

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

CRIMINAL APPEAL NO. 154 OF 2013

The State of Maharashtra,
through Public Prosecutor, High Court,
Bench at Aurangabad.

.. Appellant
[original
complainant]

Versus

Chandrakant Trimbak Shirsath
Age. 43 years, Kamgar Talathi,
Chinchapur Pangul, Tq. Pathardi,
Dist. Ahmednagar.

.. Respondent
[original
accused]

Mr.S.W. Munde, APP for the appellant-State.
Mr.N.K. Kakade, Advocate for the sole respondent.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	19.10.2022
PRONOUNCED ON	:	23.12.2022

J U D G M E N T :-

01. This appeal against acquittal is filed by the State challenging the judgment and order passed by the learned Special Judge and Additional Sessions Judge, Ahmednagar dated 17.04.2012 in Special Case No.10 of 2009, acquitting the respondent from the offence punishable under sections 7 and 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988. The judgment is mainly on the ground that the prosecution has not proved the

guilt of the accused, the prosecution could not prove spot of incident where the trap was laid, there is no due verification done and there is variance between the witnesses so far as acceptance of the amount. The Trial Court accepted the immediate explanation that was offered by the accused. It is further held that the accused was working as Talathi and was not competent to sanction the mutation entries in the revenue record and thus, there was no question of demanding any amount for doing said work.

02. The story of the prosecution is that the respondent-accused was working as Kamgar Talathi at Sajja Chinchpur-pangul, Tq. Pathardi and he demanded amount of Rs.500/- for the work of sanctioning mutation entry. When the amount was taken as per demand, the accused is caught red-handed by laying trap.

03. The prosecution examined P.W.1-Mahesh Bhaskarrao Patil, the sanctioning authority. P.W.1 in his evidence deposed that he was working as Sub-Divisional Officer, Ahmednagar at the time of trap. He received the papers of proposal for sanction along with papers of investigation. He received two envelopes. One was containing papers of investigation and other

envelope contained draft of sanction order for reference with request to determine whether sanction to prosecute should be granted or not. He studied the papers of investigation including the complaint, pre-trap panchanama, post-trap panchanama as well as statements of witnesses and other documents prepared during the course of investigation. The memorandum of accused was also sent along with the documents. On going through the documents, he was convinced that prima facie case is made out to grant sanction. He studied the papers, where telephonic talk of the accused and the complainant was recorded. This witness was satisfied that the accused demanded Rs.1000/- for supplying 7/12 extract of the land belonging to the accused. He accepted Rs.500/- earlier and Rs.500/- was paid at the time of trap.

04. In cross-examination, this witness deposed that an application for mutating name of the son of the complainant on the basis of sale-deed was given to the accused in the year 2007. A pencil entry is required to be taken by the Talathi, which is thereafter certified by Circle Inspector. He was shown the Mutation Entry No.575, which reveals that the Mutation Entry was already taken on 08.09.2009 on the basis of the sale-deed executed on 03.09.2007.

He further accepted that the intimation regarding decision of case No.22 of 2007 by Tahsildar was also given. He accepted that as per procedure, intimation regarding decision given by the Tahsildar is required to be sent to the Talathi and thereupon the Talathi is required to take Mutation Entry as per the said decision. He could not tell as to whether the accused was appointed by order of District Collector. On confronting with the document, he accepted that the Talathi was appointed as per order of appointment issued by the Sub-Divisional Officer, Niphad, Dist. Nashik. He accepted that the appointment order was issued pursuant to letter of the District Collector, Nashik dated 24.03.1999.

05. PW.2 is the complainant Vasudeo Shriram Dhakane. He stated that he had purchased 20 gunthas land in Dhakanwadi Shivar, a year prior to the incident in question. By virtue of sale-deed in the name of his son, for taking mutation entry in the record of rights, he met the accused. An objection was raised by one Nivrutti Rama Gite, the earlier owner of the land. The Tahsildar held enquiry and decided the objection in favour of the complainant. Thereafter, this witness again met the accused, where it is alleged that he demanded Rs.1000/-. This witness paid Rs.500/- to the

Talathi and decided to file a complaint in the office of Anti-corruption Bureau and lodged the complaint (Exh.19). The ACB Officer called panchas. After making of a plan about trap, this witness along with panch witness went to the office of the accused and asked the accused about his work. The accused asked whether he has brought the remaining amount, he was told that his work will be done after the remaining amount is paid to the accused. This witness, panch and accused went near a closed shop and sat on the footsteps of the closed shop in the campus of Tahsil office and stood in front of the accused. This witness took out tainted amount from his left hand side shirt pocket by his right hand and held it in front of the accused. The accused accepted the said amount by his right hand and kept the same in the pant pocket. On that, the complainant gave signal to the raiding party. The raiding party came and took the accused to the Tahsil office and thereafter procedure was followed. Under the ultraviolet lamp, the fingers and hand and shirt pocket of the complainant were found with traces of the anthracene powder. He narrated all the facts to the Investigating Officer. On enquiry this witness was told that though Mutation Entry was taken, it was not approved or certified, because of the objection taken by Nivrutti Rama Gite.

06. This witness was cross-examined by the accused. He deposed that the objector Nivrutti happens to be his father-in-law. His vendor Adinath is also his distant relative. Nivrutti had objected to the mutation entry on the count that he had given land to Adinath by way of conditional mortgage and it was not a sale. Therefore, Nivrutti had also filed Misc. Criminal Application against Adinath and son of the complainant in the Court of JMFC in respect of the transaction. He further accepted that the accused had told him that the mutation entry was not certified by the Circle Inspector. He accepted that he never met the Circle Inspector Shri Bade. He accepted that the portion marked "A" in the complaint was never told to the ACB. An admission is given that after reaching Pathardi, the complainant made cell phone call to the accused to ascertain his location, whereupon he was told that the accused was at Pathardi and not at Chinchpur. After the complainant and panch witness sat in the tea stall in the campus of Tahsil Office, accused came there on motor cycle. The accused took out some documents from dicky of the motor cycle and started going in Tahsil Office. The complainant called him by his name and thereupon the accused came near them and sat on the footstep. He offered accused a tea, but the accused refused. Suggestion was given that it is the complainant who inserted tainted amount in backside pocket of the

pant of the accused. This witness proved the complaint Exh.19. From the complaint portion marked "A", it is seen that in the complaint he had stated that the complainant had met Shri Bade, Circle Officer. The Circle Inspector told that the Talathi has not produced the entries before him.

07. PW.3-Dhondiba Tukaram Jare was working as Agricultural Assistant in the Agricultural Department. He was requested to act as Panch by the Investigating Officer. Upon his request, they went to the ACB office. In the ACB office he was explained the complaint and trap procedure. This witness was told to accompany the complainant. He proved pre-trap panchanama Exh.23. He deposed that on reaching Pathardi Government Rest House at 3.15 p.m. the Investigating Officer asked the complainant to make call to accused and to ask whether the complainant can meet the accused. The complainant therefore asked the accused on cell phone. After the call, the complainant told that the accused was at Chinchpur-pangul. The raiding party went to Chinchpur-pangul. While passing from the road the complainant saw that the Talathi was going towards Pathardi Tahsil on his motor cycle. Therefore, the vehicle was again taken to Pathardi Tahsill Office. After the vehicle was stopped at certain distance, from there the complainant

and this witness walked to the Tahsil office. From the conversation he recognized the accused. After speaking for some time, the complainant asked the accused about his work. On that the accused told that he had taken the Mutation Entry, but it was not certified and therefore he could not give him 7/12 extract. The complainant told the accused that he has already paid an amount of Rs.500/-, but there was delay in paying remaining amount of Rs.500/-. The accused replied that the complainant has to pay the amount if he has brought the same. On which the complainant took out tainted amount from his pocket by his right hand and gave it to the accused. The accused accepted the amount by his left hand. After accepting the tainted amount by left hand, the accused took that amount in his right hand and kept in his right hand side pant pocket. The complainant gave signal. On that the raiding party came. The accused was taken to Tahsil office. The tainted amount was taken out from the pocket of the accused and examined under ultraviolet lamp. Traces of anthracene powder were found on the said amount and the same tallied with the description noted in the pre-trap panchanama. Anthracene powder was also found on both the hands of the accused. A specific question was asked as to what else was examined under ultraviolet lamp. This witness answered that only hands and tainted amount was

examined. Pant of the accused was also examined, on which anthracene powder was found. The complainant was asked to wait outside the room and after some time his hands were also examined under the ultraviolet lamp, which found glittering with anthracene powder. After trap, the investigating officer asked the accused to give written explanation, which was immediately given in presence of the panchas. Thereafter, the accused was taken to Pathardi police station, where the investigating officer lodged an FIR. In his deposition, he further stated that himself, accused and the complainant were sitting at tea stall, at that time no dialogues took place between them. This witness was thereafter declared hostile and cross-examined by the learned APP. On asking about the portion marked in his statement, he stated that he has not given that statement to the police. He answered that he did not tell ACB Officer that the accused accepted the tainted amount by his left hand and then took it in his right hand and then kept in his pant pocket and this fact he deposed for the first time in the Court. Anthracene power was found only on the right hand fingers and not on his left hand fingers etc.

08. In the cross-examination, he deposed that the ACB Officer had not instructed the complainant not to open the topic of giving money on his

own. The Dy.S.P, ACB was with them during the entire proceeding. He deposed that there are other offices like police station, Tahsil office and sub-jail in the compound of Tahsil office and many visitors were present in the campus at the relevant time. There was only one tea stall outside the compound of Tahsil office. It is the complainant who called the accused from Tea stall. The accused was inside the campus and came to the tea stall. He was followed by the complainant. The accused was offered tea, however, he refused. The accused sat on the footstep near the closed shop. An important admission is given that the accused himself never demanded any amount from the complainant. He deposed that at the time of trap there was bag in the hands of the accused. However, same was not examined under ultraviolet lamp. PW.3 proved the immediate explanation (Exh.27) offered by the accused. In his immediate explanation the accused stated that the entry on the basis of sale-deed in 7/12 extract was not sanctioned by the Circle Officer. There was no demand made by the accused. The complainant, however, deliberately implicated the accused in the false case. This explanation assumes importance as it was given immediately after the trap.

09. Investigating Officer – Ramrao Madhavrao Somwanshi is

examined as P.W.4. He deposed about the trap procedure and about the investigation. He collected information and obtained sanction from the sanctioning authority.

10. In the cross-examination, he stated that he accepted that the distance between Ahmednagar and Pathardi is about 70 kms. On the same day, the vehicle, that was used for trap shows that it travelled distance of 254 kms in connection with this crime. A suggestion was given that the vehicle ran for this much distance as raiding party was following the accused by going to various places. He did not collect the information about the cell phone number of the accused on which it is alleged that the complainant had made a call. He did not recollect as to whether the accused was having any bag in his hand when he was caught. Thus, with this evidence the prosecution closed its evidence.

11. After the trial the learned Judge held that the prosecution has failed to prove the guilt of the accused and acquitted him of the offence.

12. Learned APP argued that there was sufficient evidence to convict

the appellant. The learned Sessions Judge failed to appreciate that the tainted amount was found with the accused and therefore his hands and tainted notes shown glitterence of anthracene powder. He submitted that sanction was properly granted. It is further submitted that the reasoning given and the findings recorded by the learned Sessions Judge are perverse that no place of actual trap is clear, the prosecution could not sufficiently prove the case. The finding that the panchanama Exh.28 is not signed by the panch is not correct as signature is there in presence of the Investigating Officer. He submits that this fact is not fatal to the prosecution case. The finding that there is variance in the story between two witnesses that one witness stated that amount was taken in the left hand another witness is stating that amount is taken in right hand is not material. The explanation that was offered by the accused immediately after the trap was not fatal. He further submitted that it is a matter of fact that no mutation entry was taken in 7/12 extract which shows that there was reason for the accused to demand and accept the amount for doing the said work.

13. As against the arguments of learned APP, learned Advocate for the respondent submits that the learned Sessions Judge has rightly considered the

point Nos.2 and 3 i.e. in respect of acceptance of the amount and regarding criminal misconduct. It has come on record that the accused had immediately taken pencil entry within four days, which shows that the accused had done his work promptly without any expectation and this fact deserves to be considered. The learned Advocate for the defence relied upon following cases:-

- (i) (2009) 12 SCC 515 – State of Rajasthan Vs. Mohanlal.
- (ii) 2010 ALL MR (Cri) 2588 – The Deputy Superintendent of Police Anti Corruption Bureau, Chandrapur Vs. Vithoba s/o. Ganpati Pidurkar.

14. The Hon'ble Apex Court in the case of Mohanlal (Supra) has held that presumption of innocence of accused is further reinforced by acquittal by the Trial Court. In para 38 of the judgment the Hon'ble Apex considered the judgment in the case of Krishnan WITH O.Ayyar Thavar v. State Rep.By Inspector 2003 (7) SCC 56, wherein it is held that the prosecution has to prove guilt of the accused beyond reasonable doubt. In number of cases it is held by the Hon'ble Apex Court that while dealing with the appeals against acquittal, the Court has to be very cautious, though the Courts have power to appreciate the evidence afresh. Still, considerations while dealing with the appeals against

acquittal and appeals against conviction stand totally on different footings. In the case of Mohanlal (Supra), it was argued that presumption under section 20 of the Act is not considered. In that case money was recovered from the almirah in the room. In that view of the matter the Hon'ble Apex Court held that presumption under section 20 cannot be invoked under such circumstances. In the said judgment the Court has considered the scope of section 20 and considering various judgments in the cases of appeals against acquittal has concluded that no interference is called for when the view expressed by the trial Court is reasonable and possible view and there is no perversity in the reasoning. Next judgment relied upon is in the case of Vithoba Ganpati Pidurkar (Supra). After considering various judgments, this Court at Nagpur Bench has held that the judgment of acquittal should not be lightly interfered with.

15. Considering above referred judgments, this Court finds that while recording acquittal of the Court, the Court has rightly considered the evidence. Though the learned APP submits that in this case the learned Court below has not invoked presumption under section 20, this Court finds that to raise presumption, it was necessary to satisfy the principal condition that the

acceptance of amount is pursuant to demand of bribe. Considering that in this case it is specifically brought on record in the cross that there was no demand by the accused at the time of trap and once the Trial Court has accepted that there is no demand of amount of bribe, there is no question of raising any presumption under section 20. This Court finds that no illegality is committed by the Trial Court by accepting the evidence. The learned APP has failed to point out any perversity in the judgment and order passed by the Trial Court.

16. It is clear that when no case is made out to call interference in the judgment of acquittal, this Court need not interfere with the same. Considering all above facts of the case, evidence on record and the judgments cited by the respondent, this Court finds that there is no merit in the appeal and it must fail.

17. The appeal is dismissed.

[KISHORE C. SANT, J.]