

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

CRIMINAL APPEAL NO. 1406 OF 2004

The State of Maharashtra

...Appellant

vs.

1. Shankar Bhujangarao Wadar

Age 36 yrs, Occupation – Service
resident of Datta Colony, Malegaon Road,
Miraj, District Sangli.

2. Suryakant Kisan Shengane

Age 30 yrs,
resident of Patil Galli,
Nadi Ves. Miraj, District Sangli

...Respondents

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

Mr. Balwant Salunkhe - Advocate for the Respondent No. 1

Mr. Chintamani K. Bhangoji – Advocate for the Respondent No. 2.

CORAM : S. M. MODAK, J.

DATE : 08th MARCH, 2023

JUDGMENT :-

1. Heard learned APP and learned Advocate for the Respondent No. 1-Clerk in the office of the Sub-Divisional Officer, Miraj and learned Advocate for the Respondent No. 2-who is receiver of the illegal gratification-non public servant.

2. The special judge acquitted both the Respondents for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. As the evidence on the point of demand was not satisfactory, the evidence on the point of the acceptance was not believed by the trial court. One of the reason for not accepting the evidence on the point of the demand is inconsistent statement made by the *defacto* Complainant-PW. No. 2 before the court on one hand and before the disciplinary authority on the other hand.

3. Learned APP has taken me through the evidence of three witnesses and the record. They are as follows:-

PW. No. 1	Vaibhav Vasantrao Patil	Panch witness
PW. No. 2	Ramchandra Pandurang Kharade	<i>defacto</i> Complainant
PW. No. 3	Ramchandra Dadoba Chavan	Investigating officer

The sanction given to prosecute the Respondent No. 1 was admitted and hence sanctioning authority was not examined.

4. Whereas both the learned Advocates have referred to the evidence of the defense witness Sonal Prakash Chalwade, who was working as Special Executive Magistrate in the office of the Collector at Sangli. He has recorded the statement of the *defacto* Complainant

in the departmental inquiry initiated against the Respondent No. 1 through him. The statement of the *defacto* Complainant recorded during inquiry was brought on record. Both the learned Advocates pointed out how there are inconsistencies on material aspects.

5. After going through those inconsistencies, I am with the trial court. If such inconsistencies are there, it is difficult to believe the *defacto* Complainant. When the evidence on the point of the demand is not satisfactory, it is settled law that the evidence on the point of acceptance cannot be believed upon. I will give reasons hereinafter.

6. *Defacto* Complainant has applied for license to free sale of kerosene in the open market with the Tahasildar. After inquiry Tahasildar sent a report to the Sub-Divisional Officer, Miraj. At the relevant time, the Respondent No. 1 was working as Clerk in the Sub-Divisional Office. The *defacto* Complainant has met him on 16/09/2000 for the purpose of follow up. Respondent No. 1 asked him to deposit Rs. 75/-. It was complied by the *defacto* Complainant. He was told to come on the next date.

7. On 19/09/2000, when the *defacto* Complainant met the Respondent No. 1, it was first occasion when demand of Rs. 3,000/-

was made. After deliberation, it was settled at Rs. 1,100/-. The *defacto* Complainant has not complied with that demand. But he has chosen to approach the Anti Corruption Bureau. It was on 25/09/2000. Whereas in the inquiry, he said that he approached the Anti Corruption Bureau on 19/09/2000. So far as this demand of 19/09/2000 is concerned, the *defacto* Complainant has said differently before the inquiry officer. This statement is at Exh.39. Before the court the *defacto* Complainant has also said that the Respondent No. 1 told him to pay Rs. 15,000/- towards Flag Day Contribution, if *defacto* Complainant does not want to pay Rs. 3,000/-. This fact was not stated by the *defacto* Complainant before the inquiry officer.

8. There are two more aspects where there is variance. Before the Court he has said the money of Rs. 3,000/- is demanded by the Respondent No. 1. Whereas before the inquiry officer, he has said money was demanded by the Respondent No. 2. The Respondent No. 1 only said that money will be required by higher officers. There is also variance about quantum before the inquiry officer. It was said as 1,500/- was demanded and agreed to accept Rs. 1,100/-. If facts are true, it is expected that the person will depose

the fact and say the same thing in different places. So there is doubt so as to actually who demanded the amount, whether it is the Respondent No. 1 or the Respondent No. 2. There is also variance about money demand, whether it is Rs. 3,000/- or Rs. 1,500/-. Furthermore, Rs. 15,000/- demanded for flag day contribution was not said before the inquiry officer.

9. The trial court has rightly not believed the *defacto* complainant. Ultimately, the person who given bribe is also accomplice, his evidence has to be tested with caution. Generally, these things happened in absence of any one, if such is situation the Court has to be careful while appreciating the evidence of the *defacto* Complainant. For the above discussion, I agree with the trial court.

10. There are also variances so far as acceptance part is concerned. The trap laid on 25/09/2000 in the office of the Sub-Divisional Miraj. There the Respondent No. 1 told to the *defacto* Complainant to bring a register whereas in the inquiry, he said that is it one Waichal who is clerk who has asked him to bring the register.

11. Learned Advocate for the Respondents are right that the said Waichal is not examined. Even the investigating Officer has

admitted the presence of the Waichal. There is no explanation as to why said Waichal has not examined. So there is doubt as to whether the Respondent No. 1 instructed to bring register or whether it is Mr. Waichal.

12. On the point of the trap, we have evidence of the *defacto* complainant and panch witness P.W. No. 1. So far as that evidence is concerned there are no material variances. There are evidence which show that presence of anthracene powder was there on the hands of the Respondent No. 2 and on his clothes. Trial Court laid emphasis on the place of the acceptance. Whether it is inside office or whether it is outside office. The trial court also laid emphasis on P.W. No. 1 has acted as panch in earlier anti corruption case also. Trial Court has also laid emphasis that work is already over and nothing remained to be done with the Respondent No. 1. It has come on record that the *defacto* Complainant deposited the amount as instructed by the Respondent No. 1. So nothing remained with the Respondent No. 1 so why Respondent No. 1 will ask for illegal gratification.

13. Be that it may, it can be accepted only when the evidence on the aspect of the demand is satisfactory. Unfortunately, it was not

there. Hence trial court has not accepted the evidence on the point of the acceptance. As said above sanction was not disputed.

14. For the above reasons, I do not find any merit in the appeal. There is no perversity. The view taken by the trial Court is possible view. Hence there is no merit. Hence appeal is dismissed.

[S. M. MODAK, J.]