

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

CRIMINAL APPEAL NO. 268 OF 2009

Mahadeo s/o. Pandhari Hingmire .. Appellant
Age.48 years, Occ. Service,
R/o. Alani, Tq. & Dist. Osmanabad,
(died) through LR's.

1. Smt. Sushila wd/o. Mahadeo Hingmire
Age.52 years, Occ. Household,
R/o. Alani, Tq. & Dist. Osmanabad.
2. Vaibhav s/o. Mahadeo Hingmire
Age.32 years, Occ. Unemployed,
R/o. Alani, Tq. & Dist. Osmanabad.
3. Vishal s/o. Mahadeo Hingmire
Age.30 years, Occ. Unemployed,
R/o. Alani, Tq. & Dist. Osmanabad.

Versus

The State of Maharashtra, .. Respondent
Through Dy.S.P. (A.C.B.), Osmanabad.

Mr.V.D. Sapkal, Sr. Advocate i/b. Mr.S.S. Shinde, Advocate for the appellants.
Mr.Y.G. Gujarati, APP for the respondent/State.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 12.10.2022
PRONOUNCED ON: 14.11.2022

J U D G M E N T :-

01. This is an appeal by original accused No.1 challenging judgment

and order dated 18.05.2009, passed by learned Special Judge, Osmanabad, in Special Case (AC) No.8 of 2007, by which the learned Judge was pleased to hold this appellant guilty of offence punishable under sections 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act [for short “the Act”] and has sentenced the appellant to undergo three years of rigorous imprisonment and to pay fine of Rs.4000/- and in default to suffer further rigorous imprisonment for a period of two months for the offence punishable under section 7 of the Act. For the offence punishable under section 13(1)(d) r/w 13(2) of the Act, the appellant is sentenced to suffer rigorous imprisonment for a period of four years and to pay fine of Rs.5000/- and in default to suffer further rigorous imprisonment for a period of two months. Accused No.2 came to be acquitted.

02. The appellant/accused was working as a Police Head Constable in Police Station, Kallam, Dist. Osmanabad. As per the allegations, he had demanded an amount of Rs.30,000/- from the complainant PW-1, namely, Sadik Mahmad Hamid Sayyad. The complainant-accused in a criminal case had approached Sessions Court and thereafter this Court seeking bail. This Court while granting bail, had imposed condition upon the informant to

attend the police station twice a week. It is alleged that the informant could not attend the police station, as the informant lost his niece on 03.01.2007. He told the accused that he could not attend the police station for the said reason. Upon which there was demand of Rs.30,000/- by the accused saying that he would move the Court for cancellation of bail. The amount was settled at Rs.20,000/-. The informant was asked to bring an amount of Rs.10,000/- towards first installment. It is for this reason, the informant approached the Anti-corruption Bureau on 09.01.2007 and lodged the report.

03. On the basis of information PW 4 decided to lay a trap. The informant was called on next date to office of ACB. Panchas were also called to the office. The informant went to the ACB Office along with his friend PW-2-Tambare. After giving proper instructions and showing demonstration of the anthracene powder etc. the raiding team decided to go to police station on 10.01.2007. It is alleged that the accused No.1 asked the informant, whether he brought the thing that was agreed, on which the informant said 'yes'. The accused told to give that thing to PW-2-Tambare and told complainant to wait outside. PW-2-Tambare asked him to make a gesture by looking at the informant that he had paid the money to the present accused. It is, thereafter,

the informant gave signal to the raiding party who came and caught the accused. His hands were checked under ultraviolet lamp. It is said that the trap was successful and prosecution came to be launched after obtaining sanction from the superior of accused No.1. The investigation was carried by PW-4. A charge-sheet came to be filed and appellant/accused along with accused No.2 were tried. After the Trial, the learned Special Judge convicted present accused and acquitted accused No.2.

04. The defense of the accused is that he never demanded any amount from the informant. It is submission of the appellant that the evidence is not consistent with the story of the prosecution. The evidence of the witnesses does not corroborate with each other. There is no evidence to show that there was demand by the accused. It is submitted that the hands of the accused were examined in the ultraviolet lamp, however, no glitterance was found. The story of the prosecution is unbelievable that the accused would accept the amount at the hands of PW-2-Tambare to whom he was not knowing prior to the incident. He submits that it has come in the evidence of PW-3 that the informant wanted to teach lesson to the accused as there was feeling in the mind of the informant that it is because of the accused, he is

facing prosecution and as he had opposed the bail application even in the High Court. It is further case that even the Court has not framed specific charge, as there is no specific time mentioned of the incident etc.

05. The learned APP supported the judgment stating that there is sufficient evidence to prove guilt of the accused. The inconsistency/omissions and contradictions are not material, so as to disbelieve the case of the prosecution.

06. The prosecution in this case has examined seven witnesses. PW-1 is the informant who stated in his deposition that he was an accused in one criminal case lodged against him for executing a bogus sale-deed and was facing prosecution in which he had approached the High Court for grant of bail. While granting bail, this Court had put certain conditions and the informant was directed to attend the police station twice a week. The informant though attended police station, still accused has not recorded his attendance. The informant, therefore, asked as to why attendance is not being recorded, upon which bribe was allegedly demanded to record presence of the informant and other accused persons. The demand was for

Rs.30,000/-, which was settled at Rs.20,000/-. On 03.01.2007, the informant lost his niece and therefore could not attend the police station and he informed this fact to the accused. The accused demanded an amount of Rs.10,000/- on next day. The informant requested that he does not have that much amount and he can give only Rs.5000/-. Thereupon, the informant came with an amount of Rs.9000/-. Thereafter, on 09.01.2007, the informant went to the ACB Office and filed a report. Informant and panchas were called to the office of the ACB. On next day i.e. on 10.01.2007, this informant went there and called his friend PW-2-Tambare. Thereafter, the informant and the raiding party went to the police station, where it is alleged that the accused asked the informant to go outside the room and give amount to PW-2-Tambare. On coming to the police station, accused asked the informant as to whether diaries were brought to mark presence and whether he has brought the thing that was agreed. On answering 'yes' accused allegedly told to give bribe amount to PW-2-Tambare. Accused told informant to go outside the room. Thereafter, the informant, Vaidya and Chandane went outside. Panch Shinde was in the room. When the informant was standing outside the room, accused, panch – Shinde and PW-2-Tambare were outside the police station for a tea. The accused and other persons came in the room after having tea.

One boy wearing red T-Shirt went in the office and immediately came out of the room and went on the motor-cycle. It is upon that PW-2-Tambare told the informant by gesture that the amount is given to the accused and upon that the informant gave signal to the raiding party, raiding party came to the room and drawn panchanama.

07. In the cross-examination, various omissions are brought on record, mainly about demand by the accused in the room and giving money in the hands of PW-2-Tambare. In the cross-examination, it is brought on record that the accused was carrying investigation in Crime No.40 of 2006 against the informant and four other accused persons. He accepted that the register in respect of presence is kept with the Police Station Officer. He accepted that even Thane Ammaladar can mark presence in the register, as well as in the diaries. It is also brought on record that there was no demand initially for recording presence and presence was recorded for 2 to 4 times. It was suggested that the informant had developed grudge against the accused as he had acted against interest of the informant. He further accepted that he did not give signal when the money was given to PW-2-Tambare.

08. In further cross-examination this witness accepted that it is panch No.1 Shinde, who gave signal by keeping handkerchief on the shoulder after accused No.2 left the room and it is after that signal the raiding party came to the police station. He accepted that he had not stated before police that P.W.2-Tambare had made gesture to show that he had paid money to the accused and thereafter the informant gave signal to the police. Thus, it is seen that the evidence of this witness is full of omissions. He has improved the story in material aspects. He accepted that there are various statements which appear in the deposition were not stated before the police.

09. Next witness is P.W.-2 Tambare, whose evidence is important for the reason that even as per the prosecution story the informant gave money to this witness and thereafter this witness who has given money to the accused. His presence is also without any reason and same will be discussed in the concluding paras. He stated that on 10.01.2007 he was to go to Osmanabad and therefore he was standing at the bus-stand, where the informant, one Chandane and Vaidya met him, as they were also going to Osmanabad. They went in a jeep to Osmanabad. It is the informant, who requested him to accompany him to the office of ACB. About the actual incident, he deposed

that they went to police station. The informant gave him currency notes kept in the envelope in the handkerchief. All the persons went to the police station. This witness stayed outside police station in the Varandah. He stated that he did not demand bribe money from the informant. Then, learned APP sought permission to cross-examine this witness.

10. In the cross-examination, to a suggestion, PW.2-Tambare answered that accused did not accept the amount through this witness. He was also cross-examined by the Advocate for the accused. In the cross-examination, he said that the informant wanted to file a case against the accused for accepting bribe, as he was feeling that this accused will file criminal case against the informant for not recording his presence in the police station.

11. PW-3 is a panch witness, who deposed that he was called to act as a panch by the ACB. He was read over the complaint and was explained about the procedure of raid. The pre-trap panchanama was prepared. About the actual incident he stated that on reaching to the police station, they saw the accused sitting in the chair with another person. Accused asked the

informant as to what has happened of his work on which the informant told that he had brought Rs.9000/-. The accused told the informant to give Rs.9000/- to PW.2-Tambare and asked other persons to go outside the room and thereafter the informant and other two persons went out of the room. The accused put handkerchief on the table and asked to keep bribe amount on the handkerchief. PW.2-Tambare kept Rs.9000/- in the handkerchief of the accused. Thereafter PW.2-Tambare, panch and accused went out to hotel for a tea. After having tea they came back to the office to take amount. Then thereafter all three persons came out of the room i.e. this witness, accused and PW.2-Tambare. Accused called accused No.2 from the room and this accused gave handkerchief containing bribe amount to accused No.2 and told him to take xerox copy of one paper. Other accused was wearing red T-shirt. After accused No.2 left room, this witness gave signal by keeping his handkerchief on the shoulder to the raiding party. On this, PW.2-Tambare shouted to hold the accused on which accused no.1 started to run away. The raiding party came to the police station. Dy. S.P- Shaikh caught hold accused No.1. He shown his identify card to the accused. On asking about the bribe money, accused told that it is given to accused No.2, namely, Kiran Hajare. On checking the amount, search was taken of the accused. From his pocket, an

amount of Rs.1101/- was found. Same were checked under ultraviolet lamp, however, nothing was found. This amount was given back to the accused. He specifically stated that on checking the hands of the accused under ultraviolet lamp, no blue shining was seen. When the hands of the complainant were checked, it showed blue shining under the ultraviolet lamp. He further deposed about recording of the panchanama etc. after the trap.

12. In the cross-examination, he stated that he was with the ACB Officer since 12=30 p.m. to 06=30 p.m. on 09.01.2007. However, the complainant was not seen in the office till 06=30 p.m. It was agreed to conduct raid on the next day and it was informed that the trap was to be made successful.

13. He deposed in the cross-examination that the informant told him that accused No.1 was not giving report in his favour in the case which he was facing. The informant further told this witness that accused No.1 was harassing in the investigation and it is for that purpose he had been to the ACB Office to teach lesson to the accused. He accepted that panchanama was not written in his presence. He accepted that there was delay in giving signal

and it was not given immediately. He accepted that in the panchanama, it is not mentioned that the amount was kept in handkerchief on the table and thereafter they went for tea. He stated that the contents in the panchanama are not true and correct to the extent that the complainant gave signal. He stated that the complainant did not give any signal. This witness also could not tell as to who counted the amount of the bribe and who had kept the same. He accepted that the panchanama was given to him for reading eight days prior to recording of his deposition and same was with the witness till his deposition was recorded.

14. Next witness is PW-4 Laxman Najan, who was working as Police Inspector in ACB Office, Osmanabad. He stated that accused No.2 was brought to police station at 08=30 a.m. on the date of incident, who told that he was working with accused No.1 – Hingmire as Private Assistant on daily wages of Rs. 50/-. The accused told that the amount of bribe was with him. It is this accused, who told that he took the amount from accused No.1. This witness further stated that panch No.2 was directed to count the currency notes and he counted the currency notes. He stated that blue shining was seen from the notes and handkerchief under ultraviolet lamp. No anthracene

powder was seen on the palm of the accused. He proved the post trap panchanama. He proved the copy of panchanama given by accused no.2. The omissions in the statement of PW.2-Tambare marked as "A" and "B" were brought on record. He stated that the portion was taken as per the say of PW.2-Tambare.

15. In the cross-examination, he accepted that any Police Station Officer on duty can record presence of the accused. He accepted that after the demand and acceptance of bribe money, it is for the complainant or the pancha No.1 to give signal immediately. He accepted that the investigation under the Prevention of Corruption Act should be done only by the officer of the rank of Dy. Superintendent of Police. He denied the suggestion that he conducted the investigation without any power.

16. The next witness is PW-5 Dattatray Mandlik, who was working as the Superintendent of Police, Osmanabad. This witness has accorded sanction to prosecute the applicant. He proved the sanction order dated 10.08.2007. He stated that he accorded sanction after scrutinizing police papers and after going through the material produced before him. He found that there was

sufficient evidence and material against the accused to prosecute him for the offence under the Act. He formed opinion that the accused had demanded and accepted the bribe.

17. In the cross-examination, he stated that he received form of sanction. He received in all 167 papers containing the photographs and some original papers. He accepted that at the initial stage, there was no recovery of bribe amount. The bribe amount was found later on and therefore two panchanamas were prepared. He also accepted that in absence of specific order to record presence by the Investigating Officer, any other Officer can record the presence of the accused.

18. PW-6 Mohmad Yunus Ismail Shaikh is the Investigating Officer, who deposed about the events and sequence right from first complaint by the informant till completion of trap and investigation. He also stated that at 12=20 p.m. panch No.1 Tambare and one person in Khaki pant came out of the office. They had tea outside the police station and went back to the office by walk. It was after 10 minutes after they returned to office, one person wearing red colour shirt came out of the office and it is after that pancha No.1

Tambare, a person with Khaki pant came out of the office and panch No.1 Shinde gave signal as determined. Thereafter, the raiding party started to go towards police station along with panch No.2. On seeing that the person wearing khaki pant started running away, he was chased and caused by the raiding party. At that time panch No.1 told that it was accused No.1, who accepted bribe and handed over handkerchief to the person wearing red colour shirt i.e. accused No.2. About the ultraviolet lamp, he stated that handkerchief shown presence of anthracene powder. No anthracene powder was found on the currency notes which were taken from the search of the accused and the keys and I-card found from the personal search. He stated that no anthracene powder was found on the palm of the accused in the ultraviolet lamp.

19. In the cross-examination, he accepted that no preliminary enquiry was made before laying the trap. The panch witnesses were called on the very day of the trap. On 09.01.2007, the panch were present in the office. The complainant was also present for about an hour in the office of ACB on 09.01.2007. Other two persons, namely, Vaidya and Chandane were with the complainant. He accepted that accused had opposed the bail petition filed by

the complainant in the Sessions Court as well as in the High Court being the Investigating Officer in the said crime. He accepted that after acceptance of the bribe amount, the complainant or panch witness has to give signal to the raiding party. In cross-examination, copy of the order passed by this Court in application for anticipatory bail that was preferred by the complainant in Crime No.48 of 2006, which shows that anticipatory bail was granted with condition to attend the police station twice a week. It is further brought on record the intimation given to the complainant in this case for attending the police station as per the order passed by the High Court.

20. Last witness PW-7 Chandpasha Mahamad Hanif Sayyad is brother of the informant/complainant. He stated that on 09.01.2007, the complainant was making telephone call from his mobile to the accused. Though he could not hear voice of conversation on the mobile, he could listen his brother. He heard the informant telling the accused that he lost his niece and he would not be in a position to attend the police station. His brother went to police station on 10.01.2007. However, this evidence does not have any bearing and there is no need to discuss.

21. Thus, going through the entire evidence, it is found that the complainant had developed a grudge against accused No.1 for the reason that the accused was investigating officer in the crime wherein this complainant was an accused. In that case present complainant was required to file anticipatory bail application in the Sessions Court and after that was rejected, it was filed in the High Court. In both the Courts, it was the accused, who opposed the bail application, assisted prosecutor in the Court for rejecting the anticipatory bail application. The story of the prosecution that for recording attendance of the complainant as per order passed by the High Court for recording the attendance, amount of bribe was demanded. It has also come on record that on 03.01.2007, niece of the informant died and therefore he could not attend the police station. It is the case that though the informant was attending the police station, accused was not recording said attendance. However, it has come in the evidence of the witnesses that it is not necessary that the attendance is to be recorded by the Investigating Officer only. It has come in the evidence that any other officer present in the police station can record attendance. This appears to be flaw in the case of the prosecution that unless bribe was paid to the accused, presence of the complainant would not have been recorded.

22. From the evidence, what appears is that there are some unnatural events or the things, those are noticed in this case. First is that the informant was accompanied by one Chandane and one Vaidya, who had no role in the entire process on 09.01.2007. The informant was called on 10.01.2007 to the office of ACB, though again it was expected of the informant to go to ACB office alone, he took Chandane and Vaidya and his friend P.W.2-Tambare with him for no reason. P.W.2-Tambare accompanied him in very casual manner. He was not at all expected in the office of ACB. However, merely because the informant saw him at the bus stop, he requested P.W.2-Tambare to come to ACB Office and he accompanied the informant. The work of conducting of raid needs to be done in secret manner. Here is the case that there are three persons, totally unconnected, have accompanied the informant for no reason.

23. It is quite unnatural that person who is not connected at all would hand over amount of bribe. It is quite unusual that the accused told the informant to go outside the police station and asked P.W.2-Tambare with whom there was prior acquaintance, to pay bribe amount, that too by keeping it on the handkerchief and did not accept it by hands. It is further quite

unnatural that by keeping the amount as it is, three persons went for Tea and came back to police station after having tea. Even after coming back, accused No.1 did not touch the amount, but directed one other person i.e. accused No.2, now acquitted, to take the amount. Thus, thereafter the raid was conducted. So, the amount was not immediately seized, as it was already given to accused No.2, who left the police station with the amount. As per the evidence of the Investigating Officer, it is after 8.30 p.m. in the evening accused No.2 was brought to police station and the amount of the bribe was seized. In between, one more unnatural thing that appears from record is that no signal was given by the panch or the informant immediately after the bribe amount was kept on the table, but it was given after accused, PW.2-Tambare and panch Shinde went outside the police station for tea and after they came back to police station after having tea. No reason is coming-forth as to why this unusual mode was adopted. It is also not clear as to what exactly was the role of the accused to directly tell the informant or PW.2-Tambare to handover the amount to accused No.2. It has clearly come in the evidence that when the hands of accused were examined in ultraviolet lamp, no anthracene powder was found on the palm of the accused. It clearly indicates that the amount was not directly accepted by him. Even looking to the evidence of the

witnesses, it is full of material omissions. From the recording of events on 09.01.2007, it does not find place that the accused had told the informant to come on 10.01.2007 with amount. There was no date fixed for giving the amount of bribe. It is for this reason, the learned Advocate for the appellant submitted that charge is not specific as to the time as to when the amount was to be paid. If at all only grievance was that of not recording attendance of the informant, he could have requested police officer in-charge to mark his presence or he could have made inquiry with some other police officer in the police station as to what should be done when his attendance was not being marked by the accused, when it has come on record that there is register maintained in the police station to mark attendance of the accused persons. In addition to that even the informant had kept diary with him on which he used to obtain endorsement of his attendance. Till 30.12.2006, the attendance is very much marked in the police station. For this also the story becomes doubtful that only for marking presence, the accused would demand the amount.

24. The Honb'le Apex court in the case of **P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and Anr.,**

(2015) 10 SCC 152 held as under :-

“23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, *ipso facto*, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder.”

. Thus, since in this case also the prosecution has not proved the demand of illegal gratification, it must fail.

25. Thus, after looking at the evidence and considering the submissions of the accused only conclusion that can be drawn is that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt.

26. This court thus holds that prosecution has failed to prove that the accused is guilty of the offences punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act. Hence, the

following order:-

ORDER

- i] The appeal stands allowed.
- ii] The judgment and order dated 18-05-2009 passed by the learned Special Judge, Osmanabad, in Special Case (AC) No.8 of 2007 is hereby quashed and set aside.
- iii] The appellant is acquitted of the offence punishable under sections 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act.
- iv] The fine amount, if any, be refunded to appellant No.1.

[KISHORE C. SANT, J.]