

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

CRIMINAL APPEAL NO.237 OF 2002

Jagannath Sadashiv Kore,
Age 49 years, Occu. Talathi,
R/o Hingoli, Tq. & Dist. Hingoli
Died, through L.R.
Ajay Jagannath Kore

... APPELLANT

VERSUS

The State of Maharashtra
(Copy to be served on the Public
Prosecutor, High Court of Judicature
at Mumbai, Bench at Aurangabad

... RESPONDENT

.....
Shri S.V. Suryawanshi, Advocate for appellant
Mrs. G.L. Deshpande, A.P.P. for respondent – State
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 9th March 2022

Date of pronouncing judgment : 21st March 2022

J U D G M E N T :

The challenge in this appeal is to judgment and order dated 15/4/2002, passed by Special Judge, Hingoli in Special Case No.2/1998. It is an order of conviction and resultant sentence. The original appellant (since deceased) was convicted for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of

Corruption Act and sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500/-, in default to suffer rigorous imprisonment for three months for the offence punishable under Section 7 of the Prevention of Corruption Act and further sentenced to suffer rigorous imprisonment for one year with fine of Rs.1000/- for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. Both the substantive sentences were directed to run concurrently.

Along with the original appellant, one more person by name Rajesh Rameshware was also prosecuted. Rajesh Rameshware has, however, been acquitted. The State has not preferred any appeal against his acquittal.

2. Pending the appeal, the original appellant Jagannath Kore passed away. His legal representative came on record to pursue the present appeal.

3. Facts giving rise to the present appeal are as under:

The original appellant Jagannath was serving as a Talathi of village Basamba. P.W.1 Anandrao (complainant) hails from the village Basamba, Taluka Hingoli. He owned

agricultural land in Survey No.45. Land admeasuring 7 acres and 34 gunthas was purchased by complainant Anandrao. Complainant Anandrao had purchased one half share in the land under a registered sale deed executed in 1984 by his co-brother Ashok and Ashok's brother Bajirao together. Later on, in the year 1990, complainant Anandrao purchased rest of the land in Survey No.45 from Ashok and his brother Bajirao. The sale deed, however, was not registered since Ashok and Bajirao were close relations of complainant Anandrao. A scheme of consolidation of holdings of agricultural lands in the village was implemented some time in the year 1990 or therebefore. A new land record came into existence. Complainant Anandrao had been to the village Talathi to obtain a 7/12 extract of his land. It was in 1992. The Talathi (deceased appellant) informed him that the land has been recorded exclusively in the name of Ashok. Complainant Anandrao, therefore, requested him to record the land in his name. The deceased asked him to pay Rs.2500/- for recording complainant Anandrao's name in the revenue record of the land. Complainant Anandrao paid him Rs.2000/- in installments.

4. The deceased appellant had been to the village in December 1997 for recovery of land revenue. Complainant

Anandrao requested him to give 7/12 extract of the land. The deceased asked him to pay the balance amount of Rs.500/- and then only 7/12 extract would be issued. Complainant Anandrao, therefore, approached the Anti-Corruption Bureau (ACB), Nanded. The complaint (Exh.34) lodged by Anandrao was reduced into writing. P.W.4 Manik was a Deputy Superintendent of Police, ACB, Nanded. He decided to lay a trap. The presence of two Government servants was secured to act as panchas. Pre-trap panchanama was drawn. All the concerned were given due instructions. On 5/12/1997, the complainant accompanied by a shadow witness, P.W.2 Gyanoba Gaikwad had been to the house of the deceased appellant. The appellant was away from the village. The trap thus could not be laid on 5/12/1997. Again on the next day i.e. on 6/12/1997, the complainant accompanied by P.W.2 Gyanoba went to the house of the deceased appellant. The appellant was not home. He had gone to Tahsil Office. Again by 1.30 p.m., the complainant went to the appellant's house to learn that the deceased was in Tahsil Office itself. The complainant accompanied by shadow witness, therefore, went to Tahsil Office. They met the deceased appellant Jagannath there. The trio went to a Canteen for tea. The deceased Jagannath asked the complainant whether he had brought

sum of Rs.500/-. He also made a demand for the same. The complainant did not pay the money in the canteen. The trio came back to the Tahsil Office. After a while, the deceased came out of the office. He gave his motorcycle key to Rajesh Rameshwar (acquitted accused). The deceased again made a demand of Rs.500/-. The complainant held the currency notes for being paid to the deceased. The deceased, in turn, asked the complainant to pay the same to Rajesh Rameshware. As planned, a determined signal was given. The raiding party headed by P.W.4 Manik Perke immediately came. The 5 currency notes of Rs.100/- denomination came to be seized from Rajesh Rameshware. Post-trap panchanama was drawn. Statements of persons acquainted with the facts and circumstances of the case were recorded. The deceased appellant and Rajesh Rameshware came to be arrested. On completion of the investigation, all the papers of investigation were sent to P.W.3 Ashok Shingare, Sub-Divisional Officer, Hingoli for obtaining sanction for prosecution of the deceased appellant. He, in turn, granted the sanction (Exh.68). Both, the deceased appellant and acquitted accused Rajesh Rameshware came to be proceeded against by filing charge sheet.

5. Charge (Exh.16) came to be framed. The

deceased and co-accused Rajesh Rameshware claimed to have no knowledge as to why for the amount of Rs.500/- was paid to him. While it was the defence of deceased appellant that the villagers had made a grievance against him to the Sub-Divisional Officer. Some of the villagers had even observed a fast for his transfer from the village. A Tahsildar had made an enquiry into the complaints made by the villagers. The Tahsildar gave clean chit. The complainant had joined hands with the villagers and, therefore, a false complaint was lodged.

6. To bring home the charge, the prosecution had examined 4 witnesses and produced in evidence certain documents such as sanction for prosecution, pre-trap and post-trap panchanamas, revenue record of the concerned land etc.

7. The trial Court, on appreciating the evidence in the case, convicted the deceased appellant and sentenced him as stated above. Co-accused Rajesh Rameshware was acquitted.

8. Learned counsel for the deceased appellant would submit that, the Collector was the appointing authority for a post of Talathi. The order issued by the Collector, appointing

the deceased appellant and others on the post of Talathi/s has been placed on record at Exh.72. Sanction for prosecution has been granted by the Sub-Divisional Officer, who had either no authority to appoint the deceased appellant nor did have a power to remove him. As such, the sanction for prosecution accorded by him was invalid one. Learned counsel would further submit that, the perusal of the sanction would indicate the sanctioning authority to have not gone through the papers of investigation. A draft of sanction was provided to the Sub-Divisional Officer. In accordance therewith, the sanction order has been issued.

9. Turning to the evidence in the case, the learned counsel would submit that, no work was pending with the deceased appellant. The revenue record of the land in Survey No.45 was brought into existence, recording the name of the complainant therein long before the deceased appellant was trapped. Some of the villagers had grievance against the deceased appellant. The complainant had joined hands with them and lodged a false report. The learned counsel took me through the relevant evidence in the case to ultimately urge for setting aside the impugned order.

10. The learned A.P.P. would, on the other hand,

submit that the order issued by the Collector was simply allotting the deceased and others to be appointed by the Sub-Divisional Officer as Talathi/s at certain places under the jurisdiction of the Sub-Divisional Officer. In support of her claim, she has placed reliance on the judgment of this Court in case of Dattatraya Laxman Bagdi Vs. State of Maharashtra (Criminal Appeal No.576/2001 – Nagpur Bench) to submit that the Sub-Divisional Officer was the appointing authority of the deceased and, therefore, sanction granted by him could not be faulted with. According to the learned A.P.P., perusal of the sanction would itself suggest the sanctioning authority to have applied its mind and granted the same. On the question of evidence in the case, learned A.P.P. would submit that, the evidence of the complainant coupled with the evidence of an independent witness P.W.2 Gyanoba Gaikwad, the demand and acceptance of the amount through conduit was duly proved. The trial Court rightly convicted the deceased appellant. She, therefore, urged for dismissal of the appeal.

11. Considered the submissions advanced. Perused the evidence in the case. Gone through the impugned judgment. Let us appreciate the evidence in the case.

12. The deceased appellant was a Talathi of the village

Basamba, Taluka Hingoli at the relevant time. Exh.72 is an order issued by the Collector on 14/11/1977. It is nothing but a list of the candidates selected for the post of Talathi. The deceased appellant is one of them. Vide said communication, the Sub-Divisional Officer, Hingoli was requested to issue appointment orders to the candidates named in the list. In response to the said communication, the Sub-Divisional Officer, Hingoli, vide his order Exh.71, dated 9/12/1977, appointed the candidates including the deceased appellant as Talathis at the place/s mentioned against the respective name/s in the list. As such, the deceased appellant was appointed by the Sub-Divisional Officer. Necessarily, the Sub-Divisional Officer had the authority to remove the Talathis appointed by him. Sanction granted by the Sub-Divisional officer for prosecution of the deceased appellant, therefore, cannot be faulted on the ground of want of authority.

13. Exh.68 is the sanction accorded by the Sub-Divisional Officer for prosecution of the deceased appellant. Admittedly, the Sub-Divisional Officer was supplied with a draft of sanction. A copy thereof has not been placed on record. The sanction order records that the deceased appellant on 1/12/1997 had attempted to obtain a sum of Rs.500/- for himself, and on 6/12/1997 he attempted to

obtain, and in furtherance accepted Rs.500/- for himself through Rajesh Rameshware as a gratification other than legal remuneration as a motive or reward for showing favour in exercise of his official function in the matter of recording mutation entries of land. The sanction order is, however, silent to state which papers of the investigation were perused by the sanctioning authority before according the same.

14. In case of Vinod Savalaram Kanadkhedkar Vs. State of Maharashtra reported in 2016 All.M.R.(Cri) 3697, this Court has observed :-

“19. Before considering the evidence of sanctioning authority it is necessary to see the object of Section 19 of the Act. Under section 19, grant of sanction is a weapon to discourage vexatious prosecution and it is a safeguard for the innocent, though not a shield for the guilty. The essentials of a valid prosecution can be stated as under –

(i) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction;

(ii) The authority itself has to do complete and

conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction;

(iii) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought ;

(iv) The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

(v) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.”

15. The charge indicates that, the deceased appellant was also charged for having made a demand of Rs.2500/- for making correction in the revenue record and had even accepted Rs.2000/-. The sanction order is conspicuously silent to make even a whisper in this regard. There is, therefore, reason for this Court to observe that the sanctioning authority might not have gone through all the papers of investigation before according sanction for prosecution. Had the sanctioning authority perused all the papers of investigation, the averments in regard to the facts

of having demanded a sum of Rs.2500/- and received part payment of Rs.2000/- would have been reflected therein.

16. Turning to the evidence of the complainant and shadow witness, it is to be stated that, there is no verification of the demand that was allegedly made by the deceased way back in 1992. As stated hereinabove (paragraph No.3 above) the deceased appellant had made a demand of Rs.2500/- way back in 1992. It is also the case of prosecution that a sum of Rs.2000/- was paid to the deceased time to time. It, however, does not appeal to conscience that the complainant would keep mum for over five years until the deceased come to the village for recovery of land revenue and that time he asked him to issue 7/12 extract as was agreed upon. True, the complainant P.W.1 Anandrao gave his evidence consistent with his case in the complaint Exh.34. It is a question of probative value of his evidence. There is also no verification of the demand of Rs.500/- made by the deceased on 1/12/1997 while he had been to the village for recovery of land revenue. Pursuant to the complaint lodged by P.W.1 Anandrao. Pre-trap panchanama was drawn on 5th December and a trap was laid. It, however, could not be executed as the deceased appellant was not available in the village. The same exercise was followed next day i.e. on 6th December 1997.

When the complainant along with a shadow witness had been to the house of the deceased first time on 6th December, the deceased was not home. They had again been to the house of the deceased to find the deceased was at Tahsil Office. They, therefore, went there. The deceased accompanied them to the Canteen for a tea. The deceased is said to have made a demand of Rs.500/- in the Canteen. To be specific, the deceased asked the complainant "Whether Rs.500/- as asked by him were brought?" This sentence does not indicate it was a demand of bribe. Again at the time immediately before the trap was executed, the deceased was alleged to have enquired with the complainant as to whether he had brought Rs.500/- as asked by him when as per the complainant's case, similar was the query of the deceased in the Canteen and it was answered in positive, it does not stand to reason that the deceased would again enquire with him as to whether he had brought Rs.500/- as asked by him. The shadow witness has also reiterated the same. Even for the sake of assumption that those facts are true, the same do not suggest in so many words that it was a demand of Rs.500/- towards bribe or illegal gratification.

17. There is one more reason for this Court not to rely on the evidence of the complainant. The complainant hails

from village Basamba, Taluka Hingoli. During his cross-examination, he was suggested that many of the villagers had made a complaint against the deceased appellant to the Sub-Divisional officer. It was also suggested that, some of the villagers had observed a fast for transfer of the deceased appellant from the village. The further suggestion was that, pursuant to the complaint made by some of the villagers, the Tahsildar had made an open enquiry into the complaint. Statements of the villagers were recorded and then he gave his report. The complainant claimed ignorance of all these facts. A report of enquiry made by the Tahsildar was placed on record. The same indicates that the Tahsildar had made an enquiry on the directions of the Sub-Divisional Officer. The enquiry was made into a complaint made by some of the villagers against the deceased. It thus does not appeal that the complainant was ignorant of all these facts more so when an open enquiry was made by Tahsildar and even some of the villagers had observed a fast for transfer of the deceased. The timing of the complaint made by the villagers and enquiry was just 3 – 4 months before the complainant lodged the report/ complaint. Before lodging of the complaint, the Tahsildar had given a report exonerating the deceased. As such, the deceased had every justifiable reason to contend

that a false report was lodged at the instance of some of the villagers.

18. In short, sanction for prosecution appears to have been accorded without perusing each and every paper of the investigation. It does not stand to reason that the complainant would keep quiet for little over five years when the deceased appellant had made a demand of Rs.2500/- way back in 1992 and 80% thereof i.e. Rs.2000/- had already been paid to him by the complainant. It is only after five years of making such a demand the complainant asked the deceased to issue him 7/12 extract while the deceased had been to the village for recovery of land revenue. This suggests that, the complainant had not been to the deceased any time therebefore requesting to issue him the corrected revenue record when he had paid him Rs.2000/- five years before. Admittedly, the revenue record in respect of the land Survey No.45 was corrected/ changed as was expected by the complainant 5 – 6 months before the complaint was lodged. The same indicates that the complainant's entire work of changing the revenue record in his favour had already been done, except issue of the 7/12 extract. All these facts lead this Court to observe that the evidence for the prosecution fell short to establish the guilt beyond reasonable doubt.

19. For the above reasons, interference with the impugned judgment and order is warranted. Hence the order:

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The impugned order dated 15/4/2002, passed by Special Judge, Hingoli in Special Case No.2/1998 is set aside.
- (iii) The deceased appellant Jagannath Sadashiv Kore is acquitted of the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.
- (iv) Fine amount, if paid, be returned to the legal representative of the deceased appellant namely Anil Jagannath Kore.

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

fmp/-