

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

Criminal Appeal No.495 of 2012

The State of Maharashtra

... Appellant.
(Original Complainant)

Versus

Mahesh Devsing Machhale
Age 30 yrs, Occ. Talathi,
R/a. Insuli, Tal-Sawantwadi,
Dist-Sindhudurg.

... Respondent
(Orig.Accused)

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Mr AA Palkar, APP for appellant/State.

Mr AS Khandeparkar, Senior Counsel a/w Sangram Desai, Rohit Mahadik a/w Rushikesh Bhagat a/w Vaibhav Kulkarni a/w Saurabh Mittal a/w Prerak A.Sharma a/w Apoorva Khandeparkar a/w Farhan Shaikh a/w Nihir Dedhia for respondent/accused.

Coram : R.N.Laddha, J.
Reserved on : 05.09.2023.
Pronounced on : 11.10.2023.

Judgment:

This Appeal is directed against the Judgment and Order passed by the learned Special Judge, Sindhudurg at Oros, in Special Case No.13 of 2010, on 21.11.2011, whereby the accused/respondent came to be acquitted of the offences, punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 ('the Act').

2. The complainant, Ramchandra Tatu Kothavale, is a farmer and a brick-maker. He had applied to the Tahasildar for permission to excavate soil for making bricks. The Tahasildar granted him permission from 14.10.2010 to 03.02.2010. After this period, he needed further approval, so he went to the accused, Talathi, on 09.02.2010 and requested a copy of the 7/12 extract of his land to attach to his application along with the map. The accused, however, made allegations against him of digging up soil before 09.01.2010 and digging up more than allowed and demanded a bribe of Rs.8,000/- from him.

3. The complainant then reported the matter to the Anti-Corruption Bureau on 10.02.2010. The complaint was shown to two panchas, namely, Vinayak Sutar and Bhimsen Palsambkar, thereafter, the complainant and one of the panchas went to meet the accused at his office in village Insuli, accompanied by Dy.S.P., Mr Bandekar, and his team. A voice recorder was kept in the complainant's pocket to record the conversation. The accused demanded Rs.8,000/- as a bribe from the complainant but agreed to accept Rs.5,000/- after some bargaining. He told the complainant to come back with the money on 15.02.2010. The complainant and panch witness, Vinayak Laxman Sutar, returned where Dy.S.P., Mr Bandekar, and others were waiting and gave them the voice recorder. The recording was played, and a CD was

prepared with the transcript of the conversation. A verification panchnama (Exh.13) was also made in the presence of panch witnesses. Dy. S.P., Mr Bandekar, asked the complainant and the panchas to come to the Anti-Corruption office at Kudal on 15.02.2010.

4. On 15.02.2010, currency notes worth Rs.5,000/- smeared with anthracene powder were given to the complainant. The complainant, panch witnesses and other police staff went to village Insuli to conduct the raid. On 15.02.2010, around noon, the accused was nabbed in his office after accepting a bribe of Rs.5,000/-.

5. A report (Exh.28) was lodged at Banda police station by Mr Dipak Bhaskar Bandekar (PW4). Based on this report, an offence vide CR No.3001 of 2010 was registered against the accused under Sections 7, 13(1)(d) read with 13(2) of the Act.

6. Mr Siddharam Karbassayya Salimath (PW3), the Sub-Divisional Officer, accorded sanction to prosecute the accused, and a charge sheet was subsequently filed. The accused abjured his guilt and claimed trial.

7. At the trial, to substantiate the indictment against the accused, the learned trial Court recorded the evidence of the witnesses, viz. Ramchandra Tatu Kothavale (PW1), the

complainant; Vinayak Laxman Sutar (PW2), the panch witness; Siddharam Karbassayya Salimath (PW3), the sanctioning authority; Dipak Bhaskar Bandekar(PW4), the investigating officer.

8. The statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.) came to be thereafter recorded, consisting of a denial and false implication.

9. After hearing the learned Counsel for the parties, the learned trial Court held that the evidence regarding the demand and acceptance of the bribe was questionable in several significant ways. The defence put forth by the accused was found to be probable. As a result, the trial Court acquitted the accused.

10. Being aggrieved by and dissatisfied with the impugned judgment and order of acquittal, the appellant/State has preferred this appeal.

11. I have heard Mr AA Palkar, the learned Additional Public Prosecutor for the State and Mr AS Khandeparkar, the learned Counsel for the accused/respondent and perused the impugned judgment, grounds in the appeal memo, evidence of the prosecution witnesses and the entire material on record.

12. Mr AA Palkar, the learned Additional Public Prosecutor, argued that the order of acquittal was not in accordance with the

law. He stated that the trial Court misinterpreted the evidence presented by the prosecution and was swayed by several assumptions not supported by the evidence on record, resulting in a grave miscarriage of justice. He argued that minor inconsistencies, contradictions, embellishments or improvements on trivial matters that do not affect the core of the prosecution's case should not be grounds for rejecting the evidence entirely. He submitted that the complainant provided a detailed account of events, which was corroborated by other witnesses. He stated that the accused accepting the bribe is conclusive evidence which can not be brushed aside.

13. According to Mr Palkar, the learned APP, the evidence of the complainant and the panch witness, Vinayak Sutar, confirms the accused's demand and acceptance of the bribe. The evidence of PW 3, Mr Sidharam Salimath, demonstrates that he has thoughtfully accorded the sanction. Mr Bandekar (PW4) testified that necessary procedures for setting up the trap were followed, and the accused was nabbed while accepting the bribe. In his view, the defence of the accused is not at all probable. His main contention is that the demand and acceptance of the bribe by the accused in his official capacity is proved and is also corroborated by the evidence of the panch witness.

14. Mr AS Khandeparkar, the learned Counsel for the

respondent/accused, supported the line of reasoning adopted by the trial Court to record the finding of acquittal. To refute the allegations, the learned Counsel has taken this Court through the canals of evidence and argued that the prosecution's claims are baseless. He made various submissions countering the arguments on behalf of the appellant/State. He argued that the transcript in the verification panchanama of the alleged conversation between the complainant and the accused does not depict that the accused had called the complainant to his office on 15.02.2010 to give the money demanded by him. According to him, it is not the case of the complainant that initially, the accused demanded Rs.8,000/- and later on, the demand was reduced to Rs.5,000/-. It is argued that Vinayak Sutar (PW 2) deposed that when he, along with the complainant, entered the cabin of the accused, there were a lot of people in his cabin; hence, it is difficult to believe that the accused made any demand. It is further argued that the fact, as recorded in the transcript, that as per the signal made by the accused by his hand, both the complainant and the accused came out of the office is not deposed by the complainant or the panch witness. Mere acceptance of money would not be sufficient to prove the offence for which the accused was charged.

15. This court has carefully considered the submissions made at the Bar and perused the material on record.

16. It is a settled principle in law that in the proceedings instituted against the order of acquittal, it is open to the High Court to re-appreciate the evidence and conclusions drawn by the trial Court but only in a case where the judgment of the trial court is stated to be perverse.

17. After examining the evidence of the prosecution witnesses, it becomes apparent that the permission to excavate the soil for preparing the bricks was valid from 14.01.2010 to 03.02.2010. The complainant, in his cross-examination, has admitted that the place from which the soil was excavated, the place where the bricks were to be prepared, the site was to be kept open and the place where the bricks were to be dried are required to be measured, and the exact area of the said places are required to be mentioned in the map. He further went on to admit that for this purpose, he was required to pay the fees for the measurement of the land to one Nana Redkar, and the accused was arranging for the map from Redkar. He admitted that the accused asked him to pay the amount for paying the fees to Mr Redkar and that he had given Rs.5,000/- to him as a fee to be given to Mr Redkar.

18. The verification panchnama shows that there is a transcript of the alleged conversation between the complainant and the accused. It is the claim of the prosecution that the transcript was made on

the basis of the conversation between the accused and the complainant on 10.02.2010. However, it is nowhere mentioned that the accused had called the complainant to his office on 15.02.2010 to give the money allegedly demanded by him. There is no mention of the accused demanding Rs.8,000/- from him or that the amount as alleged was reduced from Rs.8,000/- to Rs.5,000/-. In fact, it appears that the complainant was putting the words in the mouth of the accused by saying that he had asked for payment of Rs.8,000/- and thereafter he agreed to reduce it. The transcript does not speak of such reduction of demand of Rs.5,000/- by the accused.

19. Mr Vinayak Sutar, in his examination-in-chief deposed that he, along with the complainant, entered the cabin of the accused/Talathi on 10.02.2010. At that time, in the cabin, there were many people and he was listening to the conversation between the complainant and the accused from a distance. The complainant and the panch witnesses said that the demand for a bribe was made by the accused in his cabin where many people were present. Considering this, it is very difficult to believe that the accused would make a demand for a bribe from the complainant in the presence of so many people.

20. According to the complainant, when he went to the office of the accused on 15.02.2010 and was sitting there for about one and

half hour, the Anti-Corruption officials were standing around him; at that time, the accused demanded Rs.8,000/- and on failure of payment threatened to initiate proceedings against him. According to the complainant, apart from this, the accused had not made any demand on 15.02.2010, and this was captured in the voice recorder. This, however, is inconsistent with his testimony that on 10.02.2010, the accused had reduced the demand to Rs.5,000/- from Rs.8,000/- and called him to pay Rs.5,000/- on 15.02.2010.

21. The post-trap panchnama, where the transcript of the alleged recording between the accused and the complainant is recorded, demonstrates that no such demand of Rs.8,000/- has been made by the accused at any point in time. There is no mention of giving Rs.5,000/-, and the complainant asking the accused to count the same. The alleged threat to initiate penalty proceedings is also not found in the transcript. The bribe amount was given to the accused in the veranda. Vinayak Sutar, a panch witness, admitted in his cross-examination that there were 20 persons already present in the cabin of the accused when he went there along with the complainant. The complainant went inside the cabin and the panch witness waited outside the cabin. He admitted that he did not listen to the conversation between the accused and the complainant inside the cabin. He admitted that the accused and the complainant came out of the cabin and walked away at about 40 to 50 feet from

the cabin and at that time, he waited in the veranda. He admitted that the accused and complainant went towards the toilet, situated 23 meters away from the accused's office. At that time, he did not know what was happening between them. He further admitted that on 17.02.2010 at about 9:00 a.m., he heard the recording dated 15.02.2010 of the conversation between the accused and the complainant. He had no occasion to listen to the said recording prior to 17.02.2010. This goes on to show that at the time of the post-trap panchnama, he had not heard the recording played over from the voice recorder and had heard the said conversation for the first time on 17.02.2010 at about 9:00 a.m., i.e. two days after the date of recording.

22. In this backdrop, the evidence of the investigating officer (PW 4) shows that after the trap and other formalities, he played over the digital voice recorder in the presence of a panch witness and asked the complainant to identify the voices of the said recording on which he identified the voices of accused and himself. This testimony of the investigating officer is not at all supported by the complainant and panch witness, Vinayak Sutar. The complainant had never stated that the voice recording was played over in the presence of the panch witnesses and himself and that he had identified his voice and the voice of the accused in the voice recorder. The panch witness stated that he had heard the recording

for the first time only on 17.02.2010.

23. According to Dy.S.P., Mr Bandekar, a CD was prepared of the said recording and this CD was played over to the panch witnesses and after tallying it with the said conversation made in the voice recorder the said CD was kept in the packet and sealed in the presence of the panch witnesses. This also is not supported by the evidence of the panch witness, Vinayak Sutar (PW 2), who deposed that he had never heard the said conversation of the accused and the complainant untill 17.02.2010. In view of the above, the entire post-trap panchnama is suspicious and cannot be relied upon.

24. According to the complainant, except for the introduction from Dy.S.P., Mr Bandekar, to the accused nothing was done in the veranda when the accused was apprehended, and after that the accused was taken into the chamber, whereas according to the panch witness the complainant had given the money to the accused in the Aangan beyond the veranda and after getting the signal and apprehending the accused, Dy.S.P., Mr Bandekar, inquired as to where the money accepted by the accused was kept, on which he disclosed that the accused had kept the money in the left-hand shirt pocket and that it was given by the complainant from his right-hand pocket by his right-hand to the accused who after accepting it by his right-hand kept it in his left-hand shirt pocket and at that

time Dy.S.P., Mr Bandekar, had asked Mr Palsambkar to remove the said money from the shirt pocket and accordingly, an amount was taken out from the left-hand shirt pocket.

25. According to the panch witness, two events took place in the veranda; firstly, Mr Sutar had informed Dy.S.P., Mr Bandekar, as to where the accused had kept the money, and after that, the above panch witness, Mr Palsambkar, on the instructions of Mr Bandekar took out the amount and thereafter accused was taken to the office. The evidence of the complainant, however, is silent on these alleged facts.

26. The only evidence against the accused is that of the recovery of tainted currency notes from his possession. However, possessing and recovering currency notes from the accused without proof of demand does not constitute an offence under the Sections for which he was charged. Without proof of demand for illegal gratification, it cannot be established that the accused used corrupt or illegal means or abused his position as a public servant to obtain something valuable or a pecuniary advantage. In this case, the prosecution was unable to prove beyond a reasonable doubt that the accused had demanded illegal gratification. The defence put forth on behalf of the accused is a probable defence. The evidence of the prosecution witnesses shows that Vinayak Sutar, the panch witness, did not hear the conversation between the accused and the

complainant.

27. Additionally, no Certificate in terms of Section 65-B of the Evidence Act, 1872, accompanying the electronic evidence, is placed on record. There are many contradictions and omissions in the evidence of the prosecution witnesses. The trial Court has discussed the entire evidence in detail and, in the opinion of this Court, has rightly acquitted the accused/respondent.

28. It is a settled principle in law that an acquitted individual benefits from a dual presumption in their favour. The first presumption stems from the fundamental principle of criminal jurisprudence that every individual is presumed innocent until proven guilty by a competent Court of law. The second presumption arises post-acquittal, where the individual's innocence is not only presumed but further reinforced, reaffirmed, and strengthened by the verdict of the trial Court.

29. In such circumstances, the trial Court, in my considered opinion, rightly found the respondent not guilty of the offence for which he was tried.

30. Resultantly, this appeal fails and is hereby dismissed.

[R.N.Laddha, J.]