

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.589 OF 2012

Mahadeo s/o Hausarao Jaibhai
Age 45 years, Occu. Service
(under suspension)
R/o Bajrang Nagar, Parli-Vaijnath
District Beed.

... APPELLANT

VERSUS

The State of Maharashtra
(Copy to be served on Public
Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad

... RESPONDENT

.....
Shri V.D. Sapkal, Senior Counsel with
Shri U.B. Bondar, & Shri V.C. Patil,
Advocates for appellant
Shrio S.P. Sonpawale, A.P.P. for respondent
.....

CORAM : R. G. AVACHAT, J.

DATE : 2nd MARCH, 2022

J U D G M E N T :

The challenge in this appeal is to a judgment and
order of conviction and sentence dated 10/9/2012, passed by

Additional Sessions Judge-2, Ambajogai in Special Case No.1/2010. By the impugned judgment and order, the appellant was convicted for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment (R.I.) for two years and to pay fine of Rs.10,000/-, in default to suffer R.I. for six months. The appellant was further convicted for the offence punishable under Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and sentenced to suffer R.I. for two years on each count. All the sentences were directed to run concurrently.

2. The case of the prosecution as per the charge sheet was, the complainant Shri Bhaktram Kande (P.W.1) was an agriculturist. He has an agricultural land at village Jirewadi, Taluka Parali, District Beed. Land bearing Gut No.161, situated at Brahmawadi was in the name of his father. About two years before, in 2008, two wells had been dug in the land. The complainant proposed to install electric motor on the well for lifting water. It was, therefore, necessary for him to have electricity supply. The complainant had, therefore, been to the office of Maharashtra State Electricity Board (M.S.E.B.). The officer there informed him that no quotation can be issued unless entry regarding

existence of well is made in the 7/12 extract. The complainant had, therefore, been to the office of village Talathi. The complainant requested him to make an entry of wells in the 7/12 extract. The appellant asked him to pay Rs.1000/- therefor. The complainant expressed his inability to meet the demand. The appellant, however, told him that no work can be done unless he was paid Rs.1000/-. The complainant, therefore, paid him Rs.500/- on 19/4/2010 and promised to pay the remaining amount later on. The complainant did not want to pay the appellant bribe. He, therefore, approached the Anti-Corruption Bureau (A.C.B.), Beed and lodged the complaint (Exh.27).

3. P.W.3 Rameshwar, Police Inspector attached to A.C.B. decided to lay a trap. He secured presence of two persons to act as panch witnesses. He got the demand verified. Pre-trap panchanama Exh.23/C was drawn. All the concerned were instructed to ensure that the trap would be successful. Accordingly, the complainant, accompanied by a shadow witness Janardhan (P.W.2) went to the Talathi Office. The officials of A.C.B. remained in the nearby. The appellant demanded the bribe and accepted a sum of Rs.500/- by 3.15 p.m. After a determined signal was given, the raiding party arrived. It seized the bribe money from the appellant under

the panchanama. P.W.3 Rameshwar then recorded statements of the persons acquainted with the facts and circumstances of the case. All the papers of investigation were submitted to the Sub-Divisional Officer, Rajesh Joshi (P.W.4), who in turn, granted sanction for prosecution of the appellant. The appellant thus came to be proceeded against. The charge (Exh.8) was framed against the appellant. He denied the same. The prosecution examined 4 witnesses and produced in evidence certain documents to establish the charge. On appreciation of the evidence, the learned Judge convicted and sentenced the appellant as stated above.

4. Heard. The learned Senior Counsel appearing for the appellant would submit that, there was no substantive evidence in support of the prosecution case. The complainant himself testified on oath that he was in arrears of land revenue. The appellant had demanded from him payment towards arrears thereof. Demand of bribe and acceptance thereof ought to have been proved. Mere recovery of money is not sufficient to establish the crime. He would further submit that, the appellant was appointed by the Collector. The sanction to prosecution was, however, granted by the Sub-Divisional Officer. The prosecution, therefore, fails on that ground as well. He, therefore, urged for allowing the

appeal.

5. The learned A.P.P. on the other hand, reiterated the reasons given by the trial Court in support of the impugned judgment and order. He ultimately urged for dismissal of the appeal.

6. Considered the submissions advanced. Perused the evidence in the case.

The appellant was a village Talathi at the relevant time. Sanction for his prosecution (Exh.56) was accorded by the Sub-Divisional Officer, Ambajogai. Although it was suggested to the sanctioning authority that the appellant was appointed by the Collector and he only issued his posting order, it has flatly been denied. The order of appointment as a Talathi finds place at Exh.45. It is evident therefrom that the Regional Secondary Services Selection Board, Aurangabad Region had selected him. The District Collector simply assigned 8 persons to Ambajogai Sub-Division for being appointed as Talathi. It is the Sub-Divisional Officer Rajesh Joshi (P.W.4) who had issued appointment of the appellant as a Talathi of village Warapgaon. The sanction for prosecution has not been taken exception to on any other ground. The sanction has been found to have been accorded by P.W.4 Sub-

Divisional Officer, who had in fact appointed the appellant as a Talathi.

7. The complainant gave his evidence on oath. It is in his evidence that, land Gut No.161 stood in the name of his father. He was looking after the said land. A well had been dug in the land. He wanted to install an electric motor on the well. He had, therefore, been to the office of M.S.E.B. for quotation to obtain electricity supply. The M.S.E.B. official refused to give him quotation since 7/12 extract of the land did not disclose existence of the well. The complainant had, therefore, been to the Talathi office about three weeks before 21/4/2010. The appellant was the Talathi of the village. The complainant requested him to make an entry of well in the 7/12 extract. It is further in his evidence that the appellant asked him to deposit land revenue. The complainant expressed his inability. The appellant told him that unless the amount of land revenue is paid, he would not do the needful. The complainant, therefore, went to the A.C.B., Beed and lodged the complaint (Exh.22).

8. Since the complainant did not stand by his complaint, the learned A.P.P. subjected him to cross-examination. All the contents of the complaint were put to

him. He, however, denied the same. He, however, admitted to have had paid Rs.500/- to the appellant as advance. The shadow witness Janardhan (P.W.2) had accompanied him to the office of Talathi. When both of them went there, the appellant enquired with him as to whether he had brought money. He however, deposed that he had bought the money for recording entry of well in the 7/12 extract. He also admitted to have told the investigating officer P.W.3 Rameshwar that the appellant had demanded money and thereupon he paid the same. The complainant, however, stoutly denied the appellant to have made a demand of bribe and the amount paid by him in the presence of shadow witness, was towards the same.

9. The complainant was subjected to cross-examination by learned counsel representing the appellant. He gave answers to all the questions, accepting the defence version.

10. It is true that, P.W.2 Janardhan, shadow witness testified to have had accompanied the appellant on the given day. It is further in his evidence that, both of them went to Talathi office. Exchange of greetings happened between the appellant and the complainant. The complainant asked the

appellant to give him the 7/12 extract. The appellant thereupon asked him to give Rs.500/- so that he will do his work by Sunday. Thereafter a determined signal was given. P.W.3 Rameshwar and other A.C.B. staff arrived. A currency note of Rs.500 denomination was recovered from the appellant. A panchanama to that effect was drawn.

11. If we appreciate the evidence of complainant and that of the shadow witness P.W.2 Janardhan, it does appear that the complainant did not state in so many words that the appellant had demanded from him a sum of Rs.1000/- as a bribe. The complainant did not stand by his complaint. It is his consistent case in examination-in-chief and cross-examination as well that he was in arrears of land revenue. The appellant asked him to clear the Government dues. The amount paid to the appellant was towards clearance of land revenue. Even we accept the evidence of shadow witness (P.W.2 Janardhan) as it is, no inference therefrom can be drawn that the appellant had asked the complainant to pay him Rs.500/- as an illegal gratification to do his work. It is reiterated that, what the shadow witness P.W.2 Janardhan deposed to is that, there was a talk between the appellant and the complainant about his work. The complainant thereafter took out the currency note of Rs.500/- and gave it

to the appellant. The shadow witness P.W.2 Janardhan did not depose that the appellant had asked the complainant to pay him the amount as a bribe to do the needful.

12. Since the complainant himself did not stand by his complaint and the evidence of the shadow witness P.W.2 Janardhan does not state in certain terms that the appellant had made a demand of bribe and then accepted the same, the learned Judge ought not to have convicted the appellant based on such evidence. Interference is, therefore, warranted with the impugned judgment and order.

13. In the result, the appeal succeeds. Hence the order :-

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The impugned judgment dated 10/9/2012, passed by learned Additional Sessions Judge-2, Ambajogai in Special Case No.1/2010, convicting the appellant for the offence punishable under Sections 7, Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 is set aside and the appellant is acquitted of the said offences.

- (iii) Fine amount, if paid by the appellant, shall be refunded to him.

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

fmp/-