

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

CRIMINAL APPEAL NO. 193 OF 2006

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| 1. Ramesh s/o. Devidasrao Kulkarni
Age.50 years, Occ. Service,
R/o. Brahmangaon,
Taluka and District Parbhani. | .. | Appellants
[original
accused] |
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Died through LR -
Shalini wd/o. Ramesh Kulkarni,
Age.52 years, Occ. Household,
R/o. Dasnagar, Parbhani.

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| 2. Vasant s/o. Laxmanrao Petkar
Age.50 years, Occ. Private Service,
R/o. Bhajan Galli, Parbhani,
Taluka and District Parbhani. | |
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Versus

The State of Maharashtra	..	Respondent
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Mr.Hrishikesh V. Tungar, Advocate for appellant No.1.
Mr.Prasad B. Kadam, Advocate (appointed) for appellant No.2.
Mr.Y.G. Gujarati,APP for the respondent/State.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	01.12.2022
PRONOUNCED ON	:	24.01.2023

J U D G M E N T :-

01. This is an appeal filed by the accused persons against judgment and order dated 22.02.2006 passed by the learned Special Judge, Parbhani in

Special Case No.5 of 2005, holding them guilty for the offences punishable under the Prevention of Corruption Act [for short “the Act”]. Appellant No.1 is convicted for the offences punishable under section 7 of the Act and sentenced to suffer rigorous imprisonment for six months with fine of Rs.50/-, in default, to suffer simple imprisonment for seven days, for offence punishable under section 13(1)(d) r/w (2) of the Act, he is sentenced to suffer rigorous imprisonment for one year with fine of Rs.50/-, in default to suffer simple imprisonment for seven days. Accused No.2 is convicted for the offence punishable under section 12 of the Act and is sentenced to suffer rigorous imprisonment for six months and fine of Rs.50/- in default to suffer simple imprisonment for seven days.

02. During the pendency of the appeal, appellant No.1-accused No.1 died and now his wife is brought on record.

03. Accused No.1 was working as Talathi at village Brahmangaon. Appellant No.2/accused No.2 was working as his private assistant. The charge was that on 24.09.2004 in the village Brahmangaon, accused No.1 attempted to obtain an amount of Rs.100/- from the complainant as gratification other

than legal remuneration or as a motive or reward for doing an official act of issuing 7/12 extract in the name of Laxmibai Sonwane. Further charge is that on 29.09.2004 accused No.1 accepted an amount of Rs.100/- as gratification for issuing 7/12 extract. Further charge was that on the above date, place and time accused No.1 obtained pecuniary advantages of Rs.100/- by corrupt and illegal means. Against accused No.2 charge was that he accepted an amount of Rs.100/- from the complainant for and on behalf of accused no.1 and thereby abetted accused No.1.

04. The defense of the accused is that the complainant was in arrears of land revenue for last five years and he was to pay Rs.505/-. He had cleared arrears of Rs.400/-. Rs.104/- were still remaining, which he was to clear before issuing 7/12 extract. Thus, it was the amount of arrears of land revenue, which was paid by the complainant. However, because of some grudge, the complainant filed false complaint with the Anti-corruption Bureau and the accused were trapped by the ACB. It is their submission that immediately they gave written explanation to that effect. Even in the statement under section 313 of the Cr.P.C., the accused have clearly given this explanation, which is quite acceptable. However, the Trial Court has not

accepted the explanation.

05. The prosecution in its support examined five witnesses to prove the case. The first witness is the sanctioning authority, namely, PW-1-Madhukar Choudhari, who was serving as a Collector, Parbhani. In his deposition, he stated that he received a proposal for grant of sanction to prosecute the accused persons. He stated that before according sanction, he had gone through the papers including the complaint, pre-trap and post-trap panchanama, statements of witnesses and other documents. On going through the documents, he found that it was a fit case to accord sanction. Thus, he accorded sanction.

06. In the cross-examination, he was shown a letter dated 30.10.2004, wherein it reveals that the Sub-Divisional Officer, Parbhani was an appointing and removing authority of Talathi. He answered that the posting and appointment orders are distinct factors. In this case, it was the Collector, who instructed the Dy. Collector to issue posting orders. The questions were asked about the arrears of land revenue. He was asked about the earlier Talathi, who wanted to come in the place of accused No.1,

therefore, he was after accused No.1. Thereafter, in answers to the specific question, this witness answered that in addition to the Sub-Divisional Officer, the Collector is vested with power to remove Talathi. The land revenue mentioned as Rs.57.84 in the 7/12 extract of Survey No.95 is without Zilla Parishad or Grampanchayat cess. Thereafter, there was cross-examination, in which he deposed that the register 8/A is in respect of amount of Zilla Parishad and Grampanchayat cess and register 8/B is about the arrears of land revenue.

07. The next witness examined as PW-2 is Pandurang Sonwane, the complainant. In his deposition he deposed that his mother Laxmibai owns a field Gat No.95 at village Brahmangaon, admeasuring 2 Hectare 2 Are. He wanted 'no dues certificate, holding certificate, 7/12 extract and map of the said field to get Government grants for construction of a well in that field. For that purpose he met Talathi, who demanded Rs.100/-. The complainant, therefore, told that he would pay him Rs.100/- on 29.09.2004. The complainant, therefore, lodged a complaint with Anti-corruption Bureau on 28.09.2004. On 29.09.2004, he went to the ACB Office, where panch witnesses were already called. They were explained the procedure of trap.

The raiding party started at about 9.20 a.m. and then they marched by Government jeep towards Parbhani. At Parbhani railway station, two police joined the party. The Investigating Officer told him to go by auto rickshaw with one panch Somthankar towards office of Talathi. In the office, both the accused were present. The complainant requested accused No.1 to issue 7/12 extract, map and holding certificate. Accused No.1 called accused No.2 and instructed him to prepare a certificate. Accused No.2 told the complainant to wait for some time and prepared the documents. He told the complainant to get five photocopies of 7/12 extract. The complainant went for getting extract photocopied and he came back and handed over photocopies to accused No.2. Till that time panch was sitting in the office. After putting seal on the photocopy, accused No.1 signed and handed over one copy to the complainant. After handing over the documents, accused No.2 demanded Rs.100/-. The complainant took out the tainted notes and held before accused No.1. Accused No.1 signaled the complainant by moving his neck to hand over the money to accused No.2. The complainant held those notes before accused No.2, who collected those notes and kept the same in the drawer of the table of accused No.1. On that, signal was given to the raiding party and thereafter further procedure was conducted. The hands and shirt pocket of

the complainant shown blue glitterance of anthracene powder under ultraviolet lamp.

08. In the cross-examination, PW-2 deposed that a special scheme for construction of well for the members of scheduled castes was framed. He had moved an application for grant for construction of well. The applicant had been to Panchayat Samiti, Parbhani for grants. There the Gramsevak told him to bring necessary documents. He deposed that before September, 2004, accused no.1 was not Talathi of the village and therefore is was not knowing him. He accepted that it did not happen that before eight days of making report, he had met accused No.1. He accepted that portion marked "A" in his report that before ten to twelve dayss of making report, he had met accused is incorrect, but had stated that he met Kulkarni before 7-8 days. He accepted that he was in arrears of land revenue of Rs.450/- for five years. He denied suggestion that there were arrears of 7 years. He submitted that accused took charge as Talathi on 20.09.2004. He accepted that in a statement dated 30.09.2004, he had not told to have met accused No.1 before 10-12 days of making report which is portion marked "A". He denied that piror to 24.09.2004, he never met accused No.1. He accepted that in his statement it

is not recorded that accused No.1 signaled accused No.2 to pay amount to accused No.2 by moving his neck. He denied that there was no demand of amount. He accepted that in the complaint, he did not disclose that on 24.09.2004, accused No.1 had made a demand. Further, it has come in his deposition that there was no table in the room in which they were sitting. He accepted that accused No.2 accepted the notes and kept said notes in the drawer of the table in another room.

09. P.W.3-Sudhakar Kulkarni is a person working as Surveyor in the office of TILR, Parbhani, who drawn a map of the spot, where the alleged incident had taken place. In his cross-examination, he accepted that the table in the inner room was not visible from the outer room.

10. P.W.4-Prakash Jadhav is Police Inspector, Anti-corruption Bureau. He deposed that on 30.09.2004 he recorded statement of the complainant. He issued letter to the Sub-Divisional Officer, Parbhani regarding information of the accused. On 30.09.2004 he issued letter to TILR, Parbhani to prepare map of the spot. He carried out the investigation and filed charge-sheet.

11. In the cross-examination, P.W.-4 stated that portion marked "A" in the statement of the complainant was as per the statement of the complainant. He sent letter to the Sub-Divisional Officer, Parbhani with a crime report. He accepted that in the spot panchanama, presence of some other persons at the time of trap is shown. He, however, has not recorded statement of any of those persons.

12. Last witness is P.W.5-Vinayak Somthankar, who accompanied the complainant in the trap. He deposed that on 29.09.2004 at 8.00 a.m. he was called in the ACB office, where he was introduced to Dy. S.P. Shri Shaikh, his staff members and also to the complainant. They signed the complaint. About the actual trap he deposed that they went from Nanded to Parbhani in a Government vehicle. By 9.45 a.m. they stopped near railway station, Parbhani. There two police officers joined them. This witness and one Gurphade marched towards Talathi office in one rickshaw. Other members followed them in a jeep. At 11.55 a.m. the complainant and this witness entered the Talathi office, while other members were standing around the office. There were 5-6 persons sitting in the office. The accused persons were present in the room. The papers were handed over to the complainant for

getting photocopies. The complainant left the office and brought five copies of 7/12 extract. One of the copies was signed by accused No.1 and he handed over the same to the complainant. Other copies were retained by accused No.2 in the cupboard. Accused No.2 then came and asked the complainant to give Rs.100/-, the complainant kept those papers in the left pocket of his pant. He took out the tainted notes and held before accused No.1 and asked to collect. Accused No.2 collected those notes and kept it in the right drawer of table of accused No.1 inside the room. The complainant left the room to make a signal. Thereafter, this witness deposed about further procedure of drawing panchanama etc.

13. In the cross-examination, he denied the suggestion that accused No.1 had told accused No.2 to put the seal on the documents and hand over to the complainant. He denied that accused No.1 had left the office. He could not remember as to who put seal on the 7/12 extract. He accepted that the IO did not record names of the persons sitting in the office. He specifically stated that accused No.1 kept mum when the complainant held amount before him.

14. The learned Advocate for the appellant on this evidence submits

that demand of the bribe itself is not proved. The prosecution could not establish that the amount was accepted by accused No.1. Even accused No.2 merely took the amount that was given by the complainant, since there were arrears of land revenue. The complainant was in arrears of land revenue is admitted in his cross-examination. At the time of trap, accused No.1 has not made any demand and there was not question of paying the amount of bribe. There is variance between evidence of PW-2 and PW-5 i.e. the complainant and the panch witness. The complainant in his evidence has stated that by making gesture by moving neck, accused No.1 asked the complainant to pay the amount to accused No.2, whereas the panch witness has specifically deposed that the accused No.1 was silent on where the complainant held notes before him. He submits that in the office of Talathi, some other persons were also present. However, their statements have not been recorded by the Investigating Officer. On this aspect also there is variance. The complainant says that there was no one in the office at the time of incident. The case of the prosecution is that accused No.2 carried amount and kept the same in the drawer of table in the another room, is also doubtful as PW-3-Surveyor has specifically stated that from the room in which the incident took place, the drawer in another was not visible. Further, there is immediate explanation

offered by both the accused persons that the complainant was in arrears of the land revenue. He had paid part of the amount on the earlier occasion and on the date of alleged trap he was to bring Rs.100/- towards remaining amount. This fact is established from the register maintained in the office of the Talathi. Even the complainant accepted that he was in arrears of amount of land revenue. It is also a submission of the appellants that as per the complainant, the incident has taken place at 11.30 a.m., whereas panch witness stated the time of incident to be 11.55 a.m.

15. Learned Advocate for the appellants relied upon following judgments, which will be discussed in the later part of this judgment :-

- 1) State of Maharashtra Vs. Sheshrao Raut, 2015 ALL MR (Cri) 4894.
- 2) Pramod Deokar Vs. State of Maharashtra, Laws (Bom) 2008 8 351.
- 3) Madhukar Khadse Vs. State of Maharashtra, 2002 ALL MR (Cri) 1106.
- 4) Prabhakar Vs. State of Maharashtra, Laws (Bom) 2018 10 325.
- 5) Surender Kumar Vs. Central Bureau of Investigation, 2014 ALL MR (Cri) 129

16. Learned APP submits that the prosecution in this case has clearly established guilt of the accused. He submits that the amount is accepted and found in the drawer of the table of accused No.1. It has come on record that the amount accepted by accused No.2 was towards bribe. The contradiction about time of the incident cannot be said to be material contradiction. There

is difference of 20 – 25 minutes only, which in-fact proves that the incident has taken place. About persons present in the office, it is submitted that it was not necessary for the prosecution to examine each and every person. The necessary evidence is already recorded. He further submits that the admissions given by the witnesses will not help the accused. The evidence needs to be considered as a whole. The accused could not give satisfactory explanation as to how and why the amount was taken from the complainant and kept in the drawer. It was further necessary as the amount was admittedly recovered from the table of accused No.1. It is submitted that minor contradictions do occur in the evidence of two different persons as it depends upon power of observation. When one witness observes one thing, at the same time other witness observes some other thing and therefore, the contradictions on the point of signaling by the accused No.1 cannot be given much importance. Ultimately, he submits that the prosecution case cannot be disbelieved in this case looking to the entire evidence.

17. In rebuttal, learned Advocate for the appellants submits that the guilt of the accused needs to be proved beyond reasonable doubt. About signaling, it is not mere contradiction. The contradiction is such when one

evidence is accepted, naturally other evidence will have to be discarded and under such situation, question arises as to which witness is to be believed and in any case, this contradiction is certainly of the nature giving rise to a reasonable doubt.

18. Considering this evidence, it is clearly seen that the case of the complainant was that he wanted 7/12 extract and some other documents for making proposal for digging well in the land and for that purpose he met accused No.1, where the alleged demand is made. In the evidence the accused through cross has clearly brought on record that the complainant was in arrears of land revenue. The total land revenue including Panchayat samiti and Grampanchayat cess was Rs.504/-. In a register already entry is taken that the complainant has deposited amount of Rs.400/- and an amount of Rs.104/- was still remaining. This defense is made quite probable by the accused. Looking at the immediate explanation and also the statement given under section 313 of Cr.PC., it is clearly seen that the explanation is immediately offered. Accused No.2 has stated that he was also aware that the amount was to be taken from the complainant towards arrears of land revenue. Considering the admission of the complainant, this immediate

explanation appears to be quite probable and there is no reason to disbelieve this explanation.

19. So far as accused No.1 is concerned, the prosecution could not prove specific demand. There is no demand verification panchanama in this case. The evidence about earlier demand on 24.09.2009 is not proved as the complainant in his cross accepted that he did not disclose in the complaint about demand on 24.09.2004. From reading of complaint it is seen that it is only stated that on 24.09.2004 he had been to Talathi office and paid Rs.450/- towards arrears and on the same day Talathi issued no-dues certificate. However, no receipt was given. Though he has stated that demand of Rs.100/- was made but was not as bribe. However, from the complaint, it does not appear that the Talathi said that he would not give documents unless bribe is paid.

20. At the time of incident, it is clearly seen that the amount was not given to accused No.1. As per the complainant, the amount was held before accused No.1 and he only by moving his neck pointed towards accused No.2, to which the complainant took that it was directed to be paid to accused No.2.

On this aspect, considering the evidence of panch witness, who in clear terms stated that when the amount was held before accused no.1 by the complainant, he kept quite. Ordinarily person certainly understands that if neck is moved towards accused No.2, he was asking the complainant to pay the amount to accused No.2. As per evidence of PW-5 nothing was uttered by accused No.2 nor he made any gesture to hand over amount to accused No.2.

21. The contradiction about the timing of the incident though is minor, since it is submitted, it needs to be considered. The variance in the timing of 20-25 minutes will not assume any importance in this case. It has come in the evidence of the complainant that he is not educated much. Thus, it is not expected from such a person to give exact time.

22. What is material in this case is that the complainant was in arrears of land revenue and it is quite possible that accused No.2 has accepted that amount towards those arrears. About keeping of the amount in the drawer it is seen that the Surveyor, who drew map of the spot of incident has clearly stated that the drawer of the table was not visible from the outer room, where the amount was allegedly kept by accused No.2. So far as evidence of

the sanctioning authority, it is seen that the sanctioning authority in the sanction order has not spelt out about the demand of money. He has also accepted that he has not mentioned specific document which led him to come to the conclusion that it was a case to accord sanction. In the cross-examination he accepted that from the register it is found that the amount of arrears was mentioned in the said register. He also accepted that if the amount is in odd figure, then it is rounded. It is a case of the accused that since the amount that was to be paid was Rs.104/-, it was rounded up to Rs.100/-. Thus, in this case the land revenue amount was Rs.504/-, still only Rs.500/- were taken from the complainant. Further, it is seen that accused No.1 had joined very recently. The allegations of the complainant are that he met accused No.1 on 24.09.2004 and paid Rs.450/- towards land revenue and accused No.1 demanded Rs.100/- towards bribe. This fact also shows that the complainant was in arrears of land revenue.

23. In his evidence the complainant did not say that accused No.2 demanded amount for bribe. He simply says that accused No.2 demanded Rs.100/-. In view of explanation, it cannot be said that amount asked was towards bribe. In the cross-examination, the complainant accepted that he

did not tell the Investigating Officer that he had met accused No.1 10 – 12 days prior to making report and he accepted that portion marked “A” in his statement to that effect is not correct. He accepted that he had not stated the fact that accused No.1 had signaled to pay the amount to accused No.2 by moving his neck. It is clear that this part of evidence is improvement and there was no such gesture made by accused No.1. In evidence of panch witness, he specifically said that accused No.1 kept silence. On this evidence and looking to the explanation and the suggestion, it is clear that the defence of the accused since beginning is consistent. It has come on record that in the complaint it is not disclosed that on 24.09.2004 accused had told him that he would not issue documents unless amount of Rs.100/- is paid. Thus, the demand on 24.09.2004 is also not proved. While discussing the evidence of PW-3 it has come on record that the table in the room was not visible without entering in the said room. Thus, the story that the accused No.2 kept amount in the drawer of the table cannot be accepted.

24. The Investigating Officer in his cross-examination accepted that in the spot panchanama presence of other persons is revealed at the time of trap, but their statements were not recorded nor any enquiry was made with them.

PW-5 Panch witness in his statement has clearly stated that accused No.1 kept quite on seeing the notes. This is clear that there was no reaction of accused No.1 by seeing the notes. Thus, it is clearly seen that neither there was demand nor acceptance by accused No.1. This witness clearly accepted that there were 3-5 persons in the front room where the accused was sitting. Looking at the entire evidence, one thing is sure that when the amount was handed over by the complainant, there was no any demand. There was no any dialogue between accused and the complainant in respect of bribe amount. On the contrary, earlier part of the evidence of the complainant and panch clearly shows that 7/12 extracts were already prepared. Signature was made by accused No.1 without raising any demand or without any delay in routine manner. The extracts were handed over to the complainant without any talk of bribe.

25. After looking at the evidence in this case, it would be useful to discuss the judgments cited by the appellants. In the case of **Sheshrao Raut (Supra)**, amount of alleged bribe was kept on a table inspite of giving it directly to the respondent. In the evidence, it was brought on record that one indepent witness who was present at the time of alleged trap, however, he was

not examined. The panch witness in his evidence deposed that the complainant did not speak anything and he merely put money on the table of the accused. On this evidence, the learned Special Judge had acquitted the accused. The prosecution had preferred appeal against the acquittal. This Court, observing above, was pleased to dismissed the appeal. In this case the common thing with the present case is that independent persons were present at the time of trap, however, they were not examined. Secondly, while giving bribe, there was no talk of the bribe directly between the parties.

. In the case of **Pramod Deokar (Supra)**, this Court at Principal Seat at Bombay, observed that there were serious discrepancies and therefore evidence of the complainant was not relied upon and in that view of the matter the accused was acquitted in the appeal.

. In the case of **Madhukar Khadse (Supra)**, witness had deposed that no demand of money was made by the accused to the complainant at the time of trap. Even prior demand was not proved. Though presumption under 20 of the Act was raised, however, rebuttal was given by the accused that no demand was made by the accused at the time of trap. In that case also the panch witness did not support the case of demand of bribe by the accused and the appeal was allowed acquitting the accused.

. In the case of **Prabhakar (Supra)**, this Court acquitted the accused by allowing the appeal in view of absence of evidence of categorical and unqualified demand at the time of trap. In that case the prosecution had failed to prove the initial demand. In view of that the appeal was allowed and the accused was acquitted.

. In the case of **Surender Kumar (Supra)**, the Court accepted the explanation given by the appellant as plausible.

26. This Court has also considered the judgment in the case of **T. Subramanian Vs. State of T.N. (2006) 1 SCC 401**. The Hon'ble Apex Court in the said judgment it is held that when the reasonable and probable explanation based on evidence is offered by the accused that he had accepted the money, other than as illegal gratification, would be entitled to acquittal. In the said case also the money was paid to the accused towards lease rent dues. The learned Trial Court, therefore, accepted the said explanation and acquitted the accused persons by accepting the said explanation. In that case even the explanation was not immediately offered, still that was accepted. By relying upon case of **Punjabrao Vs. State of Maharashtra, (2002) 10 SCC 371**, para No.3 is quoted in the said judgment and same is reproduced below :-

“It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defence by proving beyond reasonable doubt as the prosecution, but can establish the same by preponderance of probabilities.”

. The amount was accepted as lease rent arrears due to the temple., where the accused was made to believe that the payment was towards rent due to temple. It was held that the accused cannot be said to have committed any offence, when the reason for receiving the amount is explained and when explanation is probable and reasonable then the appellant needs to be acquitted.

. Looking to the present case, both the accused have immediately offered explanation and made defense probable.

27. Taking into consideration the judgments, it is seen that it was necessary for the prosecution to examine the independent person, since it has already come on record that in the office of the accused, there were more persons present at the time of trap. Secondly, from the evidence of panch witness, in the cross-examination it has specifically brought on record by the accused that the accused No.1 did not make any demand. On the contrary, it

has come on record that he kept silence when the complainant held money before this accused. Third thing that needs to be considered is that the money was allegedly kept in the drawer, which was in the inner room. However, in the evidence of Surveyor, who drew map, it has come on record that the table in the inner room was not visible from the outer room, where the alleged incident has taken place and thus there is no possibility of anybody viewing the keeping of the amount in the drawer. On all these counts this Court holds that the prosecution has not proved the case beyond reasonable doubt. Certainly, case is made out to hold that the prosecution has not proved guilt of the appellants. The appellants deserve to be acquitted. Hence, following order :-

ORDER

- (i) Criminal Appeal is allowed.
- (ii) The judgment and order dated 22.02.2006 passed by learned Special Judge, Parbhani in Special Case No.5 of 2005 is quashed and set aside.
- (iii) The appellants are acquitted of the offences punishable under section 13(1)(d) r/w (2) and section 12 of the Prevention of Corruption Act.

- (iv) Fine amount, if any, paid by the appellants, be refunded to them.
- (iv) Bail bond of appellant No.2 stands discharged.
- (v) Appellant No.2 to furnish fresh bail bonds with sureties as per Section 437-A of the Code of Criminal Procedure, 1973.
- (vi) Mr. P.B. Kadam, learned Advocate for appellant No.2 is appointed through Legal Aid. He shall be paid his fees as per rules.

[KISHORE C. SANT, J.]