

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

CRIMINAL APPEAL NO. 421 OF 2011

Madhumati Baburao More

Age: 37 years, Occu.: Service Maintenance Surveyor,
Boris In-Charge Borkund, Tq. & Dist. Dhule
R/o 63, Shubham Nagar, Wadibhokar Road,
Dhule

..APPELLANT

VERSUS

State of Maharashtra

..RESPONDENT

....

Mr. N.L. Choudhari, Advocate for appellant

Mr. S.P. Sonpawale, A.P.P. for respondent - State

....

CORAM : R.G. AVACHAT, J.

RESERVED ON : 13th APRIL, 2022

PRONOUNCED ON : 05th SEPTEMBER, 2022

JUDGMENT :

1. The challenge in this appeal is to a judgment and order of conviction and sentence passed by the Additional Sessions Judge, Dhule in Special Case (ACB) No. 4 of 2009 on 03rd July, 2011. The appellant herein has been convicted for the offences punishable under Sections 7 and 13(a)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 ('P.C. Act'), and therefore, sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.2,000/-, in default, to suffer further rigorous imprisonment for one month.

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

One Bhatu Shivaram Patil (complainant) was the resident of village Borvihir, Tq. & Dist. Dhule. His mother – Indumati had purchased a house property from one Gulabrao Patil way back in December 1981. She sold the said house to one Mathurabai in June 2008. The name of Gulabrao Patil, the erstwhile owner of the suit property, was appearing in the city survey record of the said property. It was necessary to have the said survey record set right i.e. first to record the name of complainant's mother in the city survey record and then that of purchaser – Mathurabai.

3. The appellant was serving as Maintenance Surveyor, City Survey Office, Borkund. It was her job to maintain city survey record. The complainant had, therefore, been to her office on 18th June, 2008. The appellant told him that for doing the needful, he shall pay her a sum of Rs.3,000/-. The appellant reduced the amount to Rs.2,500/- on complainant's request. He had paid her Rs.1,000/- as advance. The complainant assured her to pay the balance amount later on. Since the complainant did not wish to pay the appellant bribe, he approached the office of Anti Corruption Bureau, Dhule ('A.C.B.') on 23rd June, 2008. P.W.4 – Sanjay Sangle was the Police Inspector at A.C.B., Dhule. He recorded the complaint (Exh.15) lodged by the complainant. It was decided to lay a trap. According to the complainant, he was going to pay the balance amount to the appellant

on 24th June, 2008. P.W.4 – Sajay Sangle, therefore, secured presence of two government employees to act as panch witnesses. A pre-trap panchanama (Exh.25) was drawn. P.W. 4 – Sanjay Sangle gave the complainant and panchas necessary instructions. The complainant was specifically instructed not to pay the bribe money until the appellant makes a demand therefor. As planned, the complainant and panchas arrived at the A.C.B. office on following day i.e. 24th June, 2008. P.W. 2 – Kishor Ladkar was asked to act as shadow witness. Accordingly, both, the complainant and P.W.2 – Kishor, went to the City Survey Office, Dhule on 24th June, 2008. The appellant had not arrived there. They, therefore, remained around the City Survey office. The members of the trap party were also around. The complainant accompanied by the shadow witness went to the City Survey Office after some time. The appellant had come there. After exchange of greetings between the complainant and the appellant, the complainant, on demand of the appellant, held before her the bribe money. The appellant, in turn, asked the peon (Original Accused No.2) present there to count the same. The peon did count it. The appellant kept the amount in a compass box on her table. The complainant came out of the office and gave a pre-determined signal. Trap party arrived. The bribe money came to be seized under the panchanama (Exh.26) then and there. P.W.4 – Sanjay Sangle then lodged the F.I.R. on behalf of the State. He did investigation of the crime. All the papers of investigation were then forwarded to P.W.3 – Vasant Mulay, the then Deputy

Director of Land Record, Nashik for obtaining sanction for prosecution of the applicant. He, in turn, accorded sanction (Exh.31). The appellant then came to be proceeded against by filing the charge-sheet.

4. The trial Court framed charge (Exh.6 and 7). The appellant pleaded not guilty. Her defence was of false implication. It is her case that the complainant had been to her office at village Borkund on 18th June, 2008. He preferred an application for recording name of his mother in the city survey record of the said house property. The complainant was in hurry. He wanted to have the said record changed immediately. She asked him to bring no objection of the original owner of the house property viz. Gulabrao Patil. It is her further case that the complainant had made a phone call to ascertain when she was going to visit the City Survey Office, Dhule. After having come to know she would be there on 24th June, 2008, the appellant came there and paid the money inspite of having not been demanded. The appellant examined the then City Survey Officer in her defence.

5. The prosecution examined four witnesses to bring home the charge. The trial Court, on appreciation of evidence in the case, convicted and sentenced the appellant as stated above.

6. Learned counsel for the appellant would submit that the investigating officer did not verify demand allegedly made by the appellant

herein. Evidence of the complainant is nothing short of the evidence of an accomplice. The shadow witness was bound to give evidence in terms of the prosecution case since he was a government servant. Had he given evidence inconsistent with the prosecution case, he had every fear of losing the service or suffer adversely in his service career. According to learned counsel, evidence of the complainant did not inspire confidence. Had the appellant really received the bribe amount, she would have kept the same in her purse, which was admittedly there on her table. The amount was kept in a compass box. The same suggests the appellant to have not received the same as a bribe money. According to learned counsel, the appellant is a woman. Her services have been terminated consequent to have been found guilty in departmental enquiry. Learned counsel ultimately urged for allowing the appeal.

7. Learned A.P.P. would, on the other hand, submit that demand and acceptance of bribe has been duly proved. The papers on record indicate the complainant's mother had sold her house property. Name of the erstwhile owner of the house property was appearing in the city survey record. The same was required to be changed first to the name of complainant's mother. The complainant had been to the office of the appellant. Although the City Survey Officer has an authority to make such mutation entry and get it certified, the paperwork was to be done by the appellant herein and then to be placed before the City Survey Officer to do the needful. According to

learned A.P.P., the bribe money smeared with anthracene powder came to be recovered from the appellant herein. Presumption under Section 20 of the P.C. Act, therefore, gets attracted. The appellant failed to rebut the same. Her defence is afterthought. Learned A.P.P. ultimately urged for dismissal of the appeal.

8. Let us appreciate the evidence in the case. P.W. 3 - Vasant Mulay, Deputy Director of Land Records, Nashik had accorded sanction (Exh.31) for prosecution of the appellant. The sanction has not been seriously taken exception to. The evidence of P.W.3 also indicates him to have accorded sanction after perusal of all the papers of investigation.

9. The complainant (P.W.1) gave his evidence in examination-in-chief. His evidence is consistent with his complaint (Exh.15) lodged on 23rd June, 2008. It is evident from it's testimony that a house property was purchased by her mother from one Gulabrao Patil way back in December 1981. The said house was soled in 2008 to one Mathurabai. A copy of the extract of the house property was required. He, therefore, went to City Survey Office, Borkund on 18th June, 2008. The appellant was serving there as Maintenance Surveyor. She asked the complainant to produce Mr. Gulabrao Patil so as to have his no objection. The complainant expressed inability to bring him as his whereabouts were not known. The appellant, therefore, asked the complainant to pay her Rs.3,000/- to do the needful. She

reduced it to Rs.2,500/-. The complainant gave her Rs.1,000/- and assured to pay balance amount afterwards. As he did not want to pay the appellant bribe, he approached the A.C.B., Dhule on 23rd June, 2008. His complaint (Exh. 15) was recorded. The complainant again went to A.C.B. office on the following day. P.W.4 – Sanjay Sangle had already secured presence of two government employees to act as panch witnesses. A pre-trap panchanama (Exh.25) was drawn. The complainant was instructed not to pay the bribe money unless demand is made by the appellant.

10. With a view to avoid repetition of the evidence, it is stated that the complainant, accompanied by P.W.2 – Kishor Ladkar (shadow witness), went to City Survey Office, Dhule on 24th June, 2008. The appellant was not present there. Both went back there after sometime to find the appellant to have arrived. After exchange of greetings between them, the complainant, on demand of the appellant, held before her the bribe money. The appellant, in turn, asked the peon (Original Accused No.2) present there to count the same. The peon did count it. The appellant kept the said amount in a compass box on her table. The complainant came out of the office and gave a pre-determined signal. Trap party arrived. The bribe money came to be seized under the panchanama (Exh.26) then and there. The evidence of complainant has been corroborated by P.W.2 – Kishor (shadow witness). He reiterated the same in his evidence.

11. Both these witnesses were subjected to a searching cross-examinations. The complainant was found somewhat economical with truth. He stated in his cross-examination that he had not made any written application in City Survey Office, Borkund for mutation of his mother's name in the city survey record of the house property. If it is so, then he had no reason to expect the city survey record to get changed on its own in his favour. Admittedly, for effecting change in the revenue record an application is required to be made. For effecting necessary change, it takes at least fifteen days of time, except change has not been made pursuant to mandate of Section 154 of the Maharashtra Land Revenue Code, 1966. In the case in hand, the house property purchased by the complainant's mother way back in 1981 stood in the name of her vendor in the city survey record until she sold it to Mathurabai in June 2008. As per the case of the complainant himself, he met the appellant in her office at Borkund on 18th June, 2008. The evidence on record indicates that an application in the name of the complainant was preferred for making the change in the city survey record. Admittedly, for effecting mutation entry, a notice is required to be served on the person whose name is going to be replaced in the revenue/city survey record. The notice period is stated to be of fifteen days at least. If such person is not available or not found, the same necessarily takes longer time.

12. Admittedly, the appellant had her permanent office at Borkund. Only on occasions she was required to visit the City Survey Office at Dhule.

The complainant, in his examination-in-chief, did not throw light on the point as to why did he go to City Survey Office, Dhule to pay the appellant bribe. It is only during his cross-examination it has come on record that he had made a phone call to the appellant to come to know that she would be visiting the City Survey Office, Dhule on 24th June, 2008. Admittedly, such phone call was not made by the complainant either in the presence of the shadow witness or any of the officials of the A.C.B.

13. The Joint Commissioner of Police/Special Inspector General of Police, A.C.B., Maharashtra State had issued a circulations dated 28th June, 2004 directing that whenever the complaint of demand of bribe is received, proper verification shall be done before laying a trap. Said direction was issued pursuant to observations made by the Apex Court in case of *Sirajuddin, Etc. Vs. State of Madras, Etc., 1970 (1) SCC 595*. A copy of the said circular has been placed on record by learned counsel for the appellant. Admittedly, no demand verification has been made in the present case. This Court however, does not find it to be a case of exception to the circular since evidence of the complainant does not inspire confidence. It is reiterated that according to the complainant, he had not moved any application for change in the property card. When he allegedly paid the appellant a sum of Rs.1,000/-, no independent person was around. The appellant's permanent office is at Borkund. It is a case of words against words. According to the

appellant, the complainant made her phone call and enquired when she was going to visit Dhule office. She, in all fairness, disclosed the same. According to the complainant, the appellant had asked him to come to Dhule office to pay her bribe. Except the bare words of the complainant in this regard, there is no supportive evidence.

14. At the City Survey Office, Dhule the complainant held the bribe money in response to the demand made by the appellant. The evidence in that regard is only to the effect that the appellant enquired with the complainant whether he has brought a sum of Rs.1,500/-. When he held the said amount before the appellant, the appellant asked the peon (Accused No.2, acquitted by trial Court) present there to count the same. The peon counted the same and gave it to the appellant, who in turn, kept the same in a compass box. Undisputedly, the appellant's purse was on her table. Instead of keeping the bribe money in her purse it was kept in a compass box. Learned counsel for the appellant has, therefore, reason to contend that the amount was received not knowing it to be a bribe. The appellant examined her immediate higher-up, the then City Survey Officer – Arun (D.W.1). It is in his evidence that the appellant had come to his Dhule office on the given day, just before the trap was effected. She met him in his chamber and told that in one matter the applicant (complainant herein) was making hurry. On his enquiry, the appellant told him that the application was received on 20th June,

2008, i.e. just 3-4 days before and she asked the complainant to wait for 15-20 days.

15. Needless to mention an accused can make out his defence on preponderance of probabilities. In the case in hand, the demand had not been verified before the trap was laid. The complainant claims to have not made any application for effecting mutation entry, still he wanted to have property card changed in the name of his mother. When the appellant had her permanent office at Borkund, he did not come clean to state in his examination-in-chief that the appellant had called him to City Survey Office, Dhule to pay her money. As stated above, it is the case of appellant that complainant made her phone call and enquired as to when she was visiting Dhule. She, in all fairness told him the date of her visit. Such phone call was not made by the complainant either in presence of any panch witness or the A.C.B. officer. On receipt of the bribe money, the appellant kept it in a compass box. She could have kept it in her purse, which was there by the side of the compass box. This Court has, therefore, every reason to observe that case of the prosecution does not inspire confidence. It is to be said that the prosecution evidence could not make out a case beyond reasonable doubt. The trial Court ought not to have convicted the appellant based on such evidence. This Court is, therefore, not at one with the impugned order of conviction and resultant sentence.

16. In the result, I pass the following order :-

ORDER

- (I) Criminal appeal is allowed.
- (II) The impugned judgment and order of conviction and sentence dated 03rd July, 2011 passed by the Additional Sessions Judge, Dhule in Special Case (ACB) No. 4 of 2009 is hereby set-aside.
- (III) The appellant is acquitted of the offences punishable under Sections 7 and 13(a)(d) read with Section 13(2) of Prevention of Corruption Act, 1988. Fine amount deposited, be refunded to the appellant.
- (IV) The appellant's bail bonds stand cancelled.

(R.G. AVACHAT, J.)

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