

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

CRIMINAL APPEAL NO. 554 OF 2016

Bhagwan Nivrutti Wagh

Age 57 years, Occupation : Service

Residing at B-9, Pushpa Villa Society,

Near Navarang Hall, Panchavati,

Nashik 422 003.

...Appellant

Versus

The State of Maharashtra

...Respondent

....

Mr. Satyavrat Joshi a/w Mr. Nitesh Mohite, Mr. Shubham Mhatre,
Advocate for the Appellant.

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

....

CORAM : PRAKASH D. NAIK, J.

DATE : 28th JUNE, 2023.

JUDGMENT :

1. The appellant is convicted vide Judgment and order dated 19.07.2016 passed by the learned Additional Sessions Judge, Nashik in Special Case (ACB) No.7 of 2010 for offence under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as “PC Act”) and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.3,000/-. The appellant is also convicted for offence under Section 13(1)(d), r/w Section 13(2) of the PC Act and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.3,000/-. Both the sentences were directed to run concurrently.

2. The prosecution case is as under :-

i) The complainant's father had an agricultural land at Avankhed. He purchased the tractor for agricultural work. Bakaram Kokate was appointed as driver on the tractor. On 28.06.2019, the tractor was hired by Ashok Bahirat. Bakaram Kokate had performed agricultural work in the agricultural land of Mr. Bahirat. After completing work, the tractor was brought back.

ii) The appellant/accused gave telephonic call to the complainant and called him at Dindori Police Station. The complainant approached him. The appellant/accused told the complainant that the watchman of cold storage namely Mr. Pendhare has lodged a complaint alleging that Mr. Bakaram has stolen plastic and iron pipes from cold storage.

iii) The complainant contacted Mr. Bakaram and inquired with him about the incident. Mr. Bakaram confirmed the incident. The complainant called him to Police Station. Mr. Bakaram told the Police that, he had kept those pipes at the house of his brother. The accused told him to put those pipes at its place and Mr. Bakaram complied his directions.

iv) The accused told the complainant that, it is a theft case and he can seize the tractor and keep it at the Police Station. The accused demanded amount of Rs. 5,000/- for not initiating action of seizure of

tractor. The complainant replied that he would return after taking the decision.

v) On 06.07.2019, the accused again made a phone call to the complainant and called him at Police Station. The complainant approached him. The appellant asked him about the next course of action. The complainant showed inability to pay the amount of Rs.5,000/- but agreed to pay Rs.3,000/-. The accused demanded the said amount immediately. The complainant showed his inability to part the amount immediately. He told the accused that he would bring the amount from his maternal brother.

vi) The complainant was not interested in parting the amount of Rs.5,000/- to the accused and hence he approached the Anti Corruption Bureau, Nashik (for short "ACB") and lodged the complaint.

vii) The ACB Officer called the panch witnesses. They verified the complaint. The complainant produced bribe amount of Rs.3,000/- in the form of 6 currency notes of Rs.500/- each. Pre-trap procedure was completed. Instructions were given to the raiding party including the complainant and panch witnesses. The panch witnesses accompanied the complainant. The tainted amount was accepted by the accused. The raiding party apprehended the accused. The currency notes were recovered from him. Post trap panchanama was recorded.

Investigation proceeded. On completing investigation, charge-sheet was filed.

viii) The charge was framed against the accused vide order dated 16.03.2011 for offences under Sections 7 13(1)(d) r/w Section 13(2) of the PC Act.

3. The prosecution examined four witnesses. PW-1 Samadhan Nanasaheb Pingal is the original complainant. PW-2 Nitin Jayprakash Gupta is the Sanctioning Authority. PW-3 Anil Suklal Pawar is the panch No.1 for pre-trap panchanama. PW-4 Pradip Nivrutti Ugale is the Investigating Officer.

4. Learned Advocate for the Appellant submitted as under :-

i. The prosecution case suffers from serious infirmities. The evidence of witnesses suffers from doubt. The prosecution has not established demand and acceptance of bribe amount beyond reasonable doubt.

ii. The panch witnesses who is supposed to be an independent person to the trap was not available for deposing before the trial Court.

iii. Although it is the case of prosecution that, Mr.Bakaram was involved in committing theft of pipes and since the pipes were allegedly transported from the tractor belonging to the complainant he was threatened by the accused that the tractor would be seized.

However there is no supporting evidence to this aspect, since Mr.Bakaram has not been examined by the prosecution. There is no material on record to show that the tractor of complainant was involved in any manner in the crime of theft and to avoid seizure, the accused had demanded the bribe amount of Rs.5,000/-.

iv. The case of the prosecution is based on the telephonic calls exchanged between the accused and complainant. However, to corroborate the said fact, the Investigating Officer has not collected the CDR and not produced the same in the proceedings before the trial Court.

v. The testimony of complainant about the demand of bribe and its acceptance is not corroborated by any independent evidence. The panch witness could not depose before the Court. It is difficult to rely upon the version of complainant to convict the appellant for the alleged offences in the absence of any independent evidence in support of the version of complainant. The evidence of complainant is required to be taken into consideration with caution, as the complainant is interested witness and his interest is to see that the accused is implicated in the case. The complainant is supposed to handover the bribe amount and his status is in the nature of accomplice. The evidence of complainant is shaky and does not inspire confidence. The

prosecution case is that the bribe amount was kept in handkerchief and the amount was kept in the pocket. There is no evidence to show that the handkerchief belongs to the accused. The said article was not shown to the witness.

vi. The demand of bribe amount is related to the seizure of tractor and the seizure of tractor is related to the grievance of one Mr.Pendhare who lodged the complaint about the theft of pipes. However, the prosecution has not examined Mr.Pendhare.

5. Learned Advocate Mr. Joshi has relied upon the following decisions :-

- i. Neeraj Dutta Vs. State (Govt. of N.C.T. of Delhi)¹.
- ii. Satvir Singh Vs. State of Delhi².
- iii. State of Punjab Vs. Madan Mohan Lal Verma³
- iv. State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede⁴.
- v. Suraj Mal Vs. State (Delhi Administration)⁵
- vi. Panalal Damodar Rathi Vs. State of Maharashtra⁶.
- vii. Arun Sambhaji Khanvilkar Vs. The State of Maharashtra⁷.

6. Learned A.P.P. submitted that there is sufficient evidence to convict the Appellant. the trial Court has analyzed the evidence on record and by assigning cogent reasons convicted the Appellant. There is no reason to

1 2023 SCC OnLine 280

2 (2014) 13 SCC 143

3 (2013) 14 SCC 153

4 2009 ALL MR (Cri.) 3127 (S.C.)

5 (1979) 4 SCC 725

6 (1979) 4 SCC 526

7 2022 ALL MR (Cri) 4386

discard the evidence of complainant. The complainant has referred to the demand made by accused and acceptance of illegal gratification. The tainted currency notes were recovered from the Appellant. Non examination of the panch witnesses would not affect the prosecution case. There is sufficient evidence of other witnesses examined by the prosecution which proves the demand and acceptance of bribe. The appellant has not succeeded in rebutting the presumption under Section 20 of the PC Act. No case is made out for interfering in the judgment of the trial Court. The evidence of PW-1 is corroborated by PW-3. The currency notes utilized in the raid for bearing numbers and the recovered currency notes could be tallied with numbers reflected in pre-trap Panchanama. Hence, the appeal may be dismissed.

7. PW-1 Samadhan Pingal is the complainant. He stated that, Avankhed agricultural land is in the name of his father. A driver by name Bakaram Kokate was appointed for driving the tractor. They also give tractor on rental basis for agricultural work. On 28.06.2009, the tractor was given to Ashok Bahirat on rental basis for agricultural work. Complainant's driver took the tractor at the agricultural land of Shri. Bahirat for work and after completing the work it was brought back. The accused gave a phone call to Bakaram. He did not respond. Bakaram gave phone number of the accused to complainant. The complainant contacted the accused. He was called at Dindori Police Station. The complainant visited the Police Station. The

accused told him that the watchman Mr. Pendhare working at cold storage has lodged the complaint that Bakaram has stolen two plastic and one iron pipe from the cold storage. The complainant made a phone call to Bakaram and asked him whether he has taken the pipes. He answered affirmatively. The complainant called him at Police Station. Bakaram visited Police Station and informed that he has kept the pipes at the house of his brother. The accused told Bakaram to return those pipes from where he has taken it away. Bakaram put back those pipes in its place. The driver came back by putting the pipes at its place. The accused told complainant that it is a theft case and he will seize the tractor and keep it at Police Station. He will have to pay Rs.5,000/- for not seizing the tractor. The complainant told him that, he would respond after a thought. He returned from Police Station. Bakaram left Police Station. On 06.07.2009, the accused made a phone call and called the complainant to Police Station. The complainant visited the Police Station and told the accused that he do not have Rs.5,000/- but offered Rs.3000/-. The accused then demanded Rs.3,000/- from him. The complainant told him that he does not have that much amount and he would bring the amount from his relative at Nashik. He was permitted to do so. The complainant visited ACB at Nashik and lodged complaint. Panchas were called. Instructions were given to them. Mr. Ahirrao was instructed to accompany complainant. Procedure for conducting raid was completed. Pre-trap panchanama was recorded. The raiding team went towards Police

Station. Complainant along with panch witness Mr. Ahirrao approached the accused. The accused asked the complainant, whether he had brought money. The accused took out the handkerchief from his pocket unfolded it and told the complainant to put the money in it. The complainant took out the amount from his shirt pocket and put it into handkerchief. He placed the handkerchief and the amount into backside pocket of his pant. Signal was given to the raiding party. The accused was apprehended. Amount was recovered. Further procedure was completed. Post-trap panchanama was recorded. In the cross examination the complainant stated that, he had not approached Police Station along with Mr. Bakaram prior to lodging complaint in the office of ACB. He has not given documents of tractor to investigating officer. The accused has demanded bribe from him for not filing case against driver Mr. Bakaram. He do not remember the time when the accused made a phone call to him.

8. PW-2 Nitin Jayprakash Gupta was serving at Nashik as Superintendent of Police from 14.04.2007 to 07.06.2010. He deposed that, he had powers to appoint and remove from the services the employees in the category of Police Constable, Police Head Constable, Police Naik and Assistant Sub Inspector. He received letter from the office of ACB, Nashik seeking sanction to prosecute and filing charge-sheet against the accused. He received documents relating to the investigation of the offences. He verified whether the offence is prima facie made out from the papers. He came to the

conclusion that, prima facie the offence is committed. Therefore, it is necessary to accord sanction to file charge-sheet. Accordingly he passed sanction on 05.03.2010. It was marked as Exhibit – 20. In the cross examination he stated that, he do not remember whether there was any document in the papers received by him to show that as to who promoted the accused to the post of Assistant Sub-Inspector. The Post of Police Commissioner is superior to the post of Deputy Police Commissioner. The officer in charge has the authority to remove an employee, who has appoint him. The presiding officer of the said post may be anyone. He had ascertained as to who was the owner of tractor in the present case. It is not correct that, he has accorded sanction without perusing documents of the present case.

9. PW-3 Anil Suklal Pawar stated that, he was called by ACB along with Hemant Hari Ahirrao. Ahirrao is no more. He was called to act as a panch witness. He has referred to the procedure followed by the ACB prior to proceeding for raid. He was member of raiding party. Other panch witness Mr. Hemant Ahirrao had accompanied the complainant. He meted with raiding party. The accused accepted money. Thereafter all the members of raiding party apprehended the accused. The amount was recovered from him. In the cross examination he stated that, for examination, he had not signed or put any mark on the handkerchief. The Handkerchief like Article-D

is easily available in the market. He could see the movement of accused, complainant and panch witness.

10. PW-4 Pradeep Nivrutti Ugale conducted investigation. He stated that, the complainant approached his office for lodging complaint. He narrated his complaint to him. His complaint was that, he has tractor and appointed Mr. Bakaram Kokate as driver. The accused had called Mr. Kokate. The complainant spoke to accused. He went to police Station. It was alleged that, Mr. Kokate took away pipes from cold storage and watchman lodged complaint. Mr. Kokate admitted having taken pipes. He was told to keep pipes at its place. The accused asked complainant whether to settle the matter demanded Rs.5,000/- for not seizing tractor. The amount was reduced to Rs.3,000/-. He referred to the arrangement made for the raid, recording of pre-trap panchanama, instructions given to the complainant and panch witness. He remained outside with the raiding party. The complainant and Mr. Ahirrao went inside and approached the accused. After the signal was made by the complainant, the raiding party apprehended the accused and tainted notes were recovered from him. He conducted the investigation. He obtained documents related to service record. He obtained CDR's of mobile phone of complainant and accused. He obtained sanction order from competent authority and filed charge-sheet. In the cross examination he stated that, he had acted as investigating officer in 8 to 9 cases but in no

case he conducted verification of demand for bribe, because at that time that was not the procedure. He didn't felt it necessary to verify complaint of the complainant or demand of bribe. During investigation it was revealed that, prior to this case, no offence was registered against the accused under the PC Act. He had not demanded any documents relating to tractor from the complainant or he has also not furnished it to him. He had collected information as to who was the appointing Authority of Mr. Wagh and filed it in this case. He had referred to all the incident while lodging the FIR.

11. The case of the prosecution proceeds on the basis that the complaint was lodged by one Mr. Pendhare, who was working as watchmen in cold storage. enquiry was conducted by the accused. The accused was attached to Dindori Police Station as Assistant Sub Inspector. Theft of pipes was allegedly committed by Bakaram. He was working as driver with the complainant. Bakaram did not respond to the calls given by the accused when the complainant gave a call to the accused, he was called at the Police Station. Bakaram was called at Police Station. The complainant then made enquiry with Bakaram and he admitted that the pipes were taken by him and they were kept at the house of his brother. Bakaram was directed to return the pipes and place them at its respective place. Bakaram complied the same. He came back to Police Station. The accused then warned the complainant that the Bakaram had taken away the pipes on the tractor which was driven

by him and that the tractor belongs to the complainant. Since it is a theft case, he would seize the tractor. The accused then allegedly demanded Rs.5000/- for avoiding the seizure of the tractor. The complainant borrowed time. Subsequently he told the accused that he would pay amount of Rs.3,000/-. The accused demanded the said amount. The complainant told him that he will arrange the amount from his maternal brother from Nashik. The complainant then approached the ACB. Thus, the demand made by accused relates to the complaint lodged by Mr. Pendhare and theft committed by Mr. Bakaram. The demand stipulated in the version of complainant is based on uncorroborated testimony of the complainant. The prosecution case is that, after the complainant approached ACB, two panch witnesses were called. Mr. Ahirrao was instructed to accompany the complainant while approaching the accused at the time of trap. Unfortunately the panch witness Mr. Ahirrao, who had accompanied the complainant at the time when the bribe amount was demanded and accepted by the accused could not be examined by the prosecution. It was contended that the said panch witness had expired before deposing in the trial. Thus, the case of the prosecution about demand of bribe and acceptance of amount is based on the version of the complainant. It is alleged that the accused folded the handkerchief and told the complainant to put the amount in the handkerchief. There is no identification that it belongs to the accused. It is also relevant to note that there was no verification of demand. The complainant has admitted that

there was no demand verification. He did not feel it necessary to verify the complaint of complainant or demand of bribe. He did not demand any documents relating to the tractor from the complainant. Nor the complainant furnished such documents to him. It is also pertinent to note that the case is based on the fact that there was telephonic conversation between the accused and Bakaram and vice-versa. The investigation officer has stated that he had collected CDR's of Mobiles phones of complainant and the accused those are filed in the case. However, the charge-sheet does not contain any such CDR, nor the prosecution has adduced such CDR's in evidence. The complainant of PW-1 is that bribe was demanded for not seizing tractor in theft of pipes by his driver Bakaram. In the examination in chief he has deposed about it. The investigation officer has referred to same grievance of complainant. However in the cross examination PW-1 has stated that, the accused made demand for not filing case against Bakaram. The prosecution is relying upon complaint filed by Mr. Meghraj Gamne regarding theft of pipes by Bakaram. However, the case proceeds on the basis that complaint was filed by one Mr. Pendhare working as watchman at cold storage. Mr. Pendhare, Mr. Bakaram or Mr. Gamne were not examined. The prosecution has examined Mr. Anil Pawar (PW-3) who acted as panch witness. Admittedly he was with raiding party but not with complainant. He is not witness to conversation between complainant and accused on the day of trap, regarding demand and acceptance of bribe. All these circumstances creates doubt about of the

prosecution case. The prosecution has failed to establish beyond doubt that the accused had demanded the bribe amount and accepted.

12. In the case of Neeraj Dutta Vs. State (Govt. of N.C.T. of Delhi) (supra) in paragraph 68 it is observed that the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

13. In the case of Satvir Singh Vs. State of Delhi (supra) it was observed that, the presumption under Section 20 of the PC Act is not applicable to shift onus on the accused.

14. In the case of State of Punjab Vs. Madan Mohan Lal Verma (supra), it is held that the law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the P.C. Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. The burden rests on the accused to displace the statutory presumption raised u/s.20 of the P.C.Act by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by hi, other than as a motive or

reward as referred to in Section 7 of P.C.Act. While invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness.

15. In the case of State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede (supra) it is held that demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence viz. Demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-a-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was

found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of S.20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.

16. In the case of Suraj Mal Vs. State (Delhi Administration) [supra] it was observed that, it was observed that recovery by itself cannot prove the charge of the prosecution against the appellant in the absence of any evidence to prove payment of bribe or to show that the appellant voluntarily accepted the money.

17. In the case of Panalal Damodar Rathi Vs. State of Maharashtra (supra) it was observed that the evidence of complainant should be corroborated in material particulars. There was no corroboration of the testimony of complainant regarding demand of money by the accused.

18. In the case of Arun Sambhaji Khanvilkar Vs. The State of Maharashtra (supra) it was observed that the electronic device/gadgets on which conversation between the complainant and accused was recorded on various dates neither produced nor played before the Court and the said aspect not proved.

19. In the present case, the prosecution cannot be said to have established its case. Hence, the appeal must succeed.

ORDER

- i. Criminal Appeal No.554 of 2016 is allowed.
- ii. The Judgment and order dated 19.07.2016 passed by the learned Special Judge, Nashik, in Special Case (ACB) No.7 of 2010 is set aside and the appellant is acquitted of all charges.
- iii. The appeal stands disposed off accordingly.

(PRAKASH D. NAIK, J.)