

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

CRIMINAL APPEAL NO. 858 OF 2012

The State of Maharashtra
[Through Dy. S. P. - Anti Corruption
Bureau, Sindhudurg] ...Appellant

vs.

Rajesaheb Yashwant Rane
Age : 44 Years, Occu. : Talathi,
Sateli Bhedashi, Class 2,
R/at : Hewale, Tal. : Dodamarg,
District : Sindhudurg. ...Respondent

Mr.Y.Y.Dabke – APP for the Appellant-State.
Mr.A.S.Khandeparkar – Senior Advocate a/w Mr.Saurabh Mittal and
Mr.Rohit Mahadik a/w Ms.Apporva Khandeparkar and Mr.Vaibhav
Kulkarni a/w Mr.Rushikesh Bhagat and Mr.Farhan Shaikh –
Advocates for Respondent.

CORAM : S. M. MODAK, J.

RESERVED ON : 5th APRIL, 2023

PRONOUNCED ON : 4th MAY, 2023

JUDGMENT :-

1. The Special Judge – Anti Corruption Bureau [“ACB”] –
Sindhudurg – Oros acquitted the Respondent-Accused for the
offences punishable under Sections 7, 13(1)(d) read with Section
13(2) of the Prevention of Corruption Act, 1988 [“PC Act”] on 24th
August, 2011.

2. *De facto* Complainant is the owner of the agricultural land and Respondent-Accused was the Talathi at village : Sateli Bhedashi, Taluka : Dodamarg, District : Sindhudurg. Respondent demanded bribe for issuing 7/12 extract in the name of *de facto* Complainant. The amount of bribe was paid in part and trap was successful while paying other part.

3. After trial, the Respondent was acquitted mainly for the following grounds :-

- (a) The *de facto* Complainant – PW No.1 has not supported the case of the Prosecution fully.
- (b) There is variance in testimonies of the *de facto* Complainant – PW No.1 on one hand and trap panch – PW No.2 on the other hand on material particulars.
- (c) The digital evidence in the form of recording conversation was not analyzed by the forensic expert.

4. This judgment of acquittal is challenged by the State. So, the issues involved in this Appeal are :-

- (a) Whether the trial Court ought to have accepted other evidence when the *de facto* Complainant has not supported fully ?
- (b) Whether the corroborative evidence ought to have accepted by the trial Court ?
- (c) Considering the limited scope of Appeal, whether judgment of acquittal can be interfered on the grounds agitated in this Appeal.

5. On this background, I have heard learned APP Shri.Y.Y.Dabke – for the Appellant-State and learned Senior Advocate Shri.A.S.Khandeparkar for the Respondent-Accused.

About trial Court judgment

6. After hearing the submissions and going through the record, it reveals that the trial Court has understood that the *de facto* Complainant has not supported the Prosecution case *in toto*. Though he deposed about the initial demand prior to lodging of the complaint, he has not given the details. While giving description about the events that transpired after approaching the Anti Corruption Bureau, he has not stated many facts. At one stage, even the trial Court has observed that the *de facto* Complainant has resiled from his complaint. This is not the exceptional case wherein *de facto* Complainant has partly resiled from his complaint. On this background, an option which was left open to the trial Court is to scan the other evidence available. This is what stated by the Constitutional Bench of Hon'ble Supreme Court in case of ***Neeraj Dutta V/s. State (Govt. of N.C.T. of Delhi)***¹.

About appeal

7. It is true that the said observations were not in existence

1 2023 SCC OnLine SC 280

when the impugned judgment is delivered. However, when this Court is dealing with an Appeal, an endeavour is to ascertain whether other corroborating evidence is sufficient to conclude about the guilt of the Accused. Unfortunately, when such exercise is carried out, this Court finds that other evidence is not worthy of credence. Hence, this Court is not having any alternative but to confirm the judgment of acquittal and to dismiss the Appeal. I will give reasons for the said decision.

Submissions

8. Learned Senior Advocate Shri.Khandeparkar relied upon the observations of Hon'ble Supreme Court in case of ***P Satyanarayan Murthy V/s. The Dist. Inspector of Police and Ors.***². Therein, the complainant has expired prior to giving evidence. The trial Court convicted the Accused for both the offences on the basis of evidence available. The conviction under Section 7 was set aside by the High Court. The Hon'ble Supreme Court set aside the conviction for the offence under Section 13(2) of PC Act. It is true that the Constitution Bench in case of ***Neeraj Dutta (supra)*** has dealt with divergent views expressed on the point of adequacy of evidence in cases under the Prevention of Corruption Act. There may be a

² AIR 2015 SC 3549

contingency wherein the *de facto* complainant has expired or not available or has not supported and the issue was whether in these contingencies, the Court can convict the Appellant on the basis of other available evidence. Now, the Court can convict the Accused on the basis of other evidence on record even though the evidence of the *de facto* Complainant is not forthcoming for any reason whatsoever.

Facts

9. *De facto* Complainant – PW No.1 – Joseph Eyyalil has purchased 68 acres of land at village Parme, Taluka : Dodamarg, District : Sindhudurg. Out of which, 52 acres was owned by him, whereas, remaining land is owned by his son Jerry Joseph. The Office of Talathi is situated at village : Bhedashi, Taluka : Dodamarg and the Respondent-Accused was the concerned Talathi. The case lodged by the Anti Corruption Bureau has arisen due to various demands made by the Accused for money for doing the work of mutating land in their names.

10. There is a demand for Rs.2,000/- per acre. The complaint at Exhibit-8 given details of the various demands of the amount paid in installments. However, when the question of deposing before the

Court had arisen, the *de facto* Complainant for the reason best known to him, has not stated those details. The complaint refers about the following demands / events :-

- (a) First meeting in December-2008 and the Accused instructed PW No.1 to give copies of sale-deeds.
- (b) After they were supplied, first demand of Rs.2,000/- per acre was made.
- (c) An amount of Rs.50,000/- was paid on 2nd January, 2009 by withdrawing it from Bank of India – Branch Konalkatta (PW No.1 went to the extent of disowning this statement which is marked as ‘Portion Mark – A’ during cross-examination.)
- (d) The payment of Rs.10,000/- on 16th October, 2009 (this is also disowned by him during cross-examination and it is marked as ‘Portion-B’.)
- (e) Reiterating the demand by accused for remaining Rs.50,000/- on 5th November, 2009 (this was also disowned during cross-examination, marked as ‘Portion Mark – C’).
- (f) Somehow, begging for reducing the amount and agreeing to pay Rs.10,000/- on 10th November, 2009 and ;
- (g) Lastly, the *de facto* Complainant approached the Office of Anti Corruption Bureau at Kudal on 9th November, 2009 and lodged the complaint (which is at Exhibit-8 – Page No.69).

11. As said above, the *de facto* Complainant has stated only few facts which were narrated in the complaint. He reiterated the

demand for Rs.1,20,000/- and paying of Rs.60,000/- to the Accused (but has not elaborated about payment of Rs.50,000/- on one occasion and Rs.10,000/- on another occasion).

12. Though during evidence before the Court, he has stated about some events that took place, that to say, lodging of complaint, going to the Office of Talathi on 10th November, 2009 at Bhedashi for the purpose of verification, again visiting the Office for offering illegal gratification and catching the Accused by the ACB Officials along with tainted currency notes. But on some aspects, he has given a version different from what is there in various panchnamas. For example, when it is the case of the Prosecution that he visited the Talathi Office on 11th November, 2009, at the time of trap, in fact, he was handed over voice-recorder but while deposing before the Court, he has not said anything about the voice-recorder. On these aspects, the trial Court has not believed his evidence.

13. Learned APP Shri.Dabke tried his level best to convince me that the other available evidence is sufficient to hold the Accused guilty. However, he was not successful. One of the incidents is when there is transcription panchnama about conversation recorded on voice-recorder and when this C.D., was sent for forensic analysis,

there is no forensic analysis report placed on record. If it is not there, it is difficult to accept the contention of Mr.Dabke.

14. He as well as learned Senior Advocate Shri.Khandeparkar have invited my attention to taking U-turn by the *de facto* Complainant while giving the evidence before the Court. However, other evidence is sufficient is the submission of Mr.Dabake. The entire Prosecution evidence consists of following depositions :-

- (i) PW No.1–Joseph Joseph Eyyalil–De facto Complainant
- (ii) Panch witness – Ganesh Kashinath Koli
- (iii) Sanctioning Authority – Sidhharam Karmasayya Salimath
- (iv) Deputy Superintendent of Police – Dipak Bhaskar Bandekar

There were also documentary evidence. No doubt, one can say that Dy.S.P – Bandekar has tried to take all precautions in collecting the evidence. So to say even he has taken out the photo copies of tainted currency notes of Rs.10,000/- (9 notes of Rs.1000/- denomination and 2 notes of Rs.500/- denomination. They are at Exhibit-11). However, he has no control over what the witnesses should depose before the Court. The evidence on the point of demand can be classified as follows :-

- (a) Evidence prior to lodging of complaint on 9th November, 2009.

and

(b) Evidence on the date of trap.

Evidence prior to lodging of complaint

15. No doubt, at that time panch witness is not expected to accompany the *de facto* Complainant. However, it has come in the evidence of PW No.1 that his son has accompanied him. However, he was not examined. As said above, he has paid Rs.60,000/- prior to lodging of complaint. It consists of following installments :-

- (i) Rs.50,000/- paid by withdrawing on 2nd January, 2009 from Bank of India. Though there is evidence of withdrawal available, it was not collected and produced in the Court. The trial Court has emphasized on this fact.
- (ii) Rs.10,000/- paid in cash on 16th October, 2009 (before the Court, he has not deposed about payment of this amount separately).

16. It is surprising that before the Court, PW No.1 has not stated about these two installments. Even otherwise, learned APP in-charge of the case has failed to bring into the notice of PW No.1 about these details. The defence took a chance and confronted that portion Mark-A and Mark-B to him during cross-examination. Probably, the defence must be sure that they have won over the

Complainant. PW No.1 during cross-examination went to the extent of disowning portion Mark-A and Mark-B. He said, he has not stated those portions to the Anti Corruption Bureau.

17. Though the Complainant at Exhibit-8 mentions about the demand of remaining amount of Rs.50,000/- by the Accused and PW No.1 assuring to pay Rs.10,000/- but while deposing before the Court, PW No.1 has omitted to state that portion. It is marked as Portion Mark-C. He has also disowned that portion. What he said is that after payment of Rs.60,000/-, he directly went to the Office of Anti Corruption Bureau and lodged the complaint.

18. At the bottom of Exhibit-8 (Page No.73), there is an endorsement :-

“due to inefficiency of my father, I state that above mentioned statement given by my father is true”.

19. There is mention that due to paralysis, he was not able to sign it properly (Page No.62). There is every reason to believe that the de facto Complainant is won over by the Accused but it is surprising that learned APP in-charge of the case has not declared him hostile at least, in respect of a portion which he has not deposed before the Court.

20. So, before the Court, there was evidence of demand of

money prior to lodging of complaint which was cryptic in nature and not supported by documentary evidence even though available. The PW No.1 has backed out from the particulars given in the complaint. So, his evidence cannot be said to be reliable and trustworthy. The trial Court has rightly disbelieved him.

Evidence of demand after lodging of complaint

21. Here before the Court, material witnesses are PW No.1 – *de facto* Complainant and trap panch – PW No.2 – Ganesh Koli. The following are the events that are depicted from their evidence :-

Verification on panchnama

- (a) Visit to the Office of Talathi – Bhedshi on 10th November, 2009 for the purpose of verification of the demand. (Exhibit-10). On that occasion, Accused was not found in the Office. But the Office was closed even though waited for sufficient long time. Accused has not returned and the Officials returns empty handed.

Pre-trap panchnama

- (b) 11th November, 2009 – carrying out pre-trap panchnama (Exhibit-12). At that juncture, PW No.1 has produced tainted currency notes to the tune of Rs.10,000/- (9 notes of Rs.1000/- denomination and 2 notes of Rs.500/- denomination). All the procedure about applying anthracene powder and testing it have been complied.

- (c) The trial Court has not believed this evidence for the reason that these tainted notes were produced by the First-Informant not on 11th November, 2009 but on 9th November, 2009 itself as stated by the First-Informant.
- (d) This particular find place in the evidence of First-Informant in sub-para of Para No.2. Whereas, as per panch witness, it has happened on 11th November, 2009.
- (e) The trial Court has drawn an inference that if tainted notes were produced on 9th November, 2009, it means, at that time, panch witness was not present. That is why, this piece of evidence is not believed for want of consistency.

Trap panchnama

- (f) Trap panchnama at Exhibit-13. Trap party members went from Kudal to village Bhedshi. They went there in two cars. PW No.1, his son and PW No.2 went there in omni car. Whereas, others went there in a government vehicle.
- (g) In fact, there are instructions given to panch witness to accompany PW No.1 throughout the trap proceedings. However, panch witness has decided to go by his own way.
- (h) The tainted currency notes were to be offered in the Talathi Office. The First-Informant did enter that Office. However, panch witness has chosen to wait outside the Office.
- (i) From that Office, Accused went to the adjoining room along with the First-Informant. The door of that room was locked. There is lengthy cross-

examination about the surroundings of that room. Though the panch witness could not see the happenings in that room, he has deposed that there is a window to that room and he could hear the conversation that took place in between the PW No.1 and the Respondent-Accused.

22. The conduct of the panch witness in not accompanying PW No.1 is difficult to digest. Dy.S.P - Bandekar has given specific instructions. The trial Court has also commented on this aspect in the impugned judgment. It is important to note that the First-Informant in his evidence has not deposed that Respondent-Accused made demand of the amount in that room. It is conspicuously absent from his evidence. Though the panch witness has deposed about hearing the conversation but even he has not deposed about money demanded by the Respondent from the First-Informant at that time.

23. So, there is absolutely no evidence about the amount demanded at the time of trap. The trial Court has rightly laid emphasis about this lacunae. The law on this point is very clear. The evidence on the point of acceptance can be considered only when it is preceded by demand of illegal gratification. In this case, it is absent.

Specific defence of accused

24. The Accused has not only taken a defence of denial but he has tried to offer some explanation as to how there was anthracene powder found on his hand. He gave the explanation not only before the Court but given it immediately to the Investigating Officer when trap panchnama was reduced into writing. According to him, in fact, an amount of Rs.10,000/- was thrust in his pant pocket by the First-Informant and when he tried to protest it, his hands were smeared with anthracene powder. This explanation also finds place in trap panchanama (Page No.141 of Exhibit-13).

25. There is one more aspect wherein the evidence on the point of trap was not believed by the trial Court. There is no evidence that the money was demanded by the Respondent-Accused as it is clear from the evidence of PW No.1 and PW No.2. Though he tried to give an explanation that in fact, interaction took place in between him and the First-Informant regarding payment of money, but it is not by way of an illegal gratification but towards payment of land measurement fees and it was Rs.30,000/-. According to him, the First-Informant agreed to pay Rs.10,000/- and also agreed to pay Rs.20,000/- subsequently. This was put to the panch witness PW

No.2. His evidence is on the point of amount he heard from the conversation. He has also heard about the talks in between both of them about paying Rs.10,000/- to be paid on that day and Rs.20,000/- on the next date towards the measurement fees of the land. (That find place in Para No.10 of his evidence).

26. There is one more piece of evidence created simultaneously about recording of the conversation in between Accused on one hand and the First-Informant on the other hand. It is on the point of demand of money.

Digital Evidence

27. Though the First-Informant has not said about carrying voice-recorder, it is the PW No.2 and PW No.4 has said about this voice-recorder. It was on two occasions. **First**, at the time of visit to the Office of Talathi for verifying the demand (Exhibit-10) and **secondly**, at the time of trap panchnama at (Exhibit-12). On first occasion, the visit was not fruitful. The panchnama is at Exhibit-10. The Office of Talathi was closed. So, there was no occasion of recording of incriminating conversation in the voice-recorder. Secondly, the conversation is reproduced in the trap panchnama at Exhibit-13 carried out on 11th November, 2009.

28. According to learned Senior Advocate Shri.Khandeparkar, this evidence was rightly discarded by the trial Court. He relied upon the observations by this Court in case of *State of Maharashtra, through, Dipak Bhaskar Bandekar Dy. S.P., Anti-Corruption Bureau V/s. Suresh Baliram Rane*³ and more specifically, Para No.7. There was evidence of conversation recorded in compact disc. The law on this point is very clear. When any interaction is recorded with the help of an electronic device, it is recorded in the memory of that device and that is primary evidence. When it is tendered in the Court either through compact disk or a pen drive, that is not the original recording but it is a copy prepared from the original recording in the memory of that device. So, when compact disk is produced, it is called as secondary evidence i.e. conversation from the memory copied in the compact disk. That is how, it requires a certificate under Section 65B(4) of Indian Evidence Act. In the sense that it was copied by following the proper procedure. Admittedly, in this case, there is no certificate produced to that effect. This is an additional ground for not considering the evidence in the form of conversation copied in compact disk.

29. So, what is the relevance of transcription of that audio

³ 2021 SCC OnLine Bom 38

recording. It is nothing but converting the audio / voice in the form of text by listening that interaction and reducing it on paper. No doubt, that conversation is part of trap panchnama at Exhibit-12. Unless and until that certificate is produced, the conversation reduced into writing in the trap panchnama cannot be accepted as a piece of evidence. There is one more reason why the trial Court has not accepted this piece of evidence by way of C.D. This was sent for forensic analysis but there is no report produced before the trial Court. I agree with those findings.

30. The interaction in between the Respondent and the First-Informant on the point of payment and measurement fees as alleged by the Accused is not accepted by the trial Court for the reason that it does not find place in the transcription which is part of trap panchnama. For the above discussion, the digital evidence has not fulfilled the test of authenticity and for want of necessary compliance of the safeguards, it cannot be accepted.

Conclusion

31. For the above discussion, the evidence on the point of demand at the time of trap as discussed above, is not trustworthy. Merely because tainted currency notes of Rs.10,000/- were found

with the Respondent, is not the evidence of culpability unless it is preceded by the evidence on the point of demand. So, I fully agree with the trial Court. So, even though the evidence is scanned on the basis of observations of Hon'ble Supreme Court in case of ***Neeraj Dutta (supra)***, the said evidence does not fulfill the test of reliability and authenticity. So, I do not accept the contention of learned APP Shri.Dabke. The trial Court has rightly given a benefit of doubt to the Respondent. There is reason to believe that the Investigating Officer has taken utmost pain in collecting the evidence. However, due to the conduct of the First-Informant in resiling or disowning his statement and due to certain lacunae in other evidence, it cannot be said that both the offences are proved beyond reasonable doubt.

About sanction

32. There is submission made by learned Senior Advocate Shri.Khandeparkar on the point of validity of the sanction. PW No.3 is the Sanctioning Authority and the sanction is at Exhibit-16. My attention is invited to the answers given by the Sanctioning Authority during cross-examination. He is Sub-divisional Officer for that area. He admits that investigation papers are not submitted to him along with the forwarding letter. It affects the validity of the

sanction. It is for the reason that there has to be application of mind by the Sanctioning Authority. If the papers are not sent for his perusal, the grant of sanction becomes a mechanical act. I agree with learned Senior Advocate Shri.Khandeparkar.

33. For the above discussion, I find no merit in the Appeal. There is no error in the findings recorded by the trial Court. Hence, Appeal is dismissed.

[S. M. MODAK, J.]