

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

CRIMINAL APPEAL NO. 230 OF 2005

Mohammed Samiuddin Siddiqui
s/o Mohammed Ismail
(Died) Through his wife
Ishratjaha Mohamed Samiuddin Siddiqui..
Age: 64 years, Occu.: Nil,
R/o N-13, Mujaffar Nagar,
Hudco Corner, Aurangabad

..APPELLANT

VERSUS

State of Maharashtra

..RESPONDENT

....

Mr. N.S. Ghanekar, Advocate for appellant
Mr. S.P. Sonpawale, A.P.P. for respondent - State

....

CORAM : R.G. AVACHAT, J.
RESERVED ON : 02nd MAY, 2022
PRONOUNCED ON : 20th JULY, 2022

JUDGMENT :

1. The challenge in this appeal is to the judgment and order dated 17th March, 2005 passed by Special Judge (P.C. Act), Aurangabad in Special Case No. 14 of 2003 convicting the original appellant (deceased) for the offence punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 ('P.C. Act') and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/- for each offence, in default, to suffer further rigorous imprisonment for one month.

2. The original appellant/convict passed away pending the appeal. His widow, therefore, came on record to prosecute the appeal.

The facts, giving rise to the present appeal, are as under :-

3. The original appellant was serving as a Maintenance Surveyor with City Survey Office, Aurangabad. PW.2 – Mohd. Yehsan Quadri (complainant) had bought a house in the name of his wife. The house was sold to one Abdul Hameed for Rs.1,70,000/-. Name of the purchaser – Abdul Hameed was to be recorded in the city survey record. Property Registration Card ('PR. Card') stood in the name of erstwhile owner. The complainant had, therefore, moved an application (Exh.17) dated 17th March, 2003 to the city survey office for recording his wife's name in the PR. Card. The file was to be processed by the original appellant. He dalyed to do the needful. When the complainant met him requesting for processing his application at the earliest, he made demand of Rs.200/-. The complainant, therefore, lodged the complaint (Exh.15) with the office of Anti-Corruption Bureau, Aurangabad ('A.C.B.') on 28th April, 2003.

4. PW.4 – Rameshwar Thorat, Police Inspector, A.C.B., Aurangabad recorded the complaint. He decided to lay a trap. Services of two clerks working with the Sales Tax Office were solicited to act as panch witnesses. They came. A pre-trap panchanama (Exh. 21) was drawn. PW.4 -

Rameshwar gave necessary instructions to the complainant and the panch witnesses. Then the trap party moved towards the office of city survey. The complainant and P.W.3 – Abhay Karmadkar (shadow witness) met the appellant in his office. He allegedly asked them to accompany him for tea in the canteen. There, he made the demand of illegal gratification. The complainant, in turn, paid the same and then gave a pre-determined signal. The members of trap party arrived in response to the signal. The appellant was overpowered. The bribe money came to be recovered from him. Thereafter, post-trap panchanama (Exh.22) was drawn. All the papers of investigation were submitted to the office of Deputy Director of Land Records, Aurangabd for obtaining sanction for prosecution of the original appellant. He, in turn, granted sanction (Exh.10). The appellant was proceeded against by filing the charge-sheet.

5. The learned Special Judge, appointed for trial of the cases under P.C. Act, framed charge (Exh.6). The appellant pleaded not guilty. His defence was that of false implication. The reference to his defence statement would be made later on. The prosecution examined four witnesses, produced in evidence certain documents for establishing the charge. The trial Court, on appreciation of evidence, convicted and sentenced the original appellant as stated above.

6. Mr. Ghanekar, learned counsel for the appellant, would submit that one Mohd. Abdul Hamid (D.W.1) was engaged as an agent to do the needful. The appellant had not been to the city survey office to submit the application. A notice to the previous vendor is required to be served before effecting change in the PR. Card. In the month of April there were many public holidays. Work of shifting of files was underway. The original appellant did not have authority to sanction the mutation. Everything which he was expected to do had already been done. Approval of the city survey officer was awaited. The complainant's brother was serving as Constable with the Crime Branch at relevant time. Moreover, the complainant had acquaintance with Deputy Superintendent of Police, A.C.B. As the complainant was annoyed/angry with the appellant for delay in issuing PR. Card, the appellant was falsely implicated. The amount was paid for being paid to D.W.1 – Md. Abdul Hamid for his service charges as an agent. According to learned counsel, in this factual backdrop, the appellant ought to have been acquitted. He, therefore urged for allowing the appeal.

7. Learned A.P.P. would, on the other hand, submit that the factum of demand of bribe and acceptance thereof has been duly proved by evidence of the complainant (P.W. 2) and independent witness (P.W. 3). Sanction for prosecution of the appellant has not been taken exception to. The complainant categorically denied to have availed services of D.W.1 – Mh. Abdul

Hamid. There was, therefore, no question of paying him (agent – D.W.1) his service charges. According to learned A.P.P., it is not a case for interference with the impugned judgment and order.

8. Considered the submissions advanced. Perused the entire evidence on record. Gone through the documents relied on.

9. Admittedly, the original appellant was serving as a Maintenance Surveyor with the office of City Survey, Aurangabad at the relevant time. It appears that he was fifty five years of age by then. The original appellant passed away pending the appeal. His widow is, therefore, prosecuting the appeal.

10. P.W.1 – Vikram Khedkar was serving as Deputy Director, Land Records, Aurangabad at the relevant time. Admittedly, he was an appointing authority of the employees of the cadre of maintenance surveyor. He accorded sanction for prosecution of the original appellant in response to the papers of investigation submitted to him for that purpose. The sanction for prosecution finds place at Exhibit 10. Perusal thereof indicates application of mind. The sanction (Exh.10) has not been taken exception to so seriously.

11. The complainant testified that he had a house property purchased by him in the name of his wife. He sold it to one Abdul Hameed

for Rs.1,70,000/-. The purchaser paid him part of the consideration amount since P.R. card was not up-to date. He had, therefore, applied to the city survey office on 17th March, 2003 for recording the name of his wife in the P.R. card. Admittedly, the name of erstwhile owner of the house property was appearing in the P.R. card. The application for change in the entries in the P.R. card is supposed to be accompanied by a deed of conveyance and a copy of current P.R. card. According to the complainant, it was he, who had personally drafted the application (Exh.17) on 17th March, 2003 and he himself handed it over to the original appellant. The appellant, in turn, told him that it takes fifteen days for effecting the change in P.R. card. He, therefore, asked him to come after a fortnight. A week after filing of the application, the appellant had visited the house of the complainant as a part of inspection required to be done before effecting the change in P.R. card. The complainant thereafter continuously went to the office of the appellant to ask him to issue him a fresh P.R. card. The appellant would, on one or the other pretext, ask him to come afterwards.

12. It is also in the evidence of the complainant that on 27th April, 2003 about 08.00 p.m. he was passing by Champa Chowk. The appellant happened to be at Champa Chowk. He gave a call to the appellant. The complainant went to him. The appellant asked him to come to his office on the following day with a sum of Rs.200/-. He promised to issue him a fresh

PR. card the same day. It is further in this evidence that same night he was passing by Roshan Gate. It was about 09.00 p.m. His friend Mazhar was with him. On way, there was a dispensary of Dr. Gaffar Quadri. One person viz. Shaikh Mujeeb, was present in the dispensary. The complainant's friend told the complainant that the said person was an officer of A.C.B. Both of them, therefore, went to him. The officer asked the complainant to come to his office next morning. Accordingly, he went to the office. The officer introduced P.W. 4 – Rameshwar to the complainant. P.W.4 – Rameshwar, in turn, recorded the complaint (Exh.15) filed by the complainant. Presence of two officials in the cadre of clerk working with the Sale Tax Office was secured to act as panch witnesses. A pre-trap panchanama (Exh.21) was drawn. All the concerned were given due instructions. The complainant was told to pay the bribe money only on the demand is made. He was also asked to give a signal, no sooner the appellant would receive the money.

13. It is further in his evidence that the trap party headed by P.W. 4 – Rameshwar, therefore, started for the office of city survey in the official vehicle. The vehicle was halted some distance away from the office. Both, the complainant and P.W.3 (shadow witness) went to the office of the appellant. He was present in his office. The complainant enquired with him about his work. The appellant asked him whether he (complainant) had brought the money, as was asked for. The complainant said him 'yes'. The

appellant then asked them to accompany him to the canteen for a cup of tea. The trio went to the canteen. Waiter served them three cups of tea. Cigarettes were brought. The appellant again asked the complainant whether he had brought the money. The appellant said him to have brought. Then the complainant asked him to pay him the money. The complainant, thereupon, held it before him the anthracene powder smeared currency notes. The appellant received the same. The appellant gave a pre-determined signal. The members of the trap party arrived immediately. The bribe money came to be seized from the appellant under the panchanama (Exh.22).

14. Almost on the same lines is the evidence of P.W. 3 – shadow witness in examination-in-chief. The evidence that has come on record during cross-examination of both these witnesses would now be referred to. The complainant admitted that he could not read, write or understand Marathi. It is however not known as to how his complaint is in Marathi language. There is no evidence to indicate that someone from the office of A.C.B. translated the same for being recorded in the regional language. P.W. 4 – Rameshwar, who had recorded the same, categorically denied that the appellant did not understand Marathi. Be that as it may. The complainant was confronted with the application (Exh.17) dated 17th March, 2003. He admitted it to have been in the handwriting of D.W. 1 – Md. Abdul Hamid. He further admitted that the said application was presented by D.W. 1 – Mh.

Abdul Hamid himself at the city survey office and not by him. He also admitted that the appellant had paid visit to his house as a part of official inspection behind his back. There is evidence of D.W. 1 – Md. Abdul Hamid that it was he, who accompanied the appellant for such visit. It has also come in evidence that a copy of current P.R. card is required to be filed alongwith the application. Admittedly, an old copy of the P.R. card was presented alongwith the application (Exh.17). There is record to indicate that D.W. 1 – Md. Adbul Hamid had obtained a certified copy of the current P.R. card (of the year on which the application presented) and presented the same to the city survey office. The same indicates the involvement of D.W.1 – Md. Abdul Hamid in the matter. D.W. 1 – Hamid claimed to have worked as an agent at city survey office. Working as an agent has not been officially permitted. It is not known as to why the complainant disowned to have had engaged D.W. 1 – Md. Abdul Hamid for obtaining P.R. card when his involvement in the matter is writ large.

15. According to the complainant, he had met the appellant for over 20/25 times. The same is, however missing in his complaint (Exh.15). He has admitted that he was annoyed/angry with the appellant since he had delayed issuing the P.R. card. He had not filed any complaint against the higher-ups of the appellant. Until 27th April, 2003 he did not feel to lodge a complaint against the appellant. Admittedly, one brother of the complainant

was serving as a Constable with the Crime Branch. Before lodging of the complaint, he had met Deputy Superintendent of Police, A.C.B., an officer of P.W. 4 – Rameshwar. It is in the evidence of the complainant that the said officer in fact introduced him to P.W. 4 – Rameshwar. P.W. 4 – Rameshwar, however denied the same.

16. As per the case of prosecution, the demand of bribe was first made by the appellant when he met the complainant at Champa Chowk on 27th April, 2003. Except version of the complainant, there is no corroborative evidence in this regard. When the complainant was annoyed/angry with the appellant on account of delay in issuance of P.R. card, he lodged the complaint (Exh.15). It was, therefore, expected of P.W. 4 – Rameshwar to verify the demand before going ahead to lay a trap. The demand has admittedly not been verified in the present case, though it is not a requirement in each and every case. Admittedly, P.W. 4 – Rameshwar had not instructed the complainant to offer the appellant a cup of tea and under that pretext take him to the canteen. According to the complainant, it was the appellant himself, who, after having enquired with him as to whether he brought the bribe money and having learnt the complainant to have brought the same, asked the complainant to accompany him to the canteen for a cup of tea. Here, the evidence of P.W. 3 – shadow witness is altogether inconsistent with the case of the complainant. According to P.W. 3 – shadow

witness, when they met the appellant in his office and in response to the complainant's enquiry regarding his work, the appellant told him that everything was ready and only the signature of his officer was remained to be obtained. The appellant even showed him the file and told the complainant that by 02.00 p.m. his work would be done in any case. According to P.W. 3 – shadow witness, the complainant did not make any demand of money when they met him at the office. The evidence of P.W. 3 – shadow witness is inconsistent with the complainant's case. According to P.W. 3 – shadow witness, it is the complainant himself, who had offered the appellant a cup of tea and asked him to join them for the tea at canteen. Accordingly, the trio went to the canteen. According to the P.W. 3 – shadow witness, in the canteen, the appellant for the first time enquired with the complainant as to whether he had brought the money. The complainant said 'yes'. Then he offered the money and the appellant, in turn, received the same. Whereas, although the complainant had testified in his evidence before the Court that the appellant had demanded the bribe while they were taking tea in the canteen, there are material omissions that have come on record. Admittedly, P.W. 4 – Rameshwar recorded statements of both the complainant and P.W. 3 – shadow witness soon after the trap was said to have been successful. P.W. 4 – Rameshwar was categorical to state in his evidence that in the said statement, the complainant did not state him that it was the appellant, who took them to the canteen. The statement is also silent to record that the appellant made

the demand of bribe in the canteen and in response thereto, he paid the same. To all such questions, the complainant claimed ignorance as to whether he had narrated all these facts in his statement that was recorded soon after the trap was complete.

17. PW. 2 has categorically admitted that soon after he entered the witness box to give evidence, the learned A.PP had read him over all the panchanamas. This witness was suggested that he gave evidence favourable to the prosecution since had he stated the true facts, the same would have affected his service career, as he was a public servant.

18. As such, the gist of appreciation of prosecution evidence would indicate that the complainant gave a false version that it was he, who had drafted the application (Exh.17) and presented the same to the appellant in person. An old P.R. card was accompanied with the application. When the P.R. card of the current year was required, it was D.W.1 – Md. Abdul Hamid, who obtained the same by making an application for it's certified copy and on receipt of the same filed with the office of city survey. Admittedly, fifteen days time is required for effecting change in the P.R. card, since a notice to the person, whose name is going to be replaced, is required to be given a fifteen days time. The appellant submitted his written statement (Exh.29). It has been averred therein that the application dated 17th March, 2003 was

submitted by the agent – Md. Abdul Hamid (D.W.1). The application (Exh.17) was received in the inward section. The required P.R. card was not presented alongwith the application. D.W. 1 – Md. Abdul Hamid, thereafter applied for certified copy of the current P.R. card. He obtained the same and then submitted it to the office. The erstwhile owner was issued with the notice of the application (Exh.17). It was the month of April. There were many public holidays viz. Ram Navami, Dr. Babasaheb Ambedkar Jayanti, Mahavir Jayanti, Good Friday besides four Sundays and two Saturdays (2nd and 4th). Meanwhile, the work of effecting partition was underway in the office of city survey. The files were, therefore, required to be shifted. Although the entire file was made ready by the appellant, the City Survey Officer had not signed it officially. P.R. card was, therefore, could not be issued on time.

19. As per the evidence of P.W. 3 – shadow witness, the appellant had shown the file to the complainant that it was ready in all respect and signature of the City Survey Officer was only remained to be obtained. He had assured the complainant that P.R. card would be issued by 02.00/03.00 p.m. on 28th April, 2003 itself. It has already been observed that the complainant was annoyed/angry with the appellant on account of delay in issuance of P.R. card. The appellant has, therefore, every reason to contend that since one brother of the complainant was a crime branch constable, and

the complainant had met the Deputy Superintendent of Police, A.C.B. the previous night, a false complaint was lodged. It has also not been made clear as to how the complaint came to be recorded in the regional language (Marathi) when the complainant claimed to have been unable to read, write and understand Marathi, whereas, according to P.W. 4 – Rameshwar, the complainant had narrated the complaint in Marathi. It has also been observed that when the complainant was annoyed/angry with the appellant, P.W. 4 – Rameshwar ought to have first gone for verification of the demand. There is gross inconsistency between the evidence of the complainant and P.W. 3 – shadow witness. The same has been referred to hereinabove. All these facts lead this Court to conclude that the prosecution evidence do not inspire confidence, in spite of the fact that currency notes came to be recovered from the deceased appellant. The trial Court, for convicting the appellant simply observed that had really the services of D.W. 1 – Md. Abdul Hamid been availed for obtaining P.R. card, the complainant should have insisted him to get the P.R. card earliest. These observations, in my view, run counter to the evidence obtained in the case. Involvement of D.W. 1 – Md. Abdul Hamid, to prefer the application and comply with outstanding requirement, undoubtedly indicate his involvement as an agent. When the complainant himself admitted that the application (Exh.17) was drafted by D.W.1 – Md. Abdul Hamid, the trial Court observed contrary. According to the trial Court, presumption under Section 20 of the P.C. Act was required to

be raised. The same has not been rebutted even on preponderance of probability. These observations, in my view, ought not to have been made in the face of evidence obtainable in the case and appreciation thereof made hereinabove.

20 For all these reasons, this Court is of the view that interference with the impugned order of conviction and sentence is warranted. Hence, I pass the following order :-

ORDER

- (I) Criminal appeal succeeds.
- (II) The judgment and order of conviction and sentence dated 17th March, 2005, passed by Special Judge, Aurangabad in Special Case No. 14 of 2003, is hereby quashed and set aside.
- (III) The appellant is acquitted of the offence punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988.
- (IV) Fine amount, if paid, be refunded to the appellant.

(R.G. AVACHAT, J.)

SSD