

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

CRIMINAL APPEAL NO. 297 OF 2012

Haibatrao Madhavrao Patil
Age; 43 years, Occu: Service,
R/o: Plot No.8, Samarth Nagar,
Dhule Road, Amalner, Tq. Amalner,
Dist. Jalgaon

... APPELLANT

VERSUS

The State of Maharashtra
Through Police Inspector,
Anti-Corruption Bureau, Jalgaon,
Tq. and Dist. Jalgaon

... RESPONDENT

....

Mr. V. D. Sapkal, Senior Advocate along with Mr.V. B. Patil, Advocate
for appellant
Mrs. Geeta L. Deshpande, APP for respondent

....

CORAM : R. G. AVACHAT, J.

RESERVED ON : 01st APRIL, 2022

PRONOUNCED ON : 05th APRIL, 2022

J U D G M E N T :-

. The challenge in this appeal is to the judgment and order dated 28.03.2012 passed by the Special Judge, Amalner in Special Case No.1 of 2012, whereby the appellant was convicted for the offence(s) punishable under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'P. C. Act, 1988') and

therefore sentenced to suffer rigorous imprisonment for six months and one year, respectively and pay fine of Rs.5,000/- each. In default of payment of fine, the appellant was directed to suffer rigorous imprisonment for one month and two months, respectively.

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

The appellant was working as Sanitary Inspector with Amalner Municipal Council. PW1 – Premchand Chavan (complainant) was serving as a Sweeper with the same Municipal Council. The appellant made a demand of Rs.3,000/- from the complainant to avoid his transfer. The demand was scaled down to Rs.2,000/-. The complainant paid him Rs.1,500/- by raising a loan from one Guru Ramsing Gogale. The appellant still insisted for balance amount of Rs.500/-. The complainant, therefore, approached the Anti Corruption Bureau (ACB), Nashik. The complaint (Exh.20) lodged by him on 17.06.2011, therefore came to be recorded. PW4 - Ravikant Sonawane, Police Inspector, ACB Nashik, decided to verify the demand and lay a trap. He, therefore, secured presence of two Government servants to act as panch witnesses. He gave the complainant and witnesses necessary

instructions. It was 17.06.2011. On the next day i.e. on 18.06.2011, the complainant accompanied by the raiding party, came down to Amalner. The complainant and a shadow witness PW2 – Bharat Bahot met the appellant in his office in the morning. The appellant made a demand of Rs.500/-. The complainant agreed to pay him the amount during the course of the day. Both, the complainant and shadow witness returned to the raiding party. Pre-trap panchanama (Exh.25) was drawn. Again the complainant accompanied by shadow witness went to the office and met the appellant. He (appellant) made a demand of Rs.500/-. Assured the complainant that he would not be transferred. The complainant, therefore, paid the amount to the appellant and gave a predetermined signal. The raiding party arrived. The appellant came to be overpowered. A sum of Rs.500/- was seized from him. As the crowd had gathered, the raiding party took the appellant to Amalner Police Station. Post-trap panchanama was drawn there. On completion of the investigation, all the police papers were submitted to the Chief Officer, Municipal Council, Amalner, for obtaining his sanction for prosecution of the appellant. The sanction (Exh.30) was obtained. The appellant came to be proceeded against by filing charge-sheet.

3. The Special Judge, framed the charge (Exh.14). The appellant pleaded not guilty. His defense is of false implication. It is his case that his wife runs a shop of hard-wares, etc. It is the case of appellant that the complainant had purchased a water tank on credit. The complainant paid the appellant the outstanding amount.

4. The learned Special Judge, on appreciation of evidence, convicted the appellant as stated above.

5. Heard the learned Senior Advocate for the appellant. Also heard the learned APP for the respondent State.

Learned Senior Advocate for the appellant would submit that the complainant was serving as Sweeper. He was uneducated and illiterate as well. Authority to transfer the Sweepers was with the Chief Officer. Supervisor had an authority to recommend transfer of Sweepers. The appellant was a Sanitary Inspector. He did not have power either to recommend or transfer any of the Sweepers. There were ACB at Dhule and Jalgaon as well. One Jay Chavan had accompanied the complainant to ACB office Nashik. It is not known as to why they approached ACB Nashik instead of approaching the nearest ACB. The shadow witness belonged to the complainant's

community. There is, therefore, every reason for the appellant to contend that he has in fact been trapped in a false trap. The learned Senior Advocate took me through the evidence on the record to ultimately urge that the prosecution evidence is unreliable and the appellant therefore deserves to be acquitted.

6. The learned APP would, on the other hand, submit that the prosecution evidence is consistent one. PW2 was an independent witness. Demand of illegal gratifications and acceptance thereof has been duly proved by the evidence of complainant and that of the shadow witness. The appellant was higher in position. Being a Sanitary Inspector, he had every power to recommend for transfer of any of the Sweepers working on the Municipal establishment. There is no reliable evidence to make out the appellant's defense. Since the bribe amount was seized from possession of the appellant, presumption under Section 20 of the P.C. Act, 1988 has to be drawn. It is for the appellant to rebut such presumption. According to the learned APP, the Special Judge has rightly convicted the appellant. There is, therefore, no reason to interfere with the impugned judgment and order.

7. Considered the submissions advanced. Perused the evidence in the case. Both, the appellant and the complainant were serving with Amalner Municipal Council as Sanitary Inspector and Sweeper, respectively. The complainant testified that just about ten days before the complaint Exh.20 was lodged on 17.06.2011, the appellant had asked him to pay a sum of Rs.3,000/- for avoiding his transfer. On negotiations, the demand was scaled down to Rs.2,000/-. He paid the appellant Rs.1,500/-. He had raised loan therefor. The appellant still insisted to pay him the balance amount of Rs.500/-. As he was reluctant to pay, he approached the ACB Nashik. His complaint was recorded. It was decided to verify the demand and then lay a trap. PW4 – Ravikant Sonawane, therefore secured presence of two Government servants to act as panch witnesses. On their arrival, necessary instructions were given to the complainant and them, as well. The raiding party came down to Amalner.

8. It is further in the evidence of the complainant that he accompanied by PW2 Bharat went to the Municipal office. They met the appellant. The appellant inquired him whether he had brought

the money. It was about 8.30 in the morning. The complainant promised him to pay the amount after a while. He and PW2 Bharat, then went back to the raiding party stationed at R. K. Flour mill. PW2 Bharat also informed him that the appellant made a demand of Rs.500/-. As PW4 verified the demand, demand verification panchanama was drawn. Thereafter, both, the complainant and PW2 again went back to Municipal office. They met the appellant in his office room. The appellant again inquired with him whether he has brought the money. He replied in the affirmative and handed over him the money. The appellant accepted the same by his right hand. The complainant came out of the office room and dropped handkerchief from his hand as a mark of determined signal for raiding party. Thereupon, the raiding party arrived in no time. The appellant was overpowered. A sum of Rs.500/- was seized from him.

9. On the same lines is the evidence of PW2 Bharat Bahot, a shadow witness. It is in his evidence that on his pre-trap visit to the appellant, he (appellant) inquired with the complainant whether he brought the money. The complainant assured him to pay the money after a while. Both of them then came back to the raiding party. They again went back to the appellant's office. The appellant there again

inquired with the appellant whether he has brought the money. The appellant assured the complainant that he would not be transferred. The complainant thereupon paid the appellant Rs.500/- and went out of the room to give predetermined signal. The raiding party arrived. The appellant was overpowered. Rs.500/- was seized from him under the panchanama drawn at Amalner Police. On these lines is the evidence of PW4 Ravikant Sonawane (Investigating Officer).

10. Both, the complainant and shadow witness were subjected to a searching a cross examination. It has been brought on record in the cross examination of the complainant that one Jay Chavan was his cousin. Jay was a Councillor in Municipal Council. One Guru Gogale was a Contractor in Amalner Municipa Council. The complainant while working as a Sweeper, would also work with Guru Gogale on daily wages at a rate of Rs.100/-. There were two unions of the employees of Amalner Municipal Council. One Rambhau Sandanshiv was the President of the unions. Although the complainant denied that Jay Chavan had accompanied him in ACB office, the complaint (Exh.20) and the oral evidence of the shadow witness and Investigating Officer undoubtedly suggest that Jay Chavan had accompanied the complainant to ACB Nashik. It was Jay

Chavan who paid Rs.500/- (five notes of Rs.100/- denomination) to the complainant for being paid as bribe money. There is also evidence to indicate the complainant to have had made two complaints with the Chief Officer requesting him not to take the appellant back in service until the trial is over. It is also in the complaint that one Satyam was a Supervisor power to transfer Sweepers, was vested to the Chief Officer. The Supervisor has authority to recommend for transfer of Sweepers. The complainant had also admitted to have had purchased a water tank from a shop "Dwar Furniture" on credit. He, however, denied that he paid the amount of Rs.500/- to the appellant towards dues therefor.

11. PW2 - Bharat Bahot admitted to have belonged to Mehtar community. The complainant too belonged to this community. PW2 - Bharat was serving as a Superior with Civil Hospital, Nashik. If we appreciate the evidence of PW2, he has simply stated that during pre-trap meeting with the appellant, he (appellant) asked the complainant whether he had brought the money. Making enquiry as to whether complainant has brought the money, does not imply it to be a case of demand of bribe. True, during the second visit, the appellant was said to have made a

demand of Rs.500/-. Both, the complainant and PW2 are consistent on his point and on the point of seizure of Rs.500/- from the appellant. No doubt, by virtue of Section 20 of the P. C. Act, 1988, presumption has to be drawn. The presumption is rebuttable one. The appellant's burden to rebut the same is on preponderance of probabilities.

12. Here is the case of an illiterate Sweeper, lodging complaint against the appellant, Sanitary Inspector. Admittedly, power to transfer Sweepers internally did vests with the Chief Officer. It is also not in dispute that the Supervisor had an authority to recommend the transfer of any Sweeper. The appellant being a Sanitary Inspector, did not have such power. As such, it is a case of the appellant having no authority either to recommend or transfer the complainant. The complainant knew the same. Dhule and Jalgaon towns are closure to Amalner. Instead of approaching the ACB of Dhule or Jalgaon, the complainant went to ACB Nashik for the reasons best known to him. He was accompanied by Councilor Jay Chavan. The parents of Jay Chavan were serving as Sweepers with the Municipal Council. His relations have also been serving as Sweepers. It is not known as to why the complainant denied Jay

Chavan to have been in his company to ACB, Nashik. PW2 and the Investigation Officer have admitted that Jay Chavan had paid a sum of Rs.500/- to the complainant for being used as bribe money. The complainant has also admitted that one Sandanshiv had guided him in the matter. The same suggests that at the instance of Sandanshiv or Jay Chavan, the complaint was lodged. The complainant in spite of being in permanent service with the Municipal Council, was admittedly serving for one Gogale as a Sweeper on daily wages. It is impermissible. Post filing of the chargesheet against the appellant, the complainant had made 2 - 3 communications to the Chief Officer, requesting him not to take back the appellant in service. True, it was his grievance that the appellant was attempting to win him over. There is, however, no evidence in this regard. As such, the evidence indicate that all was not well between the appellant on one hand and the complainant on the other. No explanation has been offered as to why ACB Nashik was approached instead of ACB Dhule or Jalgaon. The shadow witness, PW2 - Bharat Bahot was serving as Sweeper with Civil Hospital Nashik. Both, he and the complainant belonged to one and the same community, 'Mehtar'. The appellant has therefore justifiable reason to contend that only with an oblique

motive, ACB Nashik was approached and presence of PW2 was secured to act as panch witness.

13. Soon after the appellant was overpowered, he gave explanation that the complainant had placed Rs.500/- on his table. His wife runs hardware shop. The complainant had purchased a water tank on credit from her shop. The complainant had paid that amount towards said dues. The complainant has admitted to have had purchased a water tank on credit, although he denied to have been in arrears of the dues. The explanation offered by the appellant in the facts and circumstances of the case appears to be reasonable one. It was offered neither deliberately nor after thought since the same finds place in post trap panchanama drawn within an hour.

14. This Court is therefore of the view that the evidence of the complainant and that of the shadow witness (PW1 and PW2) do not inspire confidence. The Special Judge, based on such quality of evidence ought not to have held the offence to have been proved. This Court is therefore inclined to interfere with the impugned judgment and order.

15. In the result, the appeal succeeds in terms of following order.

ORDER

- (i) The appeal is allowed.
- (ii) The impugned order dated 28.03.2012, passed by the Special Judge, Amalner in Special Case No.1 of 2012, convicting and sentencing the appellant for the offence punishable under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988, is hereby quashed and set aside.
- (iii) The appellant is acquitted of the offence punishable under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988.
- (iv) The amount of fine, if paid, be returned to the appellant.

[R. G. AVACHAT, J.]