



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

CRIMINAL APPEAL NO.766 OF 2005

Ranjeet Vishnu Patil (deceased)

through legal heirs

(a) Smt. Surekha Ranjit Patil & ors.

..Applicants

VS.

The State of Maharashtra

..Respondent

Adv. Shekhar Ingawale a/w. Adv. Anand Patil a/w. Adv.
Sandip Kagade for the Appellant.

Mr. Y. M. Nakhwa, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 18, 2023

ORAL JUDGMENT :

1. The challenge in this appeal is to the judgment and order dated August 11, 2005 passed by the Special Judge, Gadhinglaj, convicting the appellant for the offence punishable under Section 7 and Section 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (hereafter 'the PC Act' for short).

2. The appellant was sentenced to suffer R.I. for a period of 3 years and to pay a fine of Rs.1500/-, in default of payment of fine, to undergo further R.I. for 6 months in connection with the offence punishable under Section 7 of

the PC Act. The appellant was also sentenced to suffer R.I. for 3 years, for the offence punishable under Section 13 (1) (d) of the PC Act and to pay a fine of Rs.1500/-, in default of payment of fine, to undergo further R.I. for six months.

3. The case of the prosecution in a nutshell is as under:-

The complainant Shri Aannappa Rama Gone, an Extension Officer (Education), Panchayat Samiti, Chandgad, retired in the month of July 1999. The complainant- PW-1's traveling allowance (TA) bills from 1996 to 1999 were pending. Hence in January 2003 the complainant had been to the appellant to ascertain the reason for delay in getting the amount. At the relevant time, the appellant had allegedly told the complainant that for want of sanction of necessary grant, his TA bills were pending and his bills will be sanctioned on receipt of grant from the Government. The complainant also met the Block Education Officer-P.W.2 R. R. Atugade who also assured to take steps for sanction of his TA bills. On 27th and 28th April, 2003 the complainant again met the appellant. The appellant informed the complainant that necessary grant was about to be sanctioned and after receipt of the grant, he would do the needful to clear his TA

bills. However, he demanded Rs.2000/- for clearing the bills. After some discussion, the complainant agreed to pay Rs.1500/-. On May 2, 2003, the complainant again went to the office of the Panchayat Samiti and met the appellant. The appellant told him to come with the necessary amount on May 8, 2003. A complaint was lodged by the complainant with the Anti-Corruption Bureau on May 7, 2003 and a trap was laid on May 8, 2003 when the appellant was arrested.

4. The charge was framed by the trial Court on June 2, 2004. The charge reads thus:-

C H A R G E

1. That you at about 13.15 hours, on 8th of May 2003 over the vacant plot from the northern side of the office of Chandgad Vivid Karyakari Vikas Seva Sanstha, working as Senior assistant with Block Development office, Chandgad a public servant, demanded and accepted a sum of Rs.1,500/- from the complainant Aannappa Rama Goni, resident of Basarge, a gratification other than legal remuneration as reward, in the exercise of the official act and function to get sanction of the amount of T.A. Bills for the period from 1996 to 1999 of complainant Aannappa Rama Goni and thereby committed an offence punishable under Sec. 7 of the Prevention of Corruption Act, 1988 and within my cognizance.

2. Secondly, at the same time and place, you being a public servant, committed misconduct, since obtaining the amount of Rs.1,500/- for yourself from the complainant Aannappa Rama Goni by corrupt and illegal means, by abusing your position as a public servant and thereby committed an offence punishable under Section 13 (1) (d) read with Sec. 13(2) of the Prevention of Corruption Act, 1988 and within my cognizance.

5. Though in the complaint it is stated by PW-1 that a demand was made on April 27th or 28th, 2003 and thereafter, on May 2, 2003, there is no reference to the making of such demand in the charge. In the charge it is indicated that the demand and acceptance of the illegal gratification is of May 8, 2003.

6. The prosecution examined seven (7) witnesses in all. PW-1-Annappa Rama Goni is the complainant who turned hostile. PW-2 Raghunath Ramchandra Atugade is a Block Education Officer attached to the Panchayat Samiti, Chandgad. PW-3 is Shirish Maruti Berad was working as a peon in the Panchayat Samiti. PW-04 is Gopal Vaidhyanath Daithankar attached to Panchayat Samiti office as Extension Officer (Education). So far as PW-5 Dnyandev Mahadev Patil is concerned, he is a panch witness no.1 in respect of the

trap panchanama, the shadow witness. PW-6 is Ashok Ramchandra Pol, a panch witness to the trap panchanama. PW-7 is Sanjay Wamanrao Nikam, investigating officer.

7. As the complainant has turned hostile, the demand made on April 27th or 28th, 2003 and the one made on May 2, 2003, is not proved as there is no other evidence to corroborate this fact. To prove the demand made on May 8, 2003, the prosecution relied upon the evidence of the shadow witness-PW-05-Dnyandev Mahadev Patil. It is pertinent to mention that the shadow witness PW-5 accompanied the complainant to the office of the Panchayat Samiti where the appellant was working. Nothing is indicated by PW-5 regarding earlier demand dated April 27 or 28, 2003 and demand made on May 2, 2003 for which the trap was laid on May 8, 2003.

8. PW-5 deposed that the appellant asked the complainant as to whether he has done his part of work to get the work done regarding bills, as directed by him. PW-5 deposed that PW-01-complainant stated that he had brought Rs.1500/- with him. The appellant asked PW-01 to wait and said that they will go outside. Then they went to

the cold-drink house. There is nothing to indicate that any demand is made in the cold-drink house. As per the version of PW-5 when they came out of the cold-drink house, in open area, the appellant demanded Rs.1500/- from the complainant. The complainant took out Rs.1500/- from his left side pocket of manila by his right hand and kept in his hand in front of the accused. The appellant accepted the said amount by his right hand and kept the said amount in his hip pocket of right side of his pant. The complainant gave signal to the raiding party led by PW-7 – investigating officer accompanied by PW-5 panch witness. PW-5 stated that the appellant suspected something was wrong. The appellant took out the said bribe amount from his pocket and dropped it on the road and started proceeding further when the officers of the raiding party asked him to stop. The officers of the raiding party then asked the appellant as to where was the said money which he accepted from the complainant.

9. According to version of the PW-5, the officers of the raiding party asked where was the said amount when the appellant said that he has not accepted the amount and

asked them to take his personal search. PW-5 then says that he appraised the raiding officers that the appellant on seeing them, had dropped the said amount on the road. Thereafter, PW-7 investigating officer directed the raiding party to apprehend the appellant. PW-5 deposed that the investigating officer instructed PW-6 panch witness Pol to collect the said currency notes which were dropped on the ground.

10. Thus, so far as demand is concerned, the complainant having turned hostile, the only evidence is that of PW-5 panch witness. It is further material to note that in the office where the demand allegedly made, PW-2 and 4 were also present. Though PW-2 and 4 have been examined, they have not deposed anything about the demand. PW-4 deposed that the complainant had come to the office of the Panchayat Samiti to meet the appellant and there was conversation among them regarding some bills whereafter the complainant, PW-5 and the appellant went outside the office. In cross-examination, PW-4 has denied the suggestion that he was deposing falsely that he had not seen the complainant and PW-5 nor did he hear

conversation between them.

11. It is material to note that PW-7 investigating officer and PW-6 were waiting outside the Panchayat Samiti Office. As per the version of the PW-5, the demand was made in the Panchayat Samiti office whereafter the complainant, PW-5 and the appellant went to the cold-drink house. The amount was accepted in the open ground outside cold-drink house. PW-5 says that the appellant dropped the bribe amount on suspecting that the raiding party was around. PW-5 has further stated that he was the one who apprised the raiding party about the bribe amount which was dropped by the appellant.

12. So far as PW-6 is concerned, he deposed that PW-6 and PW-7 investigating officer were waiting in front of the Panchayat Samiti office for signal. They were informed by somebody that the complainant and the shadow witness were not in Panchayat Samiti office. PW-6 says that it is true to suggest that Bharat Bakers and Cold-drink House is to the rear side of the Panchayat Samiti office. He deposed that the said cold-drink house was not visible from front side of the office of Panchayat Samiti and also not visible from the

place where PW-6 and PW-7 were waiting. PW-6 deposed that they had not seen the complainant and appellant going to the cold-drink house. PW-6 deposed that they were informed that the complainant and the appellant had gone to the cold-drink house which was on the rear side of the Panchayat Samiti office. PW-6 then stated that he saw the complainant and the appellant were standing and talking with each other. After seeking them, the raiding party caught the appellant. It is material to note that PW-6 in his deposition stated that he and PW-5 asked the appellant as to where the amount of Rs.1500/- was kept when the appellant asked the raiding party to take his personal search. PW-6 along with others then took search but no amount was found with the appellant. PW-6 deposed that somebody noticed that the said currency notes of Rs.1500/- were found lying by the side of the road and that it was PW-7 who directed PW-6 to collect and pick up those currency notes. It is thus seen that there is variance in the version of PW-5 and PW-6. PW-5 deposed that he appraised the raiding party that the appellant on seeing them dropped the amount from his pocket. PW-6 in his evidence deposed that

he and PW-5 asked the appellant where the amount received by him was kept and thereafter, PW-5 and PW-6 took personal search of the appellant.

13. It is also material to note that PW-6 has only stated about seeing the complainant and the appellant standing outside Bharat Cold-drink House in the open area and it is only after the complainant gave a signal that they rushed to apprehend the appellant. The deposition of PW-7 investigating officer in this regard assumes significance. PW-7 deposed that after the complainant, shadow witness went inside the office of the Panchayat Samiti, the appellant, the complainant and the shadow witness came out and proceeded towards Bharat Cold-drink House and at that time, the complainant took out the currency notes from his pocket and handed it over to the appellant. It is, therefore, that the complainant gave signal as instructed. Though PW-6 and PW-7 were together all the time, the material fact about the appellant, complainant and the shadow witness coming out from the Bharat Cold-drink House and the complainant handing over the bribe amount to the appellant is not found in the version of PW-6. It is

pertinent to note that in the FIR lodged by PW-7, there is no mention about the complainant and the appellant entering Bharat Cold-drink House and as regards PW-7 investigating officer having seen the complainant handing over the bribe amount to the appellant. PW-7 was confronted with the FIR during his cross-examination. PW-7 indicated that portion mentioned in the FIR is correctly recorded.

14. The complainant having turned hostile and in view of the glaring discrepancies and inconsistencies in the evidence of PW-5, PW-6 and PW-7, in my opinion, it would not be safe to conclude that the prosecution has proved the case against the appellant beyond all reasonable doubt. The possibility of PW-5 being an interested witness to support the case of the prosecution cannot be ruled out. Though PW-2 and PW-4 were present in the office when the demand was allegedly made, PW-2 and PW-4 have not deposed anything about the demand, PW-4 having stated that he could hear the conversation between the complainant and the appellant. In my opinion, it would be unsafe to rely upon the evidence of PW-5-shadow witness to prove the demand in the absence of any corroboration particularly when the

complainant has turned hostile.

15. It may be that the hand and the pocket of the appellant were smeared with the anthracene powder but by that itself would not be a circumstance to implicate the appellant in the absence of cogent evidence. Immediately after the incident, the statement of the appellant was recorded where he stated that the TA bills of the complainant were pending as there was no sanction from the Zilla Parishad. He stated that the complainant tried to offer him the amount and when he refused to accept, the complainant tried to thrust the amount on the appellant. In the statement under Section 313 of the Cr.P.C. the appellant stated that he has been falsely implicated. At the first possible opportunity the appellant had indicated that the complainant tried to offer him bribe amount and when he refused, the amount is thrust on him. The defence is probable. The demand is not proved.

16. Learned APP invited my attention to the material evidence on record and the findings of the trial Court in support of his contention that the demand and acceptance are rightly held to be proved in the present case.

17. Learned counsel for the appellants placed reliance on the decision of the Supreme Court in the case of **Neeraj Dutta vs. State (Govt. of N.C.T. of Delhi)**¹. Their Lordships in **Neeraj Dutta** (supra) have held that the allegations of demand of gratification and acceptance made by a public servant has to be established beyond a reasonable doubt.

18. In my opinion, the evidence in the present case fall short to bring the case of the prosecution for proving the demand of gratification and acceptance by the appellant beyond a reasonable doubt. The material discrepancies and inconsistencies in the evidence of PW-5, PW-6 and PW-7 creates a serious doubt about the prosecution case. The complainant has turned hostile. The only evidence to prove the demand in the present case is the shadow witness. There are no circumstances brought on record which will prove the demand of gratification. Therefore, the ingredients of the offence under Section 7 of the PC Act were not established and consequently, the offence under Section 13(1)(d) will not be attracted.

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19. Hence, the appeal must succeed.

20. The impugned judgment of the Special Court is set aside.

21. The appellant is acquitted of all the charges levelled against him.

22. The bail bond of the appellant stands cancelled.

23. The appeal is allowed and disposed of accordingly.

(M. S. KARNIK, J.)