

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.9 OF 2015

Nishikant s/o Sharad Pradhan
Age 28 years, Occu. Service,
R/o Gulmohar, Daulat Nagar,
Jalgaon, District Jalgaon

... APPELLANT

VERSUS

The State of Maharashtra
Through Police Inspector,
Anti Corruption Bureau
Jalgaon, Dist. Jalgaon
(Copy to be served on P.P.,
High Court of Bombay,
Bench at Aurangabad)

... RESPONDENT

.....
Mr. S.S. Manale, Advocate for appellant
Mr. A.A. Jagatkar, A.P.P. for respondent
.....

CORAM : R.G. AVACHAT, J.

Date of reserving judgment : 30th March, 2023

Date of pronouncing judgment : 11th July, 2023

J U D G M E N T :

The conviction for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the prevention of Corruption Act and consequential sentence of the appellant herein, is under challenge in this appeal.

2. The facts giving rise to the present appeal are as follows :-

The appellant was serving as a Senior Clerk with Maharashtra State Road Transport Corporation (MSRTC) Divisional Office at Jalgaon. Complainant P.W.2 Ganesh (complainant for short) was a book seller/ vendor. He had applied for a licence to sell water pouches at Chopda Bus Stand. His application was recommended by the then local M.L.A. of Taluka Amalner. The complainant had visited the MSRTC office, Jalgaon many a time so as to ensure grant of licence at the earliest. He was required to meet the appellant in connection therewith. The appellant also used to call him with a gap of a day or two. The complainant happened to meet the appellant at Akashwani Square, Jalgaon on 9/8/2013. The appellant asked the complainant to pay him Rs.10,000/- for grant of the licence. The complainant had with him Rs.2000/- that time. The appellant demanded the same as an advance. The complainant paid him that much amount that time and agreed to pay balance amount of Rs.8000/- on next visit.

3. The complainant did not wish to pay the

appellant bribe. He, therefore, approached Anti Corruption Bureau (ACB), Jalgaon on 13th of August. Shri Garud (P.W.4), Police Inspector, ACB recorded the complaint (Exh.11) lodged by the complainant. He decided to lay a trap. Since the complainant was to meet the appellant the same day, P.W.4 Shri Garud secured presence of two Government employees to act as panch witnesses. All the procedure such as pre-trap panchanama, giving necessary instructions to the complainant and the panchas was done at the office of ACB. The complainant along with a panch witness went to the S.T. Office, Jalgaon to have verification of demand of bribe. The appellant came after a while. He asked them to come to Ram Mandir, in the nearby of the office. The duo went there. The appellant, after a while, met them there. The complainant requested him to reduce some amount. The appellant initially declined, however, ultimately agreed to receive Rs.6000/- over and above Rs.2000/- already received. The complainant and the panch witness then returned to the ACB office. A demand verification panchanama (Exh.14) was drawn. Needless to mention, a voice recorder was concealed on the person of the complainant. Talk between him and the appellant was

recorded during visit for demand verification. A transcript thereof was prepared. After P.W.4 Shri Garud was satisfied about the appellant to have made a demand, he then decided to lay a trap. The complainant had assured the appellant to be back within half an hour with the amount at the same place. Again all the necessary formalities were done at the ACB office. Currency notes worth Rs.6000/- were smeared with anthracine powder. A voice recorder was again concealed on the person of the complainant. The complainant along with panch witness (P.W.3) Dilip again went to Ram Mandir. The complainant made a phone call to the appellant. He arrived. The complainant held the tainted currency notes before the appellant. He (appellant) received the same. The complainant then gave a pre-determined signal. The raiding party headed by P.W.4 Shri Garud immediately arrived. The bribe money came to be recovered from the appellant. The scene of offence panchanama was drawn. On completion of the investigation, the appellant was proceeded against by filing the charge sheet.

4. The trial Court framed the charge (Exh.2). The appellant pleaded not guilty.

5. The prosecution examined 4 witnesses and produced in evidence certain documents. The appellant examined one witness in his defence. The trial Court, on appreciation of the evidence in the case, convicted the appellant for the offence punishable under Sections 7, 13(1) (d) read with 13(2) of the Prevention of Corruption Act, 1988 and sentenced to undergo simple imprisonment for two years and to pay fine of Rs.5000/-, in default, S.I. for three months on each count. The substantive sentences have been directed to run concurrently.

6. It is in defence of the appellant that, at the relevant time he was serving as a Traffic Supervisor. The appellant had initiated a drive against unauthorised hawkers doing business on MSRTC premises (Bus Stands). A Writ Petition was, therefore, filed at his instance. Orders against unauthorised hawkers were passed in the Writ Petition. One Vishram Patil would run a lottery stall at New Bus Stand, Jalgaon. His son would run a hotel, at Amalner. The complainant was serving in the said hotel. Because of the orders passed in the Writ Petition, the hawkers were annoyed with the appellant. Shri Vishram Patil was a Vice

Chairman of the Hawkers' Association. He instigated the complainant to lodge a false complaint against the appellant and even got him trapped. It is further in his defence that the complainant had not preferred any such application for grant of licence. It was the policy of the MSRTC not to allow sale of water pouches at Bus Stands. The appellant was transferred from his position on 1st of May itself. It was the Divisional Controller who had authority to grant such a licence, if any.

7. Let us appreciate the evidence in the case. P.W.1 Hemant was the Incharge Divisional Controller, MSRTC, Jalgaon Division during the relevant time. It is in his evidence that the Divisional Controller was the appointing authority of the post of Clerk. It is further in his evidence, he had received all the papers of investigation from the Deputy Commissioner of Police, ACB, Nasik. He perused and verified all those documents and arrived at a conclusion that it was a fit case to accord sanction for prosecution of the appellant. He, therefore, accorded the sanction for prosecution (Exh.5).

8. During cross-examination of P.W.1, it has come

on record that, on the day of the incident i.e. on 13/8/2013, the appellant was serving as a Traffic Supervisor. He was serving on the said post since 1/5/2013. Therebefore, he was serving as a Senior Clerk. He claimed ignorance that Smt. Bhatane was the successor in office of the appellant as a Senior Clerk. It is further in his evidence that, powers to enquire and remove the appellant were given by his Department to one Mr. V.D. Dhayade, Divisional Traffic Superintendent. His evidence further indicates that, he had not received a draft of the proposed sanction along with police papers. It was he who dictated his Stenographer the contents of the sanction order. He claimed ignorance about the MSRTC's policy of not issuing licence for sale of water pouches at bus stands. According to him, it was the Divisional Controller who had authority to grant such licence. This witness also testified that, one Mr. Mahajan was held guilty in connection with a complaint made against the appellant herein in relation to the present crime.

9. The complainant gave his evidence consistent with his complaint (Exh.11). He has reiterated in his evidence that, he had made an application for grant of a licence to sell water pouches at Chopda Bus Stand. He

would, therefore, visit the office of Divisional Controller, Jalgaon. The appellant was a Clerk in the said office. He met the appellant many a time. The appellant made him take rounds in connection with the said work. It is further in his evidence that, on 9/8/2013, he happened to meet the appellant at Akashwani Square, Jalgaon. The appellant made a demand of Rs.10,000/- to do the needful for grant of a licence. The complainant had Rs.2000/- with him that time. He had to pay that much amount to the appellant on his demand then and there. He then assured to pay the appellant the balance amount of Rs.8000/- during next visit. Since the complainant did not want to pay the appellant bribe, he approached the ACB, Jalgaon on 13th. P.W.4 Madhavrao recorded his complaint (Exh.11).

10. As stated hereinabove, all the formalities regarding pre-trap panchanama and demand verification were made. Presence of two Government officials was secured to act as panch witnesses. A voice recorder was concealed on his person. He along with P.W.3 Dilip (panch) went to the office of Divisional Controller, Jalgaon. The appellant was not present. He came after a while. He asked them to meet him at Ram Mandir. Both of them,

therefore, first went to Ram Mandir. The appellant came there after a while. The complainant requested him to reduce the amount. The appellant, in turn, told him that there is a Committee of five persons, each of them is required to be paid Rs.2000/-. He, however, agreed to give the complainant concession of Rs.2000/-, to be paid towards appellant's share. The appellant insisted him to pay Rs.6000/-. The complainant told the appellant to have no money to pay him immediately. He assured him to be back with money after a while. Then both, the complainant and the panch witness returned to the ACB Office. P.W.4 Shri Garud drew the demand verification panchanama (Exh.14). A script of taperecorded conversation between complainant and the appellant was prepared. Then 12 currency notes of Rs.500 denomination were smeared with anthracine powder. Necessary instructions were given. The complainant and the panch witness again went to Ram Mandir. The complainant made a phone call to the appellant. The appellant came there in a while. The complainant held the tainted currency notes before the appellant. The appellant received the same and kept in his trouser pocket. The complainant gave a pre-determined

signal. Members of raiding party headed by P.W.4 came there in no time. The bribe money came to be seized from the appellant. The scene of offence panchanama was drawn. Then, the post trap panchanama was also drawn. The conversation between the appellant and the complainant recorded in a voice recorder was reduced into writing.

11. The complainant was subjected to a searching cross-examination. He was confronted with the application (Article 'A') preferred by him for grant of licence. His attention was also drawn to recommendation given by the local M.L.A. for grant of a licence in his favour. It is disclosed therefrom that, in the complaint, the complainant stated his occupation as – labour. In his application for grant of licence, he claimed to be educated unemployed. In the recommendation given by the local MLA, the complainant is stated to be unemployed, while in the Court, the complainant admitted that he would sell books at Amalner Bus Stand. The complainant claimed to have not known Vishram Patil and his son Sandeep. He also claimed ignorance about the Writ Petition filed in the year 2011, wherein orders against hawkers were passed. He

denied that no licence for sale of water pouches could be issued. He would sell books at Amalner and Chopda Bus Stands for about 12 years. He admitted that, one person could not obtain licence for selling two articles. He had told the Local M.L.A. that he was unemployed. The M.L.A., therefore, granted him letter of recommendation. He had filed two such applications with the office of MSRTC.

12. It is further in his evidence that, on 9th of August, he had come to Jalgaon to visit ACB Office. He did not remember as to whether he met the appellant that day. He met the appellant at Akashwani Square as the appellant had called him there. He denied to have not met the appellant that day or any time therebefore. It is in his evidence that, they left Ram Mandir by 2.30 p.m. first. He was also cross-examined in relation to voice recorder, recording therein and transcript thereof. He admitted to have not stated to the ACB officials on reaching Ram Mandir the appellant asked him as to whether he had brought Rs.6000/-. In the second breath, he stated to have told accordingly to the ACB official. He claimed ignorance that, one Smt. Bhatane was looking after the work of issuance of licence. The licence could be issued by

Divisional Controller alone. To rest of the questions suggesting the appellant's defence, the complainant gave negative answers.

13. P.W.3 Dilip (panch witness) testified that, he was serving as a Dairy Chemist in the Dairy Development Office, Jalgaon. He remained present at ACB Office at 11.30 a.m. on the directions of his higher-ups. Another panch was also with him. It is further in his evidence that, he went through the complaint (Exh.11) lodged by the complainant. Evidence of this witness as regards the instructions given by P.W.4 and all other steps taken at the ACB Office for demand verification etc. have been deposed to consistent with the prosecution case. The same is not that much material and hence not adverted in extenso.

14. It is further in evidence of P.W.3 Dilip that, he accompanied the complainant for verification of the demand. Both of them went to the appellant's office. Appellant was not there. He came after a while. He asked the complainant to come to Ram Mandir. Both, the complainant and himself, therefore, first went to Ram Mandir. The appellant came there after a while. The

complainant requested him to reduce some amount. The appellant declined. He told the complainant that there is a Committee of 5 persons. Each one is to be paid Rs.2000/-. The appellant agreed to reduce the amount towards his share. He asked the complainant to pay him (appellant) Rs.6000/-. The complainant told him to have already paid Rs.2000/-. The complainant told him to have not brought money with him and he assured to return within half an hour with money. The appellant told him that he was scheduled to go to Amalner. The complainant assured him to return within half an hour. It is further in the evidence of P.W.3 that then they returned to the ACB Office. A demand verification panchanama (Exh.14) was drawn there. Recorded conversation was reduced to writing. Anthracine powder was applied to 12 currency notes of Rs.500 each. Again both of them went back to Ram Mandir. The complainant made a phone call to the appellant. He (appellant) arrived in a while. The complainant paid him the bribe money. The appellant received the same and placed it in his trouser pocket. The complainant gave a pre-determined signal. The raiding party headed by P.W.4 Madhavrao Garud arrived. Bribe money came to be seized from the appellant.

Scene of offence panchanama was drawn.

15. This witness too was subjected to a searching cross-examination. He, however, stood the ground. Only, discrepancy as to time of their first visit to the office and subsequent visit to the Ram Mandir could be brought on record. This witness has specifically stated that the appellant received the bribe money by his right hand and kept it by his left hand in his left pocket of the trouser. It has also come on record that the appellant told the complainant that his work would be done by Wednesday or Thursday. I have closely perused the cross-examination. There is nothing worth to be reproduced for appreciation of the evidence. This witness stood the ground.

16. On the same lines is the evidence of P.W.4 Shri Garud (Informant-cum-investigating officer). His evidence is consistent with the prosecution case so far as regards the happenings from the day the complainant visited ACB Office and lodged the complaint until he completed the investigation and obtained sanction for the prosecution of the appellant. Since this witness was neither present while the demand verification was made and/or the appellant was

paid the bribe money, his evidence is not adverted to in extenso.

17. The appellant examined D.W.1 Shivaji, S.T. Bus Driver. It is in the evidence of this witness that, since the appellant had initiated a drive against unauthorised hawkers, and a writ petition was filed at his instance, Shri Vishram Patil, office bearer of Hawkers' Association was annoyed with him. The complainant was serving in a hotel of Vishram Patil's son at Amalner Bus Stand.

The learned A.P.P. had extensively cross-examined this witness.

18. Some documents have also been placed on record to indicate that one Shri Mahajan was held guilty in connection with a complaint made with respect to allegations made against the appellant herein. The appellant has also placed on record some documents to indicate that some complaints were made against him alleging to have made demand of money in connection with hawkers' business. He has been exonerated thereof.

19. Learned counsel for the appellant made oral

submissions and even placed on record notes of his arguments. The sanction for prosecution was said to be defective. Evidence of P.W.1 was, therefore, adverted to. This Court is not in agreement with the submissions made by the learned counsel as to the grounds of attack. P.W.1 categorically deposed to that at the relevant time he was serving as Incharge Divisional Controller. He was a competent authority to appoint an employee in a cadre of Clerk. The appellant at the relevant time was Senior Clerk. True, the appellant was transferred as a Traffic Supervisor. There is, however, clear and cogent evidence to indicate that the appellant was initially serving as a Senior Clerk in the office of the Divisional Controller. Initially, he would look after the work of processing applications for grant of licence to hawkers. It was the suggestion (implied admission) given to the prosecution witness that Smt. Bhatane was successor in office of the appellant.

20. The evidence of P.W.1 further indicates that Shri Mahajan was held guilty in a departmental enquiry. Close scrutiny of the evidence would further suggest that, Shri Dhayade was appointed for holding departmental enquiry against the appellant and to remove him from service if the

charge is proved. Shri Dhayade, therefore, could not be said to be the authority to accord sanction for prosecution of the appellant. It is true that, voice recorded conversation in recorded form was not transmitted to him along with police papers. The fact is that, the Memory Card/ Voice recorder was sent to C.F.S.L. for voice identification. Until the matter went for trial, no C.F.S.L. report was received. It is not the case of the appellant that in spite of receipt of C.F.S.L. report the same has been withheld/ suppressed from the Court. P.W.1, although Incharge Divisional Controller, being an appointing authority, was competent to accord sanction for the appellant's prosecution. There is nothing further to indicate he lacked such authority or did not apply mind for grant of sanction for appellant's prosecution.

21. The facts in the judgment of the Apex court in case of **P.L. Tatwal Vs. State of Madhya Pradesh, (2014) 11 SCC 431**, were altogether different. The facts thereof indicate the appellant therein was appointed in Municipal Corporation, the Corporation was presided over by Administrator, an adhoc arrangement was made by Government when elected committee was superseded. It was the Standing Committee of Corporation which had

authority to appoint and remove person in the cadre of the appellant therein.

It is reiterated that, nothing has been shown to conclude P.W.1 Hemant to have had no authority to accord sanction for the appellant's prosecution.

22. The next submission of the learned counsel for the appellant is that, the work for which the bribe was paid was not with the appellant. It is true that the ultimate authority to grant licence to sell any article at bus stand (MSRTC premises) vests with the Divisional Controller. One has to take a judicial notice of the fact that, in the administration of business, applications are received by the officials who are subordinate to the Divisional Controller, such applications are processed by those employees. The application along with office note is ultimately placed before the Divisional Controller for grant of licence. Admittedly, the appellant was serving as a Clerk with the office of the Divisional Controller, Jalgaon. True, he was no longer in office that since 1/5/2013. The fact is, however, that, the complainant had preferred an application for grant of licence in February i.e. long before the appellant was

assigned some other job. It, therefore, cannot be said that the appellant was no way concerned with the work of grant of a licence. Some communication was placed on record to show that it was the policy of MSRTC not to grant licence for sale of water pouches. The complainant was not in the know thereof nor was informed in that regard. On the contrary, it was suggested to P.W.1 Hemant in his cross-examination that one Smt. Pushpa Bhatanewas successor in the office of the appellant. It was suggested to P.W.2 Ganesh that the work of writing endorsement on applications submitted for issuance of licence was with Smt. Bhatane. It was in the written submissions of the appellant

"मुळातच रा.प. महामंडळाच्या नियमानुसार व परिपत्रकानुसार बस स्टॅण्डवर पाण्याचे पाऊच विकण्यास परवानगीच नाही. त्यावर स्पष्ट बंदी घालावी अशी मागणीच स्वतः महामंडळाने सरकारकडे केली आहे."

23. The original record from the office of Divisional Controller was placed on record to indicate the complainant had in fact preferred such application. It is true that in the inward register the said application has not been registered in chronological order. Close reading -of the inward register would suggest that it was not the complainant's application

alone. In the said register, after the figure 1200, the next entry is of 1199. There are very many entries about Inward of documents on 28/2/2013. After 1/3/2013, there is one entry dated 4/3/2013, then there is entry dated 1/3/2013. In view of this Court, the said document does not create any doubt in the mind of this Court to suspect the complainant to have really preferred application for grant of licence. His application was accompanied by a letter of recommendation given by Local M.L.A. It is true that in spite of the complainant to have been doing business of book vendor at a bus stand, he claimed to be educated unemployed. Before the ACB official, he stated to be a labour. These facts, however, are not sufficient to disbelieve his case and the prosecution evidence. Needless to state, *Falsus in Uno Falsus in Omnibus* is not applicable. More so, when the case of the complainant has been corroborated by an independent witness.

24. The next contention of the learned counsel for the appellant is that, there is no evidence of demand of illegal gratification. According to him, what the evidence suggests is that the complainant requested the appellant to reduce the amount. According to him, neither the

complainant nor the panch witness testified the appellant to have made a demand of illegal gratification while both of them were together.

25. In view of this Court, the case of the prosecution is to be appreciated in its entirety. According to the complainant, it was on 9th of August he had met the appellant at Akashwani Square. The appellant that time had made a demand of Rs.10,000/- to do the needful for grant of a licence. He even paid the appellant Rs.2000/- that time. It is true that there is no other evidence in support of these facts. As per the judgment of the Apex Court in case of **Neeraj Dutta Vs. State (Govt. of N.C.T. of Delhi), (Criminal Appeal No.1669/2009)**, relied on by learned counsel for the appellant himself, the fact in issue i.e. the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in absence of direct, oral and documentary evidence. The facts of the present case indicate that there is complainant's direct evidence to indicate the appellant to have made a demand of illegal gratification. The same gets reinforced by circumstantial evidence, namely when the complainant along with panch witness met the appellant at Ram Mandir,

the complainant requested the appellant to reduce the amount. The appellant, in turn, told him that the amount cannot be reduced, there is 5 member Committee and each one is to be paid Rs.2000/-. The appellant agreed to reduce the amount which is to be payable towards his share i.e. Rs.2000/-. This fact has been reinforced by the evidence of an independent witness – P.W.3 Dilip. Whatever talk between the appellant and the complainant took place at Ram Mandir during first meeting has been reiterated by the panch witness in his oral evidence. After half an hour, both the complainant and the panch witness again went back to Ram Mandir. The appellant came there in response to a phone call made by the complainant. He received the bribe money. Within minutes thereof, the tainted currency notes came to be seized from the appellant. A panchanama to that effect was drawn. The defence of the appellant that he happened to meet the complainant at Ram Mandir and the complainant thrust the tainted money into his pocket is unacceptable for want of any other material in support thereof.

26. It is true that taperecorded conversation is not forthcoming. The fact is that, all the three witnesses namely

P.W.2 to 4 have consistently deposed that the taperecorded conversation was played and transcript thereof was prepared. The same forms part of evidence. It is true that, the taperecorder was not played in the open Court. It is also true that, the original Memory Card containing recorded conversation was sent to C.F.S.L. for voice identification report. It is reiterated that, until the matter went for trial, report in that regard was not received. The appellant did not insist for the said report. It is not the case of the appellant that in spite of receipt of the report the same is withheld.

27. it is true that, proof of demand of illegal gratification is a sine qua non for conviction for the offences punishable under Sections 7 and 13 (1)(d) of the Prevention of Corruption Act. Needless to mention, each case has to be decided on its facts. In criminal cases, there can hardly be any precedent.

28. It is true that, there is some inconsistency inter-se the evidence of the prosecution witnesses. As per the prosecution case, the complainant accompanied by panch witness first went to the Divisional Controller's office by

12.30 Hrs., while another witness stated that, it was little past 2.00 p.m. The trap was conducted by 2.30 p.m. or after a little while. No witness is presumed to have a photographic memory. There is a little difference in timing. The same does not go to the root of the matter. The fact remains that, an independent witness (P.W.3) reinforce the prosecution case that he had accompanied the complainant to meet the appellant. During the meeting, the appellant did not agree to reduce the amount to be paid. He later on agreed to give the complainant concession of Rs.2000/-. Even the appellant was to go to Amalner. He agreed to wait until the complainant comes back with money. Accordingly, the complainant, accompanied by P.W.3 Dilip (panch witness) met the appellant within an hour thereafter. The complainant paid the appellant bribe. Same came to be seized from the appellant immediately. The case of the appellant that the complainant forcibly thrust the money in his pocket is found to be unacceptable. In the given set of facts, although the appellant came with some, but could not make out it even on preponderance of probabilities. In short, the trial Court rightly convicted the appellant. This Court does not find any reason to take a different view. The

appeal, therefore, fails. The same is, therefore, dismissed.

29. Appellant to surrender to serve the sentence.

(R.G. AVACHAT, J.)

fmp/-