

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

CRIMINAL APPEAL NO. 17 OF 2013

State of Maharashtra,
Through Dy.S.P., Anti Corruption Bureau,
Jalgaon

..APPELLANT

VERSUS

Usha Raghunath Bhandari
Age: 51 years, Occu.: Service,
R/o Keshavnagar, Amalner,
Tq. Amalner, Dist. Jalgaon

..RESPONDENT

....

Mr. A.S. Shinde, A.P.P. for appellant – State
Mr. S.S. Bora, Advocate h/f Mr. T.K. Sant, Advocate for respondent

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CORAM : R.G. AVACHAT, J.
DATE : 06th APRIL, 2023

ORAL JUDGMENT :

1. This is an appeal against acquittal. The respondent herein has been acquitted of the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 vide impugned judgment and order dated 09th March, 2012 passed by the Ad-hoc Additional Sessions Judge, Jalgaon in Special Case No. 6 of 2011. State has, therefore, preferred present appeal.

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

P.W.1 – Dr. Prakash was serving as Medical Officer, Primary Health Center, Shelave since August 2001. In the meanwhile, he was

selected as Medical Officer through M.P.S.C. On increment in salary for the period from July 2002 to July 2009, his salary was required to be fixed. He, therefore, met one Badgujar, Clerk in the office of Zilla Parishad, Jalgaon and made enquiry about the same. Mr. Badgujar told him to have forwarded his case to Mrs. Bhandari (respondent herein). P.W. 1 – Dr. Prakash, therefore, met the respondent and made enquiry about his bill. She had assured him to forward his bill to the treasury within 2-4 days. His bill however, had not been forwarded to the treasury. On 04th September, 2010 he had been to Zilla Parishad, Jalgaon to get cheque of his salary. He met the respondent there. She made a demand of Rs.2,000/- as illegal gratification for forwarding his bill to treasury. He did not have money that time to pay her. He assured to pay the money after his bills gets cleared. The respondent however, insisted to pay her money in advance. P.W.1 – Dr. Prakash, therefore, assured to pay her money on 06th September, 2010. The respondent asked him to come on 09th September, 2010. He agreed.

3. Since P.W.1 – Dr. Prakash was not willing to pay the respondent bribe, he approached the Anti Corruption Bureau, Jalgaon ('A.C.B.') on the same day i.e. on 04th September, 2010. He lodged the complaint (Exh.11) there. P.W.4 – Deshmukh was Police Inspector, A.C.B., Jalgaon. He asked P.W. 1 – Dr. Prakash to come to the A.C.B. office in the morning of 08th September, 2010. He accordingly went there. Two state government

employees were already present at the A.C.B. office to serve as panch witnesses. They were informed about the complaint (Exh.11). A pre-trap panchanama (Exh.18) was drawn. One of the panch witnesses was asked to accompany P.W.1 to the office of the respondent and observe the happenings. P.W.1 – Dr. Prakash was categorically instructed to pay the bribe money only on demand made by the respondent. He was also instructed to give a pre-determined signal post he pays bribe to the respondent. Accordingly, P.W.1 – Dr. Prakash accompanied by P.W.3 – Javanjale (shadow witness) went to the office of the respondent. They met her there. After some initial talks, both of them left her office and met P.W.4. They again went to the office of the respondent. P.W.1 – Dr. Prakash enquired her about his work. She made a demand of Rs.2,000/-. P.W.1 held before her currency notes smeared with anthracene powder. She received the same. He came out of the office and gave pre-determined signal. The raiding party, headed by P.W.4, entered the respondent's office. The tainted currency notes came to be seized. All of them thereafter went to the A.C.B. Office. Post-trap panchanama (Exh.19) was drawn. All the papers of investigation were submitted to the competent authority for obtaining sanction for prosecution of the respondent. P.W.2 – the Chief Executive Officer, Zilla Parishad accorded sanction (Exh.15) for the respondent's prosecution. Charge-sheet thereafter came to be laid.

4. The trial Court framed the charge (Exh.4). The respondent pleaded not guilty. Her defence was of false implication. The prosecution

examined four witnesses and produced in evidence certain documents. The trial Court, on appreciation of evidence before it, concluded the prosecution to have failed to establish the charge. According to trial Court, P.W.1 – Dr. Prakash (complainant) was in the know even before lodging of the complaint (Exh.11) that his work was with Mr. Badgujar and not with the respondent. It is not known as to why he still approached the A.C.B. and filed the complaint against the respondent.

5. Learned A.P.P. first took this Court through evidence of P.W.1 – Dr. Prakash, P.W.3 – Javanjale (shadow witness) and P.W.4 – Mr. Deshmukh (Investigating Officer). According to him, the evidence on record established the demand and receipt of illegal gratification by the respondent. He relied on the Apex Court judgment in ***K.S. Panduranga Vs. State of Karnataka, ALL M.R. (Cri.) 1485*** to submit that even if no work of P.W.1 – Dr. Prakash was with the respondent, a demand and acceptance of illegal gratification by a public servant makes out a case for conviction under Section 7 and related sections of P.C. Act. According to learned A.P.P., when the bribe money came to be seized from the respondent, presumption under Section 20 of the P.C. Act gets attracted. He would further submit that panchanama (Exh.19) undoubtedly indicates that bill of P.W.1 was found in the cupboard of the respondent. Same came to be seized. He also adverted attention of this Court to the averments in the said panchanama that it was the case of the

respondent that the complainant (P.W.1) paid her Rs.2,000/- on his own for forwarding his bills to the treasury. Learned A.P.P. further submits that although there was change of charge from the respondent to Mr. Badgujar, the same remained on paper. Actual handing over of charge did not take place. According to learned A.P.P., the trial Court ought to have convicted the respondent. He, therefore, urged for allowing the appeal.

6. Mr. Bora, learned counsel for the respondent would, on the other hand, submit that it is an appeal against acquittal. Presumption of innocence of the respondent got reinforced by her acquittal. Admittedly, the complainant was in the know since before he lodged the complaint that his work was with Mr. Badgujar and not with the respondent, still he approached the A.C.B. and lodged the complaint against the respondent. Same indicates the complainant (P.W.1) to have some motive to falsely implicate the respondent. He would further draw this Court's attention to the cross-examination of P.W.1 to suggest him to be a person not to be relied on. Learned counsel also brought to the notice of this Court contradictions *inter se* evidence of the prosecution witnesses, to ultimately urge for dismissal of the appeal.

7. Considered the submissions advanced. Perused the evidence relied on. The Apex Court in case of ***Ghurey Lal Vs. State of Uttar Pradesh, (2008) 10 SCC 450*** has observed thus :-

“If the trial Court’s view is possible and plausible, the High Court should not substitute the same by its own possible views. Due or proper weight and consideration must be given to the trial court’s decision and findings. This is especially true when a witness’ credibility is at issue.

An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court.”

8. P.W.1 – Dr. Prakash (complainant) was serving as Medical Officer at Primary Health Center, Shelave. Admittedly, his bill for arrears of increment was pending clearance. At the relevant time, one Mr. Badgujar, Clerk with the Zilla Parishad, Jalgaon was looking after the said work. The respondent herein was serving as Senior Clerk, Zilla Parishad, Jalgaon. It is in his evidence that Mr. Badgujar referred him to the respondent. He, therefore, met her and requested to see that his bill gets clear. It is further in his evidence that the respondent made a demand of Rs.2,000/- to do the needful. She asked him to come to meet her on 08th September, 2010 and pay the amount. Since he was not willing to pay her bribe, he approached the A.C.B. and lodged complaint (Exh.11).

9. Evidence of P.W.1, 3 and 4 indicate that pre-trap panchanama (Exh.18) was drawn at A.C.B. on 08th September, 2010. The informant was

instructed to give the respondent currency notes applied with anthracene powder only on her demand. On due instructions both, P.W.1 and 2 went to the office of the respondent on 08th September, 2010. The evidence of P.W.1 however, suggests that on meeting the respondent, she made enquiry about the person accompanied him (P.W.3). He told her to be his relative. When he made enquiry about his bill, she asked him to pay her Rs.2,000/-. He, thereafter, took out tainted currency notes and paid the same to the respondent. Thereafter he came out of the office and gave a pre-determined signal. Thereupon, P.W.4 accompanied by another panch witness and some of the members of the raiding team entered the respondent's office and seized the tainted currency notes. Post trap panchanama (Exh.19) was drawn.

10. In the cross-examination, P.W.1 admitted that he had lodged one police report against one Shashikant Kumawat, Multipurpose Health Worker. It was his case that Kumawat had obstructed him in discharging his official duties. In connection with the said case his evidence was recorded in the Court at Parola. Learned A.P.P. in-charge of that case declared him hostile. He stated therein to have lodged that F.I.R. under some mental tension. In his further cross-examination he admitted to have known a lady by name Latabai Bhill. She was a member of Zilla Parishad. In the Zilla Parishad meeting it was decided to take a disciplinary action against him (P.W.1) for

giving her insulting treatment. He then admitted that staff members of Primary Health Center, Shelave made a complaint against him to the Chief Executive Officer, Zilla Parishad. He then changed his version to state that it was an anonymous complaint. It is further in his evidence that he knew since before he lodged the complaint (Exh.11) that his work was with Mr. Badgujar. He was also in the know on the date he lodged the complaint that charge of work of the respondent was handed over to Mr. Badgujar with effect from 27th August, 2010 itself.

11. P.W.3 – Javanjale (shadow witness) testified to have attended A.C.B. office on 08th September, 2010. In his presence pre-trap panchanama (Exh.18) was drawn. He accompanied P.W.1 to the office of the respondent. They met the respondent in her office. P.W.1 made enquiry with her about his work. She asked him as to whether he had brought which she had asked to bring. He then asked the respondent to take out his file. He told her that his friend was waiting outside and he would return after meeting him. Then both of them came out of the office of the respondent and met P.W.4 and told him what had happened. It is further in his evidence that both of them again went back to the respondent's office. P.W.1 enquired with her about his work. She asked him whether he has brought money. He said 'Yes' and then held tainted currency notes before her. She received the same and kept it in one carry bag kept by her left side. It is further in his evidence that the

complainant then came out of office and gave pre-determined signal. Soon thereafter, P.W.4 and the members of the raiding party entered the respondent's office and the rest namely, seizure of tainted currency notes, trap panchanama, etc. followed.

12. P.W.4 – Deshmukh testified that he secured presence of two government officials to act as panch witnesses. He drew pre-trap panchanama (Exh.18). He specifically instructed P.W.1 that when the respondent would make demand of money, he should tell her that he had kept the said amount with his driver and will come within a short time. He (P.W.4) further testified consistent with the happenings post seizure of bribe money.

13. The question is whether on appreciation of evidence stated hereinabove, charge against the respondent gets duly established. Answer would be a big 'No'. When the respondent allegedly made a demand of bribe first time on 04th September, 2010, no person was present with P.W.1. As such, there is no corroboration to the case of P.W.1 that on that day the respondent had made a demand of Rs.2,000/- as illegal gratification. P.W.1 in no uncertain terms admitted that even before he lodged the complaint (Exh.11), he knew that his work was with Mr. Badgujar and not with the respondent. Then the question is when the complainant himself was in the

know that his work was with Mr. Badgujar and not with the respondent, why did he lodge the complaint against her. Many a times reason for lodging a false complaint remains hidden. Admittedly, the complainant had earlier lodged the F.I.R. against some other person alleging him to have obstructed from discharging his official duties. While giving evidence in the said case, P.W.1 turned hostile. He stated therein that the F.I.R. was lodged under mental stress. He then admitted that a resolution was passed in Zilla Parishad meeting to take disciplinary action against him for giving insulting treatment to one lady member of Zilla Parishad. Moreover, admittedly the staff members of the Primary Health Center, Shelave of which he was the head, had made a complaint against him. This suggests P.W.1 to be a person not to be relied on.

14. Moreover, there is inconsistency between the evidence of P.W.1 and 3. As per the evidence of P.W.3, first he had accompanied P.W.1 to the office of the respondent. Then both of them came out of her office, met P.W.4, narrated him the happenings thereat and again returned to the office of the respondent. As per the evidence of P.W.3, the incident of payment of bribe money took place on their second visit on the same day. The evidence of P.W.1 is however, silent to speak about the same. As per his case, the demand and acceptance took place when both of them met the respondent first on 08th September itself. It appears that P.W.4 had in fact given the

complainant specific instruction that if the demand is made, he should leave the office of the respondent and come back to him. The same appears to have been with a view to make verification of demand. Admittedly, in the case in hand P.W.4, for the reasons based known to him, has not undertaken the exercises demand verification. He had, in fact, with him ample time. Complaint was lodged on 04th September, 2010. Money was to be paid to the respondent on 08th September. During this time or even on the date on which the demand was to be met, P.W.4 could have verified the demand. It is true that in each and every case the demand verification may not be necessary. There may not be time even to undertake such exercise. The facts of the present case however, indicate that instead of having been aware that the respondent had no official work to clear complainant's bill, he (complainant) still lodged the complaint against her.

15. P.W.2 – Chief Executive Officer, Zilla Parishad (sanctioning authority) while according sanction (Exh.15) for prosecution against the respondent had also admitted that charge of the table of the respondent was handed over to Mr. Badgujar on 27th August, 2010, while the complaint was lodged on 04th September, 2010. The trial Court in paragraph no.44 of it's judgment has rightly observed thus :-

“44. It is the contention of the accused that even prior to lodging of the complaint, the complainant was well aware that

charge of her work was already handed over to clerk Badgujar. In cross examination, complainant has admitted that since beginning, he was knowing that his matter was with clerk Badgujar. Not only that, in his cross examination, he has also admitted that even before lodging the complaint on 4.9.2010, he learnt from the office that charge of Bhandari madam was handed over to Badgujar from 27.8.2010. If this is so, I failed to understand, as to why he once again went to the accused on 4.9.2010 and alleged to have made inquiry about his work with her. I find it difficult to accept the contention that on 4.9.2010, the accused made demand of bribe because it was well within her knowledge also, that work of the complainant is not with her and it was with Badgujar clerk since 27.8.2010.”

16. In view of above, this Court has no reason to take a different view than the one taken by the trial Court, particularly when it is an appeal against acquittal. Learned A.P.P. brought to the notice of this Court certain averments in the panchanama to indicate that file of the complainant's bill was seized from the cupboard of the respondent. Neither the panch witnesses nor the investigating officer however, testified in this regard. The contents of panchanama, therefore, would not be of any assistance for the prosecution. The explanation offered by the respondent soon after the trap, was also sought to be relied upon, wherein she admitted that the respondent paid her Rs.2,000/- for clearing his bill. Admittedly, her explanation has not been duly proved and admitted in evidence. P.W.4 also did not speak in his

evidence on oath in that regard. Moreover, reliance on the Apex Court judgment in case of K.S. Panduranga (supra) would be of no assistance to the learned A.P.P. since close reading of paragraph no.40 of the said judgment would indicate although the accused therein had come with a defence that there was no work with him, the evidence in that case discloses that allotment work was done by the Manager, there was evidence of P.W.4 that the immediate assignment of the loads of contractors was the responsibility of the accused in the said case. In that connection he had demanded the bribe. These facts make all the difference.

17. For all the aforesaid reasons, the appeal fails. Same is, therefore, dismissed.

(R.G. AVACHAT, J.)

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