

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

CRIMINAL APPEAL NO.133 OF 2014

Trambak Rambhau Sadgir

....Appellant

Versus

The State of Maharashtra

.... Respondent

Mr. Satyavrat Joshi, Advocate a/w. Sumant Deshpande, Nitesh Mohite, for the Appellant.

Mrs. M.R. Tidke, APP, for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 17th JANUARY, 2023

ORAL JUDGMENT :

1. The appellant has challenged the judgment and order dated 6.2.2014 passed by the Additional Sessions Judge, Nashik in Special Case No.2/2009. By the impugned judgment and order, the appellant was convicted for commission of the offense punishable under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the P.C. Act”) and was sentenced to suffer RI for six months and to pay fine of Rs.2,000/- and in default of payment of fine to suffer further RI for one month. The

appellant was also convicted for commission of the offence punishable under section 13(1)(d) read with Section 13(2) of the P.C. Act and was directed to suffer RI for one year and to pay fine of Rs.3000/- and in default of payment of fine to suffer further RI for one month.

2. Heard Shri Satyavrat Joshi, learned counsel for the appellant and Smt M.R. Tidke, learned APP for the Respondent-State.

3. The prosecution case is that the appellant was working as the Soldier Welfare Organizer with the office of the District Soldier Welfare Office. The complainant was earlier working as a Gunner in 116 Para Regiment from 1982 to 1989 at Deolali and then he worked as Anti-Malaria Lashkar in Air Force (South) at Deolali. In August 1994, he received a call from the Maharashtra State Road Transport Corporation (for short, 'MSRTC'). He worked at ST Depot Palghar upto 2003 and then he was transferred to ST Department, Nashik. He made correspondence with the ST Department for fixing his pay-scale. He was not

getting the pay-scale as he was entitled to and therefore he entered into correspondence with the ST Department, but, he did not get any response and therefore he approached the District Soldier Welfare Office and requested them to enter into correspondence with the ST Department. The office accordingly sent letters to ST Department, but, the complainant's grievance was not redressed. Therefore he wanted the office to send a reminder to the ST Department. For that purpose, he approached the appellant. The appellant demanded Rs.200 for sending a reminder to the ST Department. the complainant did not want to pay the bribe. He approached the Anti Corruption Bureau, Nashik. He gave his complaint. An arrangement was made to lay a trap. Demonstration of using anthracene powder was given to the complainant in the presence of two panchas. The trap party went to the office of the appellant. One of the panchas remained with the complainant. It is the prosecution case, that, the appellant accepted the amount of Rs.200 from the complainant. He was caught at the spot. Thereafter FIR was lodged at Sarkarwada police station Nashik vide C.R. No.3009/2008. During the course

of laying trap, pre-trap panchnama and post-trap panchnama were made. The investigation was carried out. The sanction was obtained from the Sanctioning Authority i.e. the Director of Sainik Welfare Department, Maharashtra State on 12.2.2009. The charge sheet was filed. The Special Court took cognizance and the appellant faced the trial. He denied the charges.

4. During the trial, the prosecution examined the complainant, one of the panchas and the investigating officer. The sanction was admitted by the defence. The appellant examined Bhanudas Jare as the defense witness. The appellant's defense was of total denial. According to him, the complainant wanted an identity card but since he had not completed the requisite number of years he was not eligible to get an identity card. Therefore the complainant was holding grudge against the appellant and out of that grudge, the false prosecution was launched at the instance of the complainant. The learned Judge on consideration of the evidence before him and on hearing the parties, convicted and sentenced the appellant, as mentioned earlier.

5. The complainant Sitaram Palde was examined as PW-1. he has deposed as follows:

He was serving in 116 Para Regiment from 1982 to 1989 at Deolali as Gunner. He took VRS in the year 1989. In 1991, he was appointed as Anti-Malaria Lashkar in Air Force (South) at Deolali through District Soldier Board. He worked there for seven months. On 13.8.1994, he received a call for the job as a Security Guard with ST Department through District Soldier Board, Thane and from that day he was posted at ST Depot, Palghar. He worked there upto 2003. Then he was transferred to the Divisional Office, ST Department, Nashik. He made correspondence with the ST Department for fixing his pay-scale. The ST Corporation informed him that the pay could not be fixed. In 2007, he contacted District Soldier Welfare Board, Nashik. For that purpose, he met the appellant in that office. The District Soldier Board made some correspondence with the ST Corporation. But there was no response. On 21.2.2008 at about 10.30 a.m., he met the appellant for sending a reminder to the ST

corporation. The appellant demanded Rs.200/- for sending a reminder to ST Corporation. PW-1 promised the appellant to pay Rs.200/-. Thereafter he went to the office of Anti Corruption Bureau, Canada Corner, Nashik. He met PW-3 Shri Avsare there and gave his complaint. The complaint is produced on record at Exhibit-11. PW-3 Shri Avsare then called two panchas. PW-1 handed over two notes of Rs.100/- denomination. PW-3 applied anthracene powder to both the currency notes and kept them in the left pocket of PW-1's shirt. Before that he was given demonstration regarding use of anthracene powder. The panchas had read the complaint and had signed on that complaint.

PW-1, the panchas, PW-3 and the other staff went to the office of the District Soldier Welfare Board, Nashik. PW-1 and one of the panchas i.e. PW-2 Ohol went to the office of the appellant. The appellant was not in the office. One other employee Ghule was present. He told PW-1 that the appellant had gone out for taking tea. After some time, PW-1 saw the appellant coming towards his office. The appellant entered his office. PWs-1

& 2 followed him. PW-1 then asked the appellant whether they had prepared the reminder letter. The appellant asked him whether he had brought Rs.200/-. PW-1 answered in the affirmative. The appellant suggested that they should take tea outside the office. PW-1 has further stated the pancha then gave a signal to PW-3. After that PWs-1 & 2 went towards the District Court canteen and at the threshold of the District Court Canteen the appellant demanded Rs.200/-. PW-1 took out both the notes kept in his shirt pocket by right hand. The appellant accepted these notes by his right hand and kept them in his left side shirt pocket. PW-3 caught the appellant. He started running away but the staff members caught him. PW-1 has further stated that the appellant tried to swallow those notes. PW-3 and others snatched those notes from the appellant. He was brought to his office. PW-1 was asked to wait outside. After three to four hours, he was called inside the office and on the next day PW-1's statement was recorded.

In the Court, PW-1 could not initially identify the

appellant's shirt produced in the Court. He identified two currency notes of Rs.100/-. He also identified the copies of the applications dated 18.10.2007 and 3.11.2007. Those were produced on record at Exhibits-12 & 13. Exhibit-12 dated 18.10.2007 was a letter written by PW-1 himself to the officers from State Transport Corporation praying for bonus between the period August, 1994 to October, 1997, allowance for night-duty and other monetary benefits including the difference between the last pay-basic of Rs.960/- which he was earning when he was working with Army. Exhibit-13 was a letter dated 3.11.2007 sent by the District Soldier Welfare Officer, Nashik and addressed to the Managing Director of ST Corporation requesting fixation of salary of PW-1 as per the Government Resolution in that behalf.

In the cross-examination, PW-1 admitted that he was not getting pension because of short service. He did not recollect whether he had annexed other documents to his complaint. However, he further admitted that he had annexed Exhibits-14 to 18 produced on record of the trial Court to his complaint. Exhibit-

14 was a copy of the Exhibit-13. Exhibit-15 was again a letter issued on behalf of the Commanding Officer to the General Manager, ST Corporation requesting necessary action to release the arrears of pay and allowance to PW-1. Exhibit-16 was a copy of Exhibit-12. Exhibit-17 was a letter dated 31.1.2008 sent by District Soldier Welfare Officer, Nashik to the Managing Director, ST Corporation reminding them to inform about the steps taken by the ST Corporation and requesting them to fix the salary as per the G.R.. Exhibit-18 was the letter dated 15.2.2008 sent by the General Manager of ST Corporation addressed to the District Soldier Welfare Officer informing that PW-1 was appointed from 1.4.2001 on the salary of Rs.2400/- and it was informed to PW-1 through a letter dated 2.3.2005. All these documents annexed to his complaint, were admitted by him in the cross-examination.

He admitted that, at the time of lodging of the complaint he had not mentioned in his complaint that the appellant demanded Rs.200/- for sending reminder to MSRTC. He could not explain why the word 'reminder letter' was not

mentioned in his complaint. In his further cross-examination, he admitted that he was suspended on two occasions from his service and a case was pending against him. In the further cross-examination, he admitted that he had not told the police in his statement that the appellant tried to swallow the notes, PW-3 snatched the notes from his mouth and that the appellant had tried to run away. He denied the suggestion that he was insisting that the appellant should issue him the identity card though he was not eligible for the same and on the refusal by the appellant, he involved the appellant in this false case. He denied the suggestion that the ST Corporation had already fixed his salary. He also denied the suggestion that he trapped the appellant when he was returning from canteen by thrusting money in the appellant's shirt pocket.

6. PW-2 Suraj Ohal was one of the panchas. He had accompanied PW-1 during the trap. He deposed that he was working as a Junior Clerk in the office of Divisional Joint Registrar, Co-operative Societies, Nashik. On 21.2.2008, he

attended the office of ACB on the directions of his seniors. He has described the procedure of applying anthracene powder. He had read the complaint of PW-1 and had signed it. He has deposed that once the appellant accepted the bribe, PW-1 was to give a pre-arranged signal by taking out his handkerchief and wiping his face. The raiding party went to the office of the appellant at around 12.50 p.m.. He and PW-1 went inside the office of the appellant. They met Mr. Ghule. The appellant was not there. They waited outside for some time. The appellant then returned to his office. PW-1 asked him as to what had happened to his work. The appellant replied that his work would be done. The appellant then invited PW-1 for tea. After that the appellant, PW-1 and PW-4 came out of the Collector Office and then started going towards the District Court, Nashik. The other raiding party members were following them. They entered the new building of the District Court. They started climbing the staircase for going to the first floor. At that time, the appellant asked PW-1 to pay the amount. When they reached the first floor, PW-1 took out the bribe amount from his left pocket with his right hand and handed

it over to the appellant. He accepted that amount with his right hand and kept it in the left side pocket of his shirt. PW-1 then gave pre-arranged signal to the raiding party. They immediately caught the appellant. PI Pagare caught the appellant. He tried to run away. PW-2 has further deposed that PW-3 Awsare then asked the appellant as to where he had kept those notes. The appellant did not reply. Then PW-3 asked PW-2 where the bribe amount was kept. PW-2 answered that it was in the left shirt pocket of the appellant. The other pancha Kasodekar took out the notes from the appellant's shirt pocket on the instructions of PW-3 Awsare. The numbers of the notes were tallied from the pretrap panchnama. After that, the hands of all the members of the trap party including PWs-1 & 2 were tested under ultraviolet lamp. The bluish glow was seen on only the right hand of PW-1. The shirt of the appellant showed presence of anthracene powder. His right hand finger-tips also showed presence of anthracene powder. Then further procedure was completed in the office of District Soldier Welfare Office. The appellant's shirt was seized. He identified the shirt produced on record. The appellant took out

the file concerning PW-1's matter. Exhibits-12 to 18 were found in the said file. It appears that Exhibits-12 to 18 which were produced on record were the documents annexed to the complaint given to ACB. The copies of these documents were found in the office of the appellant. PW-2 then identified the pre-trap panchnama and post-trap panchnama which are produced on record at Exhibits-26 & 27.

In the cross-examination, he reiterated that the appellant was caught on the first floor of the District Court.

7. PW-3 Shantaram Awsare was working as Dy.S.P, ACB, Nashik on 21.2.2008. He has deposed about PW-1 approaching him and giving a complaint. PW-3 then called two panchas and showed them the complaint. He gave demonstration of anthracene powder and arranged to lay a trap. PW-1 and PW-2 went to meet the appellant. PW-3 and others followed them but they took care so that they were not visible. After some time, PWs-1 & 2 and the appellant came outside and they started walking towards the new building of the District Court. When they

were going to the first floor of the new building of the District Court, PW-1 gave the pre-arranged signal. PW-3 and his staff members rushed there. PI Pagare caught the appellant. PW-3 then asked PW-2 about the notes. He told PW-3 that the notes were kept in the left side pocket of the appellant's shirt. The second pancha took out those notes on the instructions of PW-3. The numbers were tallied with the pre-trap panchnama. The appellant's hands were tested under the ultraviolet lamp. His finger tips showed the presence of anthracene powder. Bluish white glaze was also seen on the opening of the left side pocket of the appellant's shirt. The documents from the appellant's office concerning PW-1 were taken in custody. PW-3 identified Exhibits-12 and 13. He deposed that Exhibits-14 to 18 were given by the complainant along with his complaint. He proved the omissions from the previous statement of PW-1.

8. The sanction order was admitted by the defence and it is produced on record at Exhibit-32. The sanction order was admitted without admitting the allegations incorporated in the

said order. It was produced on record at Exhibit-32. It was dated 12.2.2009.

9. In the written statement given as part of examination under Section 313 of Cr.PC., the appellant stated that no work of PW-1 was pending with him. PW-1 did not fall within the definition of 'ex-serviceman'. His salary was fixed by the MSRTC long ago before the incident. MSRTC had intimated that fact to the appellant's office vide letter dated 15.8.2008. PW-1 had directly sent a letter to the office of the Lieutenant Colonel / Commanding Officer and, therefore, that office had sent letter to the appellant's office for making correspondence with the MSRTC and accordingly the correspondence was made. PW-1 was pressurizing the appellant and his office to issue identity card of ex-serviceman. PW-1 was told by the appellant that he did not fall within the definition of 'ex-serviceman'. Therefore, the identity card could not be issued to him. Because of this grudge, PW-1 involved the appellant falsely in this case. According to the appellant, PW-1 was in the habit of making false allegations

against the public servants. On the date of incident, when he was going to the canteen of the District Court and when was climbing the staircase, PW-1 came from behind and suddenly attempted to thrust something in his shirt pocket. The appellant resisted and at that time the trap party accosted him. He further stated that he did not demand any bribe neither did he accept any bribe amount. The pancha was deposing at the instance of the officers of ACB.

10. The appellant then examined his defence witness in the form of defence witness No.1 Bhanudas Jare. He has deposed that he was working as District Soldier Welfare Officer at Nashik from 1.4.2008 to 1.3.2012. According to him, as per the definition of 'ex-soldier', a person having 15 years of Army service or getting any type of pension, was 'ex-soldier' and according to him PW-1 was not an ex-soldier as per that definition. The correspondence with the ST Department was made only on humanitarian ground. Their office had received a letter from MSRTC that pay-fixation of PW-1 was already made.

In the cross-examination, he denied the suggestion

that, he was deposing falsely to help the appellant.

11. Apart from this, the defense produced various documents on record which were admitted by the prosecution. those documents were about various complaints made by PW-1 against various authorities and about various actions taken against him.

. This, in short, is the evidence led by both the sides in this case.

12. The learned trial Judge believed the prosecution case. According to him, the discrepancies in the prosecution evidence were minor. Considering the background and nature of PW-1, the exaggeration made by him could be ignored. On this reasoning convicted and sentenced the appellant.

13. Learned counsel for the appellant submitted that the prosecution has not proved its case beyond reasonable doubt. In fact, the evidence of PW-1 shows that the prosecution case was false. PW-1 had definite reason to implicate the appellant falsely. He submitted that the documents produced on record and in

particular the documents attached to the complaint which was tendered by PW1 to ACB showed that the MSRTC had already decided the issue about fixation of salary and it was also informed to PW-1, and therefore, there was no further necessity of entering into any correspondence. The correspondence was not in the nature of reminders and in his deposition PW1 had accepted that he has not used the word 'reminder' in his complaint.

14. Shri Joshi, therefore, submitted that there was nothing left to be done on the part of the appellant in this case and, therefore, there was no occasion to accept Rs.200/- as bribe. The defence of the appellant is probable. PW-1 wanted identity card of ex-servicemen but he was not eligible for the same.

15. DW-1's evidence shows that PW-1 did not fall within the definition of 'ex-serviceman' and, therefore, he was not entitled for any identity card. On refusal of the appellant to issue such identity card he was falsely implicated.

16. Shri Joshi further submitted that there are irreconcilable discrepancies in the trap procedure described by

PW-1 on the one hand and PWs-2 & 3 on the other. All these discrepancies raise reasonable doubt against the prosecution's case; the benefit of which must go to the appellant.

17. Learned APP, on the other hand, submitted that the prosecution has proved its case beyond reasonable doubt. The evidence of PW-1, PW-2 and PW-3 along with the documentary evidence in the nature of the complaint, pre-trap panchama, and the post-trap punchnama show that the prosecution has proved its case beyond reasonable doubt. She relied on the judgment of the Hon'ble Supreme Court in the case of **Neeraj Dutta Vs. State (Govt. of N.C.T. of Delhi)**, as reported in AIROnline 2022 SC 1160.

18. I have considered these submissions. To see whether the prosecution has proved its case beyond reasonable doubt, it is necessary to test the evidence of PW-1 in particular. His evidence will have to be compared with the evidence of PWs-2 & 3 to see whether PW-1 was telling truth before the court. As far as the purpose for demanding the bribe is concerned, it is the case of

PW-1 that he wanted the office of the appellant to send reminder to the MSRTC regarding fixation of his pay-scale and for his other grievance about not getting his dues. For that purpose, he has referred to the documents at Exhibits 12 to 18 in his cross-examination. Those documents and their copies were annexed to his complaint Exhibit 11, when he had approached the ACB, Nashik. Those documents indicate that there was correspondence between the appellant's office and MSRTC. The letters sent by the appellant's office were signed by the Welfare Officer or by the higher officer. PW-1 had sent his own letter on 18.10.2007. Since it was ineffective, he approached the appellant's office and that office then sent a letter dated 3.11.2007. A reminder was sent on 31.1.2008 by the appellant's office and on 15.2.2008, the General Manager of MSRTC sent a letter to the appellant's office mentioning that the PW-1's salary was already fixed. This letter was dated 15.2.2008. After that letter, complaint was made by PW-1 on 21.2.2008 and trap was laid on that very day. Thus, on 15.2.2008 itself, the MSRTC had reverted back in reply to the correspondence made by the appellant's office. Therefore, there

was no further necessity to send a reminder after 15.2.2008. PW-1 was then left with option to take steps in accordance with law for his dues. It does appear from the letter dated 15.2.2008 that MSRTC had explained about the pay-scale of PW1.

19. Significantly, a copy of this letter was annexed to the complaint made by PW-1 to the ACB officers which shows that PW-1 was aware of the response of MSRTC to the correspondence made on his behalf by the appellant's office. It further shows that there was nothing left to be sent to MSRTC by way of a reminder.

20. Thus, the basis of filing a complaint itself was without a valid reason. According to PW-1, he had met the appellant on 21.2.2008 at 9:45 a.m. and as the appellant demanded Rs.200/-, he immediately approached ACB at nashik and gave his complaint. The procedure adopted thereafter assumes importance. He has deposed that he went to the office of PW-1 with the pancha. Initially, the appellant was not in the office. He came after some time. He then asked the appellant whether he had prepared a reminder later. The appellant then asked him whether

he had brought Rs.200/-. He answered in the affirmative. Then the appellant suggested that they could take tea outside the office. This important conversation is not deposed by PW-2 the pancha. This was the first time when the appellant could have demanded bribe in presence of pancha but PW-2 is entirely silent about this particular conversation.

21. After that, according to PW-1 they went towards the District Court canteen and it is recorded in his deposition that the appellant demanded Rs.200/- from him near the entrance of the District Court canteen. This particular deposition if compared to PW-2's evidence, shows another discrepancy because according to PW-2 the demand was made on the staircase of the District Court while going to the first floor of that building. The money was also accepted at that spot. Thus, the place where the money was demanded and accepted is different in the evidence of PW-1 and PW-2.

22. The next description of events is also interesting. PW-1 has thereafter deposed that initially the appellant accepted the

money and kept it in his left pocket of his shirt. PW-3 caught the appellant. The appellant started running away. But he was caught by the other staff members. The appellant then attempted to swallow those notes. PW3 and others snatched those notes from the appellant. This particular description is totally contrary from the depositions of PWs-2 & 3. They have not deposed that the appellant tried to swallow those notes. This is important.

23. PW-1 has also deposed that PW-3 and others snatched those notes from the appellant. In that case it was necessary that PW-3's hands also showed presence of anthracene powder but it was not so. Therefore PW-1's evidence remains contrary to the evidence of PWs-2 & 3. The anthracene powder was not seen anywhere near the mouth of the appellant.

24. PW-2 has deposed that PW-1's hands were also checked under ultraviolet lamp and his right hand showed bluish glaze. However pw-1 has not deposed that his hands were checked under ultraviolet lamp. Even PW3 has not deposed that the complainant's hands were checked under ultraviolet lamp.

25. At what exact point the appellant was caught, is also not clearly mentioned. PW1 has not deposed that he had given any signal to the raiding party. According to him, as soon as the amount was kept by the appellant in his pocket, PW-3 caught him. This deposition of PW-1 is again contrary to the evidence of PW-2, who has deposed that PW-1 himself had given the agreed signal to the trap party and after that signal the appellant was caught. PW-2, in fact, has stated that PW-3 asked the appellant where the bribe amount was kept. PW-2 then told PW-3 that the bribe amount was in the left side pocket of shirt of the appellant; whereas PW-1 himself has stated that PW-3 had caught the appellate immediately after the money was accepted by the appellant; and PW-3 and others had snatched those notes from the appellant. These two depositions are totally contradictory to each other.

26. Thus, all these discrepancies have raised a serious doubt about the prosecution case. The learned APP has relied on

the judgment of **Neeraj Dutta's** case (supra). In that case the Hon'ble Supreme Court had answered the issue under reference as under :

“In absence of evidence of the complainant (direct/primary, oral/documentary evidence), it is permissible to draw inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of P.C. Act based on other evidence adduced by the prosecution.”

In the present case before this court, the complainant was examined and he gave his deposition. As discussed earlier there are irreconcilable discrepancies and contradictions between the depositions of PW-1 on one hand and other two prosecution witnesses on the other. These discrepancies have raised a grave doubt against the prosecution theory, and therefore, benefit of this doubt must be given to the appellant. The prosecution has failed to prove its case beyond reasonable doubt. The appeal, therefore, deserves to succeed. Hence the following order:

:: O R D E R ::

- i. The appeal is allowed.
- ii. The impugned judgment and order dated 6.2.2014 passed by the Additional Sessions Judge, Nashik in Special Case No.2/2009 is set aside.
- iii. The appellant is acquitted from all the charges framed in this case.
- iv. The appellant shall execute a bond under Section 437A of Cr.P.C. before the trial Court to the satisfaction of that Court.
- v. Criminal Appeal is disposed of accordingly.

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
2023.01.20
10:39:54
+0530

(SARANG V. KOTWAL, J.)

Deshmane (PS)