

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

CRIMINAL APPEAL NO.567 OF 2004

Ashok s/o Uttamrao Kakade
Age 52 years, Occ. Service,
R/o Flat No.1203, A-24,
Happy Valley Housing Society,
Tikuji Nivadi Road, Manpada
Thane (West), Dist. Thane
Died, through L.R.
Viraj Ashok Kakade,
Age 37 years, Occu. Business,
R/o 902, D-5, Lake Town
Housing Society, Bibwewadi,
Pune – 411 037, Tq. & Dist. Pune

... APPELLANT

VERSUS

The State of Maharashtra
(Copy to be served on P.P.,
High Court of Bombay,
Bench at Aurangbad)

... RESPONDENT

.....
Shri Satej S. Jadhav, Advocate for appellant
Shri R.B. Bagul, A.P.P. for respondent
.....

WITH

CRIMINAL APPEAL NO.550 OF 2004

Dinkar s/o Kaduba Murme
Age 35 years, Occu. Service,
R/o N-13, HUDCO, Aurangabad

... APPELLANT

VERSUS

The State of Maharashtra

... RESPONDENT

.....
Shri A.B. Girase, Advocate holding for
Shri Y.B. Bolkar, Advocate for appellant
Shri R.B. Bagul, A.P.P. for respondent
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 24th March, 2022

Date of pronouncing judgment : 18th August, 2022

J U D G M E N T :

Both these appeals are being decided by this common judgment since the challenge therein is to an order of conviction and sentence dated 19/8/2004, passed by Special Judge, Aurangabad in Special Case No.25/2001. The appeal (No.567/2004) has been preferred by original accused No.3. While the other appeal (No.550/2004) has been preferred by original accused No.1. There was one more accused. He was acquitted. State has not preferred appeal against his acquittal. Vide the impugned order, the accused No.1 (appellant in Criminal Appeal No.550/2004) was convicted for the offence punishable under Section 12 of the Prevention of Corruption Act, 1988 and Section 201 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of six months with a fine of Rs.1000/-, in default to suffer simple imprisonment for one

month and rigorous imprisonment for one year with fine of Rs.1000/-, in default to suffer simple imprisonment for one month respectively.

2. The accused No.3 (appellant in Criminal Appeal No.567/2004) was convicted for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for six months with fine of Rs.1000/-, in default to suffer simple imprisonment for one month and also convicted for the offence punishable under Section 13(I)(d) and 13(2) of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for one year with a fine of Rs.1000/-, in default to suffer simple imprisonment for one month.

3. Pending the appeal (No.567/2004), the original appellant Ashok Uttamrao Kakade passed away. His legal representative has come on record to pursue the appeal.

4. Facts giving rise to the present appeal are as follows :-

Deceased Ashok (appellant in Criminal Appeal No.567/2004) was serving as Police Inspector with CIDCO Police Station in the year 2000. Appellant Dinkar Murme

(appellant in Criminal Appeal No.550/2004) was serving as a Constable with the very Police Station. He was assigned a duty of Writer of Police Inspector, CIDCO Police Station.

5. P.W.1 Suresh Minchrel (complainant) would run Hotel Trimurti and Hotel Apsara at Aurangabad. Sijo Josef and Soji Sabastian were his partners in hotel business. The complainant closed his hotel for the day by 1.30 a.m. on 27/7/2000 and went home in Gulmohar Colony. Sijo Josef came at his home after a while and told that Soji Sabastian had a quarrel with police personnel and he was, therefore, detained at CIDCO Police Station. The complainant, therefore, went to the CIDCO Police Station and requested for release of Soji. The Police Station Officer (P.S.O.) declined. On the intervention of Assistant Commissioner of Police (A.C.P.), Soji was released with a condition that both Soji and Sijo would report at CIDCO Police Station on the following morning. The complainant accordingly took both of them to the Police Station by 10.30 a.m. on 27th. The deceased appellant (Police Inspector) was on duty there. The complainant entered his chamber without permission. He (deceased appellant), therefore, shouted at the complainant and asked his subordinates to detain both Sijo and Soji. He

had asked the complainant to meet Shri Dinkar Murme (appellant in Criminal Appeal No.550/2004). The complainant, in turn, met him. Shri Murme asked him to pay Rs.50,000/- for release of the duo. He also told the complainant that the demand was made by the deceased appellant. The appellant Murme, on negotiations, settled for Rs.25,000/-. Both Sijo and Soji thus came to be released.

6. The complainant since did not want to pay the bribe, approached the Anti-Corruption Bureau (A.C.B.). Shri Idhate (deceased) was Dy. Superintendent of Police. He recorded the statement-cum-complaint given by the complainant. He decided to lay a trap. Presence of two public officials serving with Irrigation Department and Co-operation Department was, therefore, secured to work as panch witnesses. They were P.W.2 Ashok Sutawane (shadow witness) and Shri Vispute. It was decided to verify the demand. The demand verification panchanama was drawn. The complainant and shadow witnesses were given due instructions. Both, the complainant and the panch witness went to the police station. Both the appellants were not present there. They, therefore, returned to the complainant's hotel to find appellant Murme accompanied by one person had

already reached the hotel. Some discussions between him and the complainant took place. As planned, the conversation came to be clandestinely tape-recorded. The complainant promised the appellant Murme to pay him bribe the following day. On return of the complainant and shadow witness to the Anti-Corruption Bureau, a pre-trap panchanama (Exh.113) was drawn. The complainant and shadow witness went to the police station on the following day. The complainant had with him a sum of Rs.25,000/- (currency notes of Rs.500/- each) smeared with anthracine powder. The appellant Murme asked the shadow witness to stay-put. Both the appellant and the complainant went just behind the police station. The complainant paid him the bribe money. The A.C.B. officials had already kept themselves around the police station. The complainant gave the pre-determined signal. Shri Idhate (deceased), accompanied by another panch witness and members of the trap party immediately came on the scene to find appellant Murme to have fled from back side of the police station. A search of the cabin of the appellant Murme was made. The trap party returned to A.C.B. On the following morning, appellant Murme appeared at A.C.B. He came to be arrested. It was found during investigation that the acquitted accused had assisted him in disposal of the bribe money. He

too was arrested. The deceased appellant surrendered before the Special Court. On investigation, the trio were proceeded against.

7. The trial Court framed the charge (Exh.41) against the accused. They pleaded not guilty. The defence of the deceased appellant was of no way concerned with the incident. It is the case of the appellant Murme that the complainant would run hotel and beer bar. He had employed ladies bartenders. Number of crimes were registered against the present complainant in connection with illegal activities. Only with a view to pressurize the police officers, a false complaint was lodged.

8. The prosecution examined in all 9 witnesses and produced in evidence certain documents. The trial Court, on appreciation of the evidence before it, passed the order of conviction and sentence impugned herein.

9. Shri Satej S. Jadhav, learned Advocate for the deceased appellant would submit that, there was no iota of evidence to connect the deceased appellant with the crime in question. The learned Advocate for the appellant Murme would submit that, the evidence of the complainant is that of

evidence of an accomplice. The demand of bribe has not been duly verified. The tape-recorded conversation has not been duly proved. No transcript of the tape-recorded conversation was prepared by the investigating officer. When the cassettes containing the tape-recorded conversation were played before the Court, they were found to have been corrupt. According to him, nothing substantial took place in the presence of shadow witness. The evidence of the complainant alone, who was bent upon to see that the deceased appellant is trapped, is not sufficient to establish the guilt beyond reasonable doubt. The learned counsel took me through the relevant evidence on record to ultimately urge for allowing the appeal.

10. The learned A.P.P. would, on the other hand, submit that, the demand and acceptance of bribe was duly proved. No sooner the bribe money was received, the appellant Murme fled from the scene. The same itself indicates his involvement in the crime. The learned A.P.P. took me through the evidence of the complainant and the shadow witness to ultimately urge for dismissal of the appeals.

11. Considered the submissions advanced. Perused the evidence and the documents relied on. Sanction for

prosecution of the appellants was not taken exception to. The investigating officer passed away pending the trial. He could not be examined as a witness. Although 9 witnesses came to be examined in support of the prosecution, material evidence to be adverted to would only be that of the complainant and the shadow witness.

12. Admittedly, the appellant would run two hotels within the jurisdiction of CIDCO Police Station. Sijo and Soji were his partners in the hotel business. On the intervening night of 26th and 27th July 2000, both Sijo and Soji were on way to their home. A police constable accompanied by a Home-Guard were on night patrolling duty. They intercepted Sijo and Soji. There was quarrel among them. Sijo fled. Soji was brought to the police station. Sijo, therefore, approached the complainant. Both of them, therefore, went to the police station. It was 2.30 a.m. The P.S.O. declined to release Soji. The complainant, therefore, approached A.C.P. Sonawane. Soji thus came to be released on condition that both Sijo and Soji will be produced at the police station the following morning. Accordingly, the complainant took both Sijo and Soji to the police station. It was 10.30 a.m. The deceased appellant (Police Inspector) was in his chamber. The

complainant entered his chamber without permission. The deceased got annoyed thereby. He shouted at the complainant and asked him to meet appellant Murme. The complainant in turn met Shri Murme.

13. The complainant (P.W.1) testified that Murme had asked him to pay a sum of Rs.50,000/- for release of Sijo and Soji. He told the complainant that it was a demand of Police Inspector Ashok Kakade (deceased). The complainant agreed to pay Rs.25,000/- on the following day. Sijo and Soji thus came to be freed. The complainant then went to the A.C.B. and lodged the complaint (Exh.53). Shri Idhate, Dy. Superintendent of Police, A.C.B. recorded the statement-cum-complaint given by the complainant. He decided to lay a trap. Presence of two public officials serving with Irrigation Department and Co-operation Department was, therefore, secured to work as panch witnesses. They were P.W.2 Ashok Sutawane (shadow witness) and Shri Vispute. It was decided to verify the demand. The demand verification panchanama was drawn.

14. It is further in the evidence of the complainant that he along with the shadow witness (P.W.2) went to the police station on the same day. Both the appellants were not

present. They, therefore, returned to his hotel to find the appellant Murme accompanied by one person (Police Constable More) had already been to the hotel. As planned, a tape-recorder was concealed on the person of the complainant. It was on switched on mode. The complainant had interaction with the appellant Murme at the hotel. Murme did not agree to reduce the amount below Rs.25,000/-. The complainant told him to have had no money to pay him immediately. He promised to pay him the same the following day. To all this conversation, P.W.2 Ashok Sutawane was said to be present as a shadow witness. After the appellant Murme and his companion left the hotel, the complainant and shadow witness came back to A.C.B. The tape-recorded version was played. Shri Idhate found the appellant Murme to have made a demand of bribe. He, therefore, asked the complainant and shadow witness to come to the A.C.B. following day. Accordingly, both of them went there. Pre-trap panchanama (Exh.113) was drawn. Anthracine powder was applied to currency notes. Then both the complainant and the shadow witness went to the CIDCO Police Station. The deceased appellant was not at the police station. They met the appellant Murme there. The trio first went to Hotel Pooja for tea. Then again returned to the police station. The

appellant Murme asked the shadow witness to keep himself behind both of them. It is the case of the complainant that, the appellant Murme then made a phone call to someone, probably to the deceased appellant. He then gave him a saffron colour envelope and asked him to place the currency notes therein. The complainant, therefore, went to wash room to do the said exercise, and returned to tell appellant Murme that the envelope was short to accommodate the currency notes. The appellant Murme, therefore, asked the complainant to accompany him to the campus of the police station. Both of them went towards back side. The shadow witness was asked to keep himself away from both of them. It is in the evidence of the complainant that, then he paid the amount to the appellant Murme in response to his demand. He then made a pre-determined signal. The trap party headed by Shri Idhate no sooner appeared on the scene. The appellant Murme fled from back side of the police station. What followed thereafter is the history. The appellant Murme appeared at the A.C.B. following morning. He was arrested. He allegedly made a disclosure statement to have had thrown the currency notes while running away. He took the police party to that spot. No thrown away currency notes were found at the spot.

15. Almost on the same line is the evidence in examination-in-chief of P.W.2 Ashok Sutawane (shadow witness). Only with a view to avoid repetition the same is not adverted to.

16. It needs no mention that for conviction for the offence punishable under Sections 7, 13(1)(d) of the Prevention of Corruption Act, demand of illegal gratification is a sine qua non. Mere acceptance of money sans demand does not constitute an offence punishable under Section 7 of the P.C. Act, 1988. The demand and acceptance of illegal gratification is a question of fact. Since the appellant Murme had fled from the scene, there is no recovery of bribe money from him. Section 20 of the P.C. Act, therefore, could not be invoked.

17. Even if we accept the case of the prosecution as it is, it is to be stated that, the deceased appellant was personally nowhere in picture or on the scene. Neither the complainant had direct interaction with the deceased appellant nor did he talk with him on phone. It was only the appellant Murme who told the complainant that the demand was made by the deceased appellant. It is true that the

appellant Murme was the Writer of the deceased appellant. Shri Murme on his own had no authority to free or release Sijo or Soji. It is, however, reiterated that, there is no iota of evidence to indicate the appellant Murme and the deceased appellant were in league and the demand was made and the money was received for and on behalf of the deceased appellant. It is, therefore, observed that, the trial Court ought not to have convicted deceased appellant on the basis of far-fetched inferences drawn on the basis of evidence in the case. The impugned order of conviction and sentence is, therefore, liable to be set aside as against the deceased appellant Ashok Kakade is concerned.

18. Let us now advert to the case of the appellant Murme. As stated above, proof of demand of illegal gratification is a condition precedent for conviction for the offence punishable under Section 7 of the P.C. Act. The trial Court, relying on the judgment of Apex Court, in case of Pannalal Vs. State of Maharashtra [AIR 1979 SC 1191], observed that the evidence of the complainant is that of an accomplice. Hence, there is necessity to insist corroboration on material particulars. The trial Court has also observed that a charge of bribery is one which can easily be made. The

complainant in bribery case is an interested witness, etc.

19. During cross-examination of the complainant, it has come on record that he would run two hotels at Aurangabad with beer bars therein. He had employed females as bartenders. He was Secretary of Hotel Owners' Association. Sijo and Soji were his partners in hotel business. When the complainant went to the police station on the intervening night of 26th and 27th for release of Soji, he had sought for intervention of A.C.P. Shri Sonawane. It is only on telephonic direction of A.C.P., Soji was freed. The same indicates complainant to have had acquaintance with high ranking police officials. It is not known as to why did he not approach Shri Sonawane or any other higher-ups of deceased appellant when demand of illegal gratification was made. When the complainant had been to the police station on the following day to produce both Sijo and Soji there, he had admittedly entered the deceased appellant's cabin without his permission. It is in his examination-in-chief itself that the deceased appellant had shouted at him in bad manner as if he was an accused. It is also the case of the complainant that the deceased appellant had told him that he would be made to pay a big fine. The complainant had, therefore, every

reason to be annoyed with the deceased appellant. If we appreciate the entire evidence in the case, it would be found that the complainant was all along insisting the appellant Murme to introduce him with the deceased appellant. When the appellant had made a demand of illegal gratification for the first time to the complainant, there was no independent witness around. Dy. Superintendent of Police Idhate had, therefore, decided to verify the demand. As planned, the complainant, accompanied by shadow witness P.W.2 Ashok Sutawane had, therefore, been to the police station. The complainant had concealed tape-recorder on his person. Since the appellant Murme was not at the police station, both of them returned to the hotel to find Murme accompanied by one person present at the hotel itself. The evidence of the complainant and even that of the shadow witness would indicate the appellant Murme did not initiate the talk in respect of illegal gratification. It was the complainant who asked the appellant Murme to reduce the amount. Shri Murme in turn declined to reduce. When the complainant told him to have no money with him to pay him immediately and assured to pay him the following day, Murme had responded him saying "Do the way you like". This has come on record in a tape-recorded conversation, whereas the complainant in his

examination-in-chief attributed the appellant Murme to have given a nod for the bribe to be paid the following day.

20. It is to be stated here itself that, although the tape-recorder was used for recording conversation between the complainant and the appellant Murme, admittedly the investigating officer appears to have not prepared the transcript of the recorded conversation during investigation of the crime. While the original cassette was sought to be played before the trial Court, it was found to be not audible. The same was, therefore, not played. Another big cassette prepared on the basis of original cassette was, therefore, played. The prosecution did not lay any foundation for admission of secondary evidence. It appears that, in his defence, the appellant herein has extensively relied on the tape-recorded conversation. It is to be stated that, the entire conversation between the appellant Murme and the complainant appears to have not been recorded in the cassette. No pick and choose of conversation can be made so as to support the prosecution case. The defence can, however, very well rely on the conversation. In one of such recorded conversations, it has come on record that, the complainant had said appellant Murme "मैं उलटा काम करने वाला

आदमी हूँ. मेरे पच्चीस गए तो मेरे को कोई बांधा नहीं" (I am a person doing wrongful acts. It does not matter if I require to spend twenty five).

21. The complainant was subjected to a searching cross-examination. He was confronted with the tape-recorded conversation, his complaint and even the post trap panchanama. Vital omissions amounting to contradictions have thus been brought on record.

22. There is evidence that, when the complainant accompanied by shadow witness had been to the police station to pay appellant Murme bribe, the trio went to nearby Pooja Hotel for tea. The appellant Murme did not make demand of bribe money at the hotel. The learned counsel for the appellant, therefore, has every reason to contend that he (appellant Murme) would have asked the complainant to pay him the bribe money in the hotel itself. The matter that on return to the police station the appellant Murme gave the complainant an envelope and asked him to place the currency notes therein and then hand it over to him does not appear in the tape-recorded conversation or even the complainant's statement to the investigating officer. While the amount was being received by the appellant Murme, both, he himself and

the complainant had gone to the back side of the police station. P.W.2 Ashok Sutawane was not in their company. May be, he was asked by the appellant Murme to stay-put. There is inconsistency in the evidence of the complainant and P.W.2 Ashok Sutawane. P.W.2 Ashok Sutawane testified that the complainant had offered money in Pooja Hotel itself. But Murme told him that he would accept it in the office. It is reiterated that, this is not part of the recorded conversation. According to the complainant, he did not offer money at Hotel Pooja. The complainant was categorical to state that the appellant did not make demand of money there.

23. Although P.W.2 Ashok Sutawane testified that the complainant held the envelope containing the currency notes before the appellant Murme and he in turn received the same, he was categorical to state in his cross-examination that, both the complainant and appellant Murme had gone away from him. The gate of the police station is West facing. Both of them had gone towards east, behind the police station. He was at the western gate of the police station. He was not able to see the happenings at the back side of the police station. While the appellant Murme had asked the complainant to pay him the money, the shadow witness was not around. These

are the happenings that took place, according to P.W.1 Suresh, while both of them were at the back side of the police station. Fleeing away of the appellant Murme and receipt of the amount may or may not be an incriminating circumstance. The fact remains that, tainted money could not be recovered from him during the trap.

24. The complainant has stated during his cross-examination that, he did not know A.C.P. Sonawane. This indicates him to be economical with truth when admittedly he had sought intervention of A.C.P. Shri Sonawane for release of Soji from the lock up. It is further in his evidence that, he was a law graduate. He had occasion to visit Police Stations many a time in connection with cases registered against him for late hour conduct of business. On account of detention of Soji, he was annoyed. His annoyance was aggravated since the deceased appellant had shouted at him in bad manner as if he was an accused. It is reiterated that the complainant could have approached A.C.P. Sonawane or even other higher police officials to make a complaint to them about demand of illegal gratification.

25. Prosecution did not rely on tape-recorded conversation in audible state or full transcript thereof. True in

the tape-recorded conversation there is reference of Rs.25,000/-. It is, however, stated that, for want of there being entire conversation available, there could not be use of selective portion/ matter. While the complainant was confronted with the tape-recorded conversation, his response was that the conversation in the transcript of which the questions were put to him, was incorrect. He even expressed reservations to identify his own voice in the tape-recorded conversation since he claimed to have not heard clearly. While he was confronted with portion marked 'A' to 'F' in the recorded conversation, his response was that the same may be correct. He was categorical to state that he was eager to see Shri Kakade (deceased appellant). According to him, there was merely a talk of money between them at back side of the police station. The same indicates the appellant Murme to have not asked him to pay him money. It is also in his evidence that, he had also filed another such complaint against P.S.I. Andhale of the very police station. True, this complaint was after the one in question was registered. He knew all the police officials stationed at Aurangabad. He rang almost all the police officers to locate A.C.P. Shri Sonawane.

26. In short, the complainant was annoyed as his

partner in the business was detained by police officials of CIDCO Police Station. The complainant had acquaintance with A.C.P. Sonawane. On Shri Sonawant's intervention, Soji was freed. On the following day, when the complainant had produced both of his partners at the CIDCO Police Station, the deceased appellant had shouted at him in bad manner as if he was an accused. He had even threatened the complainant to ensure to make him pay a big fine. This was the reason for the appellant for adding insult to injury. His evidence that appellant Murme had made a demand of Rs.25,000/- at the behest of the deceased appellant is, therefore, required to be tested with a pinch of salt. During exercise of verification of the demand of illegal gratification, the tape-recorded conversation is silent in that regard. When the complainant accompanied by shadow witness met the appellant Murme at Hotel Apsara, the appellant did not make demand of money. It was the complainant on his own requested him to scale down the demand. When the complainant told him that the money would be paid the following day, the appellant Murme responded him, "Do the way you like". When on the following day both of them in the company of appellant Murme went to Hotel Pooja for tea, the appellant did not make any demand for money nor did the complainant offer him money there. In

this regard, the evidence of shadow witness is grossly inconsistent with the evidence of the complainant. On their return to the police station, the shadow witness was asked to remain away from them. He obliged.

27. The complainant's statement and tape-recorded conversation is silent as regards the appellant Murme to have given him an envelope and asked him to place currency notes therein and then pay him. The evidence of the shadow witness indicates that, both the complainant and appellant Murme together went to the back side of the Police Station, while he remained at the other end of the Police Station. No happenings at the back side of the Police Station were visible. As such, P.W.2 Ashok Sutawane could not be said to be a witness to the demand and consequential acceptance of bribe by the appellant. It is already observed that, there are very many reasons not to act upon the sole testimony of the complainant. All in all, the prosecution evidence does not inspire confidence. The trial Court, based on such evidence, ought not to have convicted the appellants. This Court is, therefore, inclined to interference with the order impugned herein. Hence the order:

ORDER

- (i) Both the Criminal Appeals are allowed.
- (ii) The order of conviction and sentence dated 19/8/2004, passed by Special Judge, Aurangabad in Special Case No.25/2001 is set aside. The appellants are acquitted of the offences under Sections 12, 7, 13(I)(d) and 13(2) of the Prevention of Corruption Act, 1988 and Section 201 of the Indian Penal Code. Their bail bonds are cancelled. Fine amount, if paid, be refunded to them.

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

fmp/-