IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.561 OF 2011

Prasad Prabhakar Kulkarni,
Age 45 years, Occupation Service,
R/o Flat No.11, Ganesh Apartment,
Zambad Estate, Shreyanagar,
Aurangabad … APPELLANT

VERSUS

The State of Maharashtra,
(Copy served on the Public Prosecutor,
High Court of Bombay,
Bench at Aurangabad) … RESPONDENT

....
Shri Joydeep Chatterji, Advocate for appellant
Mrs. G.L. Deshpande, A.P.P. for respondent – State
....

WITH

CRIMINAL APPEAL NO.575 OF 2011

Uday s/o Uttamrao Nyayadhish
Age 41 years, Occu. Service – Field Assistant,
Legal Metrology, Division Paithan,
R/o Yashwantnagar, Paithan,
District Aurangabad … APPELLANT

VERSUS

The State of Maharashtra,
(Copy served on the Public Prosecutor,
High Court of Bombay,
Bench at Aurangabad) … RESPONDENT

....
Shri R.N. Chavan, Advocate for appellant
Mrs. G.L. Deshpande, A.P.P. for respondent – State
....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 4th March, 2022

Date of pronouncing judgment : 21st October, 2022

J U D G M E N T :

Both these appeals from conviction are being decided by this common judgment since they are interconnected. The challenge in both these appeals is to an order of conviction and sentence dated 22/9/2011, passed by the Court of Special Judge (P.C. Act), Aurangabad in Special Case No.5/2007. Vide impugned order, the appellants are convicted and sentenced as mentioned below :-

Sr. No.	Name of Appellant	Sections	Sentence of imprisonment
1	Prasad & Uday	7 P.C. Act	R.I. for 2 years and fine of Rs.1000/- each, i.d., R.I. for six months
		13(2) r/w 13(1)(d) P.C. Act	R.I. for 1 year and fine of Rs.500/- each, i.d., R.I. for 3 months
2	Prasad	12 P.C. Act	R.I. for 1 year and fine of Rs.1000/-, in default, R.I. for 3 months

2. Facts giving rise to these appeals are as follows :-

P.W.1 Prakash (complainant) was a Government approved repairer of weights and measures. He would do his business, attending weekly bazars of various villages in Paithan Taluka, District Aurangabad. Appellant Prasad (in Appeal No.561/2011) was serving as Inspector with the office of Legal Metrology, Aurangabad. While appellant Uday (in Appeal No.575/2011) was Field Assistant. Both of them would also attend weekly bazars as a part of their official duty. It was a day of weekly bazar of village Adul on 12/9/2006. Both the appellants and complainant along with his associate had been to the said village. The complainant would repair weights and scales of businessmen there. He would receive repairing charges plus Government stamping fee. Repairing charges would go to the complainant. He was supposed to deposit the stamping charges in the Government Treasury. It is his case that, both the appellants had asked him to pay 25% commission on repairing charges he received, plus 6% of Government fees, besides their travelling expenses for conveyance, to and fro the headquarters. This demand was nothing but an illegal gratification. The complainant had to pay both the appellants a sum of Rs.560/- under those heads as bribe. On the next day, it was a weekly bazar of village Bidkin. The appellants had asked the complainant to attend the said bazar and pay them as was paid on the previous day.

3. Since the complainant did not want to pay the appellants bribe, he approached Anti-Corruption Bureau (A.C.B.), Aurangabad. P.W.4 Prakash Jadhav was present at A.C.B. in his official capacity as Police Inspector. He recorded the complaint lodged by the complainant, vide Exh.40, asked the complainant to come on the following day. P.W.4 Prakash secured presence of two Government officials to act as panch witnesses. It was decided to lay a trap. Accordingly, all of them came to the A.C.B. in the morning of 13/9/2006. A pre-trap panchanama (Exh.16) was drawn. Then the complainant, his friend and shadow witness went to Bidkin Bazar. They did the business. About 44 receipts were issued to the customers whose weights and measures were repaired. The appellant Prasad asked the complainant to pay their charges (commission plus travelling expenses) to appellant Uday. As per the calculations, the amount came to Rs.565/-. The complainant had with him a sum of Rs.300/- smeared with anthracine powder while pre-trap panchanama was drawn. He included that amount with other amount and paid

the same to the appellant Uday. He then gave a pre-determined signal. A raiding party arrived. The currency notes came to be seized from possession of the appellant Uday. Trap panchanama (Exh.17) was drawn. Then post-trap panchanama was also drawn. P.W.4 Prakash lodged the F.I.R. (Exh.14) on behalf of the State. He submitted all the papers of investigation to P.W.3 Ankush Dhanvijay for obtaining sanction for prosecution of the appellants. P.W.3 Ankush, in turn, granted the sanction (Exh.23).

4. Trial Court framed the Charge (Exh.5). The appellants pleaded not guilty. Their defence is of false implication. The prosecution, in proof of the charge, examined four witnesses and produced in evidence certain documents. The trial Court, on appreciation of the evidence in the case, convicted and sentenced the appellants as stated above.

5. Heard. Mr. Chatterji and Mr. Chavan, learned counsel for the respective appellants would submit that, the complainant had an axe to grind against them. The complainant did not have a licence to repair electronic weights and measures. He would still repair the same. Merchants had made various complaints against the complainant.

Appellant Prasad had warned the complainant in that regard and even told him that no business would be given to him if he did not obtain a requisite licence for repairing electronic scales. It is also their case that, the Government fees towards stamping charges is to be paid in advance. In case there is business more than the amount paid in advance, the complainant would pay the amount to the appellants for being deposited in Government Treasury. Whatever amount was paid to appellant Uday was towards Government stamping charges. According to learned counsel, the demand verification was not made before trap was laid. The prosecution failed to bring home the charge beyond reasonable doubt. They, therefore, urged for allowing the appeals.

6. The learned A.P.P. would, on the other hand, submit that, on the basis of the evidence of the complainant and that of the shadow witness, demand and acceptance of illegal gratification has been proved beyond doubt. Presumption under Section 20 of the Prevention of Corruption Act gets invoked since the tainted money came to be recovered from appellant Uday. Sanction for prosecution has not been taken exception to. The learned A.P.P. adverted this

Court's attention to Receipt No.1888 (Exh.34) to indicate the calculations made overleaf the same. According to her, a sum of Rs.2000/- had already been deposited in advance. Had the amount been paid to the Government towards stamping charges, the amount of Rs.565/- mentioned overleaf the receipt could have been mentioned under that head. According to learned A.P.P., the trial Court has given a well reasoned judgment. No interference therewith is warranted. She, therefore, urged for dismissal of the appeal.

7. Considered the submissions advanced. Perused the evidence and the documents relied on. Let us appreciate the evidence in the case.

Both the appellants – Prasad and Uday were serving as Inspector and Field Assistant respectively with Legal Metrology, Aurangabad. The complainant was an approved repairer of weights and measures. He would attend weekly bazar of the villages in Paithan Taluka for repairing scales of businessmen there. Both the appellants would also attend such bazars. It is the case of the complainant that, on 12/9/2006, he had attended weekly bazar of village Adul. Both the appellants were present in the bazar. The complainant did repair over 40 weight and measure articles.

About 35 to 40 receipts were prepared. On the demand of the appellants, he paid them Rs.560/- towards illegal gratification. The said amount was paid towards 25% commission on the amount of his repairing charges, 6% commission on Government stamping charges and the remaining amount towards their travelling expenses. It is also his case that, the appellants had asked him to attend the next day's bazar of village Bidkin. As he did not want to pay the appellants bribe, he approached the A.C.B., Aurangabad and lodged complaint (Exh.11).

8. P.W.4 Prakash (Police Inspector) recorded the complaint. He secured presence of two Government officials to act as panchas. All of them were called to A.C.B. on the following morning. Accordingly, they came. A pre-trap panchanama was drawn vide Exh.16. Three currency notes of Rs.100 denomination were applied with anthracine powder. All the concerned were given necessary instructions. Then the trap party set out for village Bidkin.

9. It is in the evidence of the complainant that, he along with his friend Suresh Gavad went to Bidkin. Both the appellants had come there. Appellant Prasad remained at one hotel. Appellant Uday accompanied the complainant and his

friend and also the shadow witness. The appellant did repairing work of scales and measures. About 44 receipts were issued. It was a practice of issuing receipts in triplicate, first one for a customer whose scale has been repaired, second to the accused and third to be retained by the complainant. Admittedly, there were two receipt books. The receipts issued were from No.1819 to 1888. It is further in his evidence that, after his job was over, he along with appellant Uday and shadow witness returned to the hospital. Appellants asked the complainant to pay their commission as stated above in the ratio of 25%, 6% and travelling charges. The complainant calculated the said amount which comes to Rs.565/-. He took out anthracine powder applied 300 rupees and other amount from his pocket and paid the same to appellant Uday. He then gave a pre-determined signal. The raiding party arrived at the scene. The bribe money came to be recovered from appellant Uday. Trap panchanama was drawn. Then post-trap panchanama was also drawn and the rest followed as stated above.

10. P.W.2 Suresh (shadow witness) also gave evidence very much consistent with the evidence of the complainant. Only with a view to avoid repetition, I do not propose to

reproduce the same. Admittedly, the sanction for prosecution (Exh.23) accorded by P.W.3 Ankush has not been taken exception to. Evidence of P.W.4 Prakash (I.O.) is of not much importance since he was not present to witness the demand and consequential acceptance of bribe money.

11. All the three material witnesses were subjected to cross-examination. Here again, I do not propose to reproduce their evidence in extenso. Suffice it to say that, the answers given by the complainant and shadow witness in response to certain questions would, in defence of the appellants, this Court comes to the conclusion that the charge was not proved beyond reasonable doubt. The reasons therefore are as under:

The complainant did not have a licence to repair electronic scales. He would still repair such scales. Merchants and businessmen had made complaints against him to the appellant Prasad. It was on 12/9/2006 the appellant Prasad had warned the complainant to obtain requisite licence for repairing electronic scales. He had also warned him that he would not give him further business if he failed to obtain such licence. The date – 12/9/2006 is very material in this case. The warning given by the appellants to the complainant needs to be taken as a reason for the complainant to get annoyed. Admittedly, the complainant approached the A.C.B. on the same day i.e. on 12/9/2006 and lodged the complaint (Exh.14). The aforesaid facts have not been stated by the complainant in his examination-in-chief. Those have been elicited during his cross-examination. The evidence of the complainant, therefore, appears to have no ring of truth.

12. It needs no mention that for conviction for the offence punishable under Sections 7, 13(1)(d) of the Prevention of Corruption Act, demand of illegal gratification is a sine qua non. Mere acceptance of money sans demand does not constitute an offence punishable under Section 7 of the P.C. Act, 1988. The demand and acceptance of illegal gratification is a question of fact.

13. P.W.4 Prakash has admitted in no uncertain terms that, he did no exercise to have the demand verified.

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.**

14. In view of this Court, although exercise of demand verification may not be necessary in each and every case, the facts of the present case undoubtedly indicate that there ought to have been a verification of demand.

15. Admittedly, the complainant was supposed to pay the Government stamping charges. It was a practice of making payment towards stamping charges well in advance. According to the complainant, he had paid Rs.2000/- as advance for the year 2006. It is also in his evidence that, amount to be paid towards stamping charges used to be paid by him directly in Government Treasury or some times he would pay the amount to the appellants for being deposited with the Government. The complainant has admitted that, on the given day his business had already crossed to such an extent that amount paid by him towards advance was lesser. As such, he was supposed to pay additional amount towards stamping charges. It is reiterated that, he would pay the same to the appellants for being paid to the Government in the Government Treasury. It is his case that, on the given

day he had issued 44 receipts. On the last receipt (Exh.34), calculation has been made as under :

	931	442		
		रिपेरिंग	स्टॅम्पिंग	
साहेब	425	931	442	सुरेश
K.A.	140	773	356	प्रकाश
	565	1704	798	

समक्ष पंच (1) सही /-

सही /- (2) सही /-

The figure of 565 shown under the head "Saheb" is to be assumed to have been paid towards illegal gratification. It is to be stated that, it was a xerox copy that was tendered in evidence. The complainant, during his examination-in-chief, came with the original receipt and produced the same in evidence. No account was made as to in fact how much amount the complainant was supposed to pay towards stamping charges to the Government over and above the deposit of Rs.2000/- as an advance. Admittedly, there were two receipt books. It is also in the evidence of the complainant that, since he was not authorised to repair electronic scales, he would still repair such articles and issue receipts in the name of repairers who were authorised to repair such scales. He has also admitted that, rate of repairing charges of electronic weights and scales was more than repairing charges of ordinary weights and measures. Merchants had made complaint against him to the appellant Prasad. A news had also been flashed in the daily in that regard. He has unequivocally admitted to have had done more business than Rs.2000/- paid towards advance till the date of the incident. The same suggests that the complainant owed the Government some amount towards stamping charges. Admittedly, he would pay such amount to the appellants on this course, therefore, appears to be probable. Moreover, the complainant had an axe to grind against the appellant Prasad since he had warned him on 12/9/2006 and within hours thereof, he had approached A.C.B. and lodged the complaint (Exh.14). He has also admitted that, the appellant had asked him to calculate the amount and deposit the same towards the Government charges. There are material omissions amounting to contradictions as well. Those are as under :

16. The complainant admitted that, he had mentioned

in his report dated 12/9/2006 that, appellant Prasad had made him phone call and asked to come Adul bazar. He had also mentioned that, both the appellants had asked him to collect their commission out of the amount to be received towards repairing charges. All these facts have been missing in his complaint (Exh.14). Admittedly, some of the receipts are in the handwriting of the complainant's friend Suresh Gavad. No accounts or calculations were made before the trial Court to show in fact how much amount was received towards repairing charges and Government stamping fees. It is also not known whether those receipts contained the receipts pertaining to repairs of electronic scales.

17. Turning to the evidence of shadow witness – P.W.2 Suresh is concerned, he has, in no uncertain terms, admitted to have had acted as a panch witness in other three trap cases of A.C.B. It is not known as to why P.W.4 Prakash still availed his service. True, he was deputed by his official. It was, however, incumbent on the part of P.W.4 Prakash to make enquiry in that regard with the concerned employees who were deputed to act as panch witnesses. There was one more person to act as a panch. P.W.4 Prakash still asked P.W.2 Suresh to act as a shadow witness. The fact that P.W.2

Suresh acted as a panch witness, it was his fourth such case, leads this Court to not rely on his evidence to assume it as a gospel truth. It is in his evidence that, the complainant was issuing receipts to the merchants by examining shops and scales. He could not give the number of receipts issued. It is further in his evidence that, the complainant was collecting the amount from the merchants and keeping the amount in his right side pocket of the pant. This witness went on to admit that, he had gone through the pre-trap panchanama and post-trap panchanama soon before he entered the witness box to give evidence.

18. In view of this Court, based on such quality of evidence, the trial Court ought not to have convicted the appellants. This Court is, therefore, not at one with the impugned order. In short, the following facts lead this Court to allow the appeals :-

(i) The complainant did not have licence to repair electronic scales.

(ii) He would still repair such scales.

(iii) Merchants and businessmen had made many complaints against the complainant to the appellant

Prasad.

(iv) Prasad, in turn, had warned the complainant in that regard.

(v) He had even threatened the complainant that if he did not obtain requisite licence to repair electronic scales, he would not be given business.

(vi) News in that regard was flashed in daily.

(vii) On the very day on which the appellant Prasad had warned the complainant, he (complainant) had approached the A.C.B. and lodged report.

(viii) P.W.4 Prakash did not have the demand of illegal gratification verified independently.

(ix) The complainant was supposed to pay the Government stamping charges.

(x) The complainant had paid a sum of Rs.2000/- in advance.

(xi) Admittedly, on the given day, the business done by the complainant was more than the amount deposited by him as advance.

(xii) As such, the complainant owed the Government towards stamping charges.

(xiii) Admittedly, the complainant either would pay the stamping charges directly to the Government or pay it to the appellants for being deposited in the Government Treasury.

(xiv) The original receipt (Exh.34) was brought before the Court by the complainant from his home. The calculations made overleaf were in his own handwriting.

(xv) No accounts or calculations of the entire business done on the given day were placed before the Court although some receipts have been produced on record.

(xvi) The shadow witness had acted as a panch witness in three more trap cases before the one in question.

19. For all the aforesaid reasons, the following order :

O R D E R

(i) Both the Criminal Appeals are allowed.

(ii) The order of conviction and sentence dated 22/9/2011, passed by learned Special Judge (P.C. Act), Aurangabad in Special Case No.5/2007 is set aside. The appellants are acquitted of the offences punishable under Sections 7, 13(2) read with 13(1)(d) and 12 of the Prevention of Corruption Act. Fine amount, if paid, be refunded to them. Bail bonds of the appellants are cancelled.

(R. G. AVACHAT, J.)

fmp/-