabi was there. Dr. Hameed abused and threatened her with dire consequences. Kalimabi had, therefore, lodged a report with Mahanubhav Ashram Police Chowki on 5/5/2001. It is also the case of the complainant that, again on 6/5/2001 Dr. Hameed came his home along with 4 – 5 persons. The complainant was not home. All of them abused and gave threats to the life of Kalimabi. The complainant and Kalimabi again went to the Kranti Chowk Police Station, Aurangabad. Kalimabi lodged the report. Since no action was taken on the report, the complainant had to meet the Commissioner of Police.

11. It is also in the the evidence of complainant that the he again went to Mahanubhav Ashram Police Chowki on 29/5/2001. The original appellant (since deceased) was

present there. He recorded the statements of two persons named in the complaint as witnesses. He made a demand of Rs.1000/- to act upon the police report and arrest Dr. Hameed. The complainant's friend Raju Khotkar and Nasiroddin were in his company. Again on 30/5/2001, the complainant went to the Police Chowki. The original appellant again made a demand. The complainant told him that he could pay only Rs.500/-. He, therefore, asked the complainant to come with money. Since the complainant did not want to pay bribe, he approached Anti-Corruption Bureau. The officer there recorded the complaint (Exh.17). It was decided to lay a trap. Presence of two Government officials was secured to act as panch witnesses. Pre-trap panchanama (Exh.22) was drawn. The complainant and the witnesses were duly instructed.

12. The complainant and shadow witness Rahimkhan (P.W.2) went to the Police Chowki. The original appellant questioned the complainant as to whether the amount was brought. The complainant, in turn, paid the original appellant 5 currency notes of Rs.100 denomination, smeared with anthracine powder. The original appellant received the amount and kept in left pocket of his trouser.

13. The complainant was subjected to a searching cross-examination. It is in his evidence that, he had never intended to ensure arrest of Dr. Abdul Hameed. One Raju Khotkar had accompanied him to the office of Anti-Corruption Bureau. To the rest of questions, suggesting the appellant's defence, the complainant did not give-in. P.W.2 Rahimkhan was a shadow witness. It is in his evidence that, his officer had asked him to attend the A.C.B. Office on 30/5/2001. He accordingly went to the A.C.B. Office. The complainant and another panch witness were present there. The complaint lodged by the complainant was read over to them. A pre-trap panchanama was drawn. The A.C.B. Officer had instructed them and then he accompanied the complainant to the Police Chowki.

It is further in his evidence that the original appellant was present at the Police Chowki. He enquired with the complainant as to whether the amount was brought. He also informed the complainant that his file was ready and assured to do the needful. The complainant then held the bribe money. The original appellant in turn received the same and kept it in left pocket of his trouser. The complainant then went out of the Chowki and gave pre-determined signal.

P.W.4 Bhanudas (Police Inspector) and others in the raiding party immediately entered the Police Chowki. The bribe money came to be seized from the original appellant. A panchanama of the happenings there was drawn. Post-trap panchanama was also thereafter drawn.

14. I have carefully gone through the cross-examination of P.W.2 Rahimkhan. It has come in his evidence that, he had no previous acquaintance with the original appellant. He had accompanied the complainant to the Police Chowki by 2.00 p.m. on the same day i.e. some time before the raid. They took tea in the company of the original appellant and then again went to the A.C.B. Office. Whatever talk was there between the complainant and the original appellant that time was narrated by him to the A.C.B. Officer. To rest of the questions put to him during cross-examination, the shadow witness did not give-in.

15. On the same lines is the evidence of P.W.4 Bhanudas Sonawane. It is in his evidence that the complainant had approached the A.C.B. They recorded the complaint lodged by the complainant. It was, therefore, decided to lay a trap. He gave the relevant instructions to both the complainant and the panchas. Accordingly, the

complainant and the shadow witness first went to the Police Chowki and after a pre-determined signal was received by him, he entered the Police Chowki and seized bribe money from the original appellant. It is further in his evidence that pre-trap panchanama (Exh.22) and post-trap panchanama (Exh.23) were drawn by him. Then he submitted all the papers of investigation to Spl. I.G. for obtaining his sanction for prosecution. He admitted to have not resorted to the process of verification of demand. The evidence of this witness appears to be inconsistent with the case of P.W.2 Rahimkhan that he had accompanied the complainant to the Police Chowki some time before the pre-trap panchanama was drawn. In the statements recorded of Sanjay Wagh and Maruti Nade, it was transpired that both of them had been in the company of the original appellant for a while and they had a tea with the original appellant.

It is also in his evidence that, one Raju Khotkar and Chandrakant Bansode were social workers. Both of them had advised the complainant to make a representation. Close scrutiny of the evidence of all the prosecution witnesses undoubtedly indicate that the complainant was engaged by the original appellant for some construction work. Some

amount was due from Dr. Abdul Hameed to the complainant. As the amount was not paid, there was some quarrel between the two.

16. There is on record a complaint (Exh.18) dated 9/4/2001 lodged by the complainant against Dr. Abdul Hameed. The contents thereof reinforce the case of the complainant that Dr. Abdul Hameed had been to the complainant's house and abused and extended threats to his wife. It is not that the complainant had concealed his acquaintance with Raju Khotkar. In examination-in-chief itself the complainant testified that Raju Khotkar and one Sk. Nasiroddin had accompanied him to the Police Chowki. P.W.2 Rahimkhan was an independent witness.

The evidence of both the complainant and the shadow witness undoubtedly indicate the original appellant to have had made a demand of bribe. The complainant, in turn, paid him a sum of Rs.500/- as bribe money. The original appellant kept the money in left pocket of his trouser. The very amount came to be recovered from the possession of original appellant. It is immaterial whether he has received the amount by his right hand or left hand. There is no denial of having not been found in possession of the currency notes

smeared with anthracine powder.

17. Section 20 of the Prevention of Corruption Act, 1988 reads :-

“20. Presumption where public servant accepts any undue advantage :- Where, in any trial of an offence punishable under Section 7 or under Section 11, it is proved that a public servant accused of an offence has accepted or obtained or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or attempted to obtain that undue advantage, as a motive or reward under Section 7 for performing or to cause performance of a public duty improperly or dishonestly either by himself or by another public servant or, as the case may be, any undue advantage without consideration or for a consideration which he knows to be inadequate under Section 11.”

18. It is, therefore, for the original appellant to rebut the possession. Admittedly, there was nothing to indicate the original appellant to have had any grudge against the complainant to falsely implicate him. The complainant himself had come clear in his examination-in-chief as well and the complaint (Exh.17) itself that his friend Raju Khotkar had accompanied him to request the original appellant to do the needful in respect of the complaint lodged against Dr. Abdul

Hameed. There is, therefore, nothing to indicate that Raju Khotkar was a mastermind behind lodging of the report against the original appellant.

19. Admittedly, the original appellant had an opportunity to offer an explanation that the complainant owed him Rs.500/- towards price of 5 tickets of Singer Udit Narayan's programme. It is true that for welfare of police personnel such functions are held to raise funds. In those relevant days, singer Udit Narayan's Sangeet Programme was scheduled for police welfare. Had really the original appellant issued 5 tickets to the complainant with an understanding that the amount was to be paid later on, he would have stated accordingly in his explanatory statement. Admittedly, the original appellant had availed the opportunity to offer his explanation. His statement-cum-explanation (Exh.G) is to the effect that the complaint lodged by the complainant against Dr. Abdul Hameed was entrusted with him for enquiry. By 4.00 p.m. on 30/5/2001, the original appellant did enquire into the matter. Both the complainant accompanied by one person came to the original appellant's office and requested him to take action against Dr. Abdul Hameed. It is the case of the original appellant that the complainant forcibly thrust

the bribe money in his pocket. He was unaware of quantum of money. Immediately thereafter A.C.B. Officer entered and searched his person etc.

20. The trial Court has rightly observed that, had really the said amount was due from the complainant towards price of 5 tickets, the original appellant could have said so in his explanation (Exh.G). The record indicates that, the defence of the original appellant was very much afterthought. True, he has examined Police Inspector Shri Chate as his defence witness. From his evidence, the defence of the original appellant has come on record. The said witness testified to have had issued various ticket books to various Police-Sub-Inspectors. Particular number of tickets had also been issued to original appellant. The concerned Police-Sub-Inspector had deposited with him the amounts collected on sale of such tickets.

It is also in his evidence that Raju Khotkar had met him for transfer of the original appellant as he had initiated a chapter proceedings against Raju Khotkar's brother. During cross-examination, the defence witness admitted that Raju Khotkar had not made any written complaint against the original appellant. After trap, he had

paid visit to the spot as he was called by P.W.4 Bhanudas Sonawane. He was shown Exh.18 and Exh.19 i.e. the complaint lodged by the complainant against Dr. Abdul Hameed. The documents Exhibits 34, 36 and 37 indicating that the particular ticket booklets were issued to concerned Police Inspectors do not bear official Outward Numbers. The trial Court has, therefore, rightly observed that the defence made by the original appellant and the documents relied on were afterthought and prepared to suit the original appellant's case. It is not that no singer Udit Narayan's programme was scheduled. It is also not that it was not for welfare of police personnel. It is also true that the police staff were asked to sell tickets and collect funds for police welfare schemes. Had really the original appellant issued tickets to the complainant and amount thereof was due from him, he could have stated the same before the investigating officer in his explanation (Exh.G), which was given by him on the day he was trapped.

21. Learned counsel for the appellant relied on the following citations :

- (1) Uttam Ramji Shere V. State of Maharashtra
[2018 (4) Mh.L.J. (Cri.) 40]

- (2) Vinod s/o Savalaram Kanadkhedkar V. State of Maharashtra
[2016(4) Mh.L.J. (Ci.) 570]
- (3) C.B.I. Vs. Ashok Kumar Aggarwal [2014 AIR SCW 472]
- (4) State of T.N. V. M.M. Rajendran
[(1997) MAD LJ (Cri.) 543]
- (5) Panalal Damodar Rathi V. State of Maharashtra
[AIR 1979 SC 1191]
- (6) K. Shanthamma V. State of Telangana
[AIR Online 2022 SC 182]

I have carefully perused the above citations. In my view, all of them are distinguishable on facts.

22. In the case of Uttam Shere (supra), there was no evidence of demand of bribe. In case of Vinod Kanadkhedkar (supra), the evidence as regards demand of bribe was found to be doubtful. The judgment in Ashok Aggarwal's case (supra) and M.M. Rajendran (supra) pertained to grant of sanction for prosecution. In the case in hand, the sanction for prosecution has not been seriously taken exception to before the trial Court and this Court as well. The sanctioning authority has specifically deposed to have had gone through all the papers of investigation before sanction for prosecution was accorded. P.W.4 Bhanudas Sonawane (investigating officer) was categorical to state that all the papers of

investigation were forwarded to the concerned authority for obtaining sanction. Nothing was suggested to him in his cross-examination disputing to have sent all the police papers for obtaining sanction. The sanction order (Exh.28) itself indicates the sanctioning authority to have had perused all the papers of investigation and then accorded sanction.

23. In short, admittedly, the complainant had lodged a police report against Dr. Abdul Hameed. Enquiry/ investigation thereof was entrusted with the original appellant herein. The complainant had, therefore, been to the original appellant to request him to do the needful. The original appellant had made demand of Rs.1000/- first as illegal gratification. He then scaled down the demand to Rs.500/-. The factum of demand of bribe and acceptance thereof has been proved by the evidence of the complainant and the evidence of an independent witness, P.W.2 Rahimkhan. Tainted bribe money came to be recovered from the original appellant. In view of Section 20 of the Prevention of Corruption Act, it was for the original appellant to at least offer a reasonable explanation or to lead evidence in rebuttal of presumption. The explanation offered by the original appellant in writing soon after the trap was successful is

grossly inconsistent with his defence. It was his explanation that the complainant forcibly thrust some currency notes into his pocket. Had really the original appellant owed him Rs.500/- towards price of 5 tickets of Udit Narayan Sangeet Rajani, the original appellant could have given the same in his explanation (Exh.G). The meeting between the complainant and the shadow witness with the original appellant some time before the trap was laid is of no consequence in the face of overwhelming evidence on record. No question on that point had been put to the complainant in his cross-examination. As such, he did not have an opportunity to respond thereto. The trial Court has passed a well-reasoned order, convicting and sentencing the original appellant. On re-appreciation of the entire evidence in the case, this Court finds no reason to interfere with the impugned order of conviction and resultant sentence.

24. The Criminal Appeal thus fails. The same is dismissed.

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

fmp/-