

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

CRIMINAL APPEAL NO.194 OF 2008

Madhav Dattaram Bhadewad
Age 38 years, Occupation :
Junior Engineer, Panchayat
Samiti, Patoda, Taluka Patoda,
District Beed

... APPELLANT

VERSUS

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

... RESPONDENT

.....
Shri Joydeep Chatterji, Advocate for appellant
Shri R.B. Bagul, A.P.P. for respondent
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 4th March, 2022

Date of pronouncing judgment : 3rd October, 2022

J U D G M E N T :

This appeal is directed against the order of conviction and sentence dated 31/5/2008, passed by Special Judge-I, Beed in Special Case No.4/2003. Vide impugned order, the appellant herein has been convicted for the offence punishable under Sections 7 and 13(1)(d) read with Section

13(2) of the Prevention of Corruption Act, 1988 (P.C. Act for short) and sentenced to suffer rigorous imprisonment for one year on both counts and to pay fine of Rs.2000/- and Rs.5000/- respectively, in default to suffer further rigorous imprisonment for three months respectively. Both the substantive sentences have been directed to run concurrently.

2. The facts in brief, giving rise to the prosecution case are as follows :

The appellant was serving as a Junior Engineer with the office of Panchayat Samiti, Patoda, District Beed. P.W.2 Vikram Gandal (complainant) was a resident of village Jawala. His family was comprised of his wife, two children and himself. He had no house of his own. The Gram Sabha of the village had, therefore, recommended his wife for grant of a Gharkul under "Indira Avas Yojana". The complainant had been to the office of Panchayat Samiti, Patoda on 2/5/2002 and met the appellant there. He enquired with the appellant about the status of the matter regarding grant of Gharkul to his wife. The appellant, in turn, made a demand of Rs.6000/- for ensuring grant of a Gharkul. The complainant had again been to the office of Panchayat Samiti on 8th May. The appellant reiterated his demand of Rs.6000/-. The

complainant had to urge the appellant for reducing the amount. The appellant agreed to receive Rs.1000/- for the time being. The complainant informed the appellant to have no money with him to pay him immediately. He assured to pay him the amount the following day. The complainant since did not want to pay the appellant bribe, approached Anti-Corruption Bureau (A.C.B.), Beed. The complaint given by him was reduced to writing. It is at Exh.42. P.W.4 Vijaykumar Pathare was the Police Inspector, A.C.B., Beed. On recording of the complaint, he decided to lay a trap on the following day. Presence of two State Government employees was secured to act as panch witnesses. All the concerned were given due instructions. The panchas were asked to come on the following morning. The pre-trap panchanama (Exh.45) was drawn. The complainant, panch witnesses and officials of A.C.B. left for Patoda in official jeep. The complainant and panch witnesses went ahead to the office of the appellant. The members of trap party remained around. At the appellant's office, the appellant asked the complainant to wait for a while as he was busy in some work. He then came out of his room and asked whether the demanded amount has been brought. The complainant paid the appellant bribe money on his demand. He then gave a pre-

determined signal. Officials of trap party arrived at the scene. Tainted currency notes came to be seized from the appellant. Scene of offence panchanama (Exh.46) was drawn. Then post-trap panchanama (Exh.47) was also drawn. P.W.4 Vijaykumar lodged the F.I.R. on behalf of the State. He did investigation of the crime. After the investigation was over, he submitted all the police papers to the then Chief Executive Officer, Zilla Parishad, Beed (P.W.1 – Dadasaheb Jagtap) for obtaining sanction for appellant's prosecution. P.W.1 Dadasaheb, in turn, granted the same (Exh.37). The appellant thus came to be proceeded against by filing a charge sheet before the Special Court constituted for trial of offences under the Prevention of Corruption Act, 1988.

3. The prosecution examined in all four witnesses and produced in evidence certain documents to establish the charge. The learned Judge, on appreciating the evidence in the case, convicted and sentenced the appellant as stated above.

4. Shri Joydeep Chatterji, learned counsel for the appellant would submit that, the appellant and the complainant had long standing acquaintance inter-se. The appellant would purchase foodgrains from the complainant

and other farmers of the complainant's village. The appellant had paid the complainant a sum of Rs.1000/- for purchase of foodgrains (Jawar and wheat). As the foodgrains of requisite quality were not available, the appellant had asked the complainant to return the amount. What the appellant received was the amount which was already due from the complainant. According to learned counsel, this was an explanation given by the appellant no sooner the alleged bribe money came to be seized from him. Relying on a judgment of this Court in case of **Ramdas Waman Tadge Vs. State of Maharashtra** reported in **2019 ALL MR (Cri) 1833**, the learned counsel would submit that, such explanation given by accused soon after trap stands on higher footing than any other material adduced by accused by way of cross-examination or in defence evidence. The learned counsel would further submit that, mere recovery of tainted money is not sufficient to convict the accused. Proof of demand of illegal gratification is *sine qua non* for holding accused guilty of the offence punishable under Sections 7, 13(1)(d) and 13(2) of the P.C. Act. According to learned counsel, the appellant did not have authority to sanction a Gharkul. It was the Gram Sabha of the concerned village to recommend names of eligible persons. The District Rural Development Authority (DRDA)

was empowered to sanction a Gharkul. The Chief Executive Officer of the concerned Zilla Parishad was the head of DRDA. Long before the appellant was caught accepting alleged bribe money, the proposal for grant of Gharkul under Indira Avas Yojana had been returned by the DRDA to the concerned Gram Panchayat. As such, the appellant did not have any official work with him in connection with grant of Gharkul to the complainant's wife. According to learned counsel, the evidence of the prosecution, in the facts and circumstances of the case, was not sufficient to hold the appellant guilty beyond all reasonable doubt. He, therefore, urged for allowing the appeal.

5. The learned A.P.P. would, on the other hand, submit that, the trial Court has given a well reasoned judgment. It is not possible and practicable as well to have the demand of illegal gratification verified before recording of a complaint. The appellant had admittedly received the amount. He, therefore, owed explanation in that regard. Except appellant's words, there is nothing to indicate that he would buy foodgrains from the complainant and the amount received by him was refund of the amount given by him for purchase of foodgrains. The evidence of the Chief Executive Officer (P.W.1) undoubtedly indicates that, the appellant was

entrusted with the work of Gharkul Yojana. Every proposal for grant of a Gharkul would be routed through him. He had a say in the matter. Admittedly, the name of the complainant's wife was recommended for Gharkul. The complainant being illiterate person, was not in the know of the entire procedure and status of the file. The appellant had every reason to exploit the situation. The shadow witness Vijay Gangapure (P.W.3) speaks against the appellant. The witnesses were examined about five years after the appellant was trapped. There was, therefore, every reason to find some inconsistencies inter-se the evidence of prosecution witnesses. According to learned A.P.P., the prosecution proved the offence beyond reasonable doubt. There is, therefore, no reason to interfere with the impugned order.

6. Considered the submissions advanced. Perused the entire evidence in the case. Let us appreciate the same.

P.W.1 Dadasaheb was the Chief Executive Officer of Zilla Parishad, Beed during the relevant time. He was supplied with the papers of investigation for obtaining his sanction for prosecution of the appellant. It is in his evidence that, he accorded the same (Exh.37) after perusal of the papers of investigation.

The learned counsel for the appellant has not taken exception to the sanction (Exh.37), before this Court.

7. The complainant testified on oath, it is in his evidence that, he was resident of village Jawala. His family was comprised of his wife and two children. He did not have a pakka house of his own. His financial status was below poverty line. He belongs to Open category (other than B.C./ O.B.C.). The Gram Panchayat of his village had recommended his wife for allotment of a Gharkul under Indira Avas Yojana. He had, therefore, been to the office of Panchayat Samiti. The appellant was serving as Engineer. The complainant met the appellant in his office for enquiring about the proposal. The appellant, in turn, asked the complainant to pay him a sum of Rs.6000/- for allotment of a Gharkul to his wife. It is further in his evidence that, he assured the appellant to pay the amount later on. The appellant asked him to pay at least Rs.1000/- first, lest he will not allot a Gharkul. It is further in his evidence that, since he did not want to pay the appellant bribe, he approached the A.C.B., Beed. He lodged oral complaint. The officer there (P.W.4 Vijaykumar) recorded the same vide Exh.42. It is further in his evidence that, the A.C.B. Officer, before recording his complaint, asked him to

again visit the appellant to verify as to when and where he will be accepting the bribe. The complainant had, therefore, again been to the office of the appellant. Since the complainant told the appellant to have no money to pay him immediately, the appellant asked him to pay him on the following day. The complainant then came to the A.C.B. office and lodged the complaint (Exh.42).

8. It is further in the evidence of the complainant that, on the following morning i.e. on 9/5/2008, he went to A.C.B. office. He was introduced to two officials present there. They were supposed to act as panch witnesses. His complaint was read over to them. Anthracine powder was applied to 10 currency notes of Rs.100 denomination. The A.C.B. Officer gave him requisite instructions. He was specifically asked not to pay the appellant bribe unless he made a demand therefor. A pre-trap panchanama was drawn there. It is further in his evidence that, he along with the trap party came to Patoda. He along with the shadow witness Vijay Gangapure (P.W.3) went ahead. Other members of the trap party remained around. Both of them went to the office room of the appellant. He greeted the appellant and told to have brought money as was agreed. The appellant was busy in some work. He, therefore, asked him to wait for a while.

The appellant came to them after a while. The complainant told him that he wanted to attend bazaar. The appellant then asked him to pay the amount. The complainant paid him the money. The appellant also enquired with the complainant about identity of person who was in his company. The appellant, before keeping the money in his right pocket of his trouser, counted the currency notes on say of the complainant. The trap party arrived and the rest followed.

9. P.W.3 Vijay (shadow witness) testified that, he was serving as Lecturer with Government Polytechnic College. He attended A.C.B. Office on 8/5/2022 on the say of his officers. P.W.4 Vijaykumar was present at A.C.B. Office. He asked him and co-panch to come on the following morning. Both of them accordingly came to the A.C.B. Office the following morning. The complainant had also been there. Anthracine powder was applied to 10 currency notes of 100 each. The officer gave necessary instructions. The pre-trap panchanama (Exh.45) was drawn. Then all of them started for Patoda. The complainant himself went to the appellant's office first. The trap party remained behind. The complainant greeted the appellant. The appellant asked them to wait for a while. The appellant then came out of his office within 2 – 3 minutes and asked them to accompany him. It is further in his evidence

that, the appellant enquired with the complainant as to whether the amount was brought. The appellant replied in affirmative. The appellant then took them to the adjoining room. He then asked the complainant to pay him the amount. The complainant, in turn, handed over the amount to the appellant. He counted the notes before having been kept in right pocket of his trouser. The complainant then gave a pre-determined signal. The trap party arrived. The bribe money came to be seized from the appellant under panchanama (Exh.46).

10. Both these witnesses were subjected to a searching cross-examination. Their evidence came to be recorded six years after the trap. Some minor inconsistencies in their evidence were bound to occur. Admittedly, the appellant received the amount of Rs.1000/-. It is true that, the proof of demand of a bribe is the condition precedent for conviction for the offence punishable under Section 7 of the Prevention of Corruption Act. Admittedly, the Gram Sabha had recommended the complainant's wife for grant of a Gharkul under Indira Avas Yojana. There is voluminous evidence in the nature of admission given by the appellant, testimony of the sanctioning authority and other two witnesses examined by him in defence to indicate the

appellant had been entrusted with the work of Gharkul Yojana. Each and every proposal received from the Gram Sabha used to be routed through him to DRDA. It was he who scrutinised the papers. It was his job to see as to whether the proposal was complete in all respects. The complainant was an illiterate person. He was not supposed to know whether the appellant was the authority to sanction the proposal. It, therefore, cannot be observed that, the case of the appellant that he was in no way authorised to sanction the proposal could be accepted. It is true that, some days before the appellant was trapped accepting the bribe money, the proposal had been returned by the DRDA. The complainant was not in the know thereof. After a few months, again the proposal was sent by the Gram Sabha, including the name of the complainant's wife.

11. There was acquaintance between the appellant and the complainant since 1994. According to the case of the appellant himself, he had very good relations with the complainant until the day of trap. There is not a shred of material to indicate the complainant had any reason to falsely implicate the appellant. There is also no material to suggest that the appellant would purchase foodgrains from the complainant as has been propounded by him no sooner the

trap was led. It may be correct that the explanation offered by the appellant soon after the trap may stand on higher pedestal than an afterthought defence. It is also true that, there is some inconsistency inter-se the evidence of the complainant and the investigating officer (P.W.4 – Vijaykumar). P.W.4 Vijaykumar denied to have had asked the complainant to visit the appellant to verify as to when and where he was going to accept bribe money and thereafter only he would register the complaint. It is also true that the complainant's statement is silent to state that he had greeted the appellant and told him to have brought the money as agreed. The same, however, finds place in the spot panchanama. P.W.3 Vijay (shadow witness) is an independent witness. He was categorical to state that, the appellant enquired with the complainant as to whether the amount was brought. He stated that, the appellant accepted the bribe money in his presence. Who gave the pre-determined signal to the trap party loses its significance when acceptance of money is admitted fact.

11. The appellant also came with a case that, on 8th May, he was out of headquarters. He placed on record his tour diary, duly certified by the Block Development Officer. The same was tendered in defence evidence and not any time

before. The trial Court, with cogent reasons, has observed the tour programme might have been a piece of evidence created to suit the appellant's defence. On the given day, the appellant did not travel for more than 50 Kms. The places visited by him were not more than 10 – 12 Kms. away from his headquarters. The tour diary was prepared on the basis of rough notes prepared by the appellant beforehand. Those were not placed on record. True, the accused can make out his defence on the basis of preponderance of probabilities. The fact remains that, the appellant was entrusted with the work of Gharkul Yojana. The complainant had, therefore, every reason to meet him in connection with the proposal for grant of Gharkul to his wife. The complainant was not supposed to know whether the appellant had an authority to sanction the same. The appellant was to scrutinise each and every proposal and then forward to DRDA. The proposal was returned by DRDA a few days before the trap was led, was not in the know of the complainant. The appellant exploited the situation and his authority as well. Admittedly, the complainant had good relations with the appellant. It is reiterated that, there is nothing to suggest the appellant or any other employees of Panchayat Samiti would buy foodgrains from the complainant, and the amount received by

the complainant was none other than repayment of the amount since the foodgrains of particular quality were not available. The defence raised by the appellant does not appeal. The judgment of the trial Court is well reasoned. This Court is at one therewith. No interference with the impugned judgment and order is, therefore, warranted. The Criminal Appeal fails. It is dismissed.

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

At the request of learned counsel for the appellant, eight weeks' time is granted to the appellant to surrender to his bail bonds.

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

fmp/-