

Shiv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.396 OF 2007**

The State of Maharashtra

... Appellant

Vs.

Jaganath Bapurao Ganage
R/o 3/11, Dadar Police Station
Compound, Dadar (W)
Mumbai 400 028.

... Respondent

Mr. Y. Y. Dabke APP for the Appellant-State.

Mr. S. G. Rajput with Chaitali Rajput for the Respondent.

CORAM : S. M. MODAK, J.

DATED : 25TH JANUARY 2023

JUDGMENT :

1. The Respondent-accused was acquitted by the Special Judge, (ACB), Greater Bombay as per the judgment dated 8th October 2004, for the offences punishable under sections 7 and 13(1)(d) read with section 13(2) of the Prevention of Corruption Act.

2. The Respondent-accused was posted as Police Sub Inspector at Malad police station at the relevant time. This is State's Appeal against the judgment of acquittal.

3. The Respondent-accused was trapped on 20th May 1994, in the house of the complainant – PW 1 – Philip Anthony George. The

complainant was having residential house at Neptune Building, Marve Road, Malad (W), Mumbai. The complainant – Philip George was accused in an offence registered at Malad police station on 14th May 1994, along with two others. The complainant and his associates threatened the staff of Oriental Bank of Commerce and damaged their motor cars. The Respondent was Investigating Officer of that crime. The case of anti-corruption has arisen out of various demands made by the Respondent for giving favour to the complainant.

4. It seems that there are defects in investigation since beginning. There were also defects and lacunas in conducting the trial of the case. They are elaborately discussed by learned Special Judge in his judgment. Though the complainant filed complaint with Anti Corruption Bureau, Greater Mumbai on 19th May 1994, against two police officers, only present Respondent is prosecuted. The FIR dated 20th May 1994, in question was registered, earlier to trap. The Respondent-accused is accused No.1 whereas PSI Ugale is accused No.2 mentioned in the FIR. The said PSI Ugale was not sent for trial.

5. There was demand made by both accused for illegal gratification from the complainant. The present Respondent visited house of the complainant at Malad on 14th May 1994, purportedly during investigation of the offence registered on 14th May 1994 against the complainant and his associates. He took all of them to Malad police station. There was first demand by both the accused on 14th May 1994 for Rs.50,000/- and it was on account of not detaining the complainant in police station. Rs.30,000/- was demanded for both police officers and Rs.20,000/- was demanded for

paying legal fees to Advocate Vaibhav. The complainant unhesitatingly agreed to that. The complainant was permitted to stay in his flat.

6. The Respondent in his statement recorded under section 313 of the Code of Criminal Procedure has accepted concession granted to the complainant to stay in his flat during intervening night of 14th May 1994 to 15th May 1994. Though he denied it was due to assurance by the complainant to pay Rs.50,000/-.

7. The complainant was released on bail on 15th May 1994. The present Respondent accepted Rs.20,000/- and Rs.10,000/- was adjusted towards amount which the police officers took while bringing the complainant and his associates to police station on 14th May 1994. Even Rs.20,000/- was arranged for paying the fees of Advocate Vaibhav.

8. The next demand was on 16th May 1994. It was by the Respondent for Rs.25,000/- and it was for favouring the complainant for releasing his articles i.e. jeep, camera, VCR etc. After negotiations with both police officers, it was reduced to Rs.10,000/-. This demand was reiterated by present Respondent on 18th May 1994. He visited house of the complainant. Fed up all these events, the complainant approached Anti Corruption Bureau and his complaint was registered for the offences under section 7, 13(1)(d) of the Prevention of Corruption Act. Then after completing pre-trap formalities, the trap was laid in house of the complainant on 20th May 1994. The Respondent was called. He came with one Rajiv Meghshyam Sawant. It was at about 21.30 hours. They came on motor-cycle bearing No.

MFN 3812. The Respondent has given explanation in his 313 statement. He admitted visit to residence of the complainant but it was for purpose of returning VCR and he requested Shri Sawant to accompany him because Mr. Sawant was Advocate of the complainant and Respondent felt secured in his presence. The Respondent returned back the VCR. During that time the complainant offered him tainted currency notes of Rs.10,000/-. Whereas according to the Respondent they were thrust on him. PW 4 Investigating Officer caught the Respondent with tainted currency notes and that's how trap was successful.

9. PW 2 - Pandurang Chvan was trap panch. After obtaining sanction from the Joint Commissioner of Police, the charge-sheet was filed only against the Respondent. During trial, the following four witnesses were examined

PW 1-Philip George-complainant,

PW 2-Pandurang Chavan-trap panch,

PW 3-Tukaram Choudhary-Joint Commissioner of Police, Sanctioning Authority and

PW 4 - Vijay Meru-Investigating Officer.

Though the Respondent has denied the allegation of demand and acceptance of Rs.10,000/- as illegal gratification willingly. He came with case of false accusations by the complainant having criminal background and in view of his arrest by the Respondent. There is explanation of thrusting of money. The trial Court disbelieved the complainant and panch witness on various grounds. So also sanction was held defective for the reason that it was granted only against the

Respondent and the Sanctioning Authority has not considered registration of the FIR also against police officer Shri Ugale. Finally, the Respondent-accused is acquitted.

10. Learned APP has taken me through evidence and findings. According to him the findings are erroneous and he contended that there was every reason for the Respondent to demand illegal gratification because he has shown favour to the complainant. According to him variances in between testimony of PW 1 and PW 2 were natural variances. He could not explain why sanction was not given against police officer Shri Ugale.

11. As against this, learned Advocate for the Respondent supported the findings and according to him the view taken is possible view and there is no perversity. On the point of interference by the Appellate Court against the judgment of acquittal, he relied upon the following judgments :

(i) *Smt. Fulmati H. Chauhan Vs. The State of Maharashtra & Ors.*
Criminal Appeal No.275 of 2019 dated 10th Januray 2022.

(ii) *Sham Lal Vs. The State of Haryana and Ors. (Supreme Court)*
Criminal Appeal No.1013-1014 of 2008 dt. 9th April 2019.

(iii) *Chandrappa & Ors. Vs. State of Karnataka (Supreme Court)*
Criminal Appeal No.853 of 2006 dt. 15th February 2007.

12. The law on the point of interference by the Appellate Court in such Appeal is very clear. The judgment of acquittal should not be

interfered just because the Appellate Court takes different view than the trial Court view. The Appellate Court has to consider whether view taken by the trial Court is possible, reasonable or not.

13. After perusing the entire judgment, I find no merit in the Appeal. The view taken by the trial is not only possible view but in fact it is the correct view. I fully agree with view taken by the trial Court. I say so because there are circumstances which have naturally arose and if they are considered there is every reason to doubt the prosecution case. Some of them are that the complainant is also accused in other offences. The Respondent visited house of the complainant on 20th May 1994, not singly but he took Advocate Shri Raju Sawant along with him. If the Respondent is having intention to accept illegal gratification, why will he take Shri Sawant along with him. This is inconsistent with hypothesis of guilt. Even the prosecution has admitted about returning VCR by the Respondent on the date of trap at the spot. It is referred in post trap panchnama.

14. The trial Court has also considered the circumstances in which the complainant and his associates were brought to Malad police station on 14th May 1994. In his 313 statement, he has also explained those circumstances. The trial Court has noticed material contradictions in averments in the FIR on one hand and evidence given by the complainant before the Court on the other hand. It is referred in paragraph 7 of the judgment. The learned Special Judge also noticed the conduct of the complainant when he was produced before the concerned Magistrate for purpose of remand. He was produced by police officer Shri Kalekar. The complainant who is non-

resident Indian is also knowing English, has not made any complaint at that time against the Respondent about acceptance. It is referred by learned Special Judge in para 11 of the impugned judgment. So also it is on record that there were cases pending against complainant and he was extorted. (para 17). There is also lacuna in the prosecution evidence. Though the complainant was alert enough, the complaint to the Commissioner of Police and copy of that complaint was not brought on record. (para 11).

15. The trial Court noticed improvement made by trap panch PW 2 – Chavan in his evidence. There is improvement made by panch witness while giving evidence before the Court. After the trap, his statement was recorded. He said nothing about talks between the complainant and Respondent at the time of trap. This improvement was proved by the Investigating Officer also (para 13). This improvement is important because it deals with reiteration of demand of Rs.10,000/- and it was very important if the panch could have said that in his statement before the police.

16. Furthermore, there is difference in surname of the Respondent as stated by the complainant. He gave his name as Landge whereas his name is Gandge. Supplying copy of FIR to the complainant is important so also sending it to nearest Magistrate is also important. It rules out possibility of manipulation. Though the complainant has said about receiving copy of the FIR, admittedly, there is no endorsement on Exhibit-13. Learned Special Judge has elaborately discussed about its importance and non compliance of the provisions (page 14 and 15).

17. There are also defects in conducting the trial. Amar is son of the complainant and one Peter is his employee. They were present at the time of trap. They were not examined. So also Advocate Shri Sawant who visited the flat alongwith the Respondent was not examined by the prosecution. From their evidence the prosecution could have sought corroboration (Exhibit-16).

18. For the above discussion, evidence of the complainant and panch witness was found untruthful. If their evidence on one hand and the findings on the other hand are considered together, I fully subscribe to those findings. They are not erroneous.

19. It is also surprising that sanction is granted by the Joint Commissioner of Police Shri Chaudhari, only against present Respondent. The FIR was registered on 19th May 1994, against the Respondent and PSI Ugale. There is reference of PSI Ugale in various capacities. In his presence, the Respondent made demand and money is demanded for both of them. Even he demanded the amount. If it is so, why sanction is not sought against Shri Ugale in the circumstances not offering any valid justification. The Investigating Officer also could not give any satisfactory explanation. He prepared draft sanction and had put up before the Sanctioning Authority. He also admits about not mentioning any reason for not prosecuting PSI Ugale.

20. Through him the behaviour of the complainant was brought on record. He has noticed liquor bottles stored in flat of the complainant

and there was one Disco room. He has not cared to inquire about them. The Sanctioning Authority is certainly having power to ask for additional materials or to call for explanation from the Investigating Officer, if he find that there are certain lacunas in proposal seeking sanction. It has not been done. So the sanction cannot be said to be valid sanction. It was not issued impartially. I subscribe to the view of learned trial Judge.

21. So the evidence on point of demand and acceptance is not satisfactory. Even sanction is not valid. The findings are correct. So I find no merit in the Appeal. They cannot be interfered with. Appeal is merit-less and is dismissed accordingly.

(S. M. MODAK, J.)