

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

CRIMINAL APPEAL NO.1053 OF 2007

The State of Maharashtra]
(Through Pandharpur Town Police Station)] .. Appellant
(Orig. Complainant)

v/s.

Dadu Appa Nimbalkar]
aged 45 years, Occu: Service,]
R/o. Tulshi, Tal. Madha, at present Adhiv,]
Tal. Pandharpur, Dist- Solapur.] .. Respondent.
(Orig. Accused)

Shri S. V. Gavand, APP for the Appellant-State.

Shri D. W. Bhosale, for the Respondent.

CORAM: PRAKASH D. NAIK, J.

DATED : 17th JANUARY, 2022.

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ORAL JUDGMENT:-

The Appellant is the State of Maharashtra. This appeal is preferred under Section 378 (3) of Criminal Procedure Code, challenging the judgment and order dated 27th September, 2005 passed by Special Judge, Pandharpur in Special Case No.1 of 2001 whereby respondent is acquitted for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 (for short 'PC Act').

2 The case of the prosecution is as follows:-

- (a) The complainant – Bhanudas Dattu Jadhav is resident of Pandharpur. He has landed property bearing Gat No.47 ad-measuring 6 acre at Kasegaon. This land is irrigated through well and canal water. The complainant was cultivating the crops of

sugar-cane and ground nuts.

- (b) The accused is Patkari/ Distributor of canal water. He is class-IV employee, serving in Irrigation Department, Division No.2. He was initially appointed as a labourer in Bhima Patbandhare Branch No.1 vide order dated 20th October, 1997. Thereafter, by order dated 17th September, 1998, he was appointed at Bhima Patbandhare Branch No.2 Pandharpur.
- (c) The complainant received bill of irrigation charges for an amount of Rs.2,832/- for the year 2000. He paid the charges at canal office Kasegaon. The receipt was issued for that payment. In spite of payment of charges, one Balu Godse and accused visited complainant's tea stall at Pandharpur and demanded the amount of Rs.5,000/- towards irrigation charges. The complainant informs the accused and Balu Godse that he has no arrears and he has already paid Rs.2,800/- towards charges. The accused told the complainant that he will impose penalty of Rs.9,000/- for the arrears and it will be recovered by executing panchnama. Balu Godse was demanding money. Ultimately, the amount was settled at Rs.4,300/- between the complainant and the accused. It was agreed to be paid within 2 to 4 days for not charging arrears of bills to the complainant.
- (d) Complainant was not satisfied with the demand from accused and he approached ACB Office at Solapur and narrated the incident to the Officer of ACB. Shri Panse Saheb (PW-6). The complainant carried with him the extract of 7/12 khata, receipt for payment of irrigation charges and ferfar. The grievance of the complainant was reduced into writing.
- (e) Shri Panse Saheb called two panchas namely – Shankar Guram and

Suryakant Patil in the office of ACB at Solapur. They were introduced to the complainant. The pancha asked to verify the grievance of the complainant. Accordingly, pancha verified the grievance of the complainant from him and read the contents of the complaint. The pancha also made endorsement on the complaint about verification.

- (f) Complainant produced amount of Rs.4,300/- before the ACB Office. The numbers on the currency notes were noted and written in pre trap panchanama. Panchas were instructed to search the person of the complainant. Anthracene powder was applied to the currency notes.
- (g) Trap was arranged. Instructions were given to members of raiding party. Complainant was instructed that Pancha No. 1 would remain with him and he should not touch the currency notes till bribe is demanded by the accused. He was also instructed that he should have open talk with the accused so that the accused would demand money. He was instructed not to pay the amount unless demanded by accused. He was also instructed to give signal to the raiding party as soon as the accused accepts the currency notes.
- (h) Pancha No.1 was instructed to accompany the complainant and to watch the conversation between the complainant and the accused and the activities of the accused if required. Pancha No.2 was instructed to remain with raiding party and on received the signal from the complainant, he should go to the spot of trap.
- (i) Shri Panase Saheb, the members of staff, Panchas and the complainant along with required articles provided from Solapur to Pandharpur after executing pre-trap panchanma. They reached

Pandharpur at about 3.45 p.m..

- (j) Complainant and Pancha No.1 went ahead to the tea stall of the complainant. The members of raiding party waited at the distance from the place of trap. The complainant and Pancha No.1 visited the tea stall and waiting up to 5.30 p.m.. At about 5.45 p.m. one person came in the canteen. Complainant saluted him and took his name as Nimbalkar so that Pancha No.1 came to know that he was accused. Accused then sat in between Complainant and Pancha No.1. Complainant told the accused not to recover the arrears with penalty. Accused asked the complainant whether he had brought money as agreed. Accused told him that he will see the things later on and asked the complainant to pay the amount of Rs.4,300/-. Complainant took out the amount from his shirt's pocket and gave the amount to the accused. On receipt of the amount, accused started counting the money. Complainant gave signal to the raiding party. Officer came to the spot on receipt of signal. Police caught accused and search of accused was conducted. Accused was arrested. Currency notes were recovered from him. Currency notes were found in his pocket.
- (k) On completing the investigation, charge-sheet was filed. The charge was framed against the accused under Section 7 of PC Act and under Sections 13(1)(d) read with 13(2) of the PC Act vide order dated 2nd March, 2005.

3 PW-1 - Shankar Guram is the Panch Witness. PW-2 - Bhanudas Jadhav is the complainant. PW-3 – Baban Sangerampurkar is the Executive Engineer and Sanctioning Authority. PW-4 – Subhash Ullagadde is Sub-divisional Engineer at Bhima Patbhandhare, Pandharpur

Division. PW-5 – Salim Maniyar is the Sectional Officer of Bhima Irrigation Project at Pandharpur. PW-6 – Dilip Panse is the Investigating Officer.

4 The Trial Court after recording the evidence of prosecution witnesses and the statement of accused under Section 313 of Cr. Procedure Code, delivered the impugned judgment of acquittal. The Trial Court has given finding that accused had not demanded illegal gratification of Rs.5,000/- as a public servant from the complainant for not showing the arrears of irrigation charges. Prosecution has not proved that the accused has committed misconduct being a public servant by corrupt or illegal means in demanding and accepting the amount of Rs.4,300/- from the complainant. There is no cogent and satisfactory evidence laid by the prosecution to hold that accused has demanded and accepted the bribe money.

5 The learned APP submitted that Trial Court had not considered the evidence in proper perspective. The demand and acceptance of bribe amount was not proved. Section 20 of the PC Act relates to presumption. The said presumption has not been rebutted by the accused. The evidence of the prosecution witnesses was sufficient to prove the offence. Trial Court had committed an error in acquitting the accused. Bribe amount with Anthracene powder was accepted by the accused. Independent witness was present at the time of acceptance of bribe amount. There was demand of Rs.5,000/- by the accused. Accused demanded illegal gratification of Rs.5,000/- for not showing the arrears of irrigation charges and accepted amount of Rs.4,300/-. Charges were proved with reliable evidence. The accused had pleaded that the tainted

amount was thrust into his pocket. The said defence was rejected by Trial Court. However, the Court held that accused was collecting charges.

6 Learned Advocate for the Respondent supported the judgment of Trial Court. It is submitted that no case is made out for interfering in the judgment of acquittal. There was no specific demand of bribe by accused. The evidence of complainant is doubtful. Acquittal is supported with reasons. Complainant was interested in implicating the accused in the offence.

7 I have scrutinized the evidence on record. PW-1 is panch witnesses. He was summoned to act as a Pancha. Suryakant Patil was another panch. They were introduced to complainant. The complainant explained them his grievance. Preparations were ordered for trap. They proceeded to Pandharpur, after receiving pre-trap Panchnama. He was instructed to be with the complainant. He was instructed to go to the hotel along with the complainant. Both of them waited for the accused in the canteen. Accused came there. Complainant asked the accused not to recover the arrears with penalty. Accused asked the complainant whether he has brought Rs.4,300/- as agreed. Accused told complainant to pay the amount. Complainant gave the amount to the accused. Accused was apprehended with the trap amount. The tea stall was belonging to complainant. In the cross examination, he stated that he went to the office of ACB Solapur at 2.00 p.m. He was told that they are required to go to Pandharpur for raid. He had no talk with the complainant at Solapur before they departed to Pandharpur. There was crowd of customers at the hotel. Shri Panase did not show him any kind of

documents, when he went to ACB Office on first occasion.

8 From the evidence of PW-1, it can be derives that, there was no verification of demand prior to trap. He is not party to conversation between accused and complainant relating to demand of amount of bribe of Rs.4,300/- prior to incident of trap. The trap was arranged at tea stall at Pandharpur. The prosecution case about demand by accused prior to trap is based on sole testimony of complainant. According to him, the complainant told accused not to show arrears of irrigation charges. He started the conversation. The accused enquired with complainant whether he had brought money as agreed and told him to pay the amount of Rs.4,300/- as agreed. The conversation of previous agreement between them is based on version of PW-2 complainant. What is deposed by PW-1 does not clearly indicate that accused had demanded bribe amount for not showing arrears and imposing penalty of Rs.9,000/-. It is not clear how amount of Rs.4,300/- was calculated if it was towards illegal gratification. Panchanama dated 6th April, 2000 Exh. 10 is pre-trap Panchnama. PW-1 is Panch witness in said Panchnama. He is also Panch in trap Panchnama Exh.11 dated 6th April, 2000.

9 PW-2 Bhanudas Jadhav is the complainant. According to him, he is owner of the property at Kasegaon, ad-measuring 6 acres. He received bills of irrigation charges of Rs.2,832/- in the year 2000. He paid said charges in the canal office at Kasegaon. Receipt was issued. On the next date of payment of bill, he was at his tea stall. Balu Godse and the accused came to his stall. Accused was Canal Inspector. His duty was to distribute canal water. Balu Godse used to accompany him. They demanded Rs.5,000/- towards arrears of bill. He told him that, there are

no arrears and he paid an amount of Rs.2,800/-. Accused told that he will impose penalty of Rs.9,000/- for arrears. Penalty is recovered on making panchnama. Balu Godse was demanding amount. Occasionally, he used to pay the amount. Sometimes, the person from irrigation used to collect the bills. There was no talk between him and the accused after the demand. Amount was settled at Rs.4,300/-. He told that amount would be given in 2-4 days in hotel at about 4.00 to 5.00 p.m. He lodged the complaint with the ACB Office. Trap was arranged. He produced the amount for trap. Instructions were given to him. Panch No.1 was directed to accompany him. All of them went to Pandharpur. Both went to his hotel. Accused came there. He gave money to accused. The accused demanded amount and he gave it. The accused was counting money. He was caught by ACB Officers. Currency notes were examined. Accused was demanding money through Balu Godse, who was person of accused. He paid amount to Balu prior to this occasion. He was declared hostile by prosecution and cross examined. In cross examination, he stated that he told the Accused not to recover the arrears and impose penalty. Accused told him to pay Rs.4,300/- as agreed and he will not take any action. While accused was counting money, he folded the right hand by left hand upto elbow and gave signal to the raiding party. The work of distribution of water was done by Balu Godse. He gave the amount for obtaining pass for lifting irrigation to the person from the Irrigation Department. He was told that he had to pay the amount on that day since period for making payment had expired. He gave Rs.2000/- to Officer and he was given receipt without date. He was told to pay balance amount to the person of irrigation department or Balu Godse. Both were coming to his filed. Balu Godse was only demanding money with him.

10 The evidence of PW-2 reflects confusion in his version. Firstly, it is stated by him that he had received bill of Rs.2,832/- in the year 2000. He paid charges in canal office at Kasegaon. Receipt was issued. Accused and Balu Godse demanded Rs.5,000/- towards arrears of bill. He told them that he had no arrears. He was threatened of penalty of Rs.9,000/- for arrears. Balu Godse was demanding amount and occasionally he paid amount to him. Thus, although PW-2 paid arrears, he kept on making payment to Balu Godse. Demand was made by accused and Godse. For what purpose he gave money to Balu is not stated. Was he paying bribe to Balu Godse? He has no grievance against Balu Godse. He is not impleaded as accused. He has not explained how bribe amount is settled with odd figure of Rs.4,300/-. In examination-in-chief, he stated that when the accused came to hotel, they did not talk. He gave money to accused as he agreed. Then he stated that accused demanded money and he gave it. The previous agreement is known to him and not panch witness. The purpose of demand is not spelt out by him. It cannot be told that amount was given towards bribe. He further stated that accused was demanding amount through Balu Godse, who is his person. This is contrary to his earlier version and case of prosecution. After he was declared hostile and cross examined, he admitted suggestions of prosecutor. The question is on the basis of such evidence, can the accused be convicted. Subsequently, he stated that he gave amount of Rs.2,000/- to Officer. He produced Receipt Exh. 18 which do not bear date. He was told by Officer to pay balance amount to irrigation department or Balu Godse. What was this amount for, when according to him, there were no arrears. According to him, accused and Balu Godse visiting his field and only Balu Godse was asking money to him. The

witness is in confused state of mind and it appears the accused is being made scapegoat.

11 PW-3 – Baban Sangrampurkar was Executive Engineer. He was satisfied from the record and granted sanction to prosecute the accused. The accused is not concerned with issuing notice of arrears. He had no authority for receiving money.

12 PW-4 – Subhash Ullagadde was serving at Bhima Patbhandare as a Sub-divisional Engineer. According to him, accused was labourer but doing work of Beet holder/ Patkari. It is his duty to intimate the cultivator to pay irrigation charges in the section office and fill up the form of demand of irrigation water. He has no right to recover any amount or demand. Complainant was not in arrears. It was not his duty to see arrears. He has no personal knowledge about allotment of work by PW-5.

13 PW-5 – Salim Maniyar has stated that, he was Section Officer at Bhima Project. On 31st March, 2000, complainant had filled the form. Complainant had paid fees as per the receipts. There were no arrears on 31st March, 2000 against the complainant.

14 PW-6 conducted investigation. He stated that there was no date on receipt produced by the complainant regarding payment of irrigation charges. He did not verify the receipt before the trap. There was no grievance by complainant against – Balu Godse.

15 In the light of the discrepancies in the evidence of complainant and Panch witness, the presumption under Section 20 of the

P.C. Act is of no assistance to prosecution. The demand of bribe and acceptance of money as bribe is not established beyond doubt.

16 The Trial Court has analyzed the evidence and submissions of both sides while passing impugned judgment. Paragraphs 42, 43 and 44 can be quoted for reference:-

“42:- The defence submitted that the accused who is a bit holder or Patkari is given duty to recover irrigation charges by giving quota/target of recovery. Defence has produced the order given by the Branch Engineer to accused and other three persons namely Gaikwad, Mane and Deokate, that they should complete the target of recovery to the extent of 100%. This is the order dated 18/11/05. List of the target given for the year 1995-96 is also mentions this list of recovery is also issued by Branch Engineer Bhima Patbahndare Pandharpur. There is another order of Branch Engineer dated 6/6/97 which shows that if target is not completed of recovery of irrigation charges, the employees will not be paid their salary. This is the order in writing issued to accused and other two persons by Branch Engineer. So it is tried to submit before me that on behalf of defence that accused who was labourer and who was assigned duty of distribution of water is also given the duty of recovery of irrigation charges by the officers concerned. There is substance in the contention of the defence on this point as the Section Officer PW.5 Salim Maniyar has deposed in the cross examination that if the customer comes his arrears are to be accepted and then his form is to be taken. He further deposed that there is column in the form about the arrears. Signature of the holder of the person of the distributor like accused is also required to be taken in the said form. In the form of the accused column in respect of the holder of distributor is kept blank. It does not bear signature of bit holder. He further deposed that if the customer pays the amount, to bit holder, receipt is paid and given to bit holder and his signature is obtained for authority of receipt. He further admitted that Avate, Mane and Nimbalkar are the persons who brings the amount from land holders. So evidence of these witnesses supported with by the documents produced by the defence under sec. 313 Cr. P. C. and also from the evidence of complainant, it is clear that the accused who is a labourer and who

is assigned work of bit holder and also to recover arrears or the amount of irrigation charges from the consumers i.e. land holders. The Sub division Engineer Subhash Ulagadde has also admitted that accused was to act as per the directions of the Sectional Officer and Sectional Officer Maniyar P.W-5 has admitted that the accused was also assigned duty of recovery of amount and he used to bring the amount from the holders of land/ consumers.

43:- Exh. 18 is the receipt which is said to be for the arrears of Irrigation charges paid by complainant Bhanudas in Irrigation Office at section Kasegaon Office. This receipt does not bear the date. As per complainant, he had paid Rs.2,000/- to the officer person in that section on that day, when he made payment. It is not the case of prosecution that complainant Bhanudas has paid Rs.2832/- as per receipt Exh. 28. On the contrary, it is clear from the evidence on record that the date was not mentioned on the receipt as payment was not made fully. It further goes to show that the complainant has deposed in the cross examination that he was asked by the officer to pay the balance as per receipt Exh. 18 i.e. Rs.832/- in the office or to the person of the department. This is clear to show that the complainant was to pay the amount to the person of the department of the irrigation charges as per receipt Exh. 18. It is also not clear from the evidence of the prosecution witnesses namely P. W.4 Subhash Ulagadde and P. W. 5 Maniyar whether complainant Bhanudas was in arrears of irrigation charges or not as they did not bring any evidence to that effect so when it was practice to recover the amount of irrigation charges and also arrears through the staff members though P.W. Subhash Ulagadde has stated that it was not of the business of the labourer or bit holder to accept or demand the amount of irrigation charges from the consumers. However, he admitted that the labour or bit holder were to act as per the directions of Section Officer. The evidence on record that the complainant P.W. 5 Ulagadde that the documents produced on record by the defence as per sec. 313 Cr. P. C. leads to inference that the staff members including the accused were recovering the amount from the consumers. Therefore, the receipt Exh. 18 is not bearing the date as the complainant had not paid the amount full and he was to pay some balance under that receipt.

44:- Whether accused had demanded the amount as gratification as public servant also remained doubtful position from the evidence on record. The complainant in the cross examination deposed that he complained to Shri Panse Saheb against Balu Godse who as

per the evidence of complainant used to come to him for demanding the money. However, the complainant in the cross examination deposed that he was instructed by Shri Panse Saheb. He was to put the amount in the pocket of the accused. Further, it is seen from the record that the complainant was to pay the balance as per the receipt Exh. 18 to any person of the irrigation department as per the instructions given by the officer of the irrigation department at Kasegaon. It is also clear from the evidence of the prosecution witnesses and the complainant that the labourer and bit holder including accused were recovering the amount of irrigation charges from the consumers. The target given to them was required to be completed otherwise they were not get the salary. The conduct of the accused No.1 of counting the currency notes/ itself is that of his innocence. I say that if at all accused was to accept the amount as a bribe it is generally not expected that a receipt of amount which is illegal in its inception, he was to count it, so also accused had joined Kasegaon sub division one year before the incident and it is said by the complainant that Balu Godse used to come to him for taking the amount. It is seen that it was the first occasion when the complainant Bhanudas Jadhav paid the amount of irrigation charges personally on going to the office of irrigation. Only at the time of receipt Exh. 18 though evidence show that he was taking canal water for irrigating his field prior that, receipt Exh. 18 does not bear the date also is the circumstance which is against the prosecution. So the over all circumstances on record it taken together with the fact that prosecution has not proved that the complainant Bhanudas Jadhav was in arrears or his dues were clear. The fact of accepting money on 6/4/00 i.e. at the time of trap may be as per the officer of the irrigation department who has executed the receipt Exh. 18 was to recover the balance. So complainant had no grudge against the accused and he was to lodge complainant against Balu Godse Accused was made a scaping goat taking advantage of the fact that receipt Exh. 18 was bearing no date. Thus from the evidence on record led by the prosecution it is difficult to accept the story of the prosecution regarding the demand and accepting of money by the accused as a bribe or gratification other than legal remuneration. It may be possible that the accused might have gone to the Tea Stall of the complainant for bringing arrears as per receipt Exh. 18 and therefore, he might have counted the amount when it was given by

complainant. So the evidence of the complainant panch No.1 and Shri Panse Saheb on the story of demand and acceptance can not be believed being not cogent and trustworthy.”

17 Considering all these circumstances, trial Court had opined that prosecution is failed to establish the charge. I do not find any reason to take a different view. Hence, I pass the following order :

ORDER

Criminal Appeal No. 1053 of 2007 is dismissed and disposed of .

(PRAKASH D. NAIK,J.)