IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.465 OF 2004

Uttam s/o. Mohan Khajekar,
Age: 52 years, Occ. Service,
r/o. Khultabad, Dist. Aurangabad ..Appellant

Vs.

The State of Maharashtra ..Respondent

Mr.C.P.Sengaonkar, Advocate for appellant
Mr.S.P.Sonpawale, APP for respondent

CORAM : R.G. AVACHAT, J.
RESERVED ON : APRIL 29, 2022
PRONOUNCED ON : NOVEMBER 15, 2022

JUDGMENT :-

The challenge in this appeal is to judgment dated 14.07.2004 passed by learned Special Judge, Aurangabad, in Special Case No.7 of 2001. Vide the impugned judgment, the appellant has been convicted for the offences punishable under Sections 7 and 13(1)(d) and (2) of the Prevention of Corruption Act, 1988 ("P.C. Act", for short) and therefore, sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.200/-; and to suffer rigorous imprisonment for one year and to pay a fine of Rs.200/-, respectively.

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

PW 2 – Ambadas (complainant) was resident of village Mohamadpur. He had purchased 19 R land in Gut No.26 from his brother – Sarjerao for Rs.14,000/- on 27.04.2000. Fifteen days after execution of the sale deed, he met the appellant, then Talathi of village, and requested him to record his name in 7/12 extract of the land purchased. The appellant asked him to come with a copy of the sale deed, form no.4 duly signed by the vendor and a sum of Rs.400/-. Since the complainant did not wish to pay the appellant bribe, he approached the office of Anti Corruption Bureau (A.C.B.), Aurangabad, on 23.05.2000 and lodged the complaint (Exh.15).

3. PW 4 – Narayan Tandale, Police Inspector, A.C.B., decided to lay a trap. He, therefore, secured presence of two State Government employees to act as panch witnesses. A pre-trap panchnama (Exh.17) was drawn. He then asked the complainant and panchas to come to the office of A.C.B. on the following morning. They, accordingly, came there. The A.C.B. officials along with the complainant and the panchas proceeded to the office of the

appellant, at Khultabad. The complainant and PW 3 – shadow witness went ahead. They were duly instructed. The complainant met the appellant in his office on 24.05.2000. The appellant made a demand of Rs.400/- for taking mutation entry and issued 7/12 extract. The complainant, in turn, held the bribe money of Rs.400/-. The appellant received the same. The complainant then gave a pre-determined signal. The A.C.B. officials arrived. The bribe money came to be seized from the appellant. The trap panchnama (Exh.18) was drawn. Post trap panchnama was also drawn vide Exh.20.

4. PW 4 – Tandale recorded the statements of the persons acquainted with the facts and circumstances of the case. He then sent the papers of investigation to PW 1 – Mohan Katte, Sub-Divisional Officer, Vaijapur, who, in turn, accorded sanction (Exh.10) to prosecute the appellant. The appellant, thereafter, came to be proceeded against by filing charge sheet.

5. The trial Court framed Charge (Exh.7). The appellant pleaded not guilty. His defence was of false implication. The appellant admitted receipt of sum of Rs.400/-. It is, however, his

case that a sum of Rs.550/- was due towards the land revenue from the complainant's brother – Deorao. He had issued 7/12 extract in the name of Deorao to the complainant, on receipt of Rs.400/- towards the land revenue. A receipt was also prepared in that regard. The receipt was required to be prepared in triplicate. The Investigating Officer took one part of the receipt. He, however, did not place it on record of the trial Court.

6. On appreciation of the evidence in the case, the trial Court convicted the appellant and sentenced to imprisonment, as stated above.

7. Heard learned counsel for the parties.

8. Mr.C.P.Sengaonkar, learned counsel for the appellant, would submit that the complainant tried to run with the hare and hunt with the hounds. He gave vital admissions in his cross-examination. The complainant almost went back on his complaint. The trial Court ought not to have convicted the appellant in such a scenario. A moral conviction has no place in the criminal jurisprudence. He, therefore, urged for allowing the appeal.

9. Learned APP would, on the other hand, submit that the appellant admitted to have received the bribe money. The complainant's evidence is consistent with his complaint (Exh.15). The evidence of PW 3 – shadow witness reinforces the prosecution case. The appellant did not offer explanation of having received the amount towards the land revenue cess immediately after he was trapped. As such, whatever defence he has come with, is afterthought. The land revenue receipt was in the name of the complainant's brother. The mutation entry was to be taken in the name of the complainant. The demand of illegal gratification was in that regard. The evidence of the Investigating Officer reinforces the prosecution case about seizure of the bribe money from the appellant. Learned APP, therefore, urged for dismissal of the appeal.

10. Considered the submissions advanced. Perused the evidence relied on.

11. Admittedly, the complainant had purchased 19 R of land in gut no.26 from his brother, Sarjerao, for Rs.14,000/- on 27.04.2000. It is in his evidence that 15 days after execution of the sale deed, he had met the appellant, who was then Talathi of village

Sajja, Khultabad. The complainant requested the appellant to record his name in the revenue record of the land purchased. The appellant, in turn, asked him to come with a copy of the sale deed, form no.4 duly signed by the vendor and a sum of Rs.400/-. The complainant agreed to meet him after a while. It is further in his evidence that on 23.05.2000, he was present at bus stand of village Sultanpur. His friends – Dadarao Malkar and Vithal Jadhav were with him. He saw the appellant proceeding on a motorbike towards Khultabad. It was 10.00 in the morning. He stopped the appellant and told that he would be visiting him on the next day with requisite documents. The appellant also asked him to come with Rs.400/-. It is further in his evidence that as he did not wish to pay the appellant bribe, he approached the office of A.C.B., Aurangabad. PW 4 – Tandale recorded the complaint (Exh.15). PW 4 – Tandale asked him to come on the following day. The complainant, accordingly, went to the office of A.C.B. on 24.05.2000. One Shrihari Mundhe and Mohd. Saleem were present to act as panch witness. They went through the written complaint lodged by the complainant. PW 4 – Tandale gave all of them due instructions. The sum of Rs.400/- in the currency notes of Rs.100/- denomination were applied with anthracene powder. Pre-trap panchbnama (Exh.17) was prepared.

12. It is further in the evidence of the complainant that he along with PW 3 – shadow witness proceeded ahead for the appellant's office. The trap party headed by PW 4 – Tandale followed them. The complainant and PW 3 – shadow witness entered the appellant's office. It was 11.00 in the morning. A copy of the sale deed, duly filled in form no.4 along with the application for mutation entry were given to the appellant. The appellant made some entry in the register. The complainant asked him to give 7/12 extract. He gave him 7/12 extract of the land of his brother – Deorao. The appellant then made mutation entry. He then made demand for money for mutation entry. The complainant held the bribe money before the appellant, who, in turn, received the same and placed it in his shirt pocket. The complainant then went out of the office and gave the pre-determined signal. Rest followed, i.e. the trap party arrived, the appellant was over powered and the bribe money came to be seized from him. The spot/trap panchnama (Exh.18) was drawn.

13. PW 3 – Mundhe, shadow witness, gave evidence consistent with the evidence of the complainant. Same is, therefore, not reproduced in extenso. It is in his evidence that he accompanied

the complainant as a shadow witness. Both went to the office of the appellant. The appellant made demand of Rs.400/- for mutation entry. The complainant then held the amount before the appellant, who, in turn, received the same. It is further in his evidence that the trap-panchnama (Exh.18) was drawn in his presence. This witness also gave evidence as regards pre-trap panchnama. (Exh.17.).

14. Both complainant and PW 3 - shadow witness were subjected to searching cross-examination. It is in response to the questions put to him during the cross-examination, the complainant deposed that Sarjerao and Deorao were his brothers. The trio owned lands in various block numbers. The land gut no.26 belonged to the complainant. He had sold it to Sarjerao. His field in gut no.44 was in possession of Sarjerao. Sarjerao did not repay him the full money but executed sale deed in his favour on 27.04.2000. He thought that the mutation of the land gut no.26 was not recorded. He also felt that the appellant made mutation entry in favour of his brother – Sarjerao. There was some discontentment with him. He also wanted to obtain 7/12 extract of the land of his brother – Deorao. He had therefore, met the appellant many a time. <u>The</u>

complainant went on to state that the appellant had asked him to come with the amount, which was outstanding towards the revenue of the land in the name of his brother – Deorao. The complainant was not willing to pay the amount to the appellant. His friends - Dadarao Malkar and Vitthal Jadhav had brought him to the office of A.C.B. The appellant had only inquired with the complainant, as to whether he had brought the money. The complainant, however, denied that the appellant then prepared a receipt and delivered to him. It is further in his evidence that he had no good relation with his brother – Sarjerao. The appellant was on good terms with Sarjerao. He, therefore, felt that the appellant may delete his name from the revenue record on account of the appellant's good relations with Sarjerao.

15. PW 4 – Tandale, Investigating Officer, testified that the appellant gave his statement vide Exh.23, soon after the bribe money came to be seized from him. If one goes through the said statement, it would be evident therefrom that the complainant and his two friends had met the appellant. The complainant asked for 7/12 extract of the land of his brother – Deorao. He told the complainant that unless the arrears of the land revenue of Rs.550/-

was paid, no 7/12 extract in the name of Deorao could be issued. The amount of Rs.400/- that was paid by the complainant to the appellant as bribe money, was, in fact, towards arrears of the land revenue. The statement further recites that the appellant prepared a receipt in that regard. While he was writing the counter part of the receipt, the Investigating Officer seized Rs.400/- from him. The counter part of the receipt remained to be prepared.

16. The appellant also placed on record of the trial Court a communication made by the Tahsildar, Khultabad, on 22.02.2004. It has been stated therein that a sum of Rs.550/- was outstanding from Deorao towards the land revenue for the year 1999-2000. The receipt, which was being prepared by the appellant at the relevant time, has also been placed on record. There is also material to indicate that the mutation entry about the land purchased by the complainant, had already been made by the appellant.

17. The sanction (Exh.10) for prosecution of the appellant has not been taken exception to before this Court. Although the complainant lodged the complaint, alleging the appellant to have made demand of illegal gratification of Rs.400/- for recording the

complainant's name in the revenue record of the land purchased by him from his brother, the complainant, during his cross-examination, testified that he had three brothers and all the three brothers owned lands in various gut numbers. He wanted to have 7/12 extract of the land in the name of his brother – Deorao. The appellant told him that Deorao was in arrears of land revenue of Rs.550/- and unless the same is cleared, no 7/12 extract could be issued. It is further in his evidence that his friends – Dadarao Malkar and Vithal Jadhav took him to the office of A.C.B. The same indicates that the complainant was not willing to lodge the complaint.

18. There is evidence to indicate that Deorao was in arrears of the land revenue amounting to Rs.550/-. No sooner the appellant was trapped, he offered the explanation (Exh.23), reiterating his case that he had asked the complainant first to clear the outstanding of the land revenue. The amount received by him was towards the land revenue. He had prepared a receipt to be issued to the complainant. The receipt was to be issued in triplicate. While he was about to prepare the counter part of the receipt, he was trapped and the amount came to be recovered. The explanation offered by the appellant was prompt and very first in point of time

no sooner he was overpowered. The explanation, therefore, stands on higher pedestal. Same cannot be termed as an afterthought defence.

19. True, it might be a case of the complainant to have lateron been won over by the appellant. The fact, however, remains that the evidence of the complainant in the examination-in-chief, having been altogether diluted accepting the case of the appellant that the demand was towards the land revenue, the same leads this Court to observe that the trial Court ought not to have convicted the appellant in the facts and circumstances of the case.

20. In view of the above, interference with the impugned judgment is warranted. The appeal, thus succeeds.

21. Hence, the following order:-

(i) The appeal is allowed.

(ii) The impugned judgment of conviction and order of sentence dated 14.07.2004 passed by learned Special Judge, Aurangabad, in Special Case No.7 of 2001, is set aside.

(iii) The appellant is acquitted of the offences punishable under Sections 7 and 13(1)(d) and (2) of the Prevention of Corruption Act, 1988.

(iv) His bail bonds stand cancelled.

(v) Fine amount deposited by the appellant, if any, be refunded to him.

[**R.G. AVACHAT, J.**]

KBP