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

CRIMINAL APPEAL NO. 92 OF 2006

The State of Maharashtra

...Appellant

vs.

1. Shri.Gautam Pandurang Pawar
Age : 39 Years, Occupation : API.
2. Shri.Satish Sadashiv Jadhav
Age : 40 Years, Occupation : Police Havaladar

Both Attached to Vani Police Station,
Taluka : Dindori, District : Nashik.

...Respondents

Mr.H.J.Dedhia – APP for the Appellant-State.
Mr.Shailesh Kharat, Advocate for Respondent No.1.
Mr.S.S.Panchpor a/w Mr.Mayur Jadhav i/b. Mr.Ashok P. Jadhav,
Advocate for Respondent No.2.

CORAM : S. M. MODAK, J.

RESERVED ON : 3rd FEBRUARY, 2023

PRONOUNCED ON : 4th MAY, 2023

JUDGMENT :-

1. Every time, in a criminal trial, we come across the cases in which the Accused takes a defence of denial. Rarely, he comes with an explanation. In the present matter, both the Respondents who were the Accused offered certain explanation about what has happened on the date of trap i.e. 12th February, 2001. They were

attached to Vani Police Station, Nashik as Assistant Police Inspector and as Police Naik. It was accepted by the trial Court and it resulted into an acquittal of both the Respondents. This decision is challenged by the State.

2. I have heard learned APP Shri.Dedhia for Appellant-State, learned Advocate Shri.Panchpor for Respondent No.2 and learned Advocate Shri.Kharat for Respondent No.1 respectively. Trial Court based his judgment of acquittal for following three reasons :-

- (a) The evidence on the point of demand is not satisfactory
- (b) An explanation offered by Respondent No.2 - Shri.Jadhav on the point of acceptance of the amount is probable and
- (c) There is non application of mind by two Sanctioning Authorities for the reason that in the respective sanction orders, the background of the incident is not mentioned.

3. With the assistance of both the sides, I have gone through the evidence. It is true that on certain issues, I do not agree with the findings given by the trial Court. Even those findings are corrected and made in consonance with the evidence. So far as other observations are concerned, I agree with the trial Court. The conclusion is that it is difficult to interfere in the judgment of acquittal. I will give reasons for said decision.

4. There were five witnesses examined on behalf of the Prosecution. Whereas, on behalf of Respondent No.2 – Shri.Jadhav, two defence witnesses were examined. The Prosecution witnesses consists of following :-

(i)	PW No.1	Devidas Wamanrao Kokate	Complainant
(ii)	PW No.2	Satish Babasaheb Dhas	Trap Panch
(iii)	PW No.3	Ravindra Madhavrao Kedari	Sanctioning Authority for Respondent No.2
(iv)	PW No.5	Omprakash Dinanath Bali	Sanctioning Authority for Respondent No.1
(v)	PW No.4	Shashikant Shenphadu Dhande	Investigating Officer

5. Whereas, two defence witnesses consist of following :-

- (a) DW No.1- Head Constable Shivaji Jadhav – On the point of visit by Respondent No.2 to Nashik on 11th February, 2001.
- (b) Prakash Daware – Head Constable – Police Station Officer on the date of trap. Respondent No.2 has not accompanied PW No.1 while entering the cabin of Respondent No.1.

Prosecution case

6. The case of the Prosecution needs to be understood. *De-facto* Complainant Devidas Kokate is a practicing Advocate from Nashik District. He owns a land at Village : Vani, Taluka : Dindori. There was measurement of land scheduled on 30th January, 2001. Surveyor had come. The measurement was objected by neighbour

Arun Kad. There was a scuffle. It resulted into registration of two offences registered at Vani Police Station. There was an offence of rioting and causing hurt registered against the Complainant Kokate and others. Whereas, similar offence was registered against Arun Kad and others. Respondent No.1 Shri.Pawar was attached to Vani Police Station as Assistant Police Inspector. He was entrusted with the investigation of both these offences.

7. *De-facto* Complainant Kokate and others came to be arrested. They were detained in Police lockup on 30th January, 2001 and at midnight of 30th January to 31st January, 2001, they were released from the lockup. After the release, the cause of action arisen for lodging a complaint with Anti-Corruption Bureau. There are two instances of demand of illegal gratification. They are either singly by Respondent No.1 – Shri.Pawar or jointly by both the Respondents.

8. First demand was on 31st January, 2001 when the *de facto* Complainant visited the Police Station. It was Mr.Pawar only who demanded Rs.5,000/- and initially the *de facto* Complainant paid Rs.3,000/- and sought time to pay remaining amount of Rs.2,000/-. Whereas, money was demanded on second occasion on 11th February, 2001. The venue is different. *De-facto* Complainant was standing outside his house at about 5.30 p.m. Both the

Respondents were passing by the road. Mr.Jadhav reminded PW No.1 about Rs.2,000/-. PW No.1 expressed difficulty in paying it and Mr.Pawar asked him to come Police Station along with Rs.2,000/-.

9. On this background, PW No.1 approached the Office of Anti Corruption Bureau on 12th February, 2001 (Exhibit-14) and lodged the complaint. On that basis, trap was arranged on 12th February, 2001. When PW No.1 – panch witness and ACB officials went to Vani Police Station, PW Nos. 1 and 2 met Mr.Jadhav in the courtyard of the Police Station. There were some talks about the investigation of the complaint lodged by PW No.1. Then Mr.Jadhav took them to the cabin of Mr.Pawar. There also, some initial talks took place about the case filed by PW No.1. At that juncture, Mr.Pawar reiterated the demand of Rs.2,000/-. After showing the readiness, on the instructions of Mr.Pawar, money was accepted by Mr.Jadhav by going outside the cabin. After signal, he was caught red handed and thereafter, PW No.4 – Shashikant Dhande lodged the complaint and both were charge-sheeted for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of PC Act.

10. According to learned APP, there was sufficient evidence to prove the guilt of both the Respondents. Whereas, both the Respondents Counsel submitted that the findings given by the trial

Court were arrived at on proper appreciation of the evidence. According to them, the grounds agitated on behalf of the State are not sufficient enough to interfere in the findings recorded by the trial Court.

11. Learned Advocate Shri.Kharat for Respondent No.1 relied upon various judgments. They are as follows :-

- (i) Purushottam Raghunath Kulkarni V/s. State of Maharashtra¹
- (ii) Vasant V/s. The State of Maharashtra and Ors.²
- (iii) State of Maharashtra V/s. Devidas³
- (iv) Sahadeo Sadashiv Naik V/s. The State of Maharashtra⁴
- (v) State of Maharashtra V/s. Dnyaneshwar Laxman Rao Wankhede⁵
- (vi) Vinod V/s. The State of Maharashtra⁶
- (vii) The State of Maharashtra V/s. Shivram S/o Bhikaji Pawar⁷

12. Learned Advocate Shri.Panchpor for Respondent No.2 also relied upon some judgments. They are as follows :-

- (i) Dattatraya Baburao Ovhal V/s. State of Maharashtra⁸
- (ii) State of Maharashtra (Through Anti Corruption Bureau) V/s. Srirang Dagaduji Bale⁹
- (iii) The State of Maharashtra (Through A.C.B. B.M.U)

¹ MANU/MH/1641/2016

² MANU/MH/0200/2015

³ MANU/MH/1566/2014

⁴ MANU/MH/3018/2014

⁵ MANU/SC/1339/2009

⁶ MANU/MH/0485/2016

⁷ 2011 SCC OnLine Bom 210

⁸ 2020 SCC OnLine Bom 6403

⁹ 2021 SCC OnLine Bom 1123

V/s. Ajay Ratansingh Parmar¹⁰

(iv) Vishnu Krishna Belurkar and another V/s. The State of Maharashtra¹¹

13. I have perused those judgments. If there is an infirmity in the evidence of *De-facto* Complainant, it is difficult to believe his testimony. The Accused can rebut the presumption under Section 20 of the PC Act either by direct or circumstantial evidence. It is on the basis of preponderance of probability. If there is an acquittal by the trial Court, there is double presumption of innocence. Before arriving at a conclusion of the guilt, the Court has to ensure that there is consistency in the evidence of material witnesses. In some of these judgments, for want of verification of the demand, the Prosecution case was not accepted. While appreciating the Prosecution evidence, the Court has to ensure whether there was any work pending with the public servants.

14. On perusal of the sanction, the Court has to ascertain whether there was application of mind and whether it can be said that Sanctioning Authority is aware about the facts constituting the offence. Ultimately, the Appellate Court should be slow in interfering the judgment of acquittal if findings are not perverse.

¹⁰ *Criminal Appeal No. 73 of 2012 : 9th March, 2022 : Bombay High Court*

¹¹ *1974 SCC OnLine Bom 61*

Evidence on the point of demand

- (a) Demand on 31st January, 2001 in the Police Station at the instance of Mr.Pawar - ASI.
- (i) On that day, the Complainant Kokate visited the Police Station. He visited in pursuance to the message given by his professional friend Advocate Kshirsagar. Complainant was told by said Kshirsagar that Mr.Pawar - ASI demanded money. The trial Court has not believed the Prosecution story of demand made by Mr.Pawar - ASI with Advocate Kshirsagar.
- (ii) On 31st January, 2001, in the Police Station, Mr.Pawar – ASI demanded Rs.5,000/-. The Complainant paid Rs.3,000/- and sought time to pay remaining Rs.2,000/- within five to six days.
- (iii) Trial Court has not believed the demand made on 31st January, 2001. It is for two reasons. Even though his statement was recorded, Advocate Kshirsagar is not examined and secondly, Investigating Officer - PW No.5 during cross-examination admitted that during investigation, it was not disclosed that Mr.Pawar – ASI made a demand of money with advocate Kshirsagar.
- (iv) The trial Court disbelieved the events that took place on 31st January, 2001 in the Police Station for the reason that the Complainant was already released on bail and hence, there is no reason for Respondent

No.1 to demand the money for releasing him on bail. Furthermore, the offences in which the Complainant was arrested were bailable and being a legal practitioner, the Complainant ought to be aware that offences are bailable and hence, bail is a matter of right.

(b) The second demand was made on 11th February, 2001.

- (i) It is by both the Respondents. This demand was not made in the Police Station but made in front of the house of Complainant at about 5.30 p.m. The Complainant was standing outside his house. Both the Respondents were passing on motorcycle and they stopped.
- (ii) Respondent No.2 : reminded the Complainant about remaining payment of Rs.2,000/- to be made to Respondent No.1.
- (iii) Respondent No.1 : When the Complainant expressed inability to pay Rs.2,000/-, he asked him to come to Police Station on the next day along with Rs.2,000/-.

15. In fact, when the cross-examination of the Complainant is perused, I do not think that his evidence was seriously challenged. He could have been cross-examined on the aspect for how much duration the interaction took place, whether it was witnessed or heard by any person, whether the Respondents were in uniform etc. It has not happened. However, the trial Court also disbelieved this

demand. It is not for the reason that there is searching cross-examination. While disbelieving this demand, trial Court connected the demand of 31st January, 2001 and the demand made with Advocate Kshirsagar. According to trial Court, when the earlier demands were not satisfactory, this demand also cannot be believed. Trial Court while disbelieving this demand, considered the evidence of defence witness No.1.

16. On 11th February, 2001, Mr.Jadhav – Police Naik was on leave. It is also a matter of record. So the question is whether really Mr.Jadhav – Police Naik had gone to Nashik for his follow-up treatment or whether he has accompanied Mr.Pawar - ASI. According to learned APP even after leave, still Mr.Jadhav – Police Naik can certainly visit the house of the Complainant. This argument may be correct. However, when the defence witness has stated about visit of Mr.Jadhav – Police Naik to Nashik, his evidence ought to have been challenged during cross-examination. The defence witness is Shivaji Pandurang Jadhav – Head Constable. His statement was recorded by the Police. He admits that in that statement, he has not stated about visit by Mr.Jadhav – Police Naik to Nashik on 11th February, 2001.

17. It is true that the burden on the Accused is not as heavy as that on Prosecution. They have to bring on record a probable case.

Omission in Police statement about the visit to Nashik may be on account of various reasons. One of the reason may be that he might not have been asked by the Investigating Officer. Even if we keep aside this omission, still the story put up by him was seriously challenged. The trial Court has accepted the theory put up by Mr.Jadhav – Police Naik. I do not find any reason to disagree with the trial Court on that aspect.

18. It can certainly be said that with above evidence, the presence of Mr.Jadhav–Police Naik at the spot along with Mr.Pawar–ASI as deposed by Complainant is doubtful. That has to be excluded. It means the evidence of Complainant on the point of presence of Mr.Jadhav – Police Naik cannot be believed. If the same cannot be believed, the evidence of Complainant on the point of presence of Mr.Pawar – ASI and utterances also cannot be believed.

19. For the above discussion, I agree with the trial Court that demand is not proved. Now, I will discuss the evidence on the point of events took place on the date of trap. We have got the evidence of Complainant and a panch witness.

20. Both the learned Advocates pointed out various variances and lacunae in their testimony. According to them, the findings of the trial Court are well reasoned findings and they were arrived at

after proper appreciation of evidence and let they may not be disturbed. I have perused their evidence. More or less, they have stated similar facts on two aspects. They are as follows :-

- (i) Visiting Vani Police Station and meeting Mr.Jadhav – Police Naik in the courtyard of the Police Station and interacting with him about the case. That is to say, whether panchnama about sticks and iron bars was prepared or not and then, Mr.Jadhav – Police Naik took them to Mr.Pawar – ASI. Both of them have not deposed about demand made by Mr.Jadhav – Police Naik from the PW No.1 and even PW No.1 has not stated about bringing of Rs.2,000/-. It is true that Mr.Jadhav – Police Naik has not asked PW No.1 about bringing of an amount but does it mean that he is to be exonerated particularly when there is allegation that he has accepted the amount as told by Mr.Pawar – ASI.
- (ii) Both have deposed more or less on the same lines. That is to say, initial interaction about drawing of panchnama and then, Respondent No.1 asking PW No.1 about bringing of remaining amount of Rs.2,000/-. Both have stated about presence of Mr.Jadhav – Police Naik in the cabin of Respondent No.1. Both have said about acceptance of an amount of Rs.2,000/- by Mr.Jadhav–Police Naik on the instructions of Mr.Pawar – ASI.

21. Apart from denying the allegations, both the Respondents have taken a specific plea about all the events those took place otherwise. We can find their defence in following documents :-

- (a) The evidence of two defence witnesses
- (b) Written statements filed by them at Exhibit-31 and Exhibit-32 respectively.

The facts deciphered are as follows :-

- (a) Mr.Jadhav – Police Naik claims that on 11th February, 2001, he was on leave and he had gone to Nashik to do follow up in Lifeline Hospital for his treatment as he met with an accident on 24th September, 2000. The defence witness No.1 – Pandurang Jadhav has deposed those facts. He was attached to Vani Police Station.
- (b) On 12th February, 2001 at about 8.30 p.m., PW No.1 along with one person went to the cabin of Mr.Pawar – ASI. Mr.Jadhav – Police Naik has not accompanied him. This was deposed by defence witness No.2 - Satish Dhas. He was also attached to Vani Police Station.
- (c) There was drive to collect funds for Police Kalyan Nidhi and cultural programme was organized. The fund was to be raised from 29th January to 8th February, 2001. There is a circular issued by Superintendent of Police – Nashik (Rural).

- (d) Mr.Pawar - ASI called Mr.Jadhav – Police Naik on 12th February, 2001 in the evening and instructed him to raise funds for that activity.
- (e) PW No.1 has agreed to pay Rs.2,000/- towards that fund. Mr.Pawar - ASI was not acceding to the demand of PW No.1 in respect of his FIR, PW No.1 has falsely implicated them by offering money towards Police Kalyan Nidhi. This was stated during written statement attached to statement recorded under Section 313 of Cr.PC.

22. It is true that once an undue advantage is taken, presumption arises that it was taken as a motive or reward under Section 7 of PC Act. This is a rebuttable presumption. So, the issue is whether the Respondents have rebutted that presumption.

23. The trial Court has pointed out various inconsistencies and lacunae in the Prosecution evidence. At the same time, trial Court accepted the defence taken by both the Respondents. We have to see whether the findings are correct or not.

24. Learned APP submitted that just because the Mr.Jadhav – Police Naik was on leave on 11th February, 2001 and he claims that he had gone to Nashik, it does not mean that the evidence of PW No.1 on the point of demand on that date has to be disbelieved. Furthermore, he submitted that the raid was conducted on 12th

February, 2001, whereas, the programme was organized at Dindori / Vani on 30th January, 2001 means earlier to raid and hence, there is no question of accepting Rs.2,000/- on 12th February, 2001 for the purpose of raising of funds.

Findings of the trial Court

25. The trial Court considered the evidence of panch witness on one hand and the contents of the trap panchnama at Exhibit-18 on the other hand. In fact, there was interaction in between the Mr.Pawar - ASI on one hand and First-Informant on the other hand in respect of bringing of an amount of Rs.2,000/-. This is also recorded in the trap panchnama (internal Page No.20 of the trap panchnama and running Page No.173 of the paper-book). However, the trial Court observed that this interaction was not mentioned in the trap panchnama. (portion above Para No.20 of the judgment). This finding is not as per the record. I disagree with those findings.

26. The trial Court observed in Para No.24 (above Para No.25) about the annoyance of PW No.1 who is practicing Advocate. It is for the reason that he was kept in Police lock-up and released on bail in the midnight of 30th January, 2001 and 31st January, 2001. He apprehended that Mr.Pawar – ASI is likely to prepare bogus seizure panchnama of sticks and bars which will be used against him.

27. I agree with the trial Court. I have already observed that the evidence on the point of demand is not satisfactory and I am confirming the findings of the trial Court on the point of reiteration acceptance. Even though I differ with the trial Court on one aspect (that is mentioned in the trap panchnama about interaction on account of money in between PW No.1 and Mr.Pawar – ASI) and even though I do not find much inconsistency in between the evidence of PW No.1 on one hand and PW No.2 on the other hand, I am confirming those findings for the reason that Mr.Jadhav – Police Naik by examining the defence witness No.2 – Satish Dhas has raised a doubt about Mr.Jadhav – Police Naik accompanying PW No.1 in the cabin of Mr.Pawar - ASI. If the cross-examination of Mr.Pandurang is perused, I do not find that there is a serious challenge. There is no motive pointed out for giving evidence favouring Mr.Jadhav – Police Naik. So, there were two versions available. One is Mr.Jadhav – Police Naik entered the cabin as deposed by PW Nos. 1 and 2 and another only PW No.1 and another person entered the cabin of Mr.Pawar - ASI. It creates doubt about Accused No.2 - Mr.Jadhav – Police Naik entering the cabin of Mr.Pawar - ASI.

28. At the same time, both Respondents have given a probable explanation that there was a drive to raise fund for Police

Kalyan Nidhi. The documents as referred above do suggest about the same. There is no dispute. Only point raised is the programme at Dindori was already over prior to 12th February, 2001. Organizing programmes was also admitted by Sanctioning Authority – DCP Kedari. He admits about issuance of a ticket and its sale. Though he denies acceptance of donation. So, it also raises a doubt that Rs.2,000/- was accepted by Mr.Jadhav – Police Naik towards illegal gratification.

29. The burden on Accused is not as heavy as that of Prosecution. It is only preponderance of probabilities. The trial Court was right that they have made the case of Prosecution doubtful. I agree with those findings.

30. PW No.3–Dy.S.P.–Madhavrao Kedari is the Sanctioning Authority for Mr.Jadhav – Police Naik and the sanction is at Exhibit–23. Whereas, there is no discussion in the judgment about his evidence. Whereas, PW No.5 – Omprakash Bali is the Sanctioning Authority for Mr.Pawar – ASI. The sanction granted by Mr. Bali is at Exhibit-27. He was Additional Director General (Law and Order). There is no reference of the purpose for which the amount is demanded in the sanction order as admitted by PW No.5 – Bali. These are the findings of the trial Court (Para No.25). However,

learned APP Shri.Dedhia invited my attention to the sanction order at Exhibit-27. It mentions about the details of the demand. He is right. As such, I do not find any major fault with those sanctions.

31. However, for the reasons stated above, the evidence on the point of demand prior to lodging of complaint is not believable. Whereas, Respondents have made out a probable defence so as to raise a doubt about the theory put up by the Prosecution about the acceptance of Rs.2,000/- by Mr.Jadhav – Police Naik by way of an illegal gratification. They have also raised a doubt in the Prosecution case about presence of Mr.Jadhav – Police Naik in the cabin of Respondent No.1. For these reasons, the case also cannot be accepted against Mr.Pawar – ASI. I find the view taken by the trial Court is plausible view. The law on the point of interference by the Appellate Court is clear. It can only interfered when findings are perverse. It is not there. There is no merit in the Appeal. Hence, the Appeal is dismissed.

[S. M. MODAK, J.]