

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.651 OF 2001

Ghanshyam Hari Pagare

Age : 52 years, Occ : Talathi,

Samnera, Tal. Igatpuri,

Dist. Nashik

.... Appellant

versus

The State of Maharashtra

(At the instance of

Anti Corruption Bureau, Nashik)

.... Respondent

.....

- Mr. Jagdish G. Aradwad (Reddy) a/w Ashwini Jadhav,
Advocate for Appellant.
- Mr. S. R. Agarkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 30th JANUARY, 2023

JUDGMENT :

1. The Appellant has challenged the Judgment and Order dated 10/08/2001 passed by the Special Judge, Nashik, in Special Case No.4 of 1993. He was convicted and sentenced as follows :

- (a) The Appellant was convicted for commission of

offence punishable u/s 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'PC Act') and was sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.500/- and in default of payment of fine to suffer rigorous imprisonment for three months.

(b) He was also convicted for commission of offence punishable u/s 13(1)(d) r/w 13(2) of the PC Act and was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default of payment of fine to suffer rigorous imprisonment for six months.

(c) Both the sentences were directed to run concurrently.

2. Besides the Appellant, there was one more accused i.e. accused No.2 Vishnu Dagdu Gaikar. He was acquitted from the charges of commission of offence punishable u/s 7 and 12 of the PC Act. He was completely acquitted. He was not charged for any other offence.

3. Heard Mr. Jagdish G. Aradwad (Reddy), learned

counsel for the Appellant and Mr. S. R. Agarkar, learned APP for the State.

4. The prosecution case is that the complainant, Ashok Jadhav had an ancestral land at village Samnera, Taluka Igatpuri, District Nashik. After death of his father on 08/05/1991 he had made an application for transferring the land in his own name. It is alleged that on 12/11/1991, the complainant met the Appellant in his office. It is alleged that the Appellant demanded Rs.400/- for doing his work. On 17/11/1991 the Appellant had gone to his village. Even on that day again, he repeated the demand. The complainant did not want to make the payment. Therefore he approached the ACB ofice at Nashik and gave his complaint. The officer arranged for two Panchas, preparation was made to conduct the raid and on 19/11/1991 in the morning, the raiding party along with the Panchas and the complainant went to the office of the Appellant. Initially the Appellant handed over one extract of the piece of land to the complainant and he asked the complainant to come back after 15 minutes. The complainant and the Pancha again went to the office of the Appellant. But at that

time, he was not in the office. He had gone in the village. The complainant and the Pancha went in search of him. They met him. The Appellant, the Pancha and the complainant then went to a hotel to have tea. In the meantime, the accused No.2 came there. It is the prosecution case that the accused No.1 told the accused No.2 to accept the money from the complainant and then he left for his office. The complainant handed over Rs.400/- to the accused No.2 and gave the prearranged signal to the raiding party. The accused No.2 was caught. His hands and the currency notes were checked under the ultra violet lamp. The prosecution case is that the accused No.2 had accepted the amount on behalf of the accused No.1. The raiding party went to the office of the accused No.1. In the office, another extract was seized. The ACB officer then lodged his FIR at Ghoti police station at C.R.No.24/1991. The investigation was carried out and the sanctions were obtained. Both the accused were working in different capacities as public servants. Therefore sanctions were obtained from their superiors. The charge-sheet was filed. The case was tried before the Special Judge as mentioned earlier.

5. During trial, the prosecution examined six witnesses including the complainant, the Pancha, the Investigating Officer and the two sanctioning authorities. The defence of the accused was of total denial. In addition, the Appellant gave his written statement and also stated in the answer to the question put to him that he had exchange of words with the complainant during the Appellant's election duty. The complainant had abused him and had threatened the Appellant. He further stated that the complainant was a Sarpanch of the village Samnera, Taluka Igatpuri. In 1990 the Appellant was on election duty in village Malunje. There was quarrel between the workers of two political parties. They had entered the area of 100 mtrs from the election booth. The Appellant had cautioned the complainant who had taken offence to this warning. Apart from that, one Laxman Ugale was the complainant's relative and there was a case pending in respect of Gat No.207. It was decided against Laxman Ugale. Therefore, the complainant and Laxman were holding grudge against the Appellant. Third reason given by the Appellant was

that there was a case of misappropriation against the complainant. There were allegations of misappropriation to the tune of Rs.65,000/-. The complainant was pressuring the Appellant to help him, but since the Appellant did not co-operate, the complainant threatened him and lodged this false case. The Appellant then produced some certificates for his satisfactory work. They are produced on record at Ex.53.

6. The complainant Ashok Jadhav is examined as P.W.3. He has deposed that he owned an ancestral land at Samnera. His father passed away on 08/05/1991. P.W.3 collected the death extract and approached the Appellant for making entry in the records. He made an application. P.W.3 was the Sarpanch at that time. For that purpose, he visited the Talathi's office on many occasions. The Appellant was the Talathi of that village. On 12/11/1991, P.W.1 went to Talathi's office. He was accompanied by one Laxman Ugale. P.W.3 asked the Appellant to give the extract. P.W.3 has deposed that the Appellant told him that he would not take money from him, but he was required to pay the

amount to his superiors and therefore some amount was necessary. PW.3 then asked him how much amount was to be paid. The Appellant told him that he had to pay Rs.400/-. PW.3 told the Appellant that he would come on the next Tuesday along with the amount. It is his case that the Appellant told him that unless the amount was paid, PW.3 would not get the extract.

7. On 17/11/1991, the Appellant came to the village of PW.3 and met him on the way in the evening. At that time also, PW.3 asked him to give the extract. Again the Appellant demanded money. He asked PW.3 to meet him on 19/11/1991 between 10.00 a.m. to 11.00 a.m. with the amount and then collect the extract.

8. On 18/11/1991 PW.3 went to the office of ACB and lodged the complaint. The complaint is produced on record at Ex.30. The ACB officer called him on 19/11/1991 at 07.00 a.m. He went to the office at that time accordingly. The Panchas were present in the office. The Panchas signed the complaint given by him. The pre-trap Panchanama was prepared. It is produced on record at Ex.22.

9. All of them went to Ghoti. They reached the Appellant's office at about 10.15 a.m. PW.3 asked the Appellant to give him the extract. The Appellant told him that there was crowd. PW.3 told him that he wanted to go to hospital. After that, the Appellant gave him the extract in respect of Gat No.187. PW.3 told the Appellant to take the amount and to give all the extracts. The Appellant told him to come back at around 11.00 a.m.
10. PW.3 and the Pancha Ghote then went to the village and returned after 15 minutes. The Appellant was not in the office. Both of them came to the ground floor. They saw that the Appellant was standing near a hotel. They went there. PW.3 told the Appellant to accept the amount and that he wanted to go to hospital. Then they had milk. After that, the accused No.2 Gaikar came to the hotel. The Appellant told PW.3 to pay the amount to the accused No.2 Gaikar. PW.3 paid the bill for the milk and all of them started going toward's Talathi's office. PW.3 has further deposed that he paid amount to the accused No.2 on the road

adjoining the office. He took out the tainted amount with his right hand from the left side chest pocket of his shirt. The accused No.2 Gaikar accepted that amount with his right hand. He counted the money with his both hands and then asked PW.3 for what purpose that amount was given. PW.3 told the accused No.2 Gaikar that he was instructed to pay that amount by accused No.1 i.e. Appellant. The Appellant proceeded further to his office. The others i.e. PW.3 the Pancha and the accused No.2 followed him. PW.3 gave the signal. The raiding party members came there and caught the accused No.2. Then they entered the Talathi's office on the first floor. PW.3 was asked to wait outside. He was called inside after 15 minutes. One extract was found with him. His shirt pocket was showing shining spots under the UV light. The extract was seized from him. It is produced on record at Ex.31. His statement was recorded on 22/11/1991.

In the cross-examination he deposed that the Talathi used to visit different villages. The Appellant was having jurisdiction over village Malunje, Samnera, Mogare and Ghoti. On

Tuesday and Saturdays he used visit Ghoti. He admitted that the Appellant had made enquiry and had sent the matter to the Circle Officer. He also admitted that Laxman was his relative and that there was dispute between Laxman Ugale and Bala Jadhav in respect of Gat No.205 and the decision went against Laxman Ugale. He denied other suggestions about his deposition being false. However, he admitted that he had not mentioned in the complaint given to the ACB Officer that the Appellant demanded the amount on the pretext of making payment to his superior. He had not stated that he had asked the Appellant how much was to be paid and then the Appellant had answered that he had to pay Rs.400/-. P.W.3 could not assign any reason as to why these facts were not mentioned in his complaint at Ex.30 and in his other statement. These omissions are important in this context of the case. He then denied the suggestion which were put to him in consonance with the Appellant's defence regarding the quarrel during the election period and other reasons. The cross-examination on behalf of the accused No.2 was quite effective. He admitted that the accused No.2 had no concern with P.W.3's

matter. The accused No.2 had no concern with the Talathi's office. When P.W.3 was about to pay the bill for milk, the accused No.2 told the Appellant that the Appellant should give his extracts immediately as he wanted to go back to Mumbai. The Appellant asked the accused No.2 to come to Talathi's office and that he would give him the extracts. After that, the accused No.2 came out of the hotel and started going towards the office. P.W.3 has importantly admitted that he paid the tainted amount to the accused No.2 because it was already with P.W.3 and he wanted to pay atleast to somebody. He further admitted that the accused No.2 Gaikar was not ready to accept that amount. P.W.3 then further admitted that he paid the amount in the hand of accused No.2 saying that the Appellant had given such instructions to P.W.3. All these admissions are important to show that the amount was thrust by P.W.3 in the hand of the accused No.2, who did not know for what purpose the amount was being thrust in his hand.

11. P.W.4 Yuvraj Ghote was a Pancha who had accompanied P.W.3 at the time of trap. He has deposed that he and the other

Pancha Pardeshi were serving in Adivasi Vikas Directorate Nashik. On 18/11/1991 they had gone to ACB Office as per the instructions given by their superior officer. They agreed to act as Panchas. They were called on the next day i.e. on 19/11/1991. On that day they reached the ACB office at 09.00 a.m. They met the complainant. They verified the complaint which is at Ex.30. They signed it. Thereafter pre-trap Panchanama was prepared. It is produced on record at Ex.22. The raiding party proceeded towards Ghoti. P.W.4 himself accompanied P.W.3 to the office of Talathi. Others followed them by keeping some distance. They reached the Talathi's office at 10.00 a.m. The Appellant was sitting there. P.W.3 demanded the extract. The Appellant gave him extract of Gat No.187 (Ex.31). He then told P.W.3 to come back at 11.00 a.m. as there was crowd. P.W.3 and P.W.4 then came to the ground floor. They met PI Datar. The complainant showed the extract Ex.31 to him. At 11.00 a.m. P.W.3 and P.W.4 went to the Talathi's office. The Appellant was not there. Therefore both of them went in search of the Appellant. They saw the Appellant in front of a restaurant. P.W.3 invited the Appellant to that restaurant to have milk. They

had milk. PW.3 told the Appellant that he wanted to go to the hospital and that he wanted the extracts and that he had brought the amount. The Appellant told PW.3 to pay the amount. PW.3 put his hand in his pocket, but by that time accused No.2 came there. The Appellant told PW.3 to wait for some time. All of them started going out of the hotel. When PW.3 was paying the bill, the Appellant instructed the accused No.2 accept whatever PW.3 was paying. The Appellant then told the complainant to pay the amount to the accused No.2. The accused No.2 told the Appellant that he wanted to go to Mumbai and that he wanted his extract. The Appellant told the accused No.2 to come to his office and that he would be given those extracts. Saying this, the Appellant went to his office. The accused No.2 started following him. PW.3 and PW.4 also followed the accused No.2. When they reached Talathi's office, PW.3 asked the accused No.2 to accept the amount. PW.3 took out notes with his right hand from his left side pocket of his shirt. The accused No.2 accepted that amount in his right hand. PW.3 gave the prearranged signal. The other raiding party members immediately came there with the other Pancha. They

caught the accused No.2. The accused No.2 told them that he had accepted the amount as per the instructions of the Appellant. The Appellant denied that immediately. Then further procedure was completed. The Anthracene powder was seen on both hands of the accused No.2. The number on the notes were tallied with the pre-trap Panchanama. The office of the Appellant was searched. Some documents were seized which are produced at Ex.32, 33, 34 and 36. Those are the documents about various applications made by PW.3 and Ex.36 is the extract in respect of Gat No.46 showing the name of PW.3. It was mentioned that it was prepared on 19/11/1991 itself. The complainant's hand was seen under the UV light. His right hand and the chest pocket of the shirt showed presence of Anthracene powder. The post-trap Panchanama was prepared, which is produced on record at Ex.37.

The cross-examination of this witness is largely about the suggestions which he had denied.

12. PI. Ganesh Datar was examined as PW.5. He was the first Investigating Officer. He was attached to ACB, Nashik. He has

deposed that on 18/11/1991, PW.3 approached their office and lodged the complaint, which is produced on record at Ex.30. PW.5 then arranged for two Panchas and made preparation to conduct the raid on 19/11/1991. He then prepared the pre-trap Panchanama, which is produced at Ex.22 and then left ACB's office at 09.00 a.m. for proceeding to Ghoti. He has then described the incident of trap as was seen by him. He was at some distance and he could see the incident from the point when a constable rushed to accused No.2 Gaikar and caught his hand after PW.3 had given the prearranged signal. He then described the procedure of checking the hands of the accused No.2 and the complainant. He lodged his complaint at Ghoti police station vide C.R.No.24/1991. He conducted the investigation.

In the cross-examination he admitted that the heirship entry was made in the record in August 1991 itself.

13. PW.2 PI Nitin Mitkar was working as PI, ACB, Nashik. He took over the investigation on 24/06/1992. He obtained the sanction orders and submitted the charge-sheet on 22/07/1993.

14. P.W.1 Vikas Deshmukh was the Sub Divisional Officer in Nashik Division at the relevant time. He was the Sanctioning Authority empowered to accord sanction against the Appellant. He received the papers of investigation in this case on 15/05/1993 and he accorded the sanction on 17/05/1993. It is produced on record at Ex.26.

In the cross-examination he admitted that the draft sanction was sent to him. But from the cross-examination of this witness, there is nothing to indicate that he had not applied his mind while according the sanction or that he was not competent to accord the sanction. Therefore, the Appellant cannot take any advantage from his evidence for challenging the sanction to prosecute the Appellant.

15. P.W.6 Pradipkumar Garg was the Divisional Engineer, Central Railway in Mumbai, in 1993. Accused No.2 Gaikar was working under him. This witness has given the sanction to

prosecute the accused No.2. That sanction is produced on record at Ex.49. Since the accused No.2 is already acquitted and there is no challenge to that acquittal, his evidence is not material in this case.

This, in short, is the evidence led by the prosecution.

16. As mentioned earlier, the Appellant has given certain reasons, as to why according to him, he was falsely implicated.

17. Learned counsel for Appellant submitted that, the prosecution has failed to prove its case against the Appellant. There were too many contradictions in the evidence of the prosecution witnesses. The prosecution has failed to prove exactly for what purpose, the amount was demanded. It is not clear whether the demand was made to give 7/12 extract or to bring the heirs on the revenue record. The important witness Laxman Ugale was not examined. According to P.W.3, Laxman Ugale had accompanied P.W.3, when the Appellant had made the first demand. Learned counsel Mr. Reddy then relied heavily on

the admission given by the P.W.3 that, he had to somehow pay that money to somebody since he had brought that amount. He also attacked the sanction on the ground that the draft sanction was already given to the sanctioning authority.

18. Learned APP opposed these submissions. He submitted that the demand made by the Appellant is corroborated by the subsequent event that the accused No.2 was caught having accepting the same amount. There is no major contradictions between the evidence of P.W.3 and P.W.4. In fact, their evidence is consistent; which is corroborated by the evidence of the Investigating Officer. He submitted that, since the prosecution has led sufficient evidence in the form of evidence of P.W.3, P.W.4 and P.W.5 there was no necessity to add to the number of the prosecution witnesses by examining Laxman Ugale or other witnesses.

19. I have considered these submissions. As far as the sanction is concerned, as observed earlier, I do not find any

infirmity in the sanction order or the procedure adopted by the sanctioning authority in according the sanction. The cross-examination of P.W.1 does not indicate in any manner that there was non-application of mind on his part in according the sanction.

20. The main question involved in this case is about the demand and acceptance. It is also important to consider as to what was the exact purpose for demanding the bribe amount. In that behalf, the prosecution has not led consistent or reliable evidence. In the deposition, P.W.3 has stated that the Appellant had told him that, he did not want the amount for himself, but he had to pay his superior and for that purpose Rs.400/- were required. However, it was not the case of P.W.3 in his complaint which he had given to the ACB, at Nashik. He has admitted that he has not mentioned so in his complaint. In fact, his case was specific that the Appellant demanded that money for himself for doing P.W.3's work.

21. The Investigating Officer has admitted that the revenue record was already modified and the P.W.3's name was included in the month of August 1991 itself. The prosecution case is that the Appellant was demanding money for giving extracts and also for correcting the revenue record by adding names of the heirs of P.W.3's father. That demand was made in November 1991 much after the names of the complainant was brought on the revenue record.

22. P.W.3 has deposed that when he went to the Appellant's office on 19/11/1991, at the first instance, the Appellant had given the extract in respect of Gat No.187 and for the other extracts he was asked to come back after 15 minutes. When the Appellant's office was searched after the trap, the extract in respect of Gat No.46, which is produced on record at Ex.36; was seized. That extract shows that it was prepared on 19/11/1991. It is significant that, after the accused No.2 was caught and the Appellant was also confronted, he had no occasion to go to his office, to prepare this extract. This would only indicate that this

extract was already prepared by the Appellant and it was available in his office. As mentioned earlier, the Investigating Officer has admitted that names of all the heirs including the P.W.3 were already introduced in the revenue record in August 1991 itself.

23. The entire procedure even before going for the trap is not clearly deposed by other witnesses i.e. the P.W.3, P.W.4 and P.W.5. None of them has described the procedure of applying Anthracene powder on the currency notes before leaving for laying the trap. Though there is mention in the pre-trap Panchanama of applying of Anthracene powder, there is no substantive evidence in the form of deposition of these witnesses about applying Anthracene powder on these notes. Thus, the substantive evidence on this important aspect is lacking. The defence of the accused No.2 was that the notes were thrust in his hand. But even then the prosecution witnesses were required to establish that the important procedural steps were taken and that there were no suspicious circumstances in their procedure. This was required to be proved through substantive evidence.

24. There is no clear evidence about the demand made by the Appellant on the date of trap. At the first instance, in the morning the Appellant had given one extract to the P.W.3 and had asked him to come back after 15 minutes. At that point of time, he had not made any demand. Therefore, it is important to analyse as to at what point of time, he had directed P.W.3 to make the payment to the accused No.2. P.W.3 has deposed that when he was paying the bill for the milk, the Appellant had told P.W.3 to pay the amount to the accused No.2. He has not deposed that the accused No.1 had instructed the accused No.2 to accept the amount which was to be paid by P.W.3. In fact, P.W.3 has further deposed that, the accused No.2 accepted that amount and then asked P.W.3 for what purpose that amount was given. At that time, the P.W.3 had told the accused No.2 that the Appellant had instructed P.W.3 to pay that amount to the accused No.2. The accused No.2 was not even aware that the P.W.3 was to make him some payment or that he was to accept that amount. This is directly contrary to the evidence of P.W.4,

who has deposed that the Appellant had instructed the accused No.2 to accept whatever amount P.W.3 was paying. P.W.3's evidence clearly shows that the accused No.2 was not aware that the Appellant had instructed him to accept the amount. This is further clarified in the cross-examination of P.W.3 where he has accepted that the accused No.2 Gaikar was not ready to accept the amount. Thus, the prosecution case is contradictory and hence is extremely doubtful regarding the instructions given by the accused No.1 purportedly for handing over the amount of Rs.400/-. Hence, even the demand on the date of trap is not proved with clear and reliable evidence by the prosecution.

25. The matter becomes even more doubtful against the prosecution case, because of the admissions given by P.W.3. He has categorically admitted that he had paid the tainted notes to the accused No.2 because it was already with him and he wanted to pay it atleast to somebody. He further deposed that the accused No.2 Gaikar was not ready to receive the amount and that P.W.3 put the amount in the hand of the accused No.2

by telling him that the Appellant had given him such instructions. All this shows that the accused No.2 had not accepted the amount. The P.W.3 had thrust that amount in his hand. The accused No.2 had no idea why that amount was being thrust. He was not instructed to accept that amount by the Appellant. Both these aspects throw serious doubt about the entire prosecution story.

26. Thus, it can be seen that the prosecution has failed to prove the basic ingredients of the offence and therefore presumption under the PC Act cannot be invoked against the Appellant. I do not feel it safe to accept the finding of learned Judge regarding the conviction against the Appellant.

27. Based on the above discussion, I am of the opinion that the prosecution has failed to prove its case against the Appellant. The Appellant deserves to be acquitted.

28. Hence, the following order :

ORDER

- (i) The Appeal is allowed.
- (ii) The Judgment and Order dated 10/08/2001 passed by the Special Judge, Nashik, in Special Case No.4 of 1993, recording conviction and sentence against the Appellant, is set aside.
- (iii) The Appellant is acquitted of all the charges in this case.
- (iv) The Appellant shall execute bond u/s 437-A of Cr.P.C. to the satisfaction of the Trial Court, within a period of one month from today.
- (v) The Appeal is disposed of.

(SARANG V. KOTWAL, J.)