

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1221 OF 2012

Dilip Jagannath Puri	..	Appellant
Versus		
The State of Maharashtra	..	Respondent

WITH
CRIMINAL APPEAL NO.1124 OF 2013

The State of Maharashtra	..	Appellant
Versus		
Dilip Jagannath Puri	..	Respondent

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Mr.Satyavrat Joshi for the Appellant in APEAL/1221/12 and for the Respondent in APEAL/1124/13.

Mr.S.R.Agarkar, A.P.P. for the State in APEAL/1221/12 and for the Appellant in APEAL/1124/13.

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CORAM: BHARATI DANGRE, J.
DATED : 26th APRIL, 2023

JUDGMENT :-

1. The two connected Appeals are taken up for hearing, as both of them arise out of the judgment delivered by the Additional Sessions Judge, Nashik in Special (A.C.P.) Case No.18 of 2008 on 31/10/2012.

The Accused has filed Appeal No.1221 of 2012, assailing the subject judgment on the ground of a perverse finding being recorded, without appreciating the evidence brought on record, which has failed to establish the ingredients of Section

7 as well as Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, **“the P.C.Act”**).

Appeal No.1124 of 2013 is filed by the State of Maharashtra, seeking enhancement of the sentence on the ground that the penalty imposed upon the Accused is not appropriate and it being inadequate, considering the gravity and seriousness of charges, it is prayed that the sentence imposed upon the Accused shall be enhanced to the maximum prescribed under the statute.

2. The Appeals, being admitted were taken up for final hearing.

Heard the learned counsel Mr.Satyavrat Joshi for the Accused and the learned A.P.P. Mr.S.R.Agarkar for the State in Appeal No.1221 of 2012. The State in Appeal No.1124 of 2013 is represented by the learned A.P.P. Mr.Agarkar, whereas Mr.Satyavrat Joshi appeared for the Respondent/Accused.

3. The complainant (PW 1) approached the Anti Corruption Bureau (**A.C.B.**) and filed his complaint on 14/01/2008. He alleged that he is an agriculturist by profession and five months back, he purchased 10 acres of agricultural land at village Jakori from one Dilip Borawake and he obtained 7/12 extract from the Talathi of village Jakori for the year 2006-07. He narrated that since he wanted to obtain electric connection in his field and for which 7/12 extract recording his name was to be submitted to the Gram Panchayat, he approached Talathi of village Jakori for getting 7/12 extract. Shri Dilip Jagannath

Puri @ Puri Tatya (Accused) met him in the office on 10/01/2008 and 7/12 extract was given to him, which contained an endorsement in respect of Form No.XIV in the column of details of crop. He desired that the said endorsement should be removed, but for that purpose, a demand of Rs.4,000/- was raised. Since, the complainant had no money at that time, he assured the Accused that he would get the amount within a day or two and, thereupon, the Accused told him to bring the amount at Pathardi Phata on 14/01/2008, near Hotel Santosh and, thereafter, he would remove the entry.

4. On such complaint being received by A.C.P. Anant Targe (PW 3), it was reduced into writing and was signed by the complainant and the Investigating Officer and the process for laying a trap was laid.

Two panch witnesses were summoned from the office of the Executive Engineer, being one Shankar Hanumant Andure (PW 2) and one Anil Shimpi. After carrying out the procedure and formalities of drawing a pre-trap panchnama, on 14/01/2008, the first trap was attempted to be laid at 6.00 p.m., but when phone call was made to the Accused, he informed that he would not be coming at the said place and instead, he called PW 1 at a different location, near the petrol pump at Vijay Mamta Talkies at Nashik on the next date at 8.30 a.m.. Hence, a further trap was laid on 15/01/2008 and during this trap, on demand, a cash amount of Rs.4,000/- was handed over to the Accused by the Complainant. The ACB officers, immediately, apprehended the Accused and he was

taken to Upnagar Police Chowki and on completing the necessary formalities, the post trap panchnama was drawn.

5. In order to establish the prosecution case, four witnesses are examined; the complainant-Pandharinath Murlidhar Jachak being examined as PW 1, panch witness-Shankar Hanumant Andure being examined as PW 2, Investigating Officer-Anant Rangnath Targe as PW 3 and the Sanctioning Authority-Mahesh Bhaskarrao Patil as PW 4.

The Appellant face a charge under Section 7 of the P.C.Act and in order to establish the same, it is necessary to satisfy the most important ingredient i.e. demand of illegal gratification. It is settled position of law that 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.

6. In the wake of the above position of law, I have turned myself to the evidence that has been placed before the learned Judge, which resulted into his conviction.

The complainant (PW 1) is a witness interested in securing the conviction of the Accused, since it is upon his complaint, the investigating machinery was set rolling.

He deposed that the Accused was working as a Talathi of village Jakori and he filled up Form No.XIV in respect of the land purchased by the complainant in the year 2008 and he requested for deletion of the said entry in the record of rights. He deposed that a bribe amount of Rs.4,000/- was demanded for deletion of the entry and, since, he was not willing to pay the bribe, approached the A.C.B. and lodged a complaint.

As per the complainant, the first attempted trap on 14/01/2008 was not successful and, hence, it was repeated on the second day, when he went to the office of A.C.B. at 6.00 a.m.. He alongwith the Investigating Officer and the panchas, approached the petrol pump at Nashik Road. On reaching the spot, the Accused came there on motorcycle and asked whether the amount is brought and, thereafter, the cash amount of Rs.4,000/- was handed over to him, which he put in the right side of his pant pocket and the A.C.B. officers caught him red handed.

7. To corroborate the aforesaid version, I must turn to the testimony of the panch witness (PW 2), who in his examination-in-chief, corroborated PW 1, by stating that, on reaching the spot, the complainant asked the Accused, whether he has completed the work and the Accused asked him, whether he has brought the amount. As per his version, at the time when they started drinking tea, the complainant withdrew the amount of gratification from his shirt pocket and handed over the same to the Accused, who accepted it by his right hand.

In the cross-examination, he gave the following admission :-

“When I was standing near the tea stall there had been no conversation on mobile phone between complainant Jachak and any other person. The petrol pump was adjacent to the tea stall. It is true that the road goes by the side of tea stall towards the petrol pump. The conversation between complainant Jachak and the accused Puri near the tea stall was going on up to the period of 15-20 minutes. I cannot say the exact conversation took place between them. I cannot say who started the conversation and who ended it. The ACB officers came there when the complainant and accused were making conversation between them. At that time, we were drinking tea. No any shining article was shown to me by the ACB officer at the place of tea stall. I do not remember in whose custody currency notes were given near the tea stall.”

Another admission, and the most relevant one, comes from this witness to the following effect :-

“The ACB officer did not show the hands of accused at the tea stall. There was no shining on both the hands of accused when I saw his hands in Nashik Road police station.”

8. The aforesaid admissions coming from PW 2, the panch witness who was present at the time of trap where as per the demand, the amount was paid by the complainant to the Accused, falls to the ground, as PW 2 failed to corroborate the version of demand being raised by the Accused and the bribe amount being paid pursuant thereto.

Admittedly, on the first date when the trap was laid, demand is not proved and if the amount is accepted, without any demand being proved, the ingredients of Section 7 are not satisfied. PW 2 has made the case of the prosecution doubtful, as in absence of any corroboration of demand from the

independent witness in from of the panch witness, the version of the complainant cannot be taken as a gospel truth.

9. Apart from the aforesaid lacuna, which has featured through the evidence brought on record before the Special Judge, another important aspect also deserve a consideration. Pertinent to note that as per the complainant, since he wanted an entry in respect of Form No.XIV to be deleted from 7/12 extract, the question that arises is, what is the basis for taking the entry of Form No.XIV into the 7/12 extract.

Form No.XIV of the Maharashtra Land Revenue Code is a Register of persons in possession other than the persons deemed to be in possession of the land according to the record of rights. As per Rule 31 of the Maharashtra Land Revenue Record of rights and Registers (Preparation and Maintenance) Rules, 1971 (for short, **"The Rules of 1971"**), during the inspection of crops, the Talathi shall verify whether the person in actual possession of a survey number or sub-division of a survey number is the one whose name is recorded in the record of rights. If the Talathi finds that the person in actual possession is other than the person who according to the entries in the record of rights is entitled to cultivate the land, he shall enter his name in the register of persons in possession other than the persons who should have been in possession of the land according to the record of rights. As soon as such entries are made in the Register, the relevant extract shall be forwarded to the Tahsildar for necessary action. Sub-rule (2) of Rule 31 contemplate that Tahsildar shall then visit the village and shall conduct an enquiry, calling all the interested

persons to be present at village *Chavdi* and he shall hear the persons interested and after holding further enquiry as he deems necessary, decide the matter. After the resultant entries are made in the record, he shall cause necessary entries to be made in the *Khate Pustika*.

10. In the backdrop of the aforesaid Rule, PW 1 was specifically cross-examined about Form No.XVI being filled by Talathi, upon the complaint being lodged by Ashok Namdeo Vinchu, a resident of village Jakori. He pleaded ignorance about the entry being taken on his application, seeking mutation of his name in the crop cultivation column of the land purchased by the complainant, as he was cultivating the land.

PW 1 admit in the cross-examination that he is not aware about the purpose of Form No.14 (XIV) and he was not even aware, when this entry was taken in 7/12 extract of the land purchased by him. In fact, he lodged the complaint with the A.C.B., he admit that he had no knowledge of the date, month and year of entry in Form No.XIV made in 7/12 extract of the land purchased by him. He admit that he has not even bothered to make inquiries as to on whose complaint, Form No.XIC was filled up, but he presumed that the entry was made by the Accused on his own accord.

The complainant (PW 1) had no knowledge, whether the report is to be submitted by the Talathi to the Tahsildar and whether his case was also required to be forwarded to the Tahsildar, who was the only competent authority to delete an entry in Form No.XIV in 7/12 extract.

11. As per the admission given by the complainant (PW 1), after a period of one year of filing of the case, the entry in Form No.XIV was deleted from 7/12 extract, after the Tahsildar visited his land during the enquiry for preparation of panchnama. The complainant categorically deposed as under :-

“I have obtained the 7/12 extract of the land after the incident took place in this case. After the period of the one year of the filing of this case, I came to the knowledge that entry of form no.14 was deleted from the 7/12 extract. Tahsildar had visited my land during that enquiry for preparation of panchanama. In that enquiry Tahsildar recorded my statement and enquired with the adjacent holders of the land.”

12. It is thus clear that the present Appellant/Accused, who was working as Talathi, was not competent to delete the entry and even the Sanctioning Authority i.e. PW 4, had admitted in the cross-examination that filling of Form No.XIV is by Talathi, but after filling of the Form, Tahsildar has to take the decision. He specifically admitted that on the application made by Ashok Namdeo Vinchu, Form No.XIV was filled up by Talathi of village Jakori and made an endorsement on the 7/12 extract of the land and forwarded it to Tahsildar. PW 4 specifically admit as under :-

“It is true that Talathi has no authority to delete the endorsement made by him on the 7/12 extract of the form no.14 in his power.”

13. In the wake of the above, it can be seen that it was not the present Accused/Appellant, who could have shown any favour or disfavour to the complainant or he was in a position to render any service to the complainant in respect of deletion

of the entry, which was not within his power and it was a Tahsildar, who was the only competent person to make an enquiry and delete the said entry.

14. Section 7 of the P.C. Act contemplate acceptance or attempt to obtain from any person, any gratification whatsoever, other than the legal remuneration, as a motive or reward for doing or forbearing to do any official act, or for showing favour or disfavour. In this case, since it has come on record through the Sanctioning Authority himself that it was the Tahsildar, who was competent to conduct an enquiry in respect of entry in Form No.XIV taken in the 7/12 extract and the complainant himself has admitted that after conducting a due enquiry, the said entry was deleted, there is no reason for any demand being raised by the Appellant for deleting the entry, as he had no power to do so.

Apart from this, the demand itself has not been proved by the prosecution. The offence under Section 7 is not established in the present case, as even the panch witness has not supported the version of PW 1. PW 1, being an interested witness, his testimony cannot be accepted in absence of any corroboration and, particularly, in the wake of the fact that on a complaint filed by one of the villager, the entry was taken in Form No.XIV, but after following due process of law as contemplated under the Rules of 1971, the same has been deleted.

Since the prosecution has failed to prove the demand, conviction under Section 7 cannot be sustained. As far as the

offence under Section 13(1)(d) read with Section 13(2) is concerned, since the prosecution has failed to prove that the Appellant has obtained for himself any pecuniary advantage or has abused his position as a public servant, he cannot be said to be guilty of committing criminal misconduct, inviting penalty under Section 13(2) of the P.C. Act. Necessarily, the finding recorded in the impugned judgment is perverse, as it has failed to take into account the admissions given by PW 1 and PW 2. The conviction imposed under Section 7 as well as under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act is set aside. As a result, the sentence imposed on conviction is also set aside.

15. On perusal of the impugned judgment as well as the evidence of the four prosecution witnesses and the other material placed before me, the judgment passed by the learned Additional Sessions Judge, Nashik on 31/10/2012 in Special Case No.18 of 2008 deserve to be quashed and set aside. The Appellant is entitled for acquittal for the charges under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act

Criminal Appeal 1221 of 2012 stands allowed in the aforesaid term. Bail bond furnished by the Appellant stands cancelled upon his acquittal.

16. Since the Appeal filed by the Appellant is allowed, Criminal Appeal No.1124 of 2013, filed by the State, seeking enhancement of the sentence, is dismissed.

(SMT. BHARATI DANGRE, J.)