

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPEAL NO. 443 OF 2009**

Sanjay Ishwarlal Varude,
Age : 38 years, Occu: Service,
R/o Plot No. 36, Deepmala Society,
Gondur Road, In front of Stadium,
Deopur, Dhule.

...Appellant
(Orig. Accused No.1)

Versus

State of Maharashtra

...Respondent

....

Mr. Joydeep Chatterji, Advocate for Appellant
Mr RD. Sanap, APP for Respondent/State

....

AND

CRIMINAL APPEAL NO. 444 OF 2009

Ishwar Bhimrao Bhamare,
Age : 33 years, Occu: Booking Clerk
(Yogesh Travels), R/o. Takarkheda,
Tq: Shindkheda, Dist : Dhule

...Appellant
(Orig. Accused No.2)

Versus

State of Maharashtra

...Respondent

....

Mr. Joydeep Chatterji, Advocate for Appellants in both Appeals
Mr RD. Sanap, APP for Respondent/State in both Appeals

....

CORAM : SHRIKANT D. KULKARNI, J.

**RESERVED ON : 20 AUGUST, 2022
PRONOUNCED ON : 17 OCTOBER, 2022**

. Feeling aggrieved by the impugned Judgment and order of conviction passed in Special Case No. 127 of 2006 by the Special Judge, Dhule, original accused Nos. 1 and 2 have preferred their respective appeals by taking aid of Section 374 of Cr. P.C.

2. The facts giving rise to these two appeals in brief are as under :

2(a) Appellant, Sanjay Ishwarlal Varude (original accused No.1) was serving as a Police Constable and attached to Dondaicha Police Station at the relevant point of time, and assigned duty in the traffic branch. Appellant, Iswar Bhimrao Bhamare (original accused No.2) was a Manager with the Yogesh Travels at Dhondaicha. PW-1 Narendra was plying mini door rickshaw owned by Mr. Ravidra Fakira Patil on Shindkheda - Dondaicha road. PW-1 Narendra could not ply the rickshaw for two months because of financial problem of his owner. After financial crises was over, PW-1 started plying mini door rickshaw. Accused No.1 - Sanjay demanded Rs.300/- towards *Hapta* / bribe of previous two months. On 14.11.2005, PW-1 Narendra met with accused No.1 Sanjay and shown his inability to pay *Hapta* and requested to

allow him to ply the rickshaw, and he would arrange the money after some time. Accused No.1 Sanajay insisted for payment of *Hapta*, and in case of failure, threatened to file cases against him. PW-1 Narendra rushed to the A.C.B. office, Dhule and lodged F.I.R. vide exhibit 20 on 17.11.2005.

2(b) Accordingly, pre-trap *panchanama* came to be prepared in respect of bribe money of Rs.300/-. After arranging for the trap, PW-1 Narendra, Panch witness No.1 Chunilal Tukaram Nachave (PW-2) and the official of A.C.B. Mr. Dhanraj Dayama (PW-4) went to the bus stand area. PW-1 Narendra parked his rickshaw near Motilal Hotel, near Ranima Complex. PW-1 Narendra and Panch witness Chunilal (PW-2) entered in the Ranima complex. PW-1 Narendra met with accused No.1 Sanjay, and there were communication amongst them about plying of rickshaw and payment of arrears of two months. Accused No.1 Sanjay demanded bribe of Rs.300/- to PW-1 Narendra in presence of panch witness Chunilal (PW-2). PW-1 Narendra offered the bribe amount of Rs.300/-, when accused No.1 Sanjay asked to PW- Narendra to handover the same to accused No.2 Ishwar. Accused No.2 Ishwar accepted the bribe amount as per the instructions of accused No.1 Sanjay. As per the signal given by PW-1

Narendra, the official of A.C.B. arrived at the spot and caught hold both the accused. The said premises was situated in a thickly populated area, as such, raiding party along with both the accused, PW-1 Narendra, and panchas came to Government Rest House. The tainted currency notes were recovered from the pant pocket of accused No.2 Ishwar. The post-trap *panchanama* came to be drawn. The accused were brought to the A.C.B. office. The crime came to be registered against both the accused for the offences punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the P.C. Act” for the sake of convenience), and under Section 109 of the Indian Penal Code.

2(c) After completion of investigation, charge-sheet came to be filed before the Special Court at Dhule. The learned Special Judge, Dhule was pleased to frame charge against accused No.1 Sanjay under Section 7 of the P.C. Act, and also frame charge against both the accused under Section 13(1)(d) read with Section 13(2) of the P.C. Act, and charge under Section 109 of the Indian Penal Code against accused No.2 Ishwar.

2(d) The trial was commenced before the Special Judge. The prosecution machinery has examined PW-1 Narendra, panch witness Chunilal (PW-2), PW-3 Mr. Vijay Chavan (Sanctioning Authority), and PW-4 Mr. Dhanraj Dayama (Investigating Officer).

2(e) The learned Special Judge after appreciating the evidence on record, and considering the argument advanced on behalf of both the sides was pleased to hold both the accused/appellants guilty for the above said offences under the P.C. Act and accused No.2 Ishwar also held guilty under Section 109 of the Indian Penal Code and passed the order of conviction and sentence.

3. Heard Mr. Joydeep Chaterji, learned counsel for the appellants and Mr. R.D. Sanap, learned APP for the respondent/State in both the appeals.

4. Mr. Joydeep Chatterji, learned counsel for the appellants vehemently submitted that the prosecution has miserably failed to prove the demand and acceptance of bribe against accused No.1 Sanjay, who is a public servant. The tainted currency notes were allegedly recovered from the pant pocket of accused No.2 Ishwar. Accused No.2 has offered

explanation to that effect. PW-1 Narendra intend to go to Mumbai, so he had been to the office of Accused No.2, who was working at the Yogesh Travels. He gave Rs.300/- to accused No.2 Ishwar for ticket, and accordingly, accused No.2 issued ticket. PW-1 Narendra was plying mini door rickshaw without having permit and accused No.1 Sanjay, who was working as traffic Police Constable has filed cases against him. PW-1 Narendra was also sentenced by the Court. PW-1 Narendra had grudge in his mind against accused No.1 Sanjay, and accordingly falsely implicated him in this case. He submitted that demand and acceptance of bribe is a basic legal requirement to prove the charges under the provisions of the P.C. Act. The evidence on record is insufficient to bring home the guilt of the accused. He submitted that the trial Court has not considered the provisions of the P.C. Act in a proper perspective with the facts of the case, and the evidence on record and arrived at erroneous conclusion. The findings recorded by the learned Special Judge are erroneous and perverse. The impugned judgment and order of conviction and sentence is liable to be quashed and set aside.

5. Mr. Chatterji, learned counsel for the appellants submitted that the sanction for prosecution accorded by the sanctioning authority is also defective in the eye of law. The prosecution cannot succeed in such a defective sanction order.

6. Per contra, Mr. Sanap, learned APP for the State supported the findings recorded by the learned Special Judge, Dhule. He took me through the relevant part of the evidence of important witnesses. He pointed out that the evidence of PW-1 Narendra on the point of demand and acceptance of bribe is not any way shaken by way of cross-examination. Panch witness Chunilal (PW-2) has corroborated the evidence of PW-1 Narendra. It is proved by the prosecution that accused No.1 has demanded bribe of Rs.300/- to PW-1 Narendra and accused No.2 has accepted the said bribe amount from PW-1 Narendra as per the instructions of accused No.1. The tainted bribe amount/currency notes were recovered from accused No.2. The demand and acceptance of bribe by accused No.1 is duly proved in this case. The sanction for prosecution accorded by PW-3 Mr. Vijay Chavan is valid. He submitted that the learned Special Judge has not committed any error while

convicting both the appellants/accused Nos. 1 and 2. Mr. Sanap, learned APP submitted that there is no merit in the appeals.

7. I have considered the submissions of both the sides. I have gone through the evidence of witnesses as well as documentary evidence.

8. At the outset, let me place on record the following piece of documentary evidence, which is admitted by the appellants/accused.

- (i) Letter of the Commissioner, Municipal Corporation, Dhule dated 17.11.2005 (exhibit 23)
- (ii) Pre trap Panchanama dated 17.11.2005 (exhibit 11),
- (iii) Letter to Dondaicha Police Station dated 17.11.2005
- (iv) Arrest Panchanama dated 17.11.2005 (Exhibit 13)
- (v) Letter of Police Inspector, Dondaicha Police Station dated 17.11.2005
- (vi) *Panchanama* regarding bottle dated 18.11.2002 (Exhibit 12)
- (vii) Letter of Superintendent of Police, dated 21.11.2005 (Exhibit).
- (viii) Letter to R.T.O. Dhule dated 02.01.2006 (Exhibit 18).

9. The FIR vide exhibit 20 and post trap *panchanama* vide exhibit 24 have been duly proved by the prosecution agency by examining PW-1 Narendra and panch witness Chunilal (PW-2).

10. It is not in dispute that at the relevant point of time, accused No.1 Sanjay was working as a Police Constable in Dondaicha Police Station, and assigned traffic duty. Accused No.2 Ishwar was working as a Manager in Yogesh Travels, Dondaicha.

11. There is no dispute about the legal preposition canvassed by Mr. Joydeep Chatterji, learned counsel for the accused. The demand and acceptance of bribe by the accused is a *sine qua non*. Mere recovery of currency notes from the accused without proof of demand do not constitute the offences under Sections 7, 13(1)(d) and 13(2) of the P.C. Act. The presumption under Section 20 of the Act can be raised only when demand by accused is proved according to the P.C. Act.

12. The evidence of PW-1 Narendra Ratilal Dhangar (Exhibit 19) and PW-2 panch witness No.1 Chunilal Tukaram Najade (Exhibit 22) is important and crucial.

13. On going through the testimony of PW-1 Narendra, it would reveal that he has narrated about first part regarding demand of bribe by accused No.1 Sanjay to allow him to ply his mini door rickshaw on Dondaicha – Shindkheda road, and insistence by accused No.1 Sanjay to pay the *Hapta* of provisions two months. Since he was not ready to pay such *Hapta* / bribe to accused No.1 Sanjay, he rushed to A.C.B. office and lodged F.I.R. vide (Exhibit 20) on 17.05.2002. Subsequently, the A.C.B. official made arrangement of trap. The post trap *panchanama* came to be drawn by arranging panch witness vide Exhibiti 11.

14. Next part of testimony of PW-1 Narendra reveals about visit to the Ranima complex, Dhondaicha, where accused No.1 Sanjay was present in the company of accused No.2 Ishwar. The important conversation between PW-1 Narendra and accused No.1 Sanjay is disclosed by him in his evidence, which is reproduced hereunder.

“राणीमा कॉम्प्लेक्सच्या पायऱ्या चढत असतांना समोरून आरोपी वारुडेला येतांना पहिले त्याच्या अंगात फिकट गुलाबी रंगाचा शर्ट होता. त्याचे सोबत एक इसम होता. पंच क्रमांक १ ला मी तेच वारुडे असल्याचे सांगितले. नंतर मी आरोपी वारुडे कडे गेलो त्यांना नमस्कार केला व रिक्शा चालू करायचा आहे असे सांगितले. त्यांनी मला सांगितले

मागील दोन महिन्याची थकबाकी आणले काय असे विचारले व त्यांनी माझ्या सोबत असलेल्या पंचाची चौकशी केली. मी त्यांना म्हणालो की माझे सोबत असणारे हे रिक्षातील प्रवासी आहे. वारुडे म्हणाले की दे ते पैसे. त्यानांतर मी माझ्या शर्टातल्या डाव्या खिशातील रु. ३००/- काढले व वारुडेला देऊ केले पण वारुडे म्हणाले की त्यांचे सोबतचे इसमाजवळ दे व त्याप्रमाणे मी त्यांचे सोबत असलेल्या इसमाला पैसे दिले. त्या इसमाने उजव्या हाताने पैसे घेतले व त्याचे पॅन्टचे उजव्या खिशात टाकले. आम्ही थोडेसे पुढे आल्यावर मी माझ्या पॅन्ट डाव्या खिशात डावा हात टाकून हातरुमाल काढून दायमा सो. ने सांगितल्याप्रमाणे इशारा केला.”

15. The above important piece of evidence regarding demand and acceptance of bribe by accused No.1 Sanjay through accused No.2 Ishwar is not in any way shaken by way of cross-examination. He has admitted that the Court has fined him Rs.700/- for plying rickshaw without permit. His master Mr. Ravidra Fakira Patil is using rickshaw for unauthorized commercial purpose and without meter. All these admissions are not anyway damaging testimony of PW-1 Narendra. He further went on admitting that on the date of trap, the office of Yogesh Travels was open. Accused No.2 Ishwar was working as a Booking Clerk in the Yogesh Travels. He has specifically denied the suggestion that he demanded ticket to accused No.2 so as to go to Mumbai, and accordingly he gave Rs.300/- in the hands of accused No.2

Ishwar, when police came there and caught hold him. The defence tried to be put forth on behalf of accused has not received fruits. PW-1 Narendra has denied the suggestions put to him by way of defence.

16. Now coming to the evidence of PW-2 Chunilal Najade (exhibit 22), who is panch witness No.1. On going through the testimony of this panch witness, it would reveal that he has corroborated the testimony of PW-1 Narendra. He has given the same narration as like PW-1 Narendra, and reproduced the entire episode of trap and demand of bribe by accused No.1 Sanjay and acceptance through accused No.2 Ishwar. His testimony, para No.5 is important, which throws light, which is reproduced hereunder.

"नमस्कार केल्यावर फिर्यादी म्हणाला कि मला रिश्का सुरु करावयाची आहे. त्यावर वारुडे म्हणाले पैसे आणले आहे काय. वारुडे म्हणाले दोन महीन्याचे रु.३००/- आणले आहे काय. फिर्यादी म्हणाला, होय. त्यावेळी वारुडेचे लक्ष माझेकडे गेले व ते म्हणाले ही व्यक्ती कोण आहे. फिर्यादी माझेकडे पाहून म्हणाला पॅसेंजर आहे. त्यानंतर फिर्यादीने शर्टाचे खिशातील पैसे डाव्या हाताने काढले. वारुडे म्हणाला की सोबतच्या इसमाकडे पैसे द्या. त्यानुसार फिर्यादीने वारुडेच्या सोबतच्या इसमाला पैसे दिले. त्या इसमाने उजव्या हाताने पैसे घेतले व पॅन्टचे उजव्या खिशात पैसे ठेवले."

17. It is, therefore, clear that PW-2 Chunilal has fully corroborated the testimony of PW-1 Narendra and thereby strengthened the prosecution case.

18. The prosecution has succeeded in proving his case by taking help above said two witnesses that accused No.1 Sanjay has demanded the bribe of Rs.300/- to PW-1 Narendra so as to allow him to ply his mini door rickshaw, and accepted the same through accused No.2. Even though, accused No.1 Sanajy has not accepted the bribe amount, as per his instructions, accused No.2 Ishwar has accepted the bribe amount of Rs.300/- from PW-1 Narendra. It is not the requirement of the law that accused who demanded the bribe money must accept it. He can accept the bribe amount through other person, and cannot rescue from the clutches of legal provisions.

19. A useful reference can be made in ***Virendranath Vs. State of Maharashtra*** reported in ***(1996) 11 SCC 688***, practically involving similar facts. In the cited case, accused No.1 was a police officer, and accused No.2 was a restaurant owner. A trap was laid, and tainted money was recovered from accused No.2. The Hon'ble Supreme Court has held that,

when the complainant paid the money to accused No.2 on the direction of accused No.1, it was as if accused No.1 had taken money himself and passed it on to accused No.2. Acceptance thus was established from the conduct of accused No.1. Hence, accused No.1 rightly convicted for the offence which he was charged. However, the Hon'ble Supreme court acquitted accused No.2 by observing that accused No.2 could have received the money innocently without realising that it was bribe money because the prosecution has not led any other evidence from which it could be spelled out that accused No.2 was a habitual go-between in facilitating acceptance of bribe by accused No.1. The case in hand is squarely covered by the decision in ***Virendranath Vs. State of Maharashtra*** (supra).

20. In the present case, there is no evidence that accused No.2 Ishwar was knowing about the earlier communication between PW-1 Narendra and accused No.1 Sanjay regarding demand of bribe of Rs.300/- so as to allow him to ply the mini door rickshaw by way of *Hapta*. There is no whisper that accused No.2 was playing role as a facilitator for accepting bribe on behalf of accused No.1. Admittedly, accused No.2 Ishwar was serving in Yogesh Travels as a Manager/Booking

Clerk. He might have accepted the bribe money from PW-1 Narendra as per the instructions of accused No.1 Sanjay, but he was not knowing the nature of transaction between PW-1 Narendra and Accused No.1 Sanjay. Even though, accused No.2 Ishwar was accompanied accused No.1 at the time of trap, there was no evidence against accused No.2 Ishwar about his role as a facilitator in accepting bribe on behalf of accused No.1. As such, presumption under Section 20 of the P.C. Act cannot be drawn against him. Whereas, presumption under Section 20 of the P.C. Act needs to be drawn against accused No.1 Sanjay, when demand and acceptance of bribe is duly proved by the prosecution in this case.

21. On going through the evidence of PW-3 Mr. Vijay Chavan/ Sanctioning Authority), it would reveal that the sanctioning authority has accorded sanction for prosecution after going through the entire case papers, and after application of mind to the facts of the case. There is no material defect while according sanction for the prosecution against accused No.1 Sanjay. On perusing the testimony of sanctioning authority PW-3 Mr. Vijay Chavan, it would be clear that the sanctioning authority had referred to the facts leading to the initiation of the prosecution, and it is a

sufficient compliance of the provisions of the P.C. Act. The sanction order is speaking one and according to the provisions of the PC. Act. As such, it passes the test of valid sanction as per the standard legal parameters.

22. PW-4 Dy. S.P. of A.C.B. Mr. Dayama, has conducted the investigation of this case. He has stated about the investigation and thereby supported to the testimony of PW-1 Narendra and Pw-2 Chunilal.

23. Having regard to the above reasons and discussion, it is very much clear that there is no merit in the appeal preferred by appellant/original accused No.1 Sanjay. His conviction needs to be upheld with modification in the quantum of sentence. So far as the appeal preferred by appellant/original accused No.2 is concerned, it needs to be allowed.

ORDER

(i) The Criminal Appeal No. **444 of 2009** preferred by appellant/original accused No.2 - **Ishwar Bhimrao Bhamre** stands allowed.

(ii) The impugned judgment and order of conviction passed in Special Case No. 127 of 2006 by the Special Judge, Dhule dated 129.308.2009 is hereby quashed and set aside to the extent of the appellant/original accused No.2 - **Ishwar Bhimrao Bhamre**.

(iii) The appellant/original accused No.2 - **Ishwar Bhimrao Bhamre** is hereby acquitted of the offences punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Section 109 of the Indian Penal Code, and he is set at liberty.

(iv) Fine amount, if paid by the appellant/original accused No.2, be refunded to him.

(v) Appellant/original accused No.2 - **Ishwar Bhimrao Bhamre** shall furnish PR Bond of Rs.20,000/- (Rupees Twenty Thousand only) with one solvent surety of the like amount so as to appear before the Higher Court as and when such Court issues notice in respect of any Appeal or Petition filed against the Judgment of this Court and such Bail Bonds shall remain in force for six months, in view of Section 437-A of the Code of Criminal Procedure Code, 1973, before the special Judge (P.C. Act), Dhule.

(vi) The Criminal Appeal No. **443 of 2009** preferred by appellant/original accused No.1 - **Sanjay Ishwarlal Varude** stands partly allowed to the extent of reduction of sentence, however, by maintaining the conviction

(vii) Appellant/original accused No.1 - **Sanjay Ishwarlal Varude** shall suffer R.I. for one year for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. In default, he shall suffer S.I. for three months.

(viii) There shall be no change in the fine amount imposed by the trial Court.

(ix) Appellant/original accused No.1 - **Sanjay Ishwarlal Varude** shall surrender himself before the Special Judge (P.C. Act), Dhule within a period of six weeks from today.

(x) His bail bond stands cancelled.

(xi) The learned Special Judge, Dhule shall issue conviction warrant against appellant/original accused No.1 - **Sanjay Ishwarlal Varude** in view of above modified term of sentence.

(xii) Record and Proceedings be sent back to the trial court.

(xiii) Both the Criminal Appeals are accordingly disposed of.

[**SHRIKANT D. KULKARNI**]
JUDGE

S.P. Rane