

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.453 OF 1998

Shri Nagnath Rangnath Chaware
since deceased through his Legal Heirs

1. Smt.Pramila Nagnath Chaware,
2. Shri Kiran Nagnath Chaware,
3. Shri Somnath Nagnath Chaware

Appellants

VERSUS

The State of Maharashtra

Respondent

Mr.Ujwal R. Agandsurve i/by Mr.B.R.Patil, Advocate for Appellants.
Mr.Y.Y.Dabake, APP, for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

Date of Reserving the Judgment : 4th August 2021

Date of Pronouncing the Judgment : 31st March 2022

JUDGMENT :

1. The appellant has challenged the judgment and order dated 31st March 1998 passed by Special Judge, Solapur in Special Case No.1 of 1995 convicting appellant for the offences punishable under Section 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988 (P.C.Act) and sentenced to suffer rigorous imprisonment for 1½ years and pay fine of Rs.1,000/-. He is also convicted for the offence punishable under Section 7 of P.C.Act and sentenced to suffer rigorous imprisonment for one year and pay fine of Rs.750/-.

2. The prosecution case is that the accused is Head Constable attached to Mohol Police Station and at the relevant time he was on

duty at Kamti Outpost which was within the jurisdiction of Mohol Police Station. The complainant is resident of village Wagholi, Taluka Mohol. On 6th November 1994 some persons assaulted the complainant and in connection with the said incident he had visited Kamti outpost and his complaint was recorded by accused. On the next day the complainant filed application to the Superintendent of Police (Rural), Solapur, however, no action was initiated on his complaint. On 18th November 1994 the complainant approached Mohol Police Station and contacted Police Sub-Inspector Rasal and expressed grievance about inaction on his complaint. PSI Rasal prepared a note and handed it over to the complainant in a sealed envelope for being delivered to accused at Kamti outpost. Accordingly complainant visited Kamti outpost on 18th November 1994. The accused was not available. On 19th November 1994 the complainant again visited Kamti outpost and met accused. The envelope handed over by PSI Rasal was delivered to accused. The accused told the complainant to bring his wife on the next day for recording statement. On 20th November 1994 the accused recorded statement of complainant's wife, complainant and other persons. After the statements were recorded, the accused demanded amount of Rs.200/- for not filing chapter case against him. The accused informed the complainant that PSI Rasal has directed him to file chapter case against him as well as Tamboli group who had assaulted him. He would not file chapter case against complainant, if he pays bribe of Rs.200/-. The complainant disclosed that he do not have money. The accused suggested him to pay Rs.200/- on the next day. The complainant decided to approach Anti Corruption Bureau ('ACB') Office at Solapur. On 21st November 1994 the complainant went to ACB office, at Solapur and contacted Deputy Superintendent

of Police Mr.Chavan. His complaint was recorded. The complainant produced copy of application which he had sent to Superintendent of Police (Rural), Solapur. On recording the complaint, the Deputy Superintendent of Police, ACB decided to lay a trap. Two persons were summoned to act as panch witnesses. Mr.Koli and Mr.Malve visited ACB office. They were introduced to complainant. They agreed to act as panch witnesses for trap. The complaint recorded by Deputy Superintendent of Police Chavan was handed over to panch witnesses. It was read by them. The complainant produced trap money of Rs.200/- which consisted two currency notes of Rs.100/-. The procedure required for arranging trap was completed. Instructions were given to complainant and panch witnesses. The complainant was told to visit Kamti outpost along with panch no.1 and contact accused. He was instructed to pay amount only on demand by accused. Panch no.1 was to accompany complainant. Pre trap panchanama was recorded. All of them left towards Kamti outpost. The complainant and panch no.1 went to the outpost and others went around the outpost. The complainant requested the accused not to file chapter case against him and the accused asked the complainant whether he has brought Rs.200/- as suggested by him. The complainant replied in affirmative and removed the marked currency notes from his shirt pocket. The accused accepted the amount. Signal was given to the raiding party. The members of raiding party visited the place of incident. Currency notes were recovered from the accused. Anthracene powder was found on the currency notes and on the person of accused. Further procedure was completed. The accused was arrested. Crime No.116 of 1996 was registered. Investigation proceeded. Statements of witnesses were recorded. Charge sheet was filed.

3. Charge was framed by order dated 6th February 1997 under Section 7, 13(2) and 13(1)(d) of P.C.Act.

4. The prosecution examined seven witnesses. PW-1 Annappa Koli is the panch witness. PW-2 Ajan Husain Mujawar is the eye witness to the trap. PW-3 Baburao Shende is the complainant. PW-4 Mohammad Sharif Mansukh Shaikh is the Police Constable attached Kamti Outpost. PW-5 Bhaurao Chavan was Deputy Superintendent of Police, ACB, Solapur. PW-6 Suresh Kakkad is the Superintendent of Police (Rural), Solapur. PW-7 Ravindra Rasal is the Police Inspector. He conducted the investigation.

5. The statement of accused was recorded u/s.313 of Code of Criminal Procedure. The defense of the accused is of total denial. The accused filed written statement in support of his explanation u/s.313 of Cr.PC (Exhibit-41). As per written statement the defense of appellant is that he has not demanded or accepted bribe amount. He had no reason for demanding bribe. The complainant had lodged complaint with Mohol Police Station. It was recorded as N.C complaint. He was advised to file private complaint in Court. His thumb impression was obtained on complaint. At that time the complainant was insisting that immediate action be initiated against accused on his complaint. He was informed that legally no such action can be taken. The complainant quarreled with accused. Thereafter the complainant made complaint to D.S.P Solapur. The proceedings were forwarded to accused for further inquiry through Mohol Police Station. He recorded statement of complainant. There was exchange of words between them. The complainant handed

over sealed envelope to accused from Mohol Police Station on 19th November 1994. The accused read the contents of letter. Police Sub-Inspector Mr.Rasal had directed that chapter case proceedings be initiated against both the parties. Complainant was informed about it. He questioned the accused stating that he himself is complainant and he is aggrieved party. How chapter case proceedings can be initiated against him. The accused told the complainant to attend inquiry with wife and witnesses for recording their statements. The complainant was annoyed and left the place. Thereafter the accused recorded statements of witnesses from both the sides and chapter cases were prepared. On 21st November 1994 the complainant approached accused at 1.00 p.m and told him not to initiate chapter case proceedings against him and thrust something in his shirt pocket. The accused removed whatever kept by complainant in his shirt pocket by his hands. At that time 4 to 6 persons apprehended him. They caught him hands. There were currency notes in his hands. Accused told them that the complainant thrust notes in his pocket. He did not demand bribe at any time. He did not accept bribe amount. They did not listen to him. The witness in the case has deposed against him under pressure of police. On the complaint of complainant no action was initiated against his opponents and keeping grudge on that count, the complainant has filed false complaint against appellant. Chapter cases were initiated by accused against both the parties on instructions from PSI Rasal. Before the accused would forward chapter cases to Mohol Police Station for registration and for further action, he was trapped. He has not committed offence.

6. Learned advocate for appellant submitted that entire case of

prosecution is false. The demand and acceptance has not been proved. The complainant has falsely implicated the appellant as chapter case proceedings were initiated against him as per directions of superiors. The demand of bribe has not been established. The prosecution has failed to establish the charges against appellant. There is no independent evidence corroborating the version of complainant. The panch witnesses have not corroborated the complainant.

7. Learned counsel for appellant has relied upon following decisions :

- (i) **Sat Paul Vs. Delhi Administration**¹,
- (ii) **G.V.Nanjundiah Vs. State (Delhi Administration)**².

8. Learned APP submitted that accused has demanded bribe amount. The accused has accepted the bribe amount. The evidence on record supports the prosecution case. The demand and acceptance has been proved. The presumption u/s.20 of P.C.Act has not been rebutted. The currency notes containing anthracene powder were recovered from the accused. The bribe amount was demanded for not initiating chapter proceedings against complainant. The offences are proved against accused beyond doubt. The accused was posted at Kamti outpost. This fact has not been disputed. Superior officer has instructed the accused to initiate appropriate action in respect to the complaint of complainant. Chapter case proceedings were initiated by the accused against complainant. Motive to demand bribe was established. The Trial

1 (1976)1-SCC-727

2 1988-SCC-(Cri)-77

Court has assigned reasons for conviction of accused. There is no reason to interfere in the judgment and order convicting the appellant.

9. In the light of the submissions advanced by both the sides, I have scrutinized the evidence on record. PW-1 Annappa Koli has acted as panch witness. According to him, he had visited the office of ACB. Other panch was present at the office of ACB. He was appraised about the demand of bribe by accused. The complainant was introduced to them. Pre-trap panchanama was recorded. Appropriate instructions were given to them. Complainant was instructed to visit Kamti outpost and meet accused and request him to take action on the application and not to file chapter case. PW-1 was asked to accompany complainant. If the accused demands bribe, the marked currency notes be handed over to him. Pre-trap panchanama was recorded and all of them proceeded towards Kamti outpost. At about 1.45 pm, PW-1 and complainant went to Kamti outpost. Accused was present at the outpost. One person was sitting at the same premises. The complainant requested the accused not to file chapter case against him. The accused enquired whether he has brought Rs.200/- as suggested by him and told him to pay if he has brought the same. The complainant replied in affirmative. He removed currency notes from his shirt pocket and held the same before accused. The amount was accepted by accused. He kept it in his shirt pocket by opening flat button of shirt. After keeping the amount he closed the button by left hand. He was approached by raiding party. Amount was recovered from him. Trap panchanama was recorded.

10. In the cross-examination PW-1 has stated that before giving evidence he has read his statement and panchanama. By reading panchanama and statement he felt that he should depose as per panchanama. Members of raiding party were standing near the outpost, when PW-1 and complainant entered into outpost. The accused did not enquire about him. He did not state before Dy. Superintendent of Police Chavan when his statement was recorded on 22nd November 1994 that the constable sitting on southern chair ran away when the panchanama was in progress. After the complainant went out, he remained inside the outpost. The accused did not enquire as to why he is standing there.

11. PW-2 Ajan Mujawar was working as Chaukidar at Irrigation Department. According to him he visited Kamti outpost on 21st November 1994. He visited outpost to lodge report about incident of quarrel between brothers. The accused was Head Constable at Kamti outpost. The accused and other constables were present at the outpost. He was talking to the accused and narrating his complaint. The accused told him that he is busy in his work and he should remain outside. The complainant along with another person entered into the outpost. 4 to 5 persons followed him. Something has happened inside the outpost. He was asked to come inside. He was asked to visit ACB office on the next day. He did not visit the office of ACB on the next day. It did not happen that complainant and another person requested accused not to file chapter case against him and the accused demanded and accepted Rs.200/- from the complainant and the accused kept the money in shirt pocket. The learned APP requested permission to cross-examine the witness, since he had resiled from his previous statement. In the cross-

examination by APP he stated that he is not on cross terms with Police Inspector Shaikh or others. When he received summons he did not file any complaint. He did not contact prosecutor to tell him that he has no concern with this matter. The accused did not tell him that his complaint would be recorded latter on. He did not file complaint till today regarding incident of quarrel. He knows the accused prior to the incident His relations with accused are smooth. On 22nd November 1994 he was on leave. It is not true that on 22nd November 1994 he visited ACB office and his statement was recorded by Deputy Superintendent of Police Chavan. He did not make enquiry as to why several persons were entering Police Chowky. In the cross-examination by defense he stated that it is not true that the accused had filed chapter case report against him. The accused had filed chapter case report against Roshanbi i.e. his mother and elder brother Shahjan. Although he is acquainted with accused, his relation with him is not close.

12. PW-3 Baburao Shende is the complainant. According to him, some persons had assaulted him and his wife. Sarpanch of village had intervened and rescued them. He filed complaint at Mohol Police Station. He sent application to Superintendent of Police (Rural), Solapur. He met PSI Rasal and told him about his complaint. He wrote some matter on chit and kept it in the envelope. He handed over the envelope to him and told him to hand over the same to accused. He wet to Kamti outpost. Accused was not there. On the next day he came to Kamti outpost and handed over that envelope to accused. He was told by the accused that PSI Rasal had instructed him to file chapter case against both the parties. He was annoyed that chapter case was to be filed against him, in spite of fact that he

was complainant. He visited office of ACB at Solapur. Complaint was recorded. Complaint was not read over to him at ACB office. Panch witnesses were introduced to him. He produced the amount for trap. Procedure for trap was completed. He entered the outpost along with panch Koli. One constable was present. He requested accused not to file chapter case and offered Rs.200/- to him. The accused accepted amount by right hand, kept it at some place. Signal was given to raiding party. They entered into outpost. He remained outside. He was called inside. On next day his statement was recorded. While giving instructions he was informed that he should go to Kamti outpost along with panch Koli and request accused not to file chapter case and only on demand he should pay amount to accused and not otherwise. Learned APP at this stage requested the Court to allow him to put questions in the form of cross-examination in respect to his statement dated 22nd November 1994, and complaint dated 21st November 1994. Permission was granted. He stated that his complaint was read over to him. He stated that he did not make statement portion marked 'A' from his complaint Exhibit-19. He did not make portion marked 'A' from his statement dated 22nd November 1994. He is not in cross terms with Deputy Superintendent of Police Chavan or Police Inspector Shaikh. In cross-examination by accused he admitted that his complaint dated 6th November 1994 in respect of incident at the village against Tamboli was recorded by accused. It is not true to say that he was told by accused that it was N.C case and he should file his case in Court. Complaint dated 6th November 1994 was shown to him. His grievance was that despite his complaint, no action was taken and there was exchange of hot words between him and accused on 6th. During the enquiry accused had recorded his statement. He insisted

that same be read over to him. Despite his complaint no action was taken against Tamboli. They were not called at Kamati outpost. Accused told him to bring his wife for recording statement. He did not like the fact that despite his complaint, chapter proceedings were proposed against him. In his presence accused opened closed envelope and read over to him instruction of PSI Rasal and told him that he had directed to file chapter case against both the party. He was asked to bring his wife on the next day for recording statement. He had a feeling that accused was deliberately not initiating action against Tambolis and therefore he filed false complaint. He told Deputy Superintendent of Police that in spite of his complaint, chapter case action is taken against him. Complaint was not read over to him.

13. PW-4 Mohammed Shaikh was attached to Kamti outpost. He is Police Constable. Accused was head constable. Accused was his superior. According to him accused was present at chowkey. One person sitting on the chair opposite to the table of the accused. Two persons entered into chowkey One of them told accused not to file chapter case. He did not hear further talk between them. One of them went outside and 4 to 5 persons entered into chowkey. They were from ACB. One of the person who remained there pointed at accused and stated that he demanded and accepted Rs.200/-. The other persons held the accused by his both hands. He was shown statements of Yusuf Tamboli and Sharif Tamboli. He identified signatures. In cross-examination by defense, he stated that subsequently he came to know that accused demanded bribe of Rs.200/- from complainant.

14. PW-5 Bhaurao Chavan is the Deputy Superintendent of Police attached to ACB. He has deposed that complainant had visited his office. The complaint was recorded. It was decided to lay trap. The trap was arranged. Accused had accepted bribe. Tainted notes were recovered from accused. Papers regarding matter of complainant were recovered. One constable sitting in chowkey went out without their notice. He was constable Shailesh. One person sitting on chair gave his name as Allad Mujawar. He stated that he knows accused. He visits outpost frequently. Another person present gave his name as Navnath Mahadkar. He conducted investigation. In the cross-examination he stated that when they entered into outpost he knew that Constable Shaikh had witnessed the incident. He was important witness. He realised that Police Constable Shaikh has gone outside, when he started making enquiry with other persons. He recorded statements of witnesses at Solapur. He had forwarded messages to Mohol Police Station to send PC.Shaikh. He did not record version of Mahadkar in the panchanama. On going through panchanama he stated that he had interrogated Mahadkar and recorded his version in panchanama.

15. PW-6 was Superintendent of Police (Rural), Solapur. He was competent to appoint and remove the constables and police head constables. Papers of investigation were handed over to him. He noted that it was a fit case to accord sanction. Sanction was granted. In the cross-examination he stated that subordinates are supposed to follow the legal orders given by superiors. He did not remember whether papers sent to him included the papers attached at the time of trap panchanama. In the present case motive for demand of bribe was not to file chapter case against the complainant. He did not

know whether accused had filed chapter case against both the parties. Draft sanction order was sent to him along with papers of investigations. In most of the cases sent to him for sanction, he had accorded the sanction.

16. PW-7 Ravindra Rasal was the Police Sub Inspector attached to Mohol Police Station. The accused was Head Constable attached to Kamti Outpost. There are three constables attached to Kiamti outpost. On 6th November 1994, accused was P.S.O Police Station, Mohol. Complaint was filed by Baburao Shende u/s.323, 504 r/w 34 of Indian Penal Code. N.C case was registered. The accused recorded complaint of complainant. On 9th November 1994 the complainant had sent one application to Superintendent of Police (Rural), Solapur. It was sent to Mohol Police Station. It was sent to the accused for the purpose of enquiry. Along with application one forwarding slip was sent by S.P.Office and on the back side of slip he passed order to make enquiry and initiate action under Section 107 of Cr.PC if there is substance in the matter. The slip was Exhibit.24/2 and application is at Exhibit-24/3. The complainant visited police station and complained before him that no action was taken on his complaint dated 6th November 1994. He handed over packet to the complainant and told him to hand over the same to the accused for further action. By that order he had communicated to the accused to take prohibitory action against both the parties if required. The complainant met him for the first time on 18th November 1994. Without going through the record he cannot state on which date the order passed by him was sent to accused and when it was received by the accused.

17. On scrutiny of evidence it is noticed that evidence of witnesses does not inspire confidence. The benefit of doubt must be given to the accused. The demand has not been proved beyond doubt. Acceptance of amount is doubtful. The evidence of witnesses suffers from serious discrepancies. Chapter case proceedings were directed to be initiated against both the parties. The complainant was aggrieved by the fact that he had approached the police by lodging complaint against his opponents. Complainant had approached the superior officer. Sealed envelope with instructions to the accused was handed over by the superior officer. Instructions were given by the superior officer that chapter case proceedings may be initiated against both the parties. The complainant has admitted that accused had instructed him to bring his wife for recording her statement in connection with enquiry. Statement of complainant, his wife and another person were recorded as part of enquiry under chapter case proceedings. The complainant was annoyed that in spite of complaint being filed by him, chapter case proceedings were initiated against him. Thus, action was initiated in accordance with instructions. There is no motive for the accused to ask for bribe from the complainant. Since the chapter case proceedings were initiated against the complainant, statements of his witnesses were recorded. The question of demanding bribe for not initiating chapter case proceedings does not arise.

18. The discrepancies writ large from the evidence of witnesses which are sufficient to disbelieve the prosecution case can be summarised as follows :

(a) The evidence of PW-1 and PW-2 is contradictory;

- (b) The demand of bribe was not verified;
- (c) Before giving evidence PW-1 read his statement and panchanama;
- (d) On reading the panchanama and statement PW-1 feel that he should depose as per panchanama;
- (e) The accused did not enquire about PW-1 either with him or complainant when he entered into outpost with complainant (PW-3);
- (f) When the complainant went out, PW-1 remained inside the outpost. The accused did not enquire with him as to why he was standing there;
- (g) PW-1 did not state in his statement dated 22nd November 1994 that constable sitting on the southern side chair ran away when the panchanama was in progress;
- (h) Chapter case proceedings were initiated against both parties. The statements of witnesses recorded during chapter case proceedings were seized. Statement of complainant, his wife relative were recorded on 24th August 1994, 24th September 1994, 24th October 1994. Statements of opponents Yusuf Tamboli, Sharif Tamboli were recorded on 7th October 1994, 7th November 1994. Statement of Ashabi Tamboli was recorded on 20th November 1994. Complaint alleging demand of bribe was filed on 21st November 1994 for not initiating chapter case proceedings against complainant. The demand was made on 20th November 1994. The statements of witnesses in chapter case were recorded on 20th November 1994 and 21st November 1994;
- (i) PW-2 had visited outpost on 21st November 1994 to lodge complaint. He did not support the prosecution case that accused demanded bribe in his presence;
- (j) Version of PW-3 (complainant) does not inspire confidence;

- (k) PW-3 was annoyed since he was told by accused that PSI Rasal has directed to file chapter case against both the parties since he was the complainant;
- (l) Complaint was not read over to PW-3 at ACB office;
- (m) PW-3 entered into outpost with PW-1. One constable was present. He requested accused not to file chapter case and offered Rs.200/- to him. The accused accepted money. Thus, his evidence shows that accused did not demand bribe;
- (n) PW-3 was given instructions that he should go to outpost with PW-1 and request accused not to file chapter case and only on demand he should pay money to accused and not otherwise;
- (o) APP made request to Court to put questions to PW-3 on the ground that he has resoled from his previous statement and complaint;
- (p) Complaint of PW-3 was recorded by accused on 6th November 1994. His grievance was that despite his complaint no action was taken and there was exchange of hot words between him and accused on 6th itself;
- (q) During the course of enquiry accused recorded statement of PW-3;
- (r) In presence of PW-3 envelope was opened and it was read over to him and he was told that chapter case were to be filed against both parties;
- (s) PW-3 did not like the fact that despite his complaint, chapter case was proposed against him;
- (t) PW-3 had a feeling that the accused was deliberately not taking action against Tambolis and therefore filed a false complaint with ACB;
- (u) PW-3 told PW-5 that in spite of his complaint, the accused had

proposed chapter case against him. PW-5 produced typed complaint but it was not read over to him;

(v) PW-4 was attached to Kamti outpost. According to him he was at the outpost on 21st November 1994. Two persons visited outpost. One of them told accused not to file chapter case. There was further talk between them. He did not hear. One of them went out and 4 to 5 persons entered into chowkey. One person who remained inside stated that accused demanded Rs.200/0 with complainant, and amount was accepted by accused;

(w) Thus, PW-4 did not hear conversation regarding demand of bribe by accused. He did not see accused accepting money;

(x) PW-5 stated that when he entered outpost with others he knew that constable Shaikh had witnessed the incident. He was important witness. Constable Shaikh went out when he started enquiry with others. He did not send constable to bring him back;

(y) PW-5 referred to presence of Ajjad Mujawar, Navnath Mahadkar at chowkey. Statement of Mahadkar was not recorded. Both these persons were not examined;

(z) PW-6 accorded sanction. He admitted that subordinate are supposed to follow orders of superiors. Motive for demand was not to file chapter case;

(aa) Accused had followed instructions of PW-7 and initiated chapter case against both parties. PW-3 was under impression that proceedings are initiated against him although he is complainant;

(bb) PW-7 had directed issuance of prohibitory order against both parties, letter was handed over to PW-3;

(cc) The prosecution case suffers from serious doubt. The accused cannot be convicted on doubtful version of witnesses. Demand of bribe and its acceptance is not proved beyond doubt.

19. In the case of Sat Paul (supra), it was observed that evidence of interested witnesses on trap has to be corroborated by independent evidence. In the case of G.V.Nanjundiah (supra), it was held that allegations of taking bribe should be considered along with other material circumstances. Where the prosecution's allegation of demand of bribe are false, the allegation of payment of bribe and recovery of the same from the accused must be viewed with suspicion.

20. The case of prosecution of demand of bribe is under the clouds of suspicion. Taking into consideration the discrepancies in the evidence, accused is entitled for benefit of doubt and deserves to be acquitted. Hence, I pass following order :

ORDER

- (i) Criminal Appeal No.453 of 1998 is allowed and disposed of;
- (ii) The impugned judgment and order dated 31st March 1998 passed by learned Special Judge, Solapur in Special Case No.1 of 1995 convicting the appellant, is set aside and the appellant is acquitted of all the charges.

(PRAKASH D. NAIK, J.)

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