

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

CRIMINAL APPEAL NO. 328 OF 1997

Gajanan Hiru Mhatre (since deceased)

Through his wife Smita G. Mhatre

..Appellant

Versus

The State of Maharashtra

..Respondent

Mr. Prashant Badole for Appellant.

Mr. R. M. Pethe, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 25th JULY 2022.

JUDGMENT :

1. This is an Appeal against conviction. The original Appellant has expired and the appeal is prosecuted by his wife. The original accused Gajanan Mhatre had faced the trial before the Special Judge (Anti Corruption Act), Raigad, at Alibag in Special Case No.1 of 1991. He was charged and was convicted for commission of offence punishable U/s.7, 13(1)(d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'said Act'). For the offence punishable U/s.7 of the said Act the accused was sentenced to suffer R.I. for six months and to pay a fine of Rs.500/- and in default to suffer R.I. for one

month. For the offence U/s.13(1)(d) punishable U/s.13(2) of the said Act, the accused was sentenced to suffer R.I. for one year and to pay a fine of Rs.500/- and in default to suffer R.I. for one month. Substantive sentences were directed to run concurrently.

2. As mentioned earlier, while the accused was on bail during the pendency of the Appeal, he passed away and Appeal was continued by his wife Smita Mhatre.

3. I have heard Shri. Prashant Badole, learned counsel for the Accused and Shri. Pethe, learned APP for the State.

4. The prosecution case is that, the accused was working as Unarmed Police Naik attached to Khalapur police station. He was allotted work of Special Duty Constable. The complainant Janardan Mande's son Pandurang wanted license for plying auto rickshaw and for that, he needed verification certificate from that police station. It is the case of the prosecution that, on 13/10/1990, the complainant and his son approached Khalapur police station for obtaining such certificate. They were directed to pay Rs.50/- for which receipt was issued. However, above that, the

accused demanded Rs.300/- for issuing verification certificate. The complainant tried to negotiate with the accused, however, the accused refused to give certificate unless the amount of Rs.300/- was paid to him. The complainant then approached the Anti Corruption Bureau and lodged this complaint.

5. On 03/11/1990 pre-trap panchanama was prepared, anthracene powder was shown to the complainant. The powder was applied to three currency notes of Rs.100/- each. They were kept in the pocket of the complainant. The raiding party consisting of two panchas and officers of Anti Corruption Bureau along with the complainant and his son went to Khalapur police station. The accused had gone out to have tea. When he returned, the complainant and his son and one of the panchas Vishvanath Vethkoli went near him. The accused gave verification certificate in a packet to the complainant and after that again demanded Rs.300/- for doing that work. The complainant gave Rs.300/- from those marked currency notes. The accused kept two currency notes out of them and returned one note to the complainant. The complainant kept that note in his own pocket of shirt. In the

meantime, another police constable handed over a wireless message to the accused. The Complainant came out of the room and gave prearranged signal. The accused also came outside behind him, reading that message. The officers of A.C.B. caught the accused by his wrists. His hands were examined under ultraviolet light which revealed that his both hands were having traces of anthracene powder. In the meantime, as soon as, the accused was caught, he threw the notes on the ground along with the paper which he was carrying. The anthracene powder was also found on the ground. After that the officers of A.C.B. lodged the complaint. The investigation was carried out. Sanction was obtained and the accused faced the trial.

6. During trial the prosecution examined six witnesses.

PW-1 Madhukar Jadhav was a constable from the same police station.

PW-2 Janardan Mande was the complainant.

PW-3 Vishwanath Vethkoli was the pancha who had accompanied the complainant when the amount was given to the

accused.

PW-4 Pandurang Janardan Mande was the complainant's son who needed that verification certificate. PW-4 was present with PW-2 and PW-3 while the amount was handed over to the accused.

PW-5 Rakesh Mariya was the sanctioning authority.

PW-6 Ramchandra Chache, Dy. S. P. of A.C.B. department was the Investigating Officer and he had given his complaint which was registered at Khalapur police station vide C.R. No. II 43 of 1990 under the aforementioned sections.

7. The defence of the accused was very specific which he had mentioned in the answers to the questions put while recording the statement U/s.313 of Cr.p.c. He has specifically stated in those answers that he was serving in the police department 18 years prior to the raid. One room was allotted to Special Duty Constable, Crime constable and Barnishi constable. On 31/10/1990, at around 9.30 a.m. the complainant and his son came to his table. They wanted the verification certificate. The accused directed him

to the writer H. C. Jadhav. He deposited the amount of verification fees. They came back and showed him the receipt. They wanted the accused to do their work immediately. The accused asked them whether the complainant's son was convicted or penalized. He replied in the negative. The accused, thereafter told them that there was *bandobast* duty of some festival and he was required to submit information of Home guard to the Government. He was working as a Special Duty Constable. He asked the complainant and his son to wait for some time and told them that he could not give the verification certificate unless he had gone through the confidential record. At that time, the complainant asked the accused whether he knew PSI Bhalerao, who was at the control room, Alibag. The complainant told him that Bhalerao was his brother and that the accused should do his work immediately. The accused showed his inability to issue certificate immediately as he had to go through the confidential record. There was a quarrel between them. The accused came back in the night to the police station and completed his work. The complainant had not come back. The accused kept the papers in a wooden box. In the

meantime, the complainant had contacted said Bhalerao and at his instance a false complaint was filed. According to the accused, he did not make any demand. On 03/11/1990 they came back. At that time, H.C. Thakur was working on the next table. P.C. Mhatre was working on the Barnishi table. The accused immediately opened the box and handed over the packet to the complainant. In the meantime, PSO came there and handed over one wireless message to him. The accused was reading that paper. The complainant came from behind and tried to thrust currency notes in his hand. He did not accept it. When he was entering PSI room, somebody came behind him and caught his hand. After 5 to 10 minutes, I.O. Chache came and he took him to the room of PSI. Thereafter a copy of panchanama given to him and he was asked to put his signature. Then the complaint was filed. This is the defence of the accused.

8. Learned counsel for the accused submitted that the complaint was lodged at the behest of one Bhalerao who was also working in the police department. The accused had done his duty but the verification certificate could not be issued immediately on

demand. The complainant had got annoyed and at the behest of said Bhalerao, had lodged the complaint. He submitted that the complainant tried to thrust the amount in the hands of the accused and that's why anthracene powder was found on his hands. He submitted that, other pancha Sanjay Mande was a relative of the complainant. He was not examined and this is a lacuna in the prosecution case.

9. Learned APP, on the other hand, submitted that, finding anthracene powder on both hands of the accused is significant and it was not possible if the complainant had tried to thrust notes in the hands of the accused. Attempt to thrust could have involved only one hand. He submitted that, evidence of all the witnesses is consistent and, therefore, there was no reason to interfere with the finding of conviction and consequent sentence.

10. I have considered these submissions. The important evidence is that of PW-2, PW-3 and PW-4. So far as, PW-1 is concerned, his evidence is undisputed and it does not really help the accused in his defence. It is an admitted position that the

complainant and his son had gone to the police station. PW-1 had accepted Rs.50/- as charges for issuing verification certificate and for that purpose even receipt was issued. To that extent there is no dispute between the prosecution and the defence.

11. PW-2 is the complainant. He has stated about his visit to the accused's office for getting that certificate. He has deposed about paying Rs.50/- and he has specifically deposed about the demand of Rs.300/- made by the accused to them. PW-2 has stated that the accused told him that he would give report after the amount was paid and if it was not paid, he would complete the work leisurely taking his time. Thereafter he kept the packet given by the complainant in a wooden box and went outside. The complainant requested the accused to accept Rs.50/-, but he was demanding Rs.300/-. The complainant told him that they would come on Saturday. On the next day i.e. on 01/11/1990, PW-2 consulted with 2/4 villagers and decided to file a complaint. On 02/11/1990 he went to Alibag Anti Corruption office. He met Shri. Chache and narrated the facts. Chache reduced it into writing in the form of complaint. The complaint was produced at Exhibit 16.

On the next day i.e. on 03/11/1990 PW-2 along with his son with amount of Rs.300/- went to Khopoli Government Rest House at 9.30a.m. The Investigating Officer was there. He introduced the complainant with two panchas Vishvanath Vethkoli and Sanjay Mande. The complainant was knowing Sanjay Mande. Demonstration of Anthracene powder was given. The description of three currency notes of Rs.100/- was noted in the panchanama. Anthracene powder was applied to those notes. They were kept in the left chest pocket of the complainant's shirt. The Pancha was instructed to accompany the complainant in the police station pretending to be a friend of PW-4. The complainant was asked to give a signal after the amount was accepted by the accused. Thereafter all of them went to the accused's police station. The accused had gone to take tea. After he returned, he opened the wooden box and handed over verification certificate. He obtained complainant's son's signature for having received the verification certificate. The packet was handed over to the complainant. He kept it in his left hand. The accused then demanded Rs.300/-. The complainant took out three currency notes kept in his pocket. The

accused accepted the notes in his right hand. He opened the folded notes with his both hands. The accused told the complainant that he did not want that much amount and returned one currency note of Rs.100/- and kept two notes in his hand. The complainant kept that currency note in his shirt's pocket. He went out and gave the signal. The raiding party came there and caught the wrist of the accused. The accused dropped the currency notes on the ground which were in his right hand. He crumpled the paper which was in his hand and also dropped it on the ground. The complainant's hands were examined under the ultraviolet lamp. His right hand fingers and inner portion of pocket showed traces of anthracene powder. The remaining note of Rs.100/- was seized. The panchanama was carried out.

In his cross-examination, he has stated that P.S.I. Bhalerao was his maternal uncle and was working at control room at Alibag. Other pancha Sanjay Mande was complainant's nephew. He has further deposed that, when the demand was made, at that time, no other person was sitting in the room of accused and there were no officers on the other tables. At the time of raid the

accused did not make demand of money before obtaining his son's signature on a carbon copy of verification report. He gave the packet in the complainant's hand and then immediately made the demand. The complainant has stated that the verification was completed on 31/10/1990 itself. He denied the suggestion that he tried to pressurise the accused by disclosing Bhalerao's name. His complaint is produced at Exhibit 16.

12. PW-3 Vishvanath Vethkoli and PW-4 Pandurang Mande complainant's son have corroborated the evidence of PW-2 on all material points. Their cross-examination also has not yielded anything in favour of the defence. PW-3 accepted that other pancha Sanjay Mande did not tell them that the complainant was his uncle. Pre-raid panchanama is produced on record at Exhibit 18 and post-raid panchanama is produced on record at Exhibit 19. PW-4 was the son of PW-2 and he has supported PW-2's evidence to minute details. He has also stated that the accused had received the amount in his one hand and opened the folded notes with both hands and returned Rs.100/- to PW-2.

13. As far as sanction is concerned, the evidence of PW-5 has remained unchallenged and there is no serious challenge to the sanction or procedure for according sanction, even at this stage.

14. PW-6 Ramchandra Chache, Investigating Officer has completed the work of recording of the complaint, carrying out pre-trap and post-trap panchanama and of lodging of F.I.R. He has denied the suggestion of the defence that he had prepared the papers in the Rest house at Khalapur.

15. Learned Trial Judge considered this evidence and observed that the witnesses were corroborating each other. He specifically referred to the issue as to why traces of Anthracene powder should appear on the left hand of the accused when he had accepted the notes by his right hand. He has discussed this issue in paragraph No.32 of his Judgment after discussing the entire evidence.

16. I have considered these submissions and the evidence on record. The evidence of PW-2, PW-3 and PW-4 is absolutely consistent. PW-2 and PW-4 were together right from the time when

the first demand was made till the amount was paid to the accused. The important feature in this case is finding of anthracene powder traces on the both hands of the accused. According to the defence, the complainant had tried to thrust the notes in one hand of the accused. It is not the accused's case that the complainant had tried to put notes in both his hands. The anthracene powder could have been transferred on the both hands when the accused had opened the folded notes and had returned one of the notes to the complainant. That was the only time when Anthracene powder could have been transferred on the other hand. The accused has not explained this important feature when his statement U/s.313 of Cr.p.c. was recorded. The other important feature is that, even as per defence the accused had completed the verification report on that very day i.e. on 31/10/1990. The accused has stated that, after he came from his duty he completed the report. There was no reason as to why report was not handed over or prepared in the presence of complainant and his son and why it was not handed over immediately. They were asked to come after two days to receive the report. It supports the complainant's case that demand

was made to complete the report at the earliest. The defence has not clearly established as to how said Bhalerao was instrumental in guiding the complainant to lodge the report. The only conclusion that can be drawn that the accused had demanded and had accepted the bribe amount for giving verification report to the complainant and his son. The submission that the amount was paid after verification report was handed over and therefore there was no demand; does not really support the defence case, because immediately on handing over the verification report the accused again demanded the bribe amount and had actually accepted it. The other Pancha was the complainant's relative. But in this case it does not affect the prosecution case because PW-3 Vethkoli was an independent pancha who had witnessed the demand and acceptance of the bribe amount and had deposed accordingly.

17. Considering the evidence on record and above discussion, no case for interference is made out. The Appeal is accordingly dismissed.

(SARANG V. KOTWAL, J.)