

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

CRIMINAL APPEAL NO. 854 OF 2004

The State of Maharashtra
Through A.C.B. Jalgaon

... **Appellant**
(Ori. Complainant)

Versus

Chandrakant Jagannath Mahajan
Age: 43 years, Occu. Service,
Zilla Parishad, Jalgaon,
Dist. Jalgaon

... **Respondent**
(Ori. Accused)

....

Mr. G. O. Wattamwar, APP for appellant
Mr. V. B. Jadhav, Advocate along with Mr. A. V. Hon, Advocate for
respondent

....

CORAM : R. G. AVACHAT, J.

DATED : 02nd MAY, 2022

J U D G M E N T :-

. The State is in appeal against the judgment and order dated 05.08.2004, passed by the Special Judge, Jalgaon in Special Case No.15 of 2002, wherein the respondent herein came to be acquitted of the offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act. (for short, 'P.C. Act').

2. The prosecution case in short is that PW2 Ashalata (complainant), was serving as Auxiliary Nurse Midwife with Primary Health Centre (PHC) Mhasawad and Sub Section at Bornar. She has a mentally challenged daughter. The complainant therefore wanted to be transferred to Nashirabad PHC. She had, therefore, preferred application for request transfer. The respondent herein was serving as a Junior Clerk with the Establishment Department of Zilla Parishad, Jalgaon. The complainant was an employee of Zilla Parishad, Jalgaon. The Health Centre with which she was serving, was under Zilla Parishad, Jalgaon. The complainant had met the respondent many a time in connection with her request transfer since the transfer application was to be routed through him. The respondent, on 04.07.2002, told the complainant that she would not be transferred on the same ground as she had earlier been transferred on her similar request. The complainant requested him not to put a spoke in her request for transfer. The respondent, thereupon, asked her to pay him Rs.12,000/- as a condition to put up her transfer proposal for favorable consideration. On negotiation, the complainant agreed to pay him Rs. 7,000/-. A sum of Rs.5,000/-

was to be paid as advance and the remaining amount on her transfer to a desired place. Since the complainant was not willing to pay the respondent bribe, she immediately approached Anti Corruption Bureau (ACB), Jalgaon on 08.07.2002. Shri Ashok Patil, the Deputy Superintendent of Police (Dy. S.P), ACB, Jalgaon (PW5), recorded the statement-cum-complaint (Exh.14) lodged by the complainant. He decided to lay a trap on the following day. He, therefore, asked the complainant to come to the ACB next morning. The complainant, accordingly, went there. PW5 Ashok had already secured presence of two female Government employees to act as panch witnesses. A pre-trap panchanama (Exh.19) was drawn.

3. All the concerned were given requisite instructions. Accordingly, the complainant accompanied by PW3 Rajeshri, went to the Zilla Parishad office to pay the respondent bribe. They met the respondent there. The complainant inquired with the respondent whether her proposal for transfer was kept before the District Health Officer (DHO). He, in turn, asked him not to be worried of it. He asked her if she has brought the money as had been asked to bring earlier. The complainant replied to have brought the money. The respondent, instead of receiving the bribe then and there, asked the

complainant that they shall go elsewhere. After having walked a few steps, the respondent opened the drawer of one table and asked the complainant to drop bribe money therein. The complainant followed his instructions. She immediately came out of the office to give the pre-determined signal. The trap team immediately arrived. PW4 Usha (panch), took out the bribe money from the drawer. Trap panchanama (Exh.20) was drawn there. Thereafter, post-trap panchanama was drawn. PW5 Ashok, Dy.S.P lodged the First Information Report (FIR). On completion of the investigation, all the papers thereof were forwarded to the then Chief Executive Officer (CEO), Zilla Parishad, Jalgaon for obtaining his sanction for prosecution of the respondent. The charge-sheet, therefore, came to be filed against the respondent herein.

4. The learned Judge framed the charge (Exh.8). The respondent pleaded not guilty. His defence is of false implication.

5. The prosecution examined five witnesses and produced in evidence certain documents to bring home the charge. The trial Court, on appreciation of the evidence in the case, held the prosecution to have failed to establish the charge beyond reasonable

doubt. In view of the trial Court, the case of the complainant was replete with inheritance improbability.

6. Heard.

The learned APP would submit that the complainant was very much in the know that the respondent did not have an authority to transfer her to a desired place. Application for her transfer was to be routed through him. For forwarding the transfer application, the respondent had made a demand of illegal gratification. The learned APP took me through the evidence of the complainant and the shadow witness (PW3) to submit that both these witnesses had deposed consistent with each other and with that of the prosecution case, as well. Whatever has been brought on record in the cross examination of the complainant was a different matter. Those facts were also true. The personality of the complainant was such that she doesn't tolerate injustice. There was nothing to suggest the complainant to be a troublesome lady. In view of the learned APP, the learned trial Court ought not to have acquitted the respondent on flimsy grounds. What had been suggested to the complainant in her cross examination has substantially been denied. He, therefore, urged for allowing the

appeal and urged for conviction of the respondent for the offences he was charged with.

7. The learned Advocate for the respondent would, on the other hand, submit that it is an appeal from acquittal. Parameters for consideration in appeal from acquittal are somewhat different. According to him, the learned Judge has acquitted the respondent with well reasoned judgment. He took me through the evidence on record to suggest that the testimony of the complainant would not inspire evidence.

8. Considered the submissions advanced. Perused the evidence relied on.

9. The respondent was serving as a Junior Clerk with the Establishment Department of Zilla Parishad, Jalgaon at the relevant time. The complainant was serving as a Auxiliary Nurse Midwife at PHC, Mhaswad. Her daughter was mentally challenged. The complainant had therefore moved an application for request transfer to Nashirabad PHC. Application for transfer of such employees would be routed through the respondent herein. The complainant had therefore met him many a time. She had urged him to put up

the proposal for her transfer before the concerned authorities. The respondent had informed her that she would not get a desired posting, since on the similar ground she had already been transferred. It is in the evidence of the complainant that the respondent made a demand of Rs.12,000/- for favour of action. On negotiations, he agreed to receive Rs.7,000/-. A sum of Rs.5,000/- was to be paid in advance and the balance, on her transfer. Since she did not want to pay the respondent bribe, she approached ACB, Jalgaon on 08.07.2002. Her statement-cum-complaint (Exh.14) was recorded by PW5 Ashok. It has specifically been averred in the complaint that the respondent was requested to put up her transfer proposal immediately. The learned APP was therefore right in submitting that the complainant was very much in the know that the respondent did not have authority to make transfer. The respondent had made a demand of bribe only to put up a favorable proposal. The case of the prosecution in that regard should not be misread, submitted by the learned APP.

10. On recording of the complaint Exh.14, it was decided to lay a trap on the following day. Two lady Government Clerks were requested to act as panch witnesses. The complainant was asked to

attend the ACB office on the following morning. Accordingly, she went to ACB office. Both, PW3 and PW4, panch witnesses were already present. PW5 gave all of them the requisite instructions. Pre-trap panchanama was drawn. Anthracene powder was applied to the currency notes, to be paid as bribe money.

11. As planned, both, the complainant and the shadow witness (PW3) went to Zilla Parishad Office, Jalgaon on 09.07.2002. They met the respondent there. The complainant inquired with him about her transfer proposal. The respondent asked not to be worried. He asked her whether she had brought the money as was asked for. She gave a nod. Instead of receiving the bribe money then in there, the respondent asked the complainant to go elsewhere. All of them, therefore, started and after a walk of a few steps, the respondent opened the drawer of one table and asked the complainant to drop money therein. She followed the instructions. She, then, came out of the office to give pre-determined signal. In response to the signal given by the complainant, the trap team arrived. The bribe money came to be seized from the drawer. The rest of the things followed. On the same lines is the evidence of the shadow witness (PW3). It may therefore be said that the evidence of the complainant has been

reinforced by the evidence of an independent witness. There is, however, other aspect of the matter, may not be directly connected with the crime in question. During the cross examination of the complainant, it has come on record that she was aware that the authority to transfer her, was the DHO. Transfer order issued by the DHO was required to be approved by the CEO, Zilla Parishad. She had prepared her request transfer application in triplicate (Exh. 13, 15 and 16). She had personally met the CEO and DHO, as well. She had submitted her application for transfer to both these authorities. The Deputy CEO has even made some endorsement on her application. It is also in her evidence that she had met the President of Zilla Parishad and some of its members (political persons), as well for cancellation of her transfer. Both, the DHO and CEO had assured her to look into the matter. It is further in her evidence that she was transferred from Nashirabad way back in 2001. She had, therefore, proceeded on long leave. But, her higher ups (Boss) had given her memos on 24.05.1999, 04.10.1999, 23.03.1999 and 23.04.2001. Her leave application was rejected. The memos referred to herein before, were issued by Dr. Sonwane. He was alleged to have demanded a bribe of Rs.10,000/- for cancellation of her transfer. In

the very complaint she had mentioned that Dr. Sonwane was related to bootleggers. He indulged in corruption and sexual harassment of women employees. Similar complaint had been made by her against Dr. Sonwane to '*Mahila Dakshata Samiti*' and '*Human Rights Commission*', as well. It is further in her evidence that before Human Rights Commission, she had tendered apology to Dr. Sonwane. It is in her evidence that Dr. Sonwane also reciprocated the same way and the matter was compromised.

12. True, these facts may seem to have no connection with the offence in question. This Court has no further material before it to observe whether the complaints made by the complainant against Dr. Sonwane were really true or false. The fact however remains that the complainant is a brave woman. She has to be. The evidence however indicate that she had met the politicians and Zilla Parishad CEO and DHO, as well to get transferred to a desired place. The respondent filed his written say wherein it has been averred that the complainant was a quarrelsome and troublesome lady. She was in habit of making complaints against her higher ups. He was a lowest grade official in the hierarchy. Her application for transfer had already been forwarded by him. She, however, felt that the

respondent had poisoned the ears of her higher ups and therefore, she was not being transferred. It is his case that he was well aware of the behaviour of the complainant. He, therefore, submitted that no one would have dared to make a demand of bribe from the complainant. All the employees were of apprehensive of her. It was a big room meant for Establishment Section. More than 11 employees had their tables with their respective seats in one and the same room. The complainant herself pulled the drawer and dropped some money therein. Admittedly, it was not a seat and the table of the respondent himself.

13. PW1, sanctioning authority testified to have had received a draft sanction along with all the police papers. The respondent, therefore, had every reason to contend that the sanction accorded by for his prosecution, was on the basis of draft sanction and not on going through the papers of investigation. This is an appeal against acquittal. What has been submitted in defence leads this Court to observe that the trial Court had rightly not relied on the evidence of the complainant. In such a situation, there ought to have been verification of demand of bribe allegedly made by the respondent herein.

14. After having appreciated the prosecution case as against the defence version, this Court finds no reason to take a different view. The appeal, therefore, fails. The same is dismissed.

[R. G. AVACHAT, J.]

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