

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

CRIMINAL APPEAL NO. 203 OF 2003

Sandip s/o Dinkar Pawar
Age : 37 years, Occu. : Junior Engineer,
M.S.E.B.,
R/o. Kannad, District : Aurangabad .. Appellant

Versus

The State of Maharashtra .. Respondent

Mr. Jaydeep Chatterji, Advocate for the Appellant.
Mrs. P. V. Diggikar, APP for Respondent.

CORAM : KISHORE C. SANT, J.

DATED : 13th SEPTEMBER, 2022.

ORAL JUDGMENT :-

1. Challenge in this appeal is to the judgment and order passed by the learned Special Judge, Jalna in Special Case No. 13/1999. The learned Special Judge by way of impugned judgment and order has held the appellant/accused guilty of an offence punishable under Section 7 and under Section 13 (2) r/w Section 13 (1) (d) of the Prevention of Corruption Act, 1988. The accused is sentenced to suffer rigorous imprisonment for six (06) months and to pay fine of Rs. 1,000/- (Rs. One Thousand only) and in default to suffer further rigorous imprisonment for one (01) month and to suffer rigorous imprisonment for one (01) year and to pay fine of Rs. 1,000/- (Rs. One

Thousand only) in default to suffer further rigorous imprisonment for one (01) month respectively. Both the sentences are directed to run concurrently.

2. The prosecution case in short is that one Hanuman Shamrao Arsud owns a land Gat No. 278, village Wai, Taluka – Mantha, District – Jalna. He wanted an electric supply for his motor to fetch water from dam. He therefore, applied for electricity connection from the Maharashtra State Electricity Board (M.S.E.B.) on 30.06.1999. In that connection, he met the accused to get the connection at the earliest. For that reason, the complainant met the accused on 09.07.1999 in the office of the accused at Partur.

3. It is the case of the complainant that the accused who was then working as Junior Engineer, M.S.E.B. had demanded a bribe from the complainant as the complainant wanted a connection at the earliest. On the basis of the complaint, a trap was laid and panchanama was prepared. Further investigation was carried out by PW-9 namely Shrinivas Tandle working as Dy.S.P. at the relevant time. After obtaining sanction and filing charge-sheet, the case was committed to the Special Judge. In support of it's case, the prosecution has examined ten (10) witnesses.

4. De-facto complainant is examined as PW-2. He stated in his evidence that he owns land Gat No. 278 from village Wai, Taluka-Mantha, District- Jalna. For his agricultural land he used to take water from the well of his father. He wanted electricity connection to fetch water from dam to irrigate his land. For the purpose of getting electricity connection he completed necessary formalities such as submitting Form-A etc. So as to get the connection early, he met the accused and requested him to prepare an estimate at the earliest. On 09.07.1999, he met the accused for the first time. As per the version of the complainant, the accused told him that the complainant will have to pay Rs. 500/- (Rs. Five Hundred only) to get a certificate, if the complainant wants to get the connection early. The complainant thereafter, met accused on 15.07.1999 and disclosed that he would pay Rs. 500/- (Rs. Five Hundred only). He thereafter immediately visited the office of A.C.B. and lodged the report against the accused. The office of A.C.B. on the receipt of the complaint decided to lay a trap as per information of the complainant. The informant was directed to attend the office of A.C.B. on the next day i.e. on 16.07.1999. The informant thereafter attended the office of A.C.B. accordingly at about 06.00 a.m. where two panchas were already called. The complaint was read out to panch witnesses. Manner of conducting raid was also explained. The informant was specifically told to pay the bribe amount

only after it is demanded by the accused. The complainant was told to give a signal on acceptance of the amount by wiping his face with a handkerchief.

5. As per the directions, the raiding party including the complainant proceeded to the house of the accused in Government vehicle at about 08.00 to 08.15 a.m. The vehicle was stopped near S.T. stand. Some directions were again given by the I.O. The complainant and PW-1 i.e. panch went to the house of the accused. Other persons from the raiding party followed them and stayed at some distance waiting for a signal. The complainant called the accused. On giving a call the accused told him that his house is open. The complainant and the panch witness entered into room where the accused was present. Both the witnesses sat on a cot. The complainant made an enquiry with the accused about the progress in respect of providing electricity connection to him. It is stated that on this enquiry, the accused enquired with the complainant as to whether he has got money and asked the complainant to handover the bribe amount and to come at 11.00 a.m. to his office wherein he would handover estimate. It is stated that, thereafter the complainant removed the bribe amount from his pocket whereupon the accused asked as to whether the amount is counted correctly and directed to put that amount below the mattress

where the accused was sitting. After putting the amount under the mattress the complainant came out and gave signal as decided. The raiding party immediately came and raided premises and recorded statement. A panchanama was thereafter drawn.

6. The panch witness is examined as PW-1 who gave almost similar version as to that of the informant. He states that as per the instructions of the I.O., the amount was to be paid only after demand. In his evidence, about the actual incident he stated that the complainant gave call to the accused after reaching at his house. The accused asked the complainant to come inside the room as the door was open. The accused was sitting on the cot after awaking from sleep. The complainant made an enquiry with the accused about the progress of the work and asked as to whether the accused has prepared the estimate. The complainant told the accused that he has brought the bribe amount of Rs. 500/- (Rs. Five Hundred only) as per the demand. The complainant removed the bribe amount from his pocket and offered the same to the accused. The accused asked the complainant to put that bribe amount below the mattress which was on the cot on which the accused and the complainant were seated. After keeping the amount the complainant came out and gave signal to the raiding party. He stated that after signal, raiding party came into the room. The

second panch collected the bribe amount at the instance of Mr. Tandle, the I.O. and thereafter panchanama was prepared. He identified the signature on the cover of pocket in which money was kept. The personal search of the accused was taken etc.

7. The next material witness is PW-4 namely Ganesh Kakade who examined by the prosecution to show that the accused had directed him in July 1999 to prepare a map and to submit it to the accused. In his cross it has come on record that in Village Wai in the year 1997 he was accompanied by the accused when they had been to the land of the complainant. They found that the complainant had taken electricity supply without permission and had thereby committed theft of energy. After disconnecting the electricity supply they had collected the cable of the complainant. The complainant had tendered an apology in writing and stated that thereafter he would not commit theft of energy.

8. PW-3 namely one Mohd. Anis Rahimuddin Querishi who was working in M.S.E.B. is also examined by the prosecution who stated that the accused had handed over the charge to him on 14.07.1999. Prior to that, the accused was holding the charge of the division. He stated that though the charge was handed over, the key of the cupboard in the office was not handed over to him. On 16.07.1999, he did not receive the key of the cupboard from the accused. On 16.07.1999 he

had been to the room of the accused to take charge and he came back as the accused was sleeping in the morning. In cross examination, this witness admitted that he had never made any written complaint to his superiors for not receiving the key of cupboard from the accused.

9. PW-5 was serving as Head Clerk in the office of Executive Engineer at Jalna Division. He was examined to identify signature of one Mr. Dhakne, Executive Engineer at the relevant time. This witness identified signature on extract of a service book (Exhibit-36), transfer order dated. 05.05.1999 of the accused (Exhibit-37) and an appointment order of the accused dated 08.07.1997. This witness has further proved letter dated 29.07.1999 stating procedure of giving new connection.

10. PW-6 who was serving as Sub Engineer at Partur Sub Division is examined only to prove the letter that was received by the office of A.C.B. as confidential letter dated 19.08.1999 (Exhibit-40). He has only proved the signature on this letter. This letter states that the accused was not relieved. However, since the contents are not proved, it need not be considered.

11. PW-7 is examined only to prove signature of Superintendent Engineer Mr. Kharat on a letter dated 09.08.1999 (Exhibit-42)

addressed to the Dy.S.P, A.C.B., Jalna. It is stated that the power to appoint is with the Joint Director (Technical) and that power to remove the accused was with Superintendent Engineer except for misconduct as per service regulations. In this case, since the sanction is by the Joint Director (Technical) and since competence of the sanctioning authority is not questioned by the accused in this case, it is not necessary to discuss his evidence.

12. Next material witness is PW-9 i.e. I.O. who, in his evidence, clearly stated that he had specifically instructed to the complainant to give the amount of bribe after demand by the accused. He stated about the procedure followed in the trap etc.

13. Thus, after going through the entire evidence of the witnesses as discussed above the submissions are heard of the learned advocates. The learned advocates made following submission in support of their respective cares.

14. Heard the learned advocate for the appellant/accused. He has not seriously doubted the evidence of the sanctioning authority and the sanction order. He submits that taking the evidence on record as it is, a case for acquittal is made out. It is further submitted that a foundation is laid in the cross examination in support of his defence. From

examination under Section 313 it is seen that the accused has offered an explanation that he is falsely implicated as the complainant had a grudge against the accused as the accused had collected wire from the land of the complainant. Further explanation is offered that the complainant had met him only on 12.07.1999 on which the complainant was told that he will have to bring a certificate. The charge was already handed over to Mr. Anis Querishi and the accused was not holding a charge. About the actual incident he submitted that he had gone to another room for changing cloths and when he came in the room after five minutes the complainant started shouting. The learned advocate thus submits that, a clear case is made out for acquittal.

15. Heard the learned APP for the State. The learned APP vehemently argued that in this case, the demand is clearly proved. There is also an acceptance by the accused as the accused himself has asked the complainant to count the amount. She submitted, on the strength of observations made by the learned Trial Judge in paragraph No. 21 of the judgment, that the learned Court has observed that there is no suggestion given to PW-1 and PW-2 to show that the complainant has planted the currency notes below the mattress on cot without knowledge of the accused. It is further observed that there is no such

suggestion on behalf of the accused, nor any explanation offered about the currency notes below the mattress on cot. The learned Trial Court has taken another circumstance against the accused that the key of the cupboard in the office was not handed over to PW-3 though the charge was handed over to him. The learned APP further submitted that since the demand and acceptance is proved, the presumption under Section 20 of the Act needs to be taken into consideration to held the accused guilty.

16. On the point of sanction PW-8 – Joint Director (Technical) is examined. The learned advocate invited attention to the omissions in the evidence of the complainant. He pointed out that the statement of the complainant that he disclosed to the accused that he will prepare and make the payment of money within a period of 04 - 08 days and visit the accused. In his evidence the I.O. stated that the complainant only said that he assured the accused that the complainant would make arrangement of bribe amount. Another omission appears from the record is in respect of the Television that was on as per the evidence of the I.O. From the evidence of the complainant what appears is that there was no demand or acceptance on the part of the accused. The complainant on his own offered the amount. Even that amount was not directly accepted by the accused, but the amount was kept below

the mattress on the cot. Further it is seen that when in the morning the complainant and the panch witness entered into his room, the accused was wearing only underwear and baniyan and therefore, he went in another room to dress up. There is a contradiction in the evidence of PW-2 and PW-1. On the point of demand PW-2 stated that the accused directed him to count the amount and to put the amount below the mattress whereas, in the evidence of panch PW-1 it is seen that this witness does not say anything about any demand by the accused. PW-1 stated that the complainant removed the bribe amount from his pocket and offered the same to the accused. It is only thereupon the accused asked the complainant to put that bribe amount below the mattress. Further suggestion was given to the complainant and PW-1 panch that the accused went to another room and came out after wearing his shirt and pant which was denied by both these witnesses. However, the I.O. in his evidence in the cross examination clearly stated that when he entered into the room, the accused was in a proper dress. Thus, one thing is clear that when the complainant and the panch witness entered into the room, the accused was wearing only underwear and baniyan and by the time I.O. and other raiding party members came, the accused was wearing shirt and pant which clearly goes to show that the accused had gone in other room when only complainant and panch witness were seating in the room and there was every possibility of the

complainant planting the amount below the mattress on cot.

17. The submission that the accused had already handed over the charge needs to be looked carefully. There is evidence of PW-3 who says that the charge was taken by him from the accused on 14.07.1999 however, key of the cupboard was not handed over. He also states that field charge was also not handed over to him. It can not be, however, said with certainty that the accused had not handed over the charge.

18. The learned advocate for the appellant relies upon the judgment in a case of Vijayee Singh and others Vs. State of U.P. reported in AIR 1990 Supreme Court 1459.

19. He submits that the prosecution has not proved the fact of demand and acceptance by the accused. He states that the burden of proof heavily lies upon the prosecution to prove its case beyond reasonable doubt. The onus shifts on the accused only after the prosecution discharges its initial burden. It would be of benefit to reproduce certain portion of paragraph No. 15 of the judgment.

“15. The phrase “burden of proof” is not defined in the Act. In respect of criminal, cases, it is an accepted principle of criminal jurisprudence that the burden is always on the prosecution and never shifts. This flows from the cardinal principle that the accused is presumed to be innocent unless proved guilty by the prosecution

and the accused is entitled to the benefit of every reasonable doubt. Section 105 of the Evidence Act is in the following terms:

"When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

The Section to some extent places the onus of proving any exception in a penal statute on the accused. The burden of proving the existence of circumstances bringing the case within the exceptions mentioned therein is upon him. The Section further lays down that the Court shall presume non-existence of circumstances bringing the case within an exception." The words "the burden of proving the existence of circumstances" occurring in the Section are very significant. **It is well settled that "this burden" which rests on the accused does not absolve the prosecution from discharging its initial burden of establishing the case beyond all reasonable doubts.** It is also well-settled that the accused need not set up a specific plea of his offence and adduce evidence. That being so the question is : what is the nature of burden that lies on the accused under Section 105 if benefit of the general exception of private defence is claimed and how it can be discharged? In *Woolmington v. The Director of Public Prosecutions*, (1935) AC 462, Viscount Sankey, L.C. observed:" (emphasis supplied)

20. Another judgment relied upon by the learned advocate for the accused is in a case of **State of T. N. Vs. Krishnan and another** reported

in 2001 AIR (SCW) 2415 wherein, in paragraph No. 5 it is held that when the case is made out to believe that there was possibility for the complainant to plant the amount, the benefit needs to be given to the accused. In that case, the benefit was extended to the accused. The defence was considered to be probable in view of the fact that witnesses in that case were engaged in illicit distillation and sale of arrack and therefore to implicate the accused falsely the complainant placed the amount under trousers of the accused. In this case, it is specific case of the appellant that there was a grudge in the mind of the complainant and that was the reason for which he has falsely implicated the accused.

21. The third judgment he relied upon is in a case of Punjabrao Vs. State of Maharashtra reported in (2002) 10 SCC 371. In that case, the explanation offered by the accused was held to be probable by the learned Special Judge. The learned Special Judge found the said explanation to be reasonable and acceptable and had acquitted the accused. In the High Court, however, the said judgment was reversed and thus, the matter was carried to the Hon'ble Apex Court. In paragraph No. 3 of the said judgment, the Hon'ble Apex Court has observed that, it is well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that

arises for consideration is whether such explanation can be said to have been established. It is further held that the accused is not required to establish his defence by proving the same beyond reasonable doubt.

For the benefit, paragraph No. 3 is reproduced below :

“3. We have examined the judgment of the learned Special Judge as well as that of the High Court. It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probability. It is undisputed that from 24th to 26th the Patwari was collecting loans in a collection campaign. **It is, of course, true as observed by the High Court that when the investigating officer seized the amount from the accused Patwari, he did not offer the explanation that it was in relation to a collection of loan, but that by itself would not be sufficient to throw away the explanation offered by the accused in his statement under Section 313 when such explanation could be held to be reasonable under the facts and circumstances of the case, as indicated by the learned Special Judge while acquitting the accused.** It also transpires that the High Court, while setting aside an order of acquittal recorded by the Special Judge, has not focussed its attention on the reasoning advanced by the Special Judge, and by mere reappreciation has come to the conclusion, and in our view the conclusion is based upon a misreading of the relevant evidence including the evidence of PW 2. In the aforesaid circumstances, we have no hesitation to come to the conclusion that the High Court erred in interfering with the well-reasoned

judgment of the Special Judge in an order of acquittal. We, therefore, set aside the impugned conviction and sentence passed by the High Court. The appeal is allowed. The accused-appellant is acquitted of the charges levelled against him. The bail bond stands discharged.” (emphasis supplied)

22. The learned APP has produced on record the judgment delivered by the Rajasthan High Court in the case of **Pannalal Vs. State in Criminal Appeal No. 228/2002.** She invited attention to paragraph No. 16 to show that the legislative intention in providing the presumption under Section 20 of the Act is clear that in case a demand for illegal gratification is proved, then there has to be a presumption that it is an amount towards bribe. She further invited attention to paragraph Nos. 20 and 23 of the said judgment.

23. In this case, since the prosecution has not proved foundational fact of demand and acceptance beyond reasonable doubt, there is no scope to invoke the presumption under Section 20 of the Act.

24. It further needs to be considered is motive to implicate the accused falsely in a case, it is seen that two years before the incident this witness had visited the land of the complainant alongwith the accused and it was found that the complainant had committed theft of electricity. The electricity supply was therefore disconnected and the

cable of the complainant was collected. The complainant thereafter had tendered an apology in writing. It is a specific case of the accused that he has been falsely implicated because of the disconnection of supply of electricity that was illegally taken by the complainant. Even if it is not taken as animosity at least there was reason for the complainant to carry a grudge against the accused to implicate him falsely.

25. Thus, from the evidence on record, it can safely be said that the accused has definitely made out a case for his acquittal by creating a reasonable doubt in the prosecution case. The explanation offered by the accused is certainly probable, reasonable and acceptable is the submission of the learned advocate. He submits that in the case in hand, in fact, foundation for his defence in 313 statement is already laid in cross examination, as already recorded.

26. Considering all above aspects, this Court passes the following order.

ORDER

(I) The Criminal appeal is allowed.

(II) The judgment and order passed by the learned Special Court in Special Case No. 13/1999 dated 25.02.2003 is quashed and set aside.

(III) The accused is acquitted of the offences punishable under Sections 7 and 13 (2) r/w Section 13 (1) (d) of the Prevention of Corruption Act, 1988.

(IV) The fine amount deposited in the learned Trial Court be refunded to the accused.

(V) Bail bonds of the accused stand cancelled.

(VI) The appellant to furnish bail bonds with sureties as per Section 437-A of the Code of Criminal Procedure, 1974.

(KISHORE C. SANT)
JUDGE

PS.B.