

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 560 OF 2005

Ratnakar Narayan Morankar,
Age 50 years, Occu. Talathi at Mandaki
Tal and Dist. Aurangabad
R/o. Vedantnagar, Aurangabad.

...Appellant
(Original Accused)

Versus

The State of Maharashtra
Through PSO Police Station,
CIDCO, Aurangaabd.

...Respondent
(Original Prosecutor)

...

Advocate for Appellant : Mr. Joydeep Chatterji h/f Mr. Ram Deshpande
APP for Respondent/State : Mr. S. P. Tiwari

...

CORAM : KISHORE C. SANT, J.

RESERVED ON : 19th SEPTEMBER, 2022.

PRONOUNCED ON : 14th OCTOBER, 2022.

JUDGMENT :

1. This appeal is against judgment and order dated 13.07.2005 passed by the learned Special Judge (P.C. Act) in Special Case No. 4/2002. By the impugned judgment and order, the Appellant is held guilty for offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 ('P.C. Act' for short). The Appellant/Accused is sentenced to suffer Rigorous Imprisonment (R.I.) for one year and to pay fine of Rs.500 in default to suffer R.I. for fifteen days for the offence punishable under Section 7 of P.C. Act. He is sentenced to suffer R.I. for two years and to pay fine of Rs.1000/- and in default to suffer R.I. for one month for the offence punishable under Sections 7 and 13(1)(d) read with 13(2) of the P.C. Act.

2. The Appellant was tried for the said offences by the learned Special Judge on a Prosecution, which was lodged on complaint from PW-2 – Manohar Asaram Chavan. It is the case of Prosecution that the Complainant approached the office of Anti-Corruption Bureau ('ACB'

for short), Aurangabad on 12.10.2001 with a complaint that the present Appellant, who was working as Talathi at the relevant time, demanded an amount of Rs.1500/- for effecting mutation entries in 7/12 extract. It is stated that the Complainant and his brothers have partitioned the land after their father died ten to twelve years back. There was also a dispute pending between the brothers inter-se in the Civil Court at Aurangabad. It is in this connection the Complainant had approached the Appellant, for effecting entries whereupon alleged demand was made. On the basis of complaint, ACB, Aurangabad laid a trap on the same day. It is alleged that the trap was successful and at the time of trap, the Appellant demanded amount and on demand, Informant paid the amount to the Appellant. Thereafter, the Investigating Officer prepared panchnama, completed investigation and filed a charge-sheet.

3. In support of the case of Prosecution, Prosecution examined five witnesses. The defence also examined one witness in support of defence. After recording the evidence and after recording the statement under Section 313 of the Criminal Procedure Code, the learned trial Judge held

Appellant guilty of the offences and convicted him and further imposed sentences as stated above.

4. It is the defence of the Appellant that the amount was received for depositing the same in the Small Savings Scheme. At the relevant time, the Authorities had given a target to the Government Officers to encourage people to invest their amount in the said Scheme of the Government. Naturally when people used to approach for some work, the Appellant used to convince such persons for investing amount in the Small Savings Scheme. When the Appellant was in the office at the time of incident, some other persons were also sitting in his office with him. When the Complainant handed over Rs.1500 to the Appellant and asked Rs.100 back, the Appellant told him that he will fill up the form of the said Scheme and asked the Complainant to wait for some time. However, the Complainant immediately came out of the office and gave signal to the raiding team and immediately persons from the team entered the office and informed the Appellant that they are from the ACB and they carried the raid.

5. On this background, the evidence needs to be seen of the witnesses. First witness is one Ganesh Jagtap, a sanctioning authority who has accorded sanction to the Prosecution. He was working as Personal Secretary to Deputy CM, who was serving as Sub-Divisional Officer at the relevant time from June 1999 to May 2003. In his evidence, it is stated that he received papers for sanction. After going through the material and papers, he accorded sanction by order dated 01.02.2002 (Exhibit-21). This witness stated that the mutation entry no.298 was effected on 23.08.2001 and was certified on 31.08.2001. It is stated for effecting mutation, names of Tukaram Asaram Chavan and Laxman Asaram Chavan were recorded, who are brothers of the Complainant. This was done by holding an inquiry by the Tahsildar. He stated that there was a dispute between Manohar and his brothers regarding mutation. The mutation entry was recorded by the Appellant as per order of Tahsildar. In his further evidence in cross-examination, he stated that the Sub divisional officers and Tahsildar used to hold meetings of Talathis to promote small savings scheme. In one of such

meeting dated 16.01.2001, minutes (Exhibit-32) were recorded showing that there was a discussion about promoting small savings scheme. The minutes show that each Talathi was given a specified target of small saving in the year 2001. It was informed that Talathi should try hard to complete the target of small savings. No receipts were issued by the Talathi officially to collect the amount of small saving. The minutes further show that Talathi used to collect money, retain with them and thereafter hand over it to agents for collection of amount towards small saving. Thereafter agents used to issue a certificate.

. There was already a complaint made to Appellant by one Sumanbai, in which she had alleged that the Complainant has involved Appellant on the say of his brother Tukaram. To the said notice explanation was submitted on 26.11.2001 by the Appellant (Exhibit-33). It has lastly come in the cross of this witness that Appellant had not demanded money to Complainant.

6. The Complainant namely Manohar Asaram Chavan, who was examined by the Prosecution as PW-2, stated that Talathi asked him

whether the Complainant brought money? On which, the Complainant said 'YES'. In the cross-examination, he stated that 7/12 extract was already prepared. The order was also passed by the Tahsildar on 24.08.2021, wherein names of Laxman, Complainant and the legal heirs of Rambhau were already recorded. In cross, he further stated that when he went to the office of Appellant, some other persons were also sitting there and the Appellant was doing his work.

7. The next witness is PW-3 namely Giridhari Nirguji Landge, who was working as Senior Clerk in Industrial Training Institute (ITI), Aurangabad. On 11.10.2001, he was instructed to come to office of ACB on 12.10.2001. In the office, he was told about complaint filed by the Complainant, but he did not go through the complaint. He identified the signature of Complainant. He alongwith Mr. Chavan – Complainant went to the office of Appellant. Members of the Squad followed them on foot. When he and Complainant entered the office, the Appellant was making some writing. Complainant told him that he is Mr.

Morankar. Two persons were sitting in the office. Complainant told Appellant that he has brought Rs.1500. Complainant took out three currency notes and gave it to the Appellant. Immediately thereafter Complainant went out of the office and gave signal, upon which, the members of the Squad came in the office. Shutter of the office was then closed. This witness told that the tainted notes are kept in the left pocket of shirt of the Appellant. He stated that Appellant was arrested by Mr. Thorat. When the ultra violet rays switched on the fingers of Appellant tested under it shown blue shining reflection. He stated that he has not signed any document in ACB office, except Complaint at Exhibit-38 on 12.10.2001. He further stated that Complainant handed over amount to Mr. Morankar, when he was doing some writing work.

8. The next witness is PW-4 – Sunil Prabhatrao Choudhari, who was working as a Senior Clerk in Industrial Training Institute, at Aurangabad and was with the raiding party. In his evidence, he stated that the Complainant and Landge (PW-3) entered into the office of the Talathi

Morankar. The squad members were standing 50 feet away from the office. After about 15 to 30 minutes the Complainant came out of that office and gave a signal. On receiving said signal, the raiding party rushed towards the office. Mr. Thorat Police Inspector introduced himself to the Appellant and informed that a trap was laid on him. Mr. Landge (PW-3) had informed that the Appellant had kept the currency notes given by the Complainant in left pocket of his shirt. The said currency notes were taken out from the pocket of shirt of Appellant. When the said currency notes, fingers of Appellant and pocket of the shirt of Appellant were put under the light of ultra violet lamp, blue shining was noticed thereunder. In cross, he stated when the raiding party went in the office, the Appellant was writing 7/12 extract.

9. The last witness is Investigating Officer, namely Rameshwar Mohan Thorat. He was examined as PW-5. He stated about the procedure followed before and after the trap. He stated that panchas were not called in the office on 11.10.2001. He had not given any letter on 12.10.2001 for calling panchas to their office. He stated he did not

endorse the time of receipt of the complaint. He also did not make pre trap verification about the allegations made by the Complainant. He accepted that there were two persons already sitting in the office of the Appellant, when the Complainant and PW-3 entered in the office. However he did not make any enquiry with those persons. He accepted that before trap itself 7/12 extracts were written by the Appellant. He did not examine 7/12 extracts under the ultra violet lamp.

10. In support of the defence, the defence has examined one witness namely Jagannath Autade. This witness stated that at the time of incident, he was in the office of the Appellant for taking 7/12 extract of his land. Two other persons were also sitting in the office and the Appellant was writing 7/12 extracts of one Shahji Wadekar. The Appellant had asked him to pay Rs.1000/- towards small saving for getting 7/12 extract, telling that it is a beneficial scheme of the Government and he should invest the amount in small savings, on which he told his son to bring the amount. About the incident he stated that

the Complainant told the Appellant that he has brought the amount of Rs.1500/- and out of the said amount he wanted to invest Rs.1400/- in small savings and asked to give back Rs.100/-. When raiding party came in the office, this witness told him that the amount was given to the Appellant towards small savings. Learned APP cross-examined this witness. In the cross, this witness told that he received 7/12 extract without investing any amount towards small savings.

11. The learned Advocate for the Appellant submits that the Appellant has not taken any amount as bribe, but it was an amount towards small savings certificate. The Complainant and his brothers, were in family litigation and thus they had grudge against each other. The amount was given without any demand as it is clear from the evidence of panch witness. On the point of demand, at the time of trap there is a contradiction between the evidence of PW-2 & 3. If at all the amount was towards the bribe, there was no reason for the Appellant to give back Rs.100/-. The sanctioning authority in the cross-examination clearly

admitted that there were targets given to the Talathis to collect the amount towards investment in small saving certificate. The Appellant has discharged his burden by raising a defence. Even the defence witness was examined to support the case of Appellant. The case of Appellant is further fortified by the minutes of meeting dated 16.01.2001. He also placed reliance upon the judgment reported in AIR 1990 SC 1459 in the case of **Vijayee Singh Vs. State of UP** wherein Section 3 of the Evidence Act is discussed. He relied upon another judgment in the case of **Prabhakar Pitambar Tambat Vs. State of Maharashtra**, reported in 2007(1) Mh.L.J. 722. He submits that facts in this case and present case are almost identical.

12. Learned APP supports the judgment and submits that the Prosecution has clearly proved its case beyond reasonable doubt. From the cross-examination of the defence witness. He pointed out that in the case of this witness, that 7/12 extract was given without taking any amount, which shows that it was only in the case of this Complainant,

the amount was demanded. There is no other instance shown by the Appellant that he has demanded amount from any other persons for 7/12 extract. He submitted that a presumption under Section 20 of the Act needs to be invoked stating that the prior demand is proved, which is followed by acceptance of the amount. He submits that the stand of the Appellant is taken subsequently, no immediate explanation is offered and thus defence is after thought. This conduct of the Appellant appears to be unnatural and he prays for dismissal of the appeal.

13. Having considered the evidence on record and the submissions of the parties, this case needs to be examined.

14. In case under Prevention of Corruption Act, the first principle needs to be kept in mind that the case needs to be considered minutely and the evidence also needs to be scrutinized in a strict manner. The Prosecution has to prove guilt of the Accused/Appellant beyond reasonable doubt that the Appellant has made a demand from the Complainant and that the demand was unlawful demand. There should

be motive for doing or for bearing to do something and that the demand is proved to be for the above purpose.

15. Looking at the evidence of the PW-2, in this case it is clear that when the PW-2 paid money to the Appellant, there is no conversation to show that the Appellant had made specific demand for doing work of issuing 7/12 extract. On the contrary it is specific case of the Appellant that he was given a target to collect amounts from the persons who come to his office for some work towards investment in the small saving certificate. On going through the minutes of the meeting, it is clear that it was Superior Officers, who used to direct the Talathis to complete the target given to them. It is of some benefit to refer to a judgment in the case of Prabhakar (*supra*), where the facts are similar to the facts in the present case. In that case, the target was given for investment in National Saving Certificate. The amount was taken for completing the target of National Saving Certificate and the said fact was admitted by the Collector/sanctioning authority in that case. It is thus benefit of

doubt was given to the Appellant in that case that he was directed to complete the target of collecting the deposit in National Saving Certificate.

16. In the case of Vijayee Singh (supra), it is held that it is not necessary for the Appellant to prove his defence beyond reasonable doubt like Prosecution. He has to discharge his burden by making out a probable case of defence. In this case, even the defence witness is examined, who stated that he was present when the incident took place. He has clearly stated that even from him, demand was made by the Appellant towards investment in National Savings Certificate. The evidence of this witness assumes importance because he was a person, whose presence in the office was natural as he had come to office of the Appellant for his work and the same is not doubled by the Prosecution. In fact it was for Prosecution to record statement of such persons if they were found present in the office. In the case of Vijayee Singh (supra), the Hon'ble Supreme Court has discussed as to what is reasonable doubt

considering Section 3 of the Evidence Act. Paragraph No.16 of the judgment is reproduced herein below.

"16. The phrase "burden of proof" is not defined in the Act. In respect of criminal cases, it is an accepted principle of criminal jurisprudence that the burden is always on the prosecution and never shifts. This flows from the cardinal principle that the accused is presumed to be innocent unless proved guilty by the prosecution and the accused is entitled to the benefit of every reasonable doubt. Section 105 of the Evidence Act is in the following terms:

"105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

The Section to some extent places the onus of proving any exception in a penal statute on the accused. The burden of proving the existence of circumstances bringing the case within the exceptions mentioned therein is upon him. The Section further lays down that the Court shall presume non-existence of circumstances bringing the case within an exception." The words "the burden of proving the existence of circumstances" occurring in the Section are very significant. It is well settled that "this burden" which rests on the accused does not absolve the prosecution from discharging its initial burden of establishing the case beyond all reasonable doubts. It is also well-settled that the accused need not set up a specific plea of his offence and adduce evidence. That being so the question is: what is the nature of burden that lies on the accused under Section 105 if benefit of the general exception of private defence is claimed

and how it can be discharged? In Woolmington v. The Director of Public Prosecutions, [1935] Appeal Cases 462, Viscount Sankey, L.C. observed:.....

17. On this evidence, now we need to examine the case of the Prosecution and we need to see whether Prosecution has proved its case. The undisputed facts on record show that there was a dispute amongst the brothers of the Complainant inter-se. The Tahsildar had already passed an order on 23.08.2001 directing to effect mutation entries. From the evidence of the sanctioning authority itself it is clear that the target was given to all the Talathis working under Sub Divisional Officer and Tahsildar about the investment in the small savings certificates. There are minutes of meeting showing that such targets were given and this Appellant was present in the meeting. The explanation is also offered by the Appellant that the amount was towards this Savings Certificate. The evidence of PW-2 and 3 does not show that it is the Appellant, who demanded the amount towards bribe. If the evidence of PW-1 is seen, he states that the Appellant asked him as to whether the Complainant has brought the amount. However, there is no mention of

any other demand, whereas panch-witness PW-3 states that it is the Complainant, who handed over the amount on his own to the Appellant. Even PW-1 states that it is the Complainant who handed over the amount to the Appellant. DW-1 has also stated that for issuance of 7/12 extract, the Appellant had asked him also to invest some amount in small saving certificate. It is further undisputed fact that not only targets were given but there was a pressure from the Superior Officers to complete the target. There is also a document on record in the form of minutes of meeting, which clearly show that such target was given and in the minutes it had come that the amount can be taken from the persons who come for work like mutation entries, 7/12 extract etc.

18. Thus, it is clear that in this case, there was a burden on the Prosecution to prove all the facts beyond reasonable doubt pointing out the guilt of the Appellant. Whereas the burden on the Appellant was only to make out a probable case of defence, which is made out by the Appellant. The Talathis used to collect amount towards investments and

hand it over the same to Agents, whenever he comes. Thus it is clear that the amount given by the Complainant was towards investment and not as bribe. Considering all above, it is clearly a case of acquittal. Hence the following order.

ORDER

- (i) Criminal Appeal is allowed.
- (ii) Judgment and order passed by the learned Special Judge (P.C. Act), Aurangabad in Special Case No. 4/2001 dated 13.07.2005 is quashed and set aside.
- (iii) Appellant is acquitted of the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.
- (iv) Fine amount deposited in the Trial Court be refunded to the Appellant.
- (v) Bail bonds of the Appellant stand cancelled.

- (vi) Appellant to furnish fresh bail bonds with sureties as per Section 437-A of the Code of Criminal Procedure, 1973.

19. With this, the Criminal Appeal is disposed off.

[KISHORE C. SANT, J.]

NAJEEB