

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPEAL NO. 131 OF 2011**

The State of Maharashtra,  
through the State (A.C.B.),  
Amravati.

.... **APPELLANT**

**// VERSUS //**

- 1) Ratiram S/o. Dhaniram Kushwah,  
Aged about 35 years,  
Occupation : Service,  
Railway Police Force, Badnera,  
Distt. Amravati, Originally  
R/o. Village Amar, Tq. Mot,  
Distt. Zashi (U.P.)
- 2) Kiran S/o. Bapurao Bondre,  
Aged about 26 years, Occupation :  
R/o. Baripura, Badnera,  
Distt. Amravati, Originally,  
R/o. Jamgaon, Tq. Warud,  
Distt. Amravati.

.... **RESPONDENTS**

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Ms. Shamsi Haider, Additional Public Prosecutor for Appellant.  
Mr. PP. Kotwal, Advocate for Respondents.

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**CORAM : K.R. SHRIRAM, J.**

**DATED : MARCH 21, 2023**

**ORAL JUDGMENT :**

1. The State is impugning an order and judgment dated 23<sup>rd</sup> September, 2010 passed by the Special Judge, Amravati acquitting

the accused/respondents of offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (P.C. Act 1988).

2. It is prosecution's case that complainant - Satish Uttamrao Bodale (PW-1) was working with one Courier company by the name Madhur Courier Service. Madhur Courier Service was owned by Sushil Meghrajji Golcha (PW-5). PW-1 would collect parcel from the office of the PW-5 and go to the Railway Station Badnera at 7.30 in the morning as well as in the evening to collect the parcel coming by courier in the name of Madhur Couriers. Whatever was received from the office of the Madhur Courier is to be given to the certain persons giving by Vidarbha express daily. It is alleged that accused No.1 was working in the Railway Protection Police Force (RPF) at Badnera Railway Station. It is alleged that accused No.1 checked the bags of PW-1 and used to detain him so that he would miss the Vidarbha Express train. On 07<sup>th</sup> October, 2003, accused No.1 once again obstructed PW-1 at Badnera Railway station at the time of Mumbai Nagpur express and when PW-1 asked accused No.1 why he was doing, he was told to give a sum of Rs.450/- as illegal gratification. Accused No.1 told PW-1 to bring the amount in the evening. PW-1 informed accused No.1 that his owner was out of station and he was to return on 08<sup>th</sup> October, 2003 and he would discuss with him and bring the

amount of Rs.450/-. PW-1 when informed PW-5 about the demand made by accused. PW-1 was advised by PW-5 to approach the Anti Corruption Bureau (ACB). The evidence of PW-5 is not of much help because everything he says that is relevant to the case in hand is hearsay.

3. PW-1 then went to the office of the ACB. What is surprising is the owner/employer PW-5 does not go to lodge the complaint with the ACB. ACB then called two panch witnesses and the pre-trap formalities were completed. The marked currencies were placed in the pocket of PW-1 with necessary instructions. PW-1 along with PW-2 the panch witness No.1 and the second panch witness (not examined) accompanied by the raiding party went together for laying the trap. PW-1 and PW-2 went to Jakat Naka where accused No.1 was to come for accepting the bribe amount. After some time, both accused came in front of one Trimurti Pan Center. On the instructions of accused No.1, PW-1 handed over the marked currencies to the Pan Center owner one Asif who was a juvenile and accused No.1 told Asif to hand over the money to accused No.2. It is not clear as to why such a convoluted procedure was adopted.

4. Thereafter the agreed signal being given, the raiding party came and arrested both accused. Raiding party recovered the marked

currency from the pocket of accused No.2. Asif the Pan shop owner was also taken into custody but has been tried as a juvenile offender.

5. Thereafter PW-8 lodged a report at the Police Station on the basis of which First Information Report came to be registered. Statement of witnesses were recorded. Investigation papers were sent to the sanctioning authority, sanction was obtained and the accused came to be charge-sheeted. Both the accused pleaded not guilty and claimed to be tried.

6. In all, prosecution has examined eight witnesses namely Satish Uttamrao Bodade – complainant as PW-1, Namdeo Anandrao Gadling - panch witness No.1 as PW-2, Alok Sunderlal Bora – sanctioning authority as PW-3, Madhukar Haribhau Lamse – to draw the sketch map of the spot as PW-4, Sushil Meghrajji Golcha – owner of Madhur Courier Service as PW-5, Niteshkumar Shivchand Anandkar – Police Inspector who lodged the FIR as PW-6, Rupwan Bandhan Tirkey - RPF Inspector as PW-7 and Parshuram Bhasu Rathod – Investigating Officer as PW-8.

7. The Trial Court has said a lot about the case of the prosecution, but for the sake of brevity I am only highlighting few of

them. I would hasten to add that the other points raised by the trial Court also has my concurrence.

8. Admittedly, there is no witness except PW-1 to prove that accused No.1 had demanded Rs.450/- as illegal gratification. PW-2 states that he went with the other panch witnesses to the office of the ACB at 1.00 p.m. where PW-1 was already sitting. But, PW-1 states he went to the office of ACB only at 1.30 pm.

9. PW-1 also states that between 1.30 p.m. and 3.00 p.m. they left office of the ACB but, contents of the Panchnama No.1 - Exh.31 shows that it started at 1.05 p.m. and was completed at 3.10 p.m. If it is the case of PW-1 complainant that he went to the Office of the ACB only at 1.30 p.m., the fact that the panchnama was started to be prepared at 1.05 p.m. indicates that it was already being or written by the ACB.

10. PW-1 in his cross-examination has stated that he and PW-2 waited at the Jakat Naka for accused No.1 for about 45 minutes and during that period PW-1 had made three telephone calls to accused No.1. But, PW-2 does not disclose as to why PW-1 called accused No.1 three times. It would be reasonable to expect that PW-2 having gone

as shadow witness with PW-1 would have asked PW-1 at least why was he calling accused No.1 repeatedly.

11. PW-1 states that the demand was made by accused No.1 in the hotel after having tea but, PW-2 states that demand was made at Pan shop.

12. PW-1 says he went to the Office of ACB at about 1.30 p.m. PW-1 in his examination-in-chief says that he along with the others left the office of ACB at about 1.30 p.m. to 2.00 p.m. The panchnama states that it started at 13.05 hours and completed at 15.10 hours. If PW-1 has already left the office of ACB about 2.00 p.m., there was no time to demonstrate about the application of anthracin powder on the notes etc.

13. The complaint lodged by PW-1 was the hand written complaint while Exh.14 is a typed report.

14. PW-1 in his cross-examination has also admitted that there was no document with him to prove that he had a pass from the Railway authority for sending courier through railway. He also states that he had not informed about complaint to Senior Officers of Railway that accused No.1 was harassing him and creating obstruction in his

courier service. That also makes one wonder whether without a pass complainant - PW-1 could have even entered the Railway station because according to PW-1, the first demand was on 7<sup>th</sup> October, 2003 inside the Railway station.

15. PW-8 the Investigating Officer in his cross examination has admitted that the place where the bribe money was to be handed over, i.e., Chandni Chowk near Jakat Naka is not mentioned in the complaint at Exh.14. According to PW-1, he first made the complaint in the office of ACB orally and thereafter it was reduced into writing by the ACB Officer and the contents were read over to him and he signed the complaint and that complaint is Exh.14. But, PW-8 in his cross-examination has stated that complainant had not given written complaint nor he reduced it in writing and has further admitted that there is no endorsement on the complaint to the effect that its contents were read over to complainant and thereafter he signed it.

16. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, accused having secured acquittal, the presumption of his innocence is

further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

17. In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

18. Appeal dismissed.

19. The Government/Appropriate Authority shall pay over to respondent, within a period of 30 days from today, all pensionary or other benefits/dues stalled, in view of pendency of this appeal. If during the service, in view of this matter, the promotions or increments of accused have been affected, the concerned Authority/Department will pay, proceed and calculate on the basis that there was no such matter ever on record against accused and will factor in all promotions and increments that accused would have been entitled to and all the amounts shall be accordingly paid within 30 days.

After 30 days interest at 12% p.a. will have to be paid by Government/Appropriate Authority to respondent.

It is clarified that this is subject to there being no other complaint or proceedings pending against respondent.

No authority shall demand certified copy for reimbursing the benefits/dues as directed above. All to act on authenticated copy of this order. Certified copy expedited.

**(K.R. SHRIRAM, J.)**

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