

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

CRIMINAL APPEAL NO.650 OF 2004

Nanasaheb s/o Dhondiram Godse
Age 36 years, Occu. Service,
(Asstt. to Junior Engineer)
Panchayat Samiti, Gangakhed,
Presently at Panchayat Samiti,
Sailu, Tq. Sailu, Dist. Parbhani

... APPELLANT

VERSUS

The State of Maharashtra
through : Manik s/o Shivram Perake
Anti Corruption Bureau, Parbhani,
District Parbhani

... RESPONDENT

.....
Shri S.B. Bhapkar, Advocate for appellant
shri R.B. Bagul, A.P.P. for respondent
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 28th March, 2022

Date of pronouncing judgment : 23rd September, 2022

J U D G M E N T :

This appeal is directed against the order of conviction and sentence dated 30/9/2004, passed by Special Judge, Parbhani in Special Case No.4/2001. Vide impugned order, the appellant herein has been convicted for the offence punishable under Sections 7, 13(2) read with Section 13(1)(d)

of the Prevention of Corruption Act (P.C. Act for short) and sentenced to suffer rigorous imprisonment for one year on both counts and to pay fine of Rs.500/- and Rs.1000/- respectively, in default to suffer rigorous imprisonment for one month and two months respectively. Both the substantive sentences have been directed to run concurrently.

2. The facts in brief, giving rise to the prosecution case are as follows :

P.W.1 Uttam (complainant) belongs to Scheduled Caste. His financial status was below poverty line. The Panchayat Samiti, Gangakhed had, therefore, sanctioned him Rs.28,500/- for construction of house under "Indira Avas Yojana". The appellant herein was serving as Assistant to Junior Engineer. He came to the village of the complainant, marked the lay-out of the proposed construction. The complainant gave construction work to local mason. The appellant would visit the site time to time to see the progress of construction for release of the amount periodically. On each occasion of release of funds, the appellant had made a demand of bribe. The complainant paid him Rs.5000/- first. Then paid Rs.3000/-. Again the appellant was paid a sum of Rs.2000/-. While the final payment was to be released, the

appellant made a demand of Rs.500/-. Since the complainant did not wish to pay any more money to the appellant, he approached the Anti-Corruption Bureau (A.C.B.), Parbhani and lodged the complaint (Exh.10).

3. The Deputy Superintendent of Police, A.C.B., Parbhani, P.W.3 Manik Perke recorded the complaint on 9/2/2001. Since the appellant had asked the complainant to pay him the money on 9th February itself, P.W.3 Manik Perke secured presence of two Government officials to act as panch witnesses. The complainant and panch witnesses were given due instructions. Pre-trap panchanama was drawn. All of them then set out for effecting a trap.

4. The complainant, accompanied by P.W.2 Vithal Sukalkar, shadow witness, went to the office of the appellant. On appellant's demand, the complainant paid him Rs.500/- smeared with anthracine powder. He then came out of the office and gave a pre-determined signal. The trap party arrived. The bribe money (marked currency notes) came to be seized from the appellant under the panchanama (Exh.20). P.W.3 Manik Perke then lodged the F.I.R. He did investigation thereof. All the papers of investigation were submitted to P.W.4 Harshdeep Kamble, the then Chief Executive Officer,

Zilla Parishad, Parbhani for obtaining his sanction for appellant's prosecution. He, in turn, granted the same. The appellant thus came to be proceeded against by filing the charge sheet.

5. The trial Court framed the charge (Exh.4). The appellant pleaded not guilty. His defence is of false implication. According to him, authority to issue final bill did vest with the Deputy Engineer. The appellant was no way concerned with preparing final bill. One Bharat Swami, a son of Panchayat Samiti Member – Smt. Saraswatibai Mala Jangam had made a demand of Rs.5000/- as ransom. The appellant refused to pay him money. The complainant, therefore, lodged a false complaint at the behest of Bharat Swami.

6. The trial Court, on appreciation of evidence in the case, convicted and sentenced the appellant as stated above.

7. Heard. Learned counsel for the appellant would submit that, the charge was defective. The appellant was not serving as Assistant Junior Engineer. He was an Assistant to Junior Engineer. In the charge, he has been described to have held the post of Assistant Junior Engineer. He would further submit that, there was no demand verification. The appellant

had paid visit to the site many a time. The complainant raised construction of his house in breach of rules and conditions of the Scheme, "Indira Aavas Yojana". The authority to draw final bill did vest with the Deputy Engineer. The panch witnesses were not independent persons. Both of them were serving with Police Hospital. The bribe money was thrust into the pocket of the appellant. On the question of sanction for prosecution, learned counsel would submit that, the authority concerned has not applied its mind before grant of sanction (Exh.39). The same is evident from the sanction order itself and the oral evidence of P.W.4 – sanctioning authority. According to learned counsel, the trial Court ought not to have convicted the appellant based on such evidence. He, therefore, urged for allowing the appeal.

8. The learned A.P.P. would, on the other hand, submit that, admittedly, the complainant was granted a sum of Rs.28,500/- for construction of house under Indira Avas Yojana. Admittedly, the appellant had paid visit to the site many a time and cleared the bills by installments. The same indicates the appellant to have had authority to make measurements and clear the bills. The appellant, therefore, could not be heard to say to have had no authority to make a final bill. According to learned A.P.P., the oral evidence of the

complainant and that of the shadow witness undoubtedly make out a case of demand of illegal gratification and receipt of the same by the appellant. Both these witnesses did not have enmity to give evidence against the appellant. The panchanama drawn soon after the trap has not been taken exception to. The contents thereof reinforce the prosecution. The sanctioning authority gave his evidence on oath. It is in his evidence that, after having gone through all the papers of investigation, the sanction (Exh.39) came to be accorded. Tainted currency notes have been recovered from the appellant. Presumption under Section 20 of the P.C. Act, therefore, gets invoked. The learned A.P.P. ultimately urged for dismissal of the appeal.

9. Considered the submissions advanced. Perused the evidence in the case. To establish the charge, the prosecution examined 4 witnesses and produced in evidence certain documents. Let us appreciate the evidence in the case and analyse the same as well.

10. The complainant belongs to Scheduled Caste. His financial position was below poverty line. He was, therefore, sanctioned subsidy under Indira Aas Yojana. The subsidy was for Rs.28,500/-. It is in his evidence that, the appellant

had come to his village. He marked out the location. The complainant constructed the basement. The appellant threatened him to stop his further construction as the basement was made in mud. It is further in his evidence, after the work of basement was over, he received a cheque of Rs.5000/-. The appellant demanded that much amount. He threatened the complainant to make a report to stop further construction. The complainant, therefore, paid the appellant Rs.5000/-. After making further construction, the appellant had again visited the site. He took measurement. On his demand, the complainant paid him Rs.3000/- for release of further funds. The complainant was short of funds. He, therefore, sold his goats. After brick work was over, he placed tin sheets thereon as a roof. Since he did not have money to buy new tin sheets, he used old one. The appellant, therefore, again threatened him to make a report in that regard and made the complainant pay him Rs.2000/-.

11. It is further in the evidence of the complainant that, after all the work was over, he met the appellant in his office on 8/2/2001 and requested to release the remaining amount of subsidy. The appellant again asked him to pay Rs.500/- on the following day. Since he did not want to pay the appellant bribe, he approached the A.C.B. It is further in

his evidence that, he accompanied by shadow witness went to the office of the appellant. The appellant met them at the entrance of the Panchayat Samiti Office. Exchange of greetings took place between the two. The appellant asked him to come to his office. He went there. The appellant enquired with him whether he has brought the money. The appellant even asked him to pay the money and then only he would prepare the final bill. The complainant, therefore, paid the appellant a sum of Rs.500/-. He then came out of the office and gave pre-determined signal. The trap party arrived. The bribe money came to be recovered from the appellant.

12. On the same lines is the evidence of the shadow witness P.W.2 Vithal Sukalkar. The evidence of this witness is relevant on the point of the appellant having met them at the entrance gate of the Panchayat Samiti Office. He asked them to come to his Chamber. The appellant there made a demand of money. The complainant, in turn, paid him the amount. The appellant kept the same in his trouser pocket.

13. Both these witnesses were subjected to a searching cross-examination. Both of them did not give in. It may, therefore, be said that, the factum of demand of bribe

and acceptance thereof is proved by the evidence of these witnesses. The evidence, however, indicates that, the complainant is not a witness of truth. It is he who claims to have paid the appellant illegal gratification. First Rs.5000/-, then Rs.3000/- and afterwards Rs.2000/-. It is also in his evidence that, if the construction was to be made through a Contractor, the complainant was to receive a sum of Rs.5000/- less. Admittedly, he had given a contract of construction to a local Mason. In the official record, however, it was shown that the construction was made by him through labours. There is also evidence to indicate that, when the construction was to be made of certain material, he constructed the basement in mud. That was against the rules and the terms of the Scheme. The complainant was expected to use new tin sheets. Instead, he put old tin sheets on the brick work, as a roof. This Court has, therefore, hesitation to believe the evidence of the complainant.

14. It is true that, the shadow witness gave evidence consistent with the prosecution case. Learned counsel for the appellant has, however, reason to contend that, the shadow witness was not an independent witness. Admittedly, P.W.2 was employee working with Police Hospital. The investigating officer was in the cadre of Dy. Superintendent of Police. The

learned counsel for the appellant has, therefore, reason to contend that the shadow witness was bound to give evidence as was expected by the prosecution agency.

15. There is another aspect of the matter. On investigation, all the police papers along with the forwarding letter were submitted to the Chief Executive Officer for obtaining his sanction. A communication in that regard made to the sanctioning authority is on record. The sanctioning authority was requested to give sanction in his own words. The said communication is at Exh.29. The relevant paragraph reads as below :-

"आरोपी लोकसेवक श्री. नानासाहेब धोंडीराम गोडसे, सहाय्यक कनिष्ठ अभियंता, पंचायत समिती, गंगाखेड यांना काढून टाकणेश आपण सक्षम अधिकारी (**competent authority**) आहात अशी आमची धारणा आहे. आमची धारणा बरोबर असल्याची कृपया खात्री करावी.

६) जर आमची धारणा बरोबर असेल तर आपण या सोबत पाठविणेत येत असलेल्या तपासाचे कागदपत्रांच्या छायांकित प्रतीच्या संचाचा अभ्यास करावा व जेव्हा आपण वर नमूद आरोपी लोकसेवकाविरुद्ध अभियोग लावण्याची परवानगी देणेच्या निर्णयास याल तेंव्हा या सोबत जोडलेले बंद पाकीट उघडून त्यात असलेल्या मंजूरी मसुद्याप्रमाणे (**Draft Sanction Order**) त्यातील तपशिलाच्या अचूकपणाबाबतची स्वतः खात्री करून अभियोगाची मंजूर पत्र आपले स्वतःचे

शब्दात आपल्या कार्यालयीन टंकलेखन यंत्रावर पुन्हा वेगळ्या कागदावर तीन प्रतीत नव्याने टंकलिखित करून त्यावर शाईची सही तारखेसह करून आपल्या कार्यालयाचा गोल शिक्का मारून पुढील रितसर कायदेशीर कार्यवाही करणेसाठी या कार्यालयास हे पत्र प्राप्त झाल्यापासून ७ दिवसाचे आत (एक आठवड्याचे आत) वा तत्पूर्वी न चुकता पाठवावे, ही विनंती.”

16. Admittedly, two draft sanctions were supplied to the sanctioning authority P.W.4 Harshdeep Kamble along with the said communication. P.W.4 Harshdeep Kamble has admitted in no uncertain terms that, he prepared the sanction order (Exh.39) on the basis of draft sanction order. True, it is in his evidence that, he had gone through all the police papers before according the sanction. He, however, went on to admit that the sanction order (Exh.39) and the draft sanction order supplied to him were same in verbatim. The sanction order (Exh.39) accorded by him even did not bear Outward Number. It is also silent to state or refer to the document perused by him before grant of sanction. The learned counsel for the appellant is, therefore, justified in contending that the sanctioning authority appears to have not applied mind for grant of sanction. It is true that, this Court is dealing with an appeal. The sanction had, however, been taken exception to before the trial Court itself. It was within the powers of the sanctioning authority as to whether to accord the same or

not. The learned counsel for the appellant has reason to contend that, had P.W.4 Harshdeep Kamble really applied his mind, even he might have refused to accord such sanction. As such, the issue of exception to validity of sanction goes to the root of the matter.

17. In view of this Court, the trial Court, in the facts and circumstances of the case, erred in convicting the appellant. This Court is not at one with the findings recorded by the trial Court. In short, the evidence of the complainant does not inspire confidence. The panch witness was an employee of the Police Department (Police Hospital). The sanctioning authority appears to have accorded the sanction mechanically. These factors lead this Court to allow the appeal. Hence the order :

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The order of conviction and sentence dated 30/9/2004, passed by Special Judge, Parbhani in Special Case No.4/2001 is set aside. The appellant is acquitted of the offences punishable under Sections 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. Fine amount, if paid, be

refunded to the appellant.

(iii) Bail bonds of the appellant are cancelled.

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

fmp/-