IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.457 OF 1997

Satyawan Krishnaji Dubal & Anr. .. Appellants
Versus
The State of Maharashtra .. Respondent

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Mr.Satyavrat Joshi i/b Mr.Jaydeep D. Mane for the Appellants.
Mr.S.R.Agarkar, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.
DATED : 26th OCTOBER, 2023

JUDGMENT:-

1. Being aggrieved by the judgment delivered by the Special Judge, Solapur in Special Case No.14 of 1993, convicting the Appellants under the Prevention of Corruption Act, 1988 (for short, **"the P.C.Act"**) and on being sentenced to suffer imprisonment and to pay fine, the present Appeal is preferred by the two Appellants.

2. Appellant No.1 stand convicted for the offence punishable under Section 13(2) read with Section 13(1)(d) of the P.C.Act and sentenced to suffer rigorous imprisonment (R.I.) for one and half year and to pay fine of Rs.2,000/-, in default to suffer R.I. for one year. He is also convicted for the

offence punishable under Section 7 and sentenced to suffer R.I. for a period of nine months and to pay fine of Rs.1,000/-, in default to suffer R.I. for six months.

Appellant No.2 is convicted for the offence punishable under Section 12 of the P.C.Act and sentenced to suffer R.I. for six months and to pay fine of Rs.1,000/-, in default to suffer R.I. for a period of three months.

The substantive sentences imposed on the Appellants are directed to run concurrently and they are also conferred with the benefit of set off for the custody period.

On the Appeal filed by the Appellants having been admitted, both the Appellants were enlarged on bail and the sentence imposed on them vide the impugned judgment was also suspended.

3. Heard the learned counsel Mr.Satyavrat Joshi for the Appellants and the learned A.P.P. Mr.Agarkar for the State.

The Complainant is one Mr.Rajendra Sandipan Waghmare (PW 1), who was employed with Vitthal Co-Operative Sugar Factory. He alongwith three brothers and mother jointly owned land admeasuring 10 acres in Gat Nos.515 and 538 at village Gursale. The land was in joint possession of the members of the family and it was decided to effect division of the land. Accordingly, an application was filed before Mr.Satyawan Krishnaji Dubal, Talathi of Village Gursale on 27/01/1993 under the signatures of the four brothers and by affixing the thumb impression by the mother. The same came to be exhibited at Exh.31. The application was written by one Mr.Madhu Gore, when all the members of the family visited Talathi's office and it is the case of the Complainant that on the same date and in the same meeting, at the instance of Talathi/ Appellant No.1, Mr.Madhu Gore prepared a map showing division of land and he obtained signatures of the four brothers and thumb impressions of his mother and sister on the same. As per the Complainant, in the same meeting, he was informed by Appellant No.1 that expenses for division of land would be Rs.1,500/- and when he expressed that the amount was excessive and he would only pay a sum of Rs.1,000/- or at the most Rs.1,100/-, he got a response from Appellant No.1 that unless Rs.1,500/- are paid, his work will not be done. The signatures and thumb impressions were obtained on the form for sub-dividing the property.

4. As per the Complainant, on 01/03/1993, he approached Appellant No.1 and paid him Rs.625/-, which was accepted by him and again after one month i.e. on 01/04/1993, he went to his office and paid sum of Rs.500/- and it is the version of the Complainant that the amount was paid on those dates, since his salary was paid on 1st day of the month.

Once again on 06/04/1993, the Complainant went to the office of the Accused to demand copy of 7/12 record upon division and it was refused to him as the Appellant No.1 insisted that he should pay the remaining amount of Rs.375/-. The Complainant told Appellant No.1 that he is likely to receive the money on 12th and, hence, he would pay the remaining amount on that day and he requested him to issue the copy of 7/12 extract, but he was told that he should come on 12th alongwith the balance amount and get the copy.

The Complainant being agitated, as despite of payment of Rs.1,125/-, Talathi was not doing his work, he intended that some action should be taken against him and he decided to lodge a complaint. On 08/04/1993, he went to ACB office, Solapur and narrated his grievance, which was resulted into a complaint (Exh.34) being scribed . Since the balance amount was to be paid on 12th, it was decided to lay a trap on the very same day. On reaching, the office of ACB on 12th, the Complainant was introduced to two unknown persons and he informed them about his complaint in brief. A copy of his written complaint was handed over to them and they put their signatures. Thereafter, for the purpose of offering the bribe amount of Rs.375/-, he paid three currency notes of Rs.100/-, one currency note of Rs.50, one currency note of Rs.20 and one currency note of Rs.5/-. The notes offered were smeared with anthracene powder and after issuing instructions to the raiding team, they approached the Talathi office of Appellant No.1 with panch No.1, who was directed to be introduced as his brother-in-law. Panch No.2 was asked to accompany the raiding party.

The necessary equipments for the purpose of raid were also collated and the Complainant alongwith panch No.1 went to Talathi office and found the Appellant No.1 sitting in the office. After offering his greetings, the Complainant asked for the copy of 7/12 record and he was told by the Appellant No.1 that there was nobody to scribe/write the 7/12 extract and he should come after 10 to 15 minutes. As instructed, he went inside the Talathi's office after 15 to 20 minutes and at that time, Appellant No.1 informed him that blank forms were not available and he should get the same from outside or he should come on next morning. Since the forms were available at Pandharpur, the Complainant purchased two blank 7/12 forms and returned to Gursale Talathi office, but found it to be locked.

The Police Inspector, ACB (PW 6) declared the trap as withdrawn for that day. The currency notes were removed from his pocket and were retained in a distinct packet. The Complainant was asked to wash his clothes and remain present at the ACB office on the next day in the morning.

As directed, the Complainant reported to the ACB office on the next day and the whole procedure was repeated, when he handed over the bribe amount, two blank forms of 7/12 extract and the packet in which the currency notes were retained on the earlier date, was also opened. The team was made ready for laying of the trap.

The ACB Officer (PW 6), panch witnesses and the Complainant alongwith their staff reached Gursale at about 9.00 a.m. and as decided, panch No.1 accompanied the Complainant to Talathi's office, which was closed. They continued to loiter nearby to await it's opening and when Appellant No.1 came, he opened the door with his key and went inside the office, who was followed by Appellant No.2. Thereafter, the Complainant and panch No.1 (PW 2) entered his office and as per the Complainant, when he handed over blank 7/12 forms to him and requested him to fill the same, he inquired whether remaining amount was brought by him. Thereafter, 7/12 record was prepared by taking out the

Register from the cupboard and out of the two blank forms, one form was utilized and another was copied. Appellant No.1 again inquired, whether the amount was brought and when he responded in the positive, he was asked to pay the amount to Accused No.2. Accordingly, the amount was accepted by Accused No.2 by right hand and even he made inquiry from Accused No.1, as to what amount was settled and he was informed by the Complainant that out of Rs.1,500/-, Rs.375/- was balance, which is being paid, as earlier an amount of Rs.1,125/- was paid. Accused No.2 kept the currency notes received from the Complainant in Nehru shirt left chest pocket and Accused No.1 handed over the extract.

5. Thus, the case of the prosecution is, for effecting the sub-division of the property, Appellant No.1 demanded a bribe amount of Rs.1,500/- and accepted the same in installments and while the last installment of Rs.375/- was to be received, a trap was laid and the money was recovered from Accused No.2, who accepted the same at the instance of Accused No.1. It is the case of the prosecution that the amount was accepted by way of illegal gratification in discharge of the official duty by Accused No.1, who was working as Talathi and, since, it was within his power to sub-divide the property and to take entries in 7/12 extract and furnish the copy thereof.

6. In order to corroborate the Complainant, the prosecution examined the shadow panch as PW 2, as the Complainant, who offered bribe, is guilty of abetment of bribery and, therefore,

his version cannot be completely trusted and deserve corroboration.

PW 2-Malshidhha Kumbhar, working as Live Stock Supervisor at Panchayat Samiti, South Solapur, was called to act as panch alongwith one Chandrakant Sambhaji Salve. Both the panchas reported to the ACB office, as directed by Block Development Officer on 12/04/1993 in the morning hours. They were requested to act as panch witnesses for the proposed trap and they were introduced by the Investigating Officer to the members of the staff and the Complainant, who narrated the complaint in brief to the panchas about demand of bribe by Talathi for doing his work. The complaint was shown to them and was signed by them.

PW 2 deposed about the failed trap on 12/04/1993 and then he deposed about the trap laid on 13/04/1993.

He corroborate PW 1 on the aspect of reaching the office of Talathi, which was found to be locked and was subsequently opened by Accused No.1. He also make reference to Accused No.2 as the unknown person wearing Nehru shirt and payjama, who also entered the Talathi's office.

According to PW 2, the Complainant handed over blank forms to Accused No.1 and requested him to fill in the same. Accused No.1 then collected two Registers and started writing in the form and inquired from the Complainant, whether he has brought the remaining amount and when he held the currency notes before Accused No.1, he asked the Complainant to give the same to Accused No.2, who accepted the same and put it in the left chest Nehru shirt pocket. Accused No.2

handed over both the extracts to the Complainant and told him that the work was done. In the meantime, the raiding team barged in and the procedural formalities were completed and the marked currency notes were recovered from the Nehru shirt chest pocket of Accused No.2 i.e. an amount of Rs.375/-.

PW 2 is the panch and he is expected to be an independent person and he is extensively cross-examined by the counsel for the Accused.

In the cross-examination, he has deposed that he went to the ACB office on 12th. He did not question the Complainant nor did the Officer laying the trap had any discussion with him. He categorically deposed as under :-

> "In that morning I was at ACB Office from 7.30 to 9.30-9.45 a.m.. Except introduction to each other, we panch witnesses and complainant had no other discussion. I had feeling that trap should be successful. We panch witnesses had no discussion with the Complainant about this matter while we were in the matador proceeding to Gursale on 12th. We panch witnesses had no discussion with the Complainant or talk while we were returning to Pandharpur on 12th."

7. PW 2 has deposed that on 16th, when he was interrogated by PI Shaikh, he stated before him that on 12th, the Complainant narrated the complaint orally and he alongwith other panch heard the same. He has further deposed that he had stated before PI Shaikh that on 12th, when he accompanied the Complainant, Accused No.1 told that writer was not available and they should come after 15 minutes and, therefore, they again went to Accused No.1. Another relevant, but significant omission in his evidence is to the following effect :-

> "I had stated before PI Shaikh that on 13th we went to AC Talathi office and the door was closed and the accused came after 15 minutes and opened the door. I had stated before PI Shaikh on 16th that the accused No.1 had asked the complainant not to disclose about the acceptance of money and the accused no.2 stated that nothing will happen even if complainant disclose. I had stated before PI Shaikh on 16th that the accused No.2 enquired with complainant about the remaining amount and the complainant answered in the affirmative and at the instance of accused no.1 the complainant paid Rs.375/- to the accused no.2.
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> .. .. ..
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> I had stated before PI Shaikh that when the complainant came outside to place order for tea, two persons entered into the office. I had stated before PI Shaikh on 16th that the accused No.1 made attempt to go outside and PI Shaikh asked him to remain present in the same condition and PI Shaikh held the accused No.2 by his hands. I had stated before PI Shaikh that PI Shaikh asked accused No.1 as to whether there are any government dues from complainant and the accused No.1 informed that there was no dues. All above referred facts are not mentioned in my statement dated 16th because PI Shaikh recorded brief statement."

8. The said witness is also cross-examined on behalf of Accused No.2 and on the blank forms, which were brought from Pandharpur, the witness admit that they were in custody of the Complainant, when his personal search was taken at the Rest House at Pandharpur on 12th. He admit that it is not mentioned in the panchnama that the Complainant was found in possession of two forms, when his personal search was taken at Government Rest House at Pandharpur on 12th. Nor the panchnama mention that the forms were purchased by the Complainant.

About the use of the currency notes as bribe amount, PW 2 had categorically deposed that when the trap was recalled on 12th, Panch No.2 removed the currency notes at the instance of

PI Shaikh and it was kept in brown colour packet and the panch witnesses and PI had put their right palm on the packet, when they signed the packet. According to him, the packet was taken into custody by PI Shaikh. On 13th morning, that packet was opened by obtaining signatures of the panch witnesses and even PI Shaikh signed the same.

However, the witness admit that no such signatures were obtained and the packet was handed over to Head Constable Jadhav by PI Shaikh and he opened the same. He admit that in the morning of 13th, anthracene powder was not applied to the currency notes and these currency notes were kept in the shirt pocket of the Complainant.

Several omissions have been extracted from the witness and the relevant omission is about holding of currency notes of Rs.375/- by the Complainant in front of Accused No.1 and omission to mention in the trap panchnama about payment of Rs.625/- and Rs.500/- being paid by the Complainant on an earlier occasion.

The pre-trap panchnama and the trap panchnama are exhibited as Exhs.48 and 49.

9. During the course of investigation, Accused No.1 produced various documents, which include the application for sub-division preferred by the Complainant and five other members of his family and several Registers and Diaries. He also produced 7/12 Register as well as the Receipt Book for special recovery.

10. The prosecution has also examined the Revenue Circle Officer at Pandharpur Division, as village Gursale was under his control and specifically he exercised control over working of Talathis in fourteen villages, including village Gursale. It was his duty to verify the record maintained by the Talathi as well as VI-D Register. PW 4 has deposed that the Complainant Waghmare had given application to Accused No.1 to record the mutation and after receipt of this application, he recorded the mutation entry. Within fifteen days of recording of mutation, as per PW 4, notice is required to be sent and mutation is to be sanctioned. According to him, mutation entry No.2073, which pertains to the Complainant, was not placed before him for sanction. When he visited village Gursale on 05/04/1993, he sanctioned mutation entry No.2073 alongwith other entries.

PW 4 has specifically deposed that notice of mutation entry No.2073 is in the handwriting of Accused No.1, which he had sanctioned on 05/04/1993.

In the cross-examination, PW 4 admit that he did not make inquiry with Accused No.1 about mutation entry No.2073 and he also specifically deposed that he had not verified the record about the said mutation entry.

11. The evidence of the Investigating Officer, Mr.Mohd. Yunus Ismail Shaikh is about the trap and the procedure that was adopted. He categorically admit that the Register of VI D was not attached at the time of trap panchnama, but it was taken in custody and it remained in the office. However, when called by Pandharpur Tahsildar, it was sent to him. He also

admit that no tape-recorder was used by him for the purpose of trap.

He has proved the omissions from the version of the Complainant as well as PW 2. He admit that it is not mentioned in the trap withdrawal panchnama that when the personal search of the Complainant was taken, he was found in possession of two blank 7/12 forms. He admit that out of two blank forms with the Complainant, only one form was used, but he did not attach other blank form.

12. The 7/12 record, where the names of the complainant and his family members are found to be mutated, is produced and the entries are effected on 13/04/1993 under the signature of Talathi. Accused No.1 has also produced certain documents on record, which include the complaint filed by Accused no.1 in his capacity as Tahsildar, Pandharpur, for causing destruction of the percolation of tank and it is the specific case of Accused No.1 that on account of this complaint, the Complainant had a grudge against him. Apart from this, another document that is being produced by the Accused, was an intimation issued by the Sub-Divisional Officer to the Talathi i.e. Accused No.1, asking him to publish the list of the farmers, who have not paid the land revenue and this included the land survey Nos.515 and 538. A demand notice as regards survey Nos.515 and 538 is also exhibited, which reflect that an amount on account land development work had become payable and it is a huge amount of Rs.1,758.40 in case of survey No.515 and Rs.6,482.79 as regards survey No.538. The demand notice reflect that some amount was paid and the

amount together with interest for the period of installment was to be paid in eight annual installments, set out in the demand notice.

Accused No.1, in his statement under Section 313 of the Cr.P.C has specifically stated as under :-

> *"There was Government due in sum of Rs.14,000/- from father of the complainant towards the levelling of the land. The complainant's land was agreed to be purchase by Fukate. On 26-2-1993 when I obtained signatures of complainant and his brother, sister and mother, they had agreed to pay government dues. In that meeting purchaser Fukate also present. I hjad informed this fact to P.W.Dongare and he asked me to recover the dues. On 5th the mutation was sanction and on 6th I had issued extract of 7/12 to the complainant. He was asking for four boundaries of the land to be mention in the 7/12 extract. I declined to issue such extract. On 8th the complainant and his brothers came to me and informed that the complainant had raised money of his share but others had not raised money of their share. In that meeting, purchaser Fukate was present. He told me that, he would deposit the dues of the brothers of the complainant, of the share of the brothers of the complainant. After his brothers left my office, the complainant told Fukate that, his brother would not repay the money of their share and that arrangement was not agreeable to him. The land was of the exclusive share of the complainant. In that meeting the complainant give me threat that, he would see me if I fail issue 7/12 extract. Then he left my office.*
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> *On 12th complainant and Fukate came to me. I was not having blank forms of 7/12 record. Therefore, I could not issue 7/12 extract. On 13th morning Fukate alone came to me. He told me that, the complainant has agreed with the arrangement and he would deposit all the arrears with me.*
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> *In the morning of 13th, Fukate alone first came to my office. Then accused No.2 to me. Thereafter complainant came to me. Fukate told me that, he has brought money and he would deposit the same. Accordingly, I issued 7/12 extract to Fukate. That is same extract which is at Exh.37. Then complainant asked me to issue 7/12 extract, I told him to deposit the arrears of the dues, he got annoyed and left my office. Before that the complainant had asked Fukate about the 7/12 extract and then left my office."*

Apart from this, Accused No.1 has also thrown light about the prior incident when the Complainant and his brother were attempting to create an outlet to the percolation tank and he was informed about the said fact by the Police Patil and, therefore, he visited the site. He reported the incident and forwarded the same to Tahsildar through village Kotwal and the Complainant and his brother were called at Grampanchayat, when he stopped the work. Accused No.1 also stated in his 313 statement that the Complainant has sold the remaining the land, after he sold part of the land to Mr.Fukate.

Pertinent to note that the Complainant in his cross-examination has admitted that he had decided to sell out his land to one Laxman Ratnakar Fukate, though he denied the suggestion that there was Government encumbrance over the land and the Accused insisted him to pay the Government dues. He admit that he had sold the land to Mr.Fukate in the month of May 1993 and he is a witness in the case. He denied the suggestion that on that date, Mr.Fukate and Mr.Kolekar were present with the Accused at the time of the trap.

When the examination-in-chief of the Complainant is carefully read, he has categorically deposed that when he was going outside, two persons entered into Talathi's office and they were Mohan Kolekar and Laxman Ratnakar Fukate. It is not clear as to why the purchaser of the Complainant's land happened to be there and here the statement of Accused No.1 recorded under Section 313, provide some insight, as he had asked the purchaser to clear the Government dues and Mr.Fukate had agreed to deposit the arrears and in the morning, Mr.Fukate visited his office and expressed that he would deposit the amount due and payable and he agreed to issue 7/12 extract to Mr.Fukate.

Some glaring loopholes are noticed in the prosecution case, as PW 4, the Revenue Circle Officer has deposed that he had already sanctioned the mutation entry of the Complainant and his family members on 05/04/1993 and there is no reason for not issuing copy of the same, once the entry was sanctioned. The prosecution case appears to be doubtful as the demand of the bribe amount is not proved by the prosecution, as it is not established that the Accused No.1 had asked the Complainant to come with the bribe amount on a particular day and in fact, on 12/04/1993, when the trap was laid for the first time, the office was closed. On the next day, Accused No.1 started recording the entries as per the land record in the forms meant for the said purpose and as per the version of the Accused, it is pursuant to Mr.Fukate, purchaser of the land from the Complainant, who had agreed to pay the revenue dues.

The prosecution has failed to establish that the demand of Rs.375/- was a balance amount of Rs.1,500/-, which was demanded to issue 7/12 extract, as the mutation entries were already sanctioned on 05/04/1993 itself. If the entries were sanctioned by the superior officer, the only job assigned to the Talathi is to amend 7/12 extract and issue copy thereof.

The demand of the bribe amount having not been established by the prosecution, as it appears to be doubtful. PW 2, the shadow panch has contradicted the Complainant on several aspects, including whether the complaint was understood by him and the other panch, as he has deposed that he was not made aware about the actual case of the Complainant and he was simply interested in making the trap successful. This create doubt in the case of the prosecution and definitely the benefit of the same must accrue to Accused No.1.

13. As far as Accused No.2 is concerned, in his statement under Section 313, he has offered the following explanation :-

> *"Myself and complainant reside at the same village. We were working together in the same sugar factory. I was member of Intuc whereas the complainant was member of Lalbawata Union. I was given award and Rs.500/- by sugar Factory for my good performance. The complainant used to envy me. I am holder of Gursale and having land. On the day of raid, I had been to office of accused no.1 to collect copy of 7/12 record. Accused no.1 was writing something Fukte was sitting by his side. I asked accused no.1 for copy of 7/12 record and he told me that work was in progress and I should come after sometime. Then I sat by the side of accused no.1 facing east. Then complainant accompanied by one person came there and they sat opposite to me facing west. Then accused no.1 handed over some papers to the complainant. Then complainant and the person accompanied to complainant, stood. While leaving the office, the complainant inserted something in my left shirt pocket and the complainant and that person ran away. I started shouting as to what is the matter and what complainant has inserted while leaving the office. Complainant told me that he would place order for tea and left the office. Then I inserted my right hand into my left shirt pocket to find out object and they were currency notes. In the meantime, members of the raiding party entered into the office."*

In any case, it is the case of Accused No.2 that he has no concern with Accused No.1 and he visited the office of Accused No.1 on the given date for collecting copy of 7/12 extract and he happened to wait for his turn, as he saw Accused No.1 scribing something. It is his case that amount was forcefully inserted on his left shirt pocket and the Complainant fled away from the spot, to be trapped by the raiding team. In any case, he face the charge under Section 12 and if the charge under Section 7 for demanding illegal gratification is not proved by the prosecution against Accused No.1 by clinching evidence, even he cannot be held guilty of abetment under Section 12.

It is the prosecution which has to discharge the burden to prove the charges beyond reasonable doubt and in this case, when the version of the prosecution is amiss about the demand of illegal gratification and the connect of the same with discharge of duty by Accused No.1. The prosecution has failed to discharge it's burden and the benefit must go to the accused persons.

As a necessary consequence, the impugned judgment dated 19/07/1997, which has failed to take into consideration the settled parameters of the criminal jurisprudence about the burden to prove the guilt of an accused being established by the prosecution beyond reasonable doubt, is quashed and set aside.

The Appeal is allowed. The Appellants are acquitted of the charge levelled against them. The bail bonds furnished by them stand cancelled.

(SMT. BHARATI DANGRE, J.)