

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

CRIMINAL APPEAL NO. 66 OF 2001

Dharamraj s/o Hemraj Ambekar,
Age : 38 years, Occu. Service,
R/o. Nagarjawala, Tq. Pathri,
Dist. Parbhani

.. Appellant

Versus

The State of Maharashtra

.. Respondent

Mr. V. J. Dixit, Senior Advocate i/by Mr. S. V. Dixit, Advocate for the
Appellant.

Mr. S. W. Munde, APP for Respondent/State.

CORAM : KISHORE C. SANT, J.

Date on which reserved for judgment : 20th December, 2022.

Date on which judgment pronounced : 22nd February, 2023.

JUDGMENT :-

. This appeal is filed by the original accused challenging the judgment and order dated 22.01.2001 passed by the learned Special Judge, Parbhani thereby convicting him for the offences punishable under Sections 7, 13 (1) (d) r/w Section 13 (2) of the Prevention of Corruption Act, 1988 (for short "the Act") in Special Case No. 1/1993. The accused is sentenced to suffer rigorous imprisonment for one (01) year and to pay fine of Rs. 500/- (Rs. Five Hundred only) and in default to suffer rigorous imprisonment for fifteen (15) days for the

offence punishable under Section 7 of the Act. He is further sentenced to suffer rigorous imprisonment for two (02) years and to pay fine of Rs. 1,000/- (Rs. One Thousand only) and in default to suffer rigorous imprisonment for one (01) month for the offence punishable under Section 13 (1) (d) r/w Section 13 (2) of the Act. The sentences are directed to run concurrently.

2. The case of the prosecution is that the accused was working as Talathi. The informant – Karbhari had approached him for taking entries in the revenue record in respect of land that was standing in the name of his deceased father. After death of father the land was partitioned in the brothers. For the said work the accused demanded Rs. 1,000/- for mutation. The informant therefore met the officer of Anti Corruption Bureau (ACB) and lodged his complaint. The ACB decided to lay a trap and accordingly trap was laid on 23.03.1992. It is alleged that, at the time of trap this accused accepted the bribe amount.

3. The defence of the accused/appellant is that the accused never demanded any amount towards bribe. The informant wanted that entire land be mutated in his name. However, the accused had taken mutation entries in the name of all the brothers by giving public notice. On that count, the accused was falsely implicated. The informant

further wanted to correct the record as some of the land under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short "Act of 1947") was shown to be part of neighbouring owner. The accused told that he cannot correct the mistakes committed in the record prepared under that Act. It is further defence that, at the time of trap the informant had kept his notes on the chair in which he had sat and he gave signal to the raiding party. It is the I.O. on entering into the room directed this accused to take the notes from the chair and as per his directions the accused took those notes by counting and in that process anthracene powder came into his contact and therefore his fingers came in contact with anthracene powder.

4. The prosecution in support of its case examined five witnesses (i) The informant, (ii) Anil Baburao Malwadkar - a panch, (iii) Udhav Sidaji Shelke – cousin of informant, (iv) Vithal Satwaji Angule – I.O. and (v) Sumant Namdeorao Bhangе – Sanctioning Officer.

5. The first witness i.e. informant is examined at Exh. 16/1. In his evidence he stated that, after death of his father the land standing in the name of father was partitioned amongst brothers and for that purpose he had met the accused in the month of December 1991 where there was demand of the amount. He again went to the house of the

accused in the month of February, 1992 and asked as to whether his work is done whereupon, he was told that his work would not be done unless the balance amount of Rs. 500/- is paid. Thereafter, again in the month of March, 1992 the informant went to the house of the accused. This time he had taken with him an application for grant of 100% subsidy for digging of a well under the scheme sponsored by the Government namely "Jawahar Vihar Vyapti Karyakram". He requested the accused that, for this purpose he required certain documents and requested to issue requisite certificates required for the purpose of making application. There the accused again demanded Rs. 100/- for issuing the certificate. The informant assured the accused that he would pay total amount of Rs. 600/- after 2-3 days and went to the office of ACB for lodging a complaint.

6. The informant further deposed that, after lodging the complaint, the I.O. asked him to attend his office on the coming Monday etc. On 23.03.1992 after completing the formalities for laying down a trap, both the panchas, the staff members and I.O. went to Manwat in a Jeep. The panch namely Shri Malwadkar and the informant went to the house of the accused. The accused told that, on that day Tahsildar of Pathri had come to Manwat and therefore, he would not be in a position to complete the work and they came back to Parbhani. Thus,

the first trap failed on 23.03.1992.

7. Again the informant went to the house of the accused in April, 1992 and asked him about the work. The accused told that that he would do it if the informant would pay Rs. 600/-. The informant again assured that he will pay within next 2-3 days. Second time he lodged the report with the ACB on 20.04.1992. The complaint was given in the handwriting of the informant. The said panchas were again called for the purpose of laying of a trap. This time complainant was given mini tape recorder. Demonstration was shown about its use at the time of raid. The panch namely Shri Malwadkar and the informant went on walk towards house of the accused. The accused opened the door. Later on the informant stated that, in fact, he opened the door by pushing the same. After entering into the house he switched on tape recorder. The accused and the informant sat on two chairs while panch Shri Malwadkar was standing. The informant asked about his work. On that, the accused asked whether the amount is brought and asked the informant to give the money. The accused told the informant that he would be required to pay Rs. 600/- more as there were two mutation entries. The informant again promised to pay remaining amount after 2-4 days. Upon that, the accused asked to handover the money. The accused received the amount with his hands and counted the same.

Immediately on giving signal the raiding party caught hold the hands of the accused. The accused immediately threw the notes towards the informant and the said notes fell down on the chair between the laps of the informant. The notes were lying on the seat of the chair. On this the panchanama was drawn. The informant further deposed about the panchanama.

8. In the cross-examination, the informant accepted that he could not produce consent letter executed by his brother and other legal heirs of the deceased brother. His mother and two brothers had not moved the Talathi for recording the lands of their shares after demise of the father. He could not tell how much land was given to the share of brothers. He accepted that, before the police he had not stated that the Tahsildar, Pathri had come to Manwat and therefore the accused would not be in a position to do the work. He further accepted that, he had not stated that on 23.03.1992 the accused had gone for recovery of the dues with his superior officer and therefore, the amount could not be paid to him. He accepted that the portion marked 'A' of the report Exh. 18 is not correct. The portion marked 'A' is about that, accused had gone for recovery of the taxes and therefore he could not do any work on that day. In the cross-examination, it is stated that, the notes fell down between the lap of the informant when the raiding party had

entered in the room. This witness proved both the complaints dated 23.03.1992 and 20.04.1992.

9. Next witness is PW-2 namely Shri Anil Malwadkar who acted as panch. He accompanied the informant at the time of actual trap. He deposed that, he was called by the ACB and was requested to work as panch. About actual incident, he deposed that, he and informant went to the house of the accused. There was only one chair in the courtyard of the house of the accused. The accused brought two more chairs in the courtyard. All three persons sat on the chairs. The accused asked the informant as to whether he has brought the money. The informant replied in affirmative. The accused then asked the informant to pay the money. On giving the money the accused counted the notes. The conversation thereafter was going on. This panch went out of the house and gave signal immediately. On receiving the signal the raiding party came in the house of the accused and caught hold the hands accused. The accused threw the notes. The said notes fell down on the ground between both the legs of the informant. The panchanama was carried. Further procedure was followed in which the hands of the accused were found with blue shining under the ultra violet lamp. The notes were lifted by the I.O. from the place they were lying. The notes also shown blue shining. The tape recorder that was placed in the

pocket of the informant was taken out. The cassette of which was played there and was thereafter seized.

10. In the cross-examination, this witness denied specific suggestion that the I.O. asked the accused to pick up the notes and to count the same. This witness proved the panchnama.

11. PW-3 is cousin of the informant namely Shri Udhav Shelke. He deposed that, father of the informant died in the year 1982-83. The informant – Karbhari had informed him that he had agreed to pay Rs. 1,000/- to the accused for effecting a mutation entry. He further stated that, however, he was not present when Karbhari had talks with the accused in respect of that payment. Since this witness did not support the prosecution the learned P.P. sought permission to declare him hostile and cross-examined this witness. In the cross-examination, however, he accepted that he had signed the consent letter as a witness which was at Exh. 19. In the cross-examination by the accused this witness accepted that the consent letter Exh. 19 and other documents were given to the accused by the informant 8-10 days prior to date of laying of a trap. Thus, this witness is not of much use to the prosecution.

12. Next witness is PW-4 that is investigating officer namely Shri Vithal Angule. In his evidence he deposed about the receipt of the complaint, laying down of a trap and about further investigation and drawing of panchnama etc. He deposed that, on the first occasion the accused had already gone with the Tahsildar, Pathri for some official work. On 18.04.1992 again there was demand as per the say of the informant. He further deposed that, on the date of trap, a mini tape recorder was given to the informant and it was told as to how to operate the same. About actual trap, he deposed that, Police Constable Ashok Patil caught hold of right hand of the accused whereas, Police Constable Modak caught hold of left hand of the accused by wrists. Then accused immediately threw the notes from his hands towards informant and the said notes fell down on the seat of the chair between his laps where informant was sitting. Further, he stated that, under the light of ultra violet lamp finger tips of the accused were found having blue shining except little finger. He also deposed about the recording of conversation between the informant and accused in small cassette. He re-recorded that conversation on a big cassette and kept the small cassette and big cassette in two separate packets. By playing big cassette transcription of the conversation was prepared.

13. In the cross-examination, this witness accepted that letter Exh. 35 does not bear any endorsement of the office of ACB. He accepted that, he was standing at the distance of about 2 ft. behind the informant at the time of trap and the two Constables were on either side of the accused. He accepted that he had inadvertently deposed that the accused threw the notes from his hand before this witness introduced himself to the accused. When the notes were dropped by the accused his right fist was closed.

14. PW-5 is the sanctioning authority who is examined as a last witness by the prosecution. This witness at the relevant time was working as Sub Divisional Officer, Sailu. In his evidence he deposed that, he received copies of the papers of investigation. After studying the papers he was satisfied that the case was made out to accord sanction for prosecution. In the cross-examination, he accepted that in the sanction order Exh. 43 there is no specific reference to any particular document perused by him as he did not feel it necessary to specifically mention the same. He accepted that, he had received a draft sanction order with letter Exh. 42. He denied the suggestion that he mechanically signed the order without application of mind. He accepted in the cross-examination that the Talathi has no power to take mutation entry for correction of the holding which was wrongly

recorded during the implementation of the scheme of consolidation of holding.

15. The learned senior advocate made submissions from the evidence of PW-1 and PW-2 - panch that there is variance. PW-1 stated that the amount was lying between his laps and panch took the amount. However, hands of the panch are not examined. From the evidence of PW-2 he submits that, this witness deposed about the tape recorder. He submits that, panch PW-2 in his evidence stated that the notes were on the ground between both the legs of PW-1. From the cross-examination of PW-2, he submits that, this witness could not say as to whether the hands of the accused were caught hold separately or as stated that his wrists were caught hold separately, but simultaneously. The accused had thrown the notes from his hands almost at the same time when his hands were caught hold. He pointed out that, a suggestion was given to this witness that the I.O. had asked the accused to pick up the tainted notes from the ground. He submits that, evidence about holding both the hands is against the panchanama wherein, it is noted that the right hand of the accused was caught hold. From the evidence of PW-4 he submitted that omissions are brought on record as regards the statements in Exh. 19. From the evidence of I.O. he submitted that, this witness accepted that the cassette player did not

play clearly and the voice could not be heard. This fact is clear from the panchanama Exh. 29. Thus, he submits that no conversation is recorded and naturally there is no question of playing conversation from the tape recorder. He submits that the I.O. was standing at the distance of 2 ft. behind the informant when the Police Constable caught hold the accused. He accepted that, inadvertently he deposed that the accused threw notes from his hand before the I.O. who introduced himself. From the evidence of PW-5 – sanctioning authority he submits that the Talathi has no power to grant mutation and thus there is no question of asking any bribe. He submits that, considering all these, the defence of the accused is totally probable. In the statement under Section 313 of the Code of Criminal Procedure he has clearly stated that the informant wanted his name to be recorded in the revenue record in property of his deceased father. Since the accused did not agree to the same, the informant got angry and therefore he lodged the complaint. Before that, the complainant had met the accused on several times. He further submitted that when the first raid was failed the prosecution had no reason to go again for second raid, however, the prosecution anyhow wanted to prosecute this complainant and therefore, this exercise was undertaken. From the depositions of PW-1, 2 and 4 it is clear that, each one has stated the position of notes differently. It has come that second panch Mr. Patil lifted the notes

from the ground, however, he is not examined. It has come on record that the tainted notes were thrown at the informant and those fell between the lap of the informant and on the chair. However, the chair and the pant of the informant are not examined under the ultra violet lamp. He submits that, earlier demand is not proved. He submits that, the appeal deserves to be allowed.

16. Learned A.P.P. opposes the appeal stating that prosecution has examined five witnesses. From the evidence of all the witnesses except PW-3 who turned hostile, the case of the prosecution is clearly proved. The noting is clearly established that for taking mutation entries the amount was demanded. Rs. 500/- was to be paid for mutation and Rs. 100/- was for issuing certificate as decided. On 23.03.1992 the trap failed, however, again there was a demand and therefore, again the complaint was lodged by the informant. Thus, demand and acceptance is proved. The contradictions are minor in nature. The witnesses have corroborated the version of each other on material aspects. He submits that, there is no sufficient foundation made by the accused in his defence. There was no question of asking the accused to pick up the notes and thus, defence is not sustainable. About the sanction, he submitted that in the chief itself the sanctioning authority has deposed that he has examined all the papers which clearly reflects the

application of mind. He lastly submitted that, in this case a presumption is rightly invoked as the demand and acceptance is proved. There is no sufficient material to rebut the said presumption. So far as having grudge in the mind is concerned, he submits that this can be said only about the informant, however, there are other witnesses also to support the case of the prosecution. He submits that, the learned Trial Court has rightly considered all the aspects and has rightly convicted the accused. He prayed for dismissal of the appeal.

17. Now coming to the judgments cited by the parties, the learned senior advocate for the appellant relies on following judgments.

- (i) **Jaswant Singh Vs. State of Punjab reported in AIR 1958 SC 124.**
- (ii) **Panalal Damodar Rathi Vs. State of Maharashtra reported in 1979 Cri.L.J. 936.**
- (iii) **Mohd. Iqbal Ahmed Vs. State of A.P reported in AIR 1979 SC 677.**
- (iv) **Suraj Mal Vs. The State (Delhi Administration) reported in AIR 1979 SC 1408.**
- (v) **State of Karnataka Vs. Ameer Jan reported in AIR 2008 SC 108.**
- (vi) **C. M. Girish Babu Vs. C.B.I. Cochin reported in AIR 2009 SC 2022.**

18. In the case of **Jaswant Singh Vs. State of Punjab** (supra), the Hon'ble Apex Court has held that the sanction under the Act is not a automatic formality, but it is essential and should be observed with complete strictness. The object behind sanction is to see that the authority granting sanction is able to consider for itself the evidence before it and comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden. In that case, it was held that the sanction was necessarily be granted validly.

19. Second judgment in the case of **Panalal Damodar Rathi Vs. State of Maharashtra** (supra), the Hon'ble Apex Court has observed that the evidence of the complainant should be corroborated in material particulars as the person who offers bribe is guilty of abetment of bribery and the complainant cannot be placed on any better footing that of accomplice. It was held that, corroboration is absolutely necessary in the cases under Anti Corruption Act. In that case, the version of the complainant is that the accused asked as to whether he has brought the money and the complainant answered in affirmative. Thereafter, the accused asked the complainant to give money to the second accused. However, this is not stated by the panch witness and in that view, the accused came to be acquitted since there was no corroboration in the version of the complaint on the point.

20. In the case of **Mohd. Iqbal Ahmed Vs. State of A.P.** (supra), the Hon'ble Apex Court has held that the facts on the basis of which the prosecution was to be sanctioned were mentioned in the sanction order, neither the document of sanction contained any ground on which the satisfaction of the sanctioning authority was based by application of mind. In that case, it was merely mentioned that the sanction has been given on the basis of a note of the Commissioner, Municipal Corporation. It was held that, there was no valid sanction and the accused was acquitted.

21. In the case of **Suraj Mal Vs. The State (Delhi Administration)** (supra), the Hon'ble Apex Court had accepted the defence of the appellant that he was falsely implicated and nothing was brought out from the accused and there was no any demand of bribe. The Hon'ble Apex Court accepted that there were inconsistencies in the statement of the witnesses and as such, the testimony of such witnesses was held to be unreliable and unworthy of credence. In that case, though there was recovery, the Hon'ble Apex Court held that mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence is not reliable and the accused was acquitted.

22. In the case of **State of Karnataka Vs. Ameer Jan** (Supra), the Hon'ble Apex Court upheld the acquittal of the accused. In that case, the sanctioning authority had passed an order solely on the basis of the report made by the Inspector General of Police. The said report was also not brought on record and thus, it was held that sanction was not proper.

23. The last judgment is in the case of **C. M. Girish Babu Vs. C.B.I.** (supra), the Hon'ble Apex Court dealt with the aspect of presumption under Section 20. It is held that, the presumption is not an inviolable one. The accused can rebut the said presumption either through cross-examination of the witness or by adducing reliable evidence. It is only if the accused fails to disprove the presumption, the same would stick and then it can be held by the Court that the prosecution has proved that the accused received the amount towards gratification. It is further held that, burden of proof on the accused is not as the burden placed on the prosecution to prove the case beyond reasonable doubt. The accused is only required to discharge the burden by preponderance. The accused need not prove innocence beyond reasonable doubt and thus, the appeal of the accused was allowed.

24. Considering all these judgments and considering the evidence, this Court finds that there is variance between the version of PW-1 and

PW-2 – Panch is material in respect of lying of the amount on the chair or on the laps of the informant. Variance goes to the root of the matter and makes the evidence unreliable. So far as evidence of sanctioning authority is concerned, it is seen that, he has not mentioned all the documents on the basis of which he formed an opinion that a case is made out to grant sanction to prosecute the appellant. The sanctioning authority accepts that, it has received a draft sanction order. He denied the suggestion that, he mechanically signed the order without application of mind. It has also further come in the cross that the Talathi had no power to take mutation entry for correction, this clearly shows that there was no question of the present accused asking for bribe.

25. In this case one more factor that needs a consideration that the first trap had failed as the accused was not in the village on 23.03.1992. If really there was any demand then certainly accused would have called the complainant. However it is the complainant who went to the accused after about a month. This shows that anyhow the raiding party wanted to make a trap successful. Defence of the accused therefore becomes probable that he had not demanded a bribe. Though tape recorded was with the party nothing is produced on record.

26. Considering all the facts, this Court finds that the finding of the learned Special Judge is not sustainable. The learned Special Judge has taken that the prosecution has proved the case beyond reasonable doubt is clearly against the evidence on record. On the point of sanction, the observation of the learned Special judge suffers from perversity. The evidence of sanctioning authority is not properly appreciated. The observation that, PW-3, cousin of the informant became hostile and did not co-operate the evidence of the informant. However, it is held that, it would not be ground to discard the evidence of the informant. This finding is also not correct. The observation that the variation in the evidence in respect of approximate time and of the said demand would not be material is also not correct.

27. Thus, this Court finds that the evidence is wrongly appreciated by the learned Trial Court. This Court, therefore, comes to a conclusion that, the appeal deserves to be allowed. Hence, the following order.

ORDER

(I) The appeal is allowed.

(II) The accused is acquitted of the offences punishable under Sections 7, 13 (1) (d) r/w Section 13 (2) of the Prevention of Corruption Act.

(III) The judgment and order passed by the learned Special Judge, Parbhani dated 22.01.2001 in Special Case No. 1/1993 is hereby quashed and set aside.

(IV) The fine amount be refunded to the appellant, if any.

(V) The appellant to comply with Section 437-A of the Code of Criminal Procedure and furnish P.R. bond and solvent surety in the sum of Rs. 15,000/- (Rs. Fifteen Thousand only) till the appeal period is over.

(KISHORE C. SANT, J.)

P.S.B.