

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 395 OF 2003

Govind Yeshwant Adsule

...Appellant

Versus

The State Of Maharashtra

...Respondent

....

Mr. Ujwal R Agandsurve Advocate for Appellant.

Mr. Y. Y. Dabake, APP for the Respondent-State.

....

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd JULY, 2023.

JUDGMENT:-

1. The Appellant challenges the Judgment and Order dated 11th March 2003 passed by learned Special Judge Solapur in Special Case No. 04 of 2001 convicting the Appellant for offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and sentencing him to suffer Rigorous Imprisonment for two years and also convicting him for the offence punishable under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

2. The case of the prosecution is as under:-

(i) The accused was working as Maintenance Surveyor and posted at Solapur. Complainant is the Trustee of Panjaji Mashid Hindu Trust. The Trustees had made an application for entering their names to the Trust

Property. The Assistant Charity Commissioner by order dated 27th June 2000 directed to enter the names of new trustees.

(ii) On 1st August 2000, the complainant had visited the office of Maintenance Surveyor and made an application for entering the name of Trustees to the Trust property. He submitted requisite documents and affidavit along with orders of the Assistant Charity Commissioner. The application was accepted and the complainant was directed to meet the accused, who was working at table No.6.

(iii) On 16th August 2000, the complainant along with his friends met accused, who was in-charge of table No.6. The complainant inquired about the status of his application. He was told to make inquiry after one month.

(iv) On 18th September 2000, the complainant along with his friend again visited the office of accused. He made enquiry about application of Trust. The accused told him that, the application is received and he should follow up after eight days.

(v) On 5th October 2000, the complainant met the accused at 02:00 p.m. and enquired about his work. The accused told him that, the names mentioned in the change report are not readable. He was advised to make an application to Charity Commissioner and obtain fresh copy. The complainant made fresh application and gave names of all new Trustees.

(vi) On 19th October 2000, the complainant met accused and again enquired about his work. He was told to make inquiry after eight days. On

1st November 2000, the complainant met the accused and he was asked to wait in the canteen. The accused told the complainant that for such type of work he charges of Rs.5,000/-. The complainant told the accused about his financial condition and it is not possible to him to arrange the said amount. The accused then reduced the amount to Rs.2,000/-. The complainant told that it is not possible to pay and he would discuss the said issue other trustees and come.

(vii) The complainant discussed about payment of amount with other trustees, who did not agree over it and told that it was not within their right to pay amount and get the work done.

(viii) On 2nd November 2000, the complainant met the accused and told him that it was not possible to pay the amount. The accused reduced the amount to Rs.1,500/-. Complainant showed inability to pay the amount and thereafter, the amount was reduced Rs.1,000/-. Accused told the complainant that in the event the said amount is not arranged, his application would be rejected.

(ix) After one months complainant visited office of accused to find out it his work is done i.e. on 4th December 2000. He learnt that accused had gone to Court. Complainant again visited office of accused on 6th December 2000 and enquired about his work. Accused told him that he is in haste to go to Court. He told complainant to meet afterwards. He also told complainant that his application is kept pending. He told complainant to

come on next day at 12:00 hrs. with Rs.1,000/-.

(x) The complainant approached A.C.B.. He was asked to visit the office on the next day. The complainant visited the office of ACB on 7th December 2000 and lodged the complaint. His complaint was recorded. Panch witnesses were called. Instructions were given to complainant and panchas. Anthracine powder was applied to notes. Notes were kept in the pocket of the complainant. Pre-trap panchnama was recorded.

(xi) The raiding party proceeded to the office of the accused. On demand, the amount was handed over to the accused. It was accepted by him. The raiding party apprehended the accused and tainted currency notes were recovered from him. Further procedure was complied. Investigation was completed. Sanction to prosecute was obtained and charge-sheet was filed.

3. Charge was framed vide order dated 18th November 2000 for offence under Section 7 of the Prevention of Corruption Act and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act.

4. The prosecution has examined five witnesses.

- (i) PW-1 Moh. Yusuf Ibrahim Tamboli is the panch witness.
- (ii) PW-2 Hanmant Ambadas Dhage is the complainant.
- (iii) PW-3 Pandurang Shankar Karande is the Deputy Chief Survey Officer.
- (iv) PW-4 Zakir Hussain Abdul Aziz Munshi is working in the Department of Maintenance Surveyor.
- (v) PW-5 Dilip Khanderao Panse is the Investigating Officer.

5. Learned Advocate for the Appellant submitted that, the appellant has

been falsely implicated in this case. The uncle of the complainant was working as Maintenance Surveyor prior to appointment of appellant. He was transferred from the said department. The complainant's uncle had grudge against the appellant and at his instance and out of vendetta, the appellant has been falsely implicated in this case. There are serious discrepancies in the evidence of complainant. The prosecution has not established the demand of bribe beyond doubt. The complainant had referred to several demands which are uncorroborated by any independent evidence. Even on the day of raid, there was no demand by the appellant. There are contradictions in the complaint and the statement of panch witnesses. The work of the complainant was not pending with appellant.

6. Learned APP submitted that, there is sufficient evidence to convict the appellant. The demand of bribe has been proved. Amount was accepted by the accused. Presumption under Section 20 was not rebutted by the accused. The version of complainant is supported by panch witnesses. The tainted currency notes were recovered from the appellant. There is no explanation from the accused as to how he was found in possession of bribe amount.

7. In the light of submission made by both the sides it would be appropriate to refer to the evidence of the prosecution witnesses.

8. PW-1 Mh. Yusuf Ibrahim Tamboli was called by ACB on 7th December 2000 to act as panch witness. Rajendra Mane was also called for same

purpose. They were introduced to complainant. Complaint was read over to them. Instructions were given about trap. Procedure for raid was completed. Pre-trap panchnama was recorded. Raiding party proceeded to the office of City Survey office at Solapur. He accompanied the complainant. They met the accused. Accused told complainant that he was looking for him from Dipavali. Accused took them to canteen for tea. The complainant enquired about his work. Accused questioned complainant if he had done the work as told by him. The complainant answered in affirmative. They came out of canteen. The complainant removed the amount and paid it to accused. The accused accepted the amount and kept it in his shirt pocket. Signal was given to raiding party. The accused was apprehended. Currency notes were recovered from him. Procedure was complied. Post trap panchnama was recorded. In the cross-examination he stated that, while proceeding to the raid, they did not carry typewriting machine. They had done typing work in city survey Office. The raiding party was near by canteen. They were present in the canteen for ten minutes. The demand of Rs.1000/- was made during the course when they were consuming tea.

9. According to this witness, the complainant had made inquiry about his work and the accused inquired as to whether the complainant had done the work as told by him. The evidence of this witness does not specify that, the accused had demanded money for performing complainant's work.

10. PW-2 Hanmant Ambadas Dhage is the complainant. He has deposed that, he is the Trustee of Vishweshwar Jivheshwar Vishwastha Mandal, Solapur. He is the president of the said Trust. The trust has property at 27, Begum Peth C.S. No. 5606. The property extract standing in the name of Panjaji Mashid, Hindu. Earlier Trustees had expired. Entry was made in the office of Charity Commissioner but no such entry was made in city survey register. The Trustees got their names entered in the Charity Commissioner. Order dated 27th June 2000 was passed by Charity Commissioner about names of Trustees. He went to office of City Survey and made application. On 16th August 2000 he approached accused at table No.6. He enquired about his application. The accused told him to make enquiry after one month. On 18th September 2000, he went to the office of accused. Accused told him to make enquiry after eight days. On 5th October 2000, he went to the office of accused and told him that name of the trustee on change report are not readable and advised him to make an application for obtaining fresh copy of the order. On 19th October 2000, he met accused and inquired about his work. He was told to enquire after eight days. On 1st November 2000, he again went to the accused. He was asked to wait near the canteen. Accused demanded the amount of Rs.5,000/- and reduced it to Rs.2000/-. The complainant sought time. He met the accused on 2nd November 2000 and told him that it is not possible to make payment. Amount was reduced to 1500/- and than to Rs. 1000/-.

On 4th December 2000, he went to the office of accused. He was not available. On 6th December 2000, he again enquired about work. Accused told him to pay amount. He approached ACB. He was called on 7th December 2000. His complaint was recorded. Trap arranged. He along with PW-1 went to office of accused and enquired about his application. Accused told him that he was waiting for him since Dipawali and asked him as to what happened about his money. Accused asked him whether he has brought Rs.1000/-. He told accused that he has brought money. He gave Rs.1000/- to accused and gave signal to raiding party. Accused was apprehended.

11. It is pertinent to note that, PW-2 (complainant) referred to the fact that, the accused had questioned as to what happened about his money. Accused also asked him whether he had brought Rs.1000/-. The version of panch witness does not indicate that, the accused had inquired with the complainant whether he has brought his money or he has brought Rs.1000/-. In the cross-examination he stated that, he had attended office of the accused on 5th October 2000 and at that time the accused had shown him the orders passed by his superior on exhibit-14. The defence of the accused is that the work relating to the application filed by complainant was pending with the Superior. On the basis of this order, he gave application and name and addresses of deceased Trustees. He had produced xerox copy of order of Assistant Charity Commissioner on 5th

October 2000. He was not carrying original certified copy of order of Assistant Charity Commissioner. He had told that he would submit original certified copy by Dipawali. He was aware that until he files the original copy his work could not be done. He had not submitted original certified copy even till date of trap. He had not obtained certified copy of order of Assistant Charity Commissioner even on the day of his deposition. On 6th December 2000, he had disclosed Dy.S.P Panse the nature of his complaint. He did not record the same in writing on that day. He had stated in his complaint that he had told accused that he would be coming with amount by Dipawali. Mr. Panse told him that he did not record complaint as sufficient time had lapsed since Dipawali and directed him to come on next day. His complaint and statement recorded by Mr. Panse on 8th December 2000, does not make reference to his visit to the ACB office on 6th December 2000. Complaint and statement does not show that Mr. Panse directed him to come on next day at 10:30 am. Statement dated 8th December 2000 makes positive reference to his visit to ACB on 7th December 2000. This admission of PW-2 is of great significance. The complainant was aware that his work cannot be done unless he submit the original copy. The version of the complainant that the accused had demanded the bribe for performing the work is doubtful. His statement dated 8th December 2000 does not mention that his complaint was recorded and signed by him in the presence of panchas. His statement does not make reference to the fact that before

the trap he went to the office of accused and confirmed about the presence in the office. His statement before police does not mention that on 7th December 2000 he questioned the accused in his office about the work. He admitted that Vishnupant Hanmant Dhage is his uncle. He was working in the office of Maintenance Surveyor. The defence of the accused/appellant is that Vishnupant Dhage was transferred from Solapur to Pandharpur and at his place accused was posted. Vishnupanth Dhage was working at Solapur for four years and therefore, he had grudge against the appellant and at his instance the complainant had falsely implicated the accused in the crime.

12. The evidence of PW Nos. 1 and 2 does not inspire confidence to establish that the appellant had demanded the bribe amount and the same was accepted by him as bribe amount. Their evidence is contradictory to each other. According to PW-1 on deate of trap complainant (PW-2) enquired about his work and accused questioned complainant if he had done work as told by him. Complainant told him that he had done work. The evidence of PW-1 does not disclose that there was specific demand by accused from complainant for performing work on the day of trap. However, the evidence of PW-2 (complainant) mentions that he questioned accused as to what happened about his work. Accused told him that he was waiting for him since Dipawali and questioned as to what happened about his money. It is pertinent to note that this version is not corroborated by

PW-1. The panch witness (PW-1) has not stated that accused had enquired about his money. The version of PW-2 that accused stated that he was waiting since Dipawali is also not referred by PW-1. According to PW-2, the accused questioned as to what was decided by them and whether he had brought Rs.1000/- and while returning from canteen accused questioned him if he had brought Rs.1000/- and he told him that he had brought amount and than accused told him to pay is not reflected in evidence of PW-1.

13. The version of PW-2 does not inspire confidence. According to him, the accused demanded money on 15th November 2000 and 2nd November 2000. On 4th December 2000 accused was not available. On 6th December 2000, he met accused. Thus, the complainant waited for more than one month after the alleged demand. The demand dated 1st November 2000, 2nd December 2000 and 6th December 2000 uncorroborated testimony of PW-2. PW-2 has admitted that on 5th October 2000 accused had shown him order of superior Exhibit-14. He gave application on the basis of this order. On that day he was not carrying original certified copy of of order of Charity Commissioner. He was aware that until he files the original copy his work would the original certified copy even till date of trap and til lhis evidence was recorded he did not obtain certified copy of order passed by Assistant Charity Commissioner. Hence, question of completing work without compliance by complainant did not arise.

14. PW-3 Pandurang Shankar Karande was working as Deputy Chief Survey Officer. He received papers from ACB regarding sanction for prosecution. He passed the sanction order. In the cross examination, he admitted that, he prepared notes and obtained order from City Survey Officer. The accused had put up the notes on 22nd September 2000 before City Survey Officer and City Survey Officer had passed order to put up the papers along with original documents but the accused did not put up the same. The City Survey Officer wanted other documents to be put up along with office note. On 5th October 2000, the complainant filed another application.

15. PW-4 Zakirhussain Abdul Aziz Munshi was working as Maintenance Surveyor. He was working on table No. 6. The accused was in-charge of his table. He knows the complainant. He knows about the raid. The complainant had come to his table before raid. His work was with accused. In the cross-examination he admitted that, he heard that uncle of complainant Vishnupant Dhage was Maintenance Surveyor.

16. PW-5 Dilip Khanderao Panse is the Investigating Officer. He has referred to the events after complainant has approached the office of ACB. He referred to the raid, Pre-trap panchanama, post trap panchanama. In the cross-examination he stated that, the complainant had approached the ACB on 7th December 2000. After recording the complaint it was decided to lay trap. He stated that, on the basis of statement of Vishnupanth Dhage,

he has gathered that since Dipawali complainant and accused did not meet each other. He stated that, on the basis of complaint at exhibit 19, there is no demand of bribe prior to Dipawali and the demand is on 1st November 2000 onwards. The initial demand plays important role. He did not ask for explanation from the complainant. His complaint does not mention that the amount was given and accepted near the out-gate and they have observed it.

17. Scrutiny of the entire evidence depicts discrepancies as stated herein above. It is short of proving the charge. In the case of **Moti Ram Jai Singh Pawar Vs. The State of Maharashtra (1985 2 Crimes (HC) 18)**, it was observed that it is well settled in the matter of trap cases, particularly when the initial part of the genesis of that story of demand and negotiations is found to be untrustworthy, the entire prosecution case must fail for the simple reason that the testimony of the complainant by itself can never be accepted.

18. In the light of the aforesaid circumstances, judgment of conviction is required to be set aside.

ORDER

- (i) Criminal Appeal No. 395 of 2003 is allowed.
- (ii) The Judgment and Order dated 11th March 2003 passed by learned Special Judge Solapur in Special Case No. 04 of 2001 convicting the appellant for the offence under Section 7 of Prevention of Corruption Act

and Section Section 13(2) read with 13(1)(d) of Prevention of Corruption Act is set aside and the appellant is acquitted of all the charges.

(iii) Bail bond stands cancelled. Fine, if any, be deposited shall be refunded to the Appellant.

(iv) Criminal Appeal stand disposed of.

(PRAKASH D. NAIK, J.)