

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Appeal No. 560 OF 2001

Sanjay Gopalrao Wangikar,

Age 43 years, Occu. Service

Extension Officer, Social Welfare Section,

Zilla Parishad, Parbhani.

District Parbhani.

...Appellant

(Original Accused)

Versus

The State of Maharashtra

Through Anti-Corruption Bureau,

Parbhani.

...Respondent

...

Mr. Rajendra Deshmukh, Senior Advocate a/w Mr. Govind

Kulkarni, Advocate for Appellant.

Smt. G. L. Deshpande, APP for Respondent/State.

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CORAM : KISHORE C. SANT, J.
RESERVED ON : 27th SEPTEMBER, 2022.
PRONOUNCED ON : 11th NOVEMBER, 2022.

JUDGMENT :

1. This appeal is filed by the Appellant/Complainant against the judgment and order dated 30.11.2001 passed by the Special Judge, Parbhani in Special Case No. 01/2000, by which, the learned Special Judge has held the Appellant guilty of offence punishable under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (P.C. Act for short). The Appellant is directed to undergo sentence of rigorous imprisonment for six months and to pay fine of Rs.500 in default to suffer further rigorous imprisonment for fifteen days for the offence punishable under Section 7 of P.C. Act. He is further directed to undergo rigorous imprisonment for two years and to pay fine of Rs.1500/- in default to suffer further rigorous imprisonment for three months for the offence punishable under Section 13(2) read with 13(1)(d). Both the sentences are directed to run concurrently.

2. The case of Prosecution in short is that the Appellant was working as an Extension Officer, Zilla Parishad Parbhani in Panchayat Samiti, Gangakhed. While he was working as such, he demanded a bribe of Rs.1500/- from the Complainant – Narayan Parande (PW-1), who was then Sarpanch of village Lasina in Sonpeth Taluka of Parbhani District. Bribe was demanded for sanctioning and disbursing an amount of Rs. 40,000/- in favour of Gram Panchayat. The Complainant had proposed and persuaded proposal with Panchayat, Gangakhed for construction of a cement road in the village under the Backward Locality Development Scheme. The said proposal thereafter was submitted to the Social Welfare Branch of Panchayat Samiti. For the said proposal, a budget of Rs.2,00,000/- was sanctioned. Out of the said amount, two installments of Rs.80,000/- were released. On 20.08.1999, Complainant met the Appellant and made an enquiry about the work. The Appellant called the Complainant on 23.08.1999. There was a discussion of demand of Rs.5000/- and the said amount came to be settled to Rs.1500/-.

3. The Complainant in view of this demand, made a report to Anti Corruption Bureau, Parbhani (hereinafter referred as 'ACB). PW-5 working as Deputy Superintendent of Police, who decided to lay a trap against the Appellant and thus the trap was arranged. It is alleged that the trap was successful. Thereafter investigation was completed and Prosecution came to be launched.

4. It is the defence of the Appellant that he never demanded any amount towards bribe. The amount which was given to him, was the amount towards arranging an Orchestra Programme in the village of Complainant (PW-1) for Ganpati Festival. The amount was settled to Rs.5000/-. Out of the said amount, Rs.1500/- was taken as advance amount from the Complainant. The Appellant and his daughter are Singers and they were working in one Orchestra. It is further defence that the Appellant had no power to sanction or disburse the amount and thus he was not having any authority to take a decision in respect of sanction or

disbursement of amount. Further Appellant's case is that the evidence at the time of trap, shows that there was a discussion about arranging an Orchestra in the village.

5. In support of its case, the Prosecution examined five witnesses. However, PW-1/Complainant and PW-3 were declared hostile. The Prosecution thus rests mainly on depositions of PW-2/shadow panch, PW-4/CEO, Z.P., Parbhani; PW-3/Sanctioning Authority and PW-5/Investigating Officer, who conducted the trap carried investigation and filed a charge-sheet.

6. Since the case is under Prevention of Corruption Act, the evidence needs to be scrutinized carefully. The first witness is Complainant namely Narayan Sopanrao Parande. In his deposition, he has stated that at the relevant time, he was Sarpanch of Lasina Gram Panchayat. He submitted that a resolution was passed by the Gram Panchayat for construction of a cement road in the locality of persons belonging to

backward class. Pursuant to the resolution, an estimate of work was prepared and the proposal was submitted to Panchayat Samiti, Gangakhed. Total budget of Rs.2,00,000/- was sanctioned for the work. Thereafter approval came to be granted and the work of the cement road commenced. The sanctioned amount was initially disbursed in two installments of Rs.80,000/- each. For the remaining amount of Rs.40,000/- a request was made. The Panchayat Samiti sent the proposal to Z.P., Parbhani for final approval. However, as there was no communication thereafter, this witness came to Parbhani to enquire about the approval of Rs.40,000/-, and contacted the Appellant. On 19.08.1999, Appellant told him that unless Rs.5000/- is paid to him, he would not pass the bill. Whereas, this witness told the Appellant that he did not possess that much amount. Thereafter this witness went to ACB, where his complaint came to be recorded. After recording of the complaint, the Panchas were called to the office of ACB. They were informed about the procedure of trap etc. This witness went to the office of Appellant as

decided. Members of the raiding party followed him. When Complainant entered the office, Appellant asked him to sit down. After that, Appellant also asked him as to whether amount is brought and asked to pay the amount. Appellant accepted the amount by his right hand and kept it in the left side pocket of his shirt. Appellant thereafter told that the Appellant would forward the bill. The Complainant immediately came out of the office and gave signal to the raiding team on receiving signal persons from the team entered the office and informed the Appellant that they are from the ACB and caught Appellant red-handed. After sometime, Complainant was called inside the office/room, his hands were examined in the light of ultraviolet torch. On his hands, shining was noticed in the said light. Thereafter, a panchnama was prepared at that place.

. Thus this witness did not support in clear terms that there was a demand by the Appellant. On asking further question with this witness, he stated that he did not inform the Investigating Officer about the demand made by the

Appellant, he had informed only that the papers are not moving further. At this stage, learned Special P.P. declared the witness hostile and sought permission to cross-exam the witness. Wherein, this witness said that the Appellant demanded an amount and therefore Complainant paid it. He further stated that there was no dialogue between the Appellant and him about the settlement of charges of playing orchestra.

. In the cross-examination by the Appellant of this witness (PW-1), he stated that the scheme of Improvements of the Backward Locality, is the scheme of the State Government and not of Zilla Parishad. It is a fact that Z.P. sends proposal to the Social Welfare Department, Pune for approval. The work of construction begins only after approval is granted by the Social Welfare Dept. to the Z.P. He further stated that the work of road was started only after receiving the amount and the amount of bill is paid only after the Social Welfare Officer accorded it's sanction for such a payment. The amount is disbursed on giving No Objection Certificate. It is

thereafter, the matter is to be sent to Cash and Finance Dept. of Z.P., who remits the said amount to the concerned Panchayat Samiti. He further stated that the Gram Panchayat has no direct concern with the Social Welfare Section of Z.P. under the said scheme. He stated that prior to the incident, the Social Welfare Officer had not visited village Lasina for verification of the work.

. He further stated that he was aware that the Appellant is a popular Singer and daughter of Appellant is also famous Singer, who sings in Orchestra namely Swapnaja. In the year 1999, Ganesh Festival was performed in the month of September and he had a talk with the Appellant about the orchestra of his daughter. Appellant asked him to pay Rs.5000/- as advance towards orchestra. He denied that the amount which he paid was towards advance for booking of an Orchestra. On asking a specific question to this witness i.e. On 19.08.1999, Appellant did not ask to pay the amount? Whereas the answer is 'it is true'.

7. The next witness is PW-2, namely Sanjay Gangadharrao Pawar, a Panch in the trap. In his evidence, it has come that two persons were called in the office of ACB, Parbhani and they were told to act as Panch, he is one of them. He further stated that he went alongwith Complainant to the office of Appellant. When they entered in office, Appellant was there and he offered them a sit. After that, Complainant made enquiry about his deal with the Appellant, on which it was informed that the signature of the Social Welfare Officer was not put on the file till that time. Upon that, the Appellant asked the Complainant, whether he has brought the amount. On that, the Complainant replied, he has brought the amount. Thereafter, Complainant took out the amount from his pocket, by his right hand and paid it to Appellant, he received the amount and told the Complainant that he would forward the papers and that the Complainant need not worry about it. Immediately after that the Complainant came out of the room and gave signal to the team of raiding party. On receiving signal, the raiding team entered the room and

asked this witness, where the Appellant has kept the amount received from the Complainant. This witness told that the Appellant kept the said amount in the left side chest pocket of his shirt. The Investigating Officer directed to take out notes kept in the left side pocket of Appellant's shirt. There were three notes of Rs.500/-. From his evidence, an omission is brought on record in cross-examination. The Statement recorded on 24.09.1999 i.e. next day of trap in which, the instructions about the examinations of currency notes under the Ultraviolet lamp, were not recorded by the Investigating Officer. A specific question was asked that after the entry in the room, Investigating Officer asked Appellant as to where the notes are kept and it is the Appellant who informed him that the notes are in his pocket to which he answered as 'correct'. This witness further stated that the Muster Roll on which, the witness put the signature was not seized. He further stated that there was a talk between the Complainant and Appellant about holding Orchestra Programme during Ganpati Festival at Lasina.

8. The third witness is Deepak Raosaheb Wadkute (PW-3), who was working as Social Welfare Officer in Z.P. He stated that the amount for the said work was transmitted to his office and a request of the said amount was made by the Gram Panchayat, Lasina through the concerned Block Development Officer. Accordingly this witness had recommended the Cash and Finance Account of Z.P. (CAFO) to effect payment of 40% of the grant of the Gram Panchayat concerned. The said amount was released and was utilized for the purpose of construction of road. The remaining amount of 20% was to be paid after completion of construction. Thereafter again he had recommended to further 20% amount release. He stated that a proposal was received from BDO, Gangakhed for payment of remaining amount of 20% to the concerned Gram Panchayat and it was the Appellant with whom, the matter was pending and the same was still to be done. He had not instructed the Appellant to verify the completion of the work. At this stage, this witness is declared hostile and permission was granted to cross-

examine the witness by Prosecution. He accepted that it is practice to send to Gram Panchayat a copy of rules and regulations of a work being carried out the construction, which is approved by the Director of Social Welfare. He accepted that the BDO his Jr. Engineer, and the concerned Gramsevak are responsible for supervising the work of construction and also for maintaining the account. He specifically stated that the Sarpanch of Gram Panchayat has no concern with the work under the scheme. He accepted that it is Social Welfare Officer, who has to give no objection after verification of work and thereafter the proposal is sent to CAFO. He specifically stated that in the entire process, Appellant has no authority either to recommend proposal or not to recommend it. He further accepted that no verification of the work was done, nor the recommendation was made to CAFO. The said proposal had gone to the table of Appellant as he was Extension Officer for the Improvement of Backward Locality.

9. The fourth witness is the sanctioning authority namely Gopalkrishna Ganesh Kulkarni (PW-4). He stated that he accorded sanction to prosecute the Appellant. In his cross-examination, he stated that the scheme of improvement of Backward Locality is sponsored by State Government and not by Zilla Parishad. Therefore the said scheme is financed by the State Government. He further stated that the responsibility of supervising the work under the said scheme is that of the B.D.O., Jr. Engineer and the Gramsevak of the concerned Gram Panchayat. He also specifically accepted that the Appellant had no authority, he was bound to carry out the work assigned to him by the Social Welfare Officer and that Extension Officer has no power to approve the proposal. This witness did not feel it necessary to mention in the sanction order the list of documents perused by him.

10. The last witness Rajendra Madhavrao More (PW-5), is the Investigating Officer. He stated that the amount was paid by the Complainant after demand made by the Appellant

and Appellant kept the amount in the pocket of his left side of his shirt. He accepted that there is no mention of this in his panchanama.

11. This evidence needs to be considered in the light of legal position appearing from the judgments cited by both the parties.

12. Learned Advocate for the Appellant in support his case relied upon the judgment in the case of **P. Satyanarayana Murthy**, reported in (2015) 10 Supreme Court Cases 152. Wherein it is held that mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, would not be sufficient to bring home the charge under Sections 7 and 13(1), (d), (i) and (ii) of Prevention of Corruption Act. The Paragraph Nos. 13, 22 and 25 of the said judgment are reproduced herein below.

13. Admittedly, the complainant S. Jagan Mohan Reddy, the then Principal of Rama Typewriting Institute, Laxminagar, B. Camp, Kurnool could not be examined as a witness for the prosecution, as he had

expired before the trial. To reiterate, in his complaint lodged with the Deputy Superintendent of Police, Anti-Corruption Bureau, Kurnool Range, Kurnool on 3-10-1996, he alleged that on the same date, the appellant, who was then the Assistant Director, Commissionerate of Technical Education, Hyderabad, had visited his institute and had pointed out that because of his omission to file an application for renewal of recognition thereof for the year 1997, cancellation of recognition would ensue resulting in loss of seniority of the institute. According to the complainant, situated thus, he requested for the assistance of the appellant who assured that it would be possible only if he was paid Rs.1000. According to the complainant, he pleaded his inability to pay such amount. On this, the appellant reduced his demand to Rs. 500 and instructed him (complainant) to meet him on 4-10-1996 in Room No.68, Meenakshi Lodge, Kurnool along with challan of Rs.360, being Rs.60 as renewal fee and Rs.300 as penalty. The complainant, being disinclined to pay the illegal gratification as demanded, lodged a complaint with the Deputy Superintendent of Police, Anti-Corruption Bureau, Kurnool and sought action against the appellant.

22. In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an

indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

25. In our estimate, to hold on the basis of the evidence on record that the culpability of the appellant under Sections 7 and 13(1)(d)(i) and (ii) has been proved, would be an inferential deduction which is impermissible in law. Noticeably, the High Court had acquitted the appellant of the charge under Section 7 of the Act and the State had accepted the verdict and has not preferred any appeal against the same. The analysis undertaken as hereinabove qua Sections 7 and 13(1)(d)(i) and (ii) of the Act, thus, had been to underscore the indispensability of the proof of demand of illegal gratification.

13. As against that learned APP relied upon the judgment from two different High Courts. First judgment in the case of **Dr. Abhai Ranjan Vs. State of U.P. & Anr.**, in Criminal Application No. 18671 of 2021 delivered by the Allahabad High Court. Second judgment in the case of **Manmohan**

Singh Vs. State of Madhya Pradesh delivered by the Madhya Pradesh High Court at Gwalior in Criminal Appeal No. 2713 of 2021.

14. Looking at the ratio laid down in the case of P. Satya Narayan, it is clear that there has to be a demand of amount of bribe to prove offence under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

. In this case, from the evidence of PW-1 & PW-2, the Prosecution could not show that there was a specific demand by the Appellant of the amount towards bribe. Evidence of PW-1 clearly shows that there was a discussion about arranging of Orchestra Programme for Ganpati Festival in his village. It can be gathered that the possibility of the said amount being paid towards Orchestra cannot be ruled out. To come to this conclusion, evidence of PW-2, is available in which it is stated in the cross that there was a discussion about Orchestra. If the amount was in respect of same work then there was no question of any discussion about Orchestra.

From the evidence of PW-4, on asking initially, though he told that he does not know that the Appellant and his daughter are Singers. But after showing some photographs of cultural programme, he accepted that he is seen standing with Appellant and his daughter in the said photographs. The fact of running of orchestra by the daughter of the Appellant, is not challenged by the Prosecution.

15. The Prosecution has also not conducted demand verification panchanama prior to laying down of a trap and the trap was directly arranged. The Prosecution has also not produced on record with sufficient evidence that the Appellant had any authority either to sanction the amount or to approve the proposal or even to disburse the amount. On the contrary in the cross of sanctioning authority, it has come that in the entire process, the Sarpanch and Up-Sarpanch has no role to play and everything is to be done by the Panchayat Samiti, Block Development Officer and the Gram Sevak. Thus, there was no question of a Sarpanch to look

into the matter and to pursue the matter of grant of approval of proposal and disbursal of the amount. It appears from letter dated 15.07.1999, that the proposal was forwarded under the signature of the Gram Sevak and the Sarpanch.

16. From the evidence of PW-2, it has come that there was a talk about arranging of orchestra between Complainant and Appellant. This certainly creates a doubt about the Prosecution story.

17. From the evidence of PW-3 also a clear omission is brought on record that is portion marked 'A' and 'B'. He further accepted that unless verification of the work was done, there was no question of taking further steps and in this matter, there was no verification of the work was done.

18. From the cross of PW-4 i.e. sanctioning authority, it is seen that he clearly accepted that there was no role of the Appellant in the matter. Thus, ultimately what we have to

see is as to whether the Complainant had any role? Whether Appellant had any authority with him? To both these questions, answer is 'No'. The Appellant was bold enough to accept the fact that he accepted the amount. However his defence is that it was towards the programme of orchestra. Looking at the evidence, it again can be said that this certainly creates a doubt about the story of the Prosecution. The defence is made out which is quite probable and is sufficiently made out by the Appellant.

19. Looking at the evidence it is seen that Prosecution has not disputed that the Appellant and his daughter are Singers and daughter arranges an orchestra. There was a programme of orchestra arranged in Ganpati Festival in the village of the Complainant. The Prosecution could not prove that there is no such case and that the defence can be totally brushed aside as improbable. The judgments which are cited by the learned APP are not of much help to the Prosecution. In the first case, it can be seen that the sanction is required for

Prosecution, it was a case where the Accused has approached the High Court under Section 482 of Cr.P.C. for quashing of a case under corruption act. Thus that case is of no avail to the Prosecution.

. Next case of Manmohan Singh (supra) based on another case of **State of Maharashtra Vs. Mahesh G. Jain**, reported in (2013) 8 SCC 119, it is held that the sanctity is attached to the sanction order and minor irregularities or technicalities are not to be given Everstine status etc. However, the said observations are necessarily in the facts of that case. To come to conclusion that whether sanction is proper or without application of mind etc., it is necessary to examine the same in the light of material available on record in each case.

20. In this, it is pointed out that a draft sanction order - Exhibit-32 was provided to the sanctioning authority and the sanctioning authority without changing a word here and there has copied the sanction order and has signed the same. On comparing Exhibit-32 i.e. draft of sanction order and the

sanction order Exhibit-35, it is clearly seen that there is practically no change in the draft of sanction order and the sanction order. The blank spaces are filled in respect of the place and date of sanction only. The irresistible conclusion is that the sanctioning authority has not applied its mind independent and has signed the order mechanically.

21. It has already come on record, in specific terms, that the Accused had no role to play in the sanction or disbursement of the amount. Even the Sarpanch had no role to play in getting the proposal sanctioned or to move the file for disbursement etc. It is already brought on record that it is a scheme of the Government and the authority to sanction the project etc. was with the Director of Social Welfare. The Complainant himself is declared as hostile. Therefore, the Prosecution has relied upon the deposition of the Shadow Panch, however this witness also accepts that there was a conversation about the Orchestra. It is also clear that in this case no demand verification was carried.

22. Though it is vehemently argued by the Prosecution that the demand and acceptance of the amount is proved and there is recovery of amount also cannot be accepted. The Prosecution relied upon the fact that the Accused has accepted that he had received the amount. However, it is clear defence of the Accused that the amount was given towards an Orchestra. Looking to the defence, certainly the Accused has made out the case from evidence and by making out the possibility of accepting the amount towards Orchestra. Further looking at the fact, which is established in the trial that the Accused was not an authority to sanction or disburse the amount. Thus, when the Accused was not an authority, there was no question of paying any amount to the Accused. It has also come on the record that the Sarpanch had no role in the entire process and thus had no reason even to contact the Accused for disbursement of the amount. In view of this and looking at statement under section 313 of Cr.P.C., the Accused has clearly made out a case of acquittal. Hence the following order.

O R D E R

- (i) Criminal Appeal is allowed.
- (ii) The judgment and order passed by the Special Judge, Parbhani in Special Case No. 01/2000 dated 30.11.2001 is quashed and set aside.
- (iii) The 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.

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

[KISHORE C. SANT, J.]

NAJEEB...