IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1310 OF 2012

The State of Maharashtra
(Through Anti Corruption Bureau
Sangli and Police Station, Palus,
Taluka Palus, District Sangli; .... Applicant.
Crime No.11/2009) (Orig.Complainant)

Versus

Mr Shivaji Balvant Mote,
Aged 56 years,
Occupation – Govt.Service,
R/o. Omkar Colony, Islampur, ... Respondent.
Taluka Walwa, Dist.Sangli. (Orig.Accused)

Mr Shekhar Jagtap,Advocate a/w Ms Sairuchita Choudhary and Mr Venkatesh Shinde i/b J.Shekhar & Co. for the respondent/original accused.
Mr AA Palkar, APP for Appellant/State.

Coram : R.N.Laddha,J.
Reserved on: 23 August 2023.
Pronounced on: 12 September 2023.

Judgment :

This Appeal is directed against the Judgment and Order passed by the Special Judge at Sangli in Special Case (ACB) No.8 of 2009, whereby the accused therein came to be acquitted of the offence punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act').

2. Mohd. Hanif Babulal Kulkarni, the complainant, owned land in village Ankalkhop bearing Gat No.1592. After retiring from the police department in 2009, he wanted to install an electric motor on land bearing Gat No.1595, owned by one Jagannath Mulik, adjacent to the Krishna river bed to irrigate his land. In April 2009, he visited the office of the irrigation department at Walwa and met the accused, whom he knew from his visits to Ankalkhop for collection of water cess. The accused noted the details of the required papers for motor installation on the backside of a handbill and told him that he would have to pay Rs.14,000/- in two instalments for permission from higher authorities. The complainant collected the relevant papers and handed them to respondent No.2 along with an application for permission on 26.2.2009. After applying, the accused called him and asked for Rs.7,000/-. On 29.6.2009, the accused contacted him again and asked for the amount.

3. The complainant then contacted the Deputy Superintendent of Police (Anti Corruption Bureau), Sangli, and informed him about the bribe demand by the accused. The Deputy Superintendent (Anti Corruption Bureau) asked him to come to his office at Sangli on 30.6.2009 to lodge a

complaint. On that day, the complainant's son informed him that the accused visited their house and asked about him. Later that day, the accused and another department employee came to his house again and asked if he had arranged the amount.

4. After the accused made it clear that he would not complete the permission process unless paid, the complainant agreed to meet his demand for money once his son returned home. The accused then asked the complainant to call him once his son arrived home so they could arrange a meeting place. However, on 30.06.2009, the complainant went directly to the office of the Deputy Superintendent of Police (Anti Corruption Bureau) and lodged a report detailing the facts. Ramchandra Vishnupant Joshi and Rahul Tanaji Hange, working in the office of Joint District Registrar (Class-I), Sangli, were appointed as panch witnesses. After verifying the contents of the complaint, currency notes worth Rs.7,000/- smeared with anthracene powder were given to the complainant. Ramchandra Joshi was instructed to accompany the complainant during the trap arranged at his house in Ankalkhop. The complainant, Mr Patil (P.I.), Mr Ingle (Dy.S.P.), and other police staff then went to village

Ankalkhop to conduct the raid. On 30.6.2009, around 12.30 p.m., the accused was nabbed in the complainant's house after accepting a bribe of Rs.7,000/-.

5. A report (Exh.50) was lodged at Palus Police Station by Mr Anil Shantaram Patil (PW 1). Based on this report, an offence vide C.R.No.11 of 2009 was registered against the accused under Sections 7, 13(1)(d) read with 13(2) of the Act.

6. Mr Khalil Harun Ansari (PW 3), a Superintendent Engineer, accorded sanction to prosecute the accused, and a charge sheet was subsequently filed.

7. Charge came to be framed against the accused for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Act. The accused abjured his guilt and claimed trial.

8. At the trial, to substantiate the indictment against the accused, the learned trial Court recorded the evidence of witnesses, namely Mohd. Hanif Babulal Kulkarni (PW 1); Ramchandra Vishnupant Joshi (PW 2); Khalil Harun Ansari (PW 3); and Anil Shantaram Patil (PW 4), the Investigating

Officer.

9. The statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, came to be thereafter recorded, consisting of a denial and false implication. The accused had examined Atmaram Shamrao Kadam, an employee of the irrigation department, in his defence.

10. After hearing the learned Counsel for the parties, the learned trial Court held that the evidence regarding the demand and acceptance of bribe was questionable in several significant ways. The defence put forth by the accused was found to be probable. As a result, the accused was acquitted by giving benefit of doubt. The trial Court ultimately issued this judgment and order of acquittal.

11. Being aggrieved by and dissatisfied with the impugned judgment and order of acquittal, the appellant/State has preferred this appeal.

12. I have heard Mr.A.A.Palkar, learned Additional Public Prosecutor for the State and Mr.Shekhar Jagtap, the learned Counsel for the accused/respondent and perused the impugned judgment, grounds in the appeal memo, evidence of

the prosecution witnesses and the entire material on record.

13. Mr.A.A.Palkar, learned Additional Public Prosecutor, argued that the order of acquittal was not in accordance with the law. He stated that the trial Court misinterpreted the evidence presented by the prosecution and was swayed by several assumptions not supported by the evidence on record, resulting in a grave miscarriage of justice. He argued that minor inconsistencies, contradictions, embellishments or improvements on trivial matters that do not affect the core of the prosecution's case should not be grounds for rejecting the evidence entirely. He stated that the complainant provided a detailed account of events, which was corroborated by other witnesses. His main contention is that the accused accepting the bribe itself, is conclusive evidence which cannot be brushed aside.

14. According to the learned APP, the evidence of the complainant and panch witness, Ramchandra Joshi, confirms the accused's demand and acceptance of bribe. The evidence of PW 3, Mr Ansari, demonstrates that he has thoughtfully accorded the sanction. Mr Anil Patil (PW 4) testified that necessary procedures for setting up the trap were followed,

and the accused was nabbed while accepting the bribe. In his view, the defence of the accused is not at all probable as it was alleged that the bribe was demanded to obtain permission from senior officials.

15. Mr Shekhar Jagtap, the learned Counsel for the respondent/accused, supported the line of reasoning adopted by the trial Court to record the finding of acquittal. He made various submissions countering the arguments on behalf of the appellant/State. He argued that the complainant sought to install an electric motor on the agricultural land of Jagannath Mulik. However, since he had not paid arrears of water taxes since 2008, the possibility of granting the permission was ruled out. It was submitted that the alleged demand on 30.06.2009 could not be accepted as the first three demands were not substantiated by cogent evidence. The details of phone conversations between the accused and the complainant were not collected and documented. The digital tape recorder was not produced, and Jagannath Mulik was not examined. The defence witness, who was admittedly with the accused at the time of the trap, testified that the complainant gave the money to cover Jagannath's overdue taxes. To substantiate his contentions, he relied on the

following judgments: ***i) Avinash Sitaram Garware Vs. State of Maharashtra***[1] ***ii) The State of Maharashtra Vs. Anandrao Rajaram Patil***[2] ***iii) Neeraj Dutta Vs. State (Govt. of NCT of Delhi)***[3]***.***

16. It is a settled principle in law that in the proceedings instituted against the order of acquittal, it is open to the High Court to re-appreciate the evidence and conclusions drawn by the trial Court but only in a case when the judgment of the trial Court is stated to be perverse.

17. After examining the evidence of the prosecution witnesses, it becomes apparent that Jagannath had an outstanding water cess of around Rs.7000/- during the relevant period. The irrigation department's account records for Jagannath reveal that he had a water cess arrears of Rs.6593/- in 2007-08, which increased to Rs.7172/- in 2008-09 and further escalated to Rs.7580/- in 2009-10. This timeline encompasses the date of a trap. The notice (Exh.42) issued by the irrigation department, Walwa confirms that he had an arrears of Rs.7172/-. Furthermore, Mr Ansari (PW 3) conceded that since Jagannath was on the defaulter's list, he

1 2008 ALL MR (Cri)15.
2 2020 ALL MR (Cri)237.
3 2023 (3) KLT (SN) 35.

was unable to obtain permission to install an electric motor in his field. During cross-examination, Mr Ansari (PW 3) also acknowledged that the documents related to Jagannath's outstanding water cess were not present at the time of sanction approval. He also admitted that the accused was not authorised to grant permission for electric motor installation and could not assist the complainant in obtaining water lifting permission. There is no evidence to suggest that Jagannath cleared his dues when the complainant proposed the installation of an electric motor. Hence, it is evident that Jagannath had an outstanding water cess of approximately Rs.7000/- when the complainant submitted the proposal for installing an electric motor for water lifting.

18. The complainant's evidence suggests that permission could only be obtained if any arrears owned by the Government were paid, and permission could be denied if the dues were not paid. The complainant's cross-examination revealed that after all required documents were submitted with the application, the file would first go to the branch manager for review and then to the Executive Engineer via the Deputy Engineer for approval. The branch manager must visit the site, verify that neither the applicant nor the

consenting parties owe any money to the Government, and then submit a report to the Deputy Engineer, who should forward the file to the Executive Engineer for approval. If, during the investigation, the branch manager discovers that documents are incomplete or that the applicant or consenting party are in arrears of Government dues, they should not forward the file to the Deputy Engineer for further processing. This shows that one of the essential requirements for obtaining permission was that neither the applicant nor the consenting party must be in arrears of water cess. However, in this case, the consenting party, Jagannath, was in arrears of water cess of Rs.7000/- and odd. This makes it clear that at the relevant time, the complainant was aware of both the procedure and the arrears of water cess.

19. The prosecution alleges that the accused demanded a bribe on four occasions. The first demand was made approximately two months before the complaint was filed, the second on 26.6.2009, when the application for permission along with necessary documents was submitted, the third on 29.6.2009, when the complainant was en route to Ankalkhop, and the fourth on 30.6.2009, during the trap.

20. The complaint (Exh.26) does not provide any details about the first demand, nor is there any evidence from the complainant to support it. The complainant claims that the first and second demands were made by the accused in his office at Walwa during business hours. However, no complaint was filed after either of these demands. The third demand, made on 29.6.2009, is not supported by the call records of the accused cellphone, which do not show any contact between the defendant and the complainant on that date.

21. Regarding the complainant's claim that on 29.6.2009, the accused inquired if he had arranged the amount he demanded when he visited his house with an employee from his office. However, no investigation was conducted to identify the employee who accompanied the accused. This is also not mentioned in the complaint (Exh.26). These facts on record indicate that this demand is based solely on the complainant's evidence. Any other evidence does not corroborate the complainant's testimony.

22. In this case, it is evident from the records that Mr Paitil (PW 4) has performed several roles, including arranging the

trap, preparing pre-trap and post-trap panchanamas, filing the FIR (Exh.50), conducting the investigation, and submitting the charge sheet. In ***Tryambak Lilaji Binnar Vs. State of Maharashtra,***[4] it was held that the person who filed the complaint should not conduct the investigation in corruption cases because he has a vested interest in the success of his complaint. The fact that the same Inspector who arranged the trap, filed the FIR, and conducted the investigation goes against the standard procedure.

23. The only evidence against the accused is the recovery of tainted currency notes from his possession, which he admits to possessing. However, possessing and recovering currency notes from the accused without proof of demand does not constitute an offence under Section 7 of the Act. This also applies to the offence under Section 13(1)(d)(i) and (ii) of the Act as without proof of demand for illegal gratification, it cannot be established that the accused used corrupt or illegal means or abused his position as a public servant to obtain something valuable or a pecuniary advantage. In this case, the prosecution was unable to prove beyond a reasonable doubt that the accused had demanded illegal gratification. The

4 2002(3) Mh.L.J.293.

defence put forth on behalf of the accused is a probable defence.

24. It is a settled principle in law that an acquitted individual benefits from a dual presumption in their favour. The first presumption stems from the fundamental principle of criminal jurisprudence that every individual is presumed innocent until proven guilty by a competent court of law. The second presumption arises post-acquittal, where the individual's innocence is not only presumed but further reinforced, reaffirmed, and strengthened by the verdict of the trial Court.

25. In such circumstances, the trial Court, in my considered opinion, rightly found the respondent not guilty of the offence for which he was charged.

26. Resultantly, this appeal fails and is hereby dismissed.

[R.N.Laddha, J.]