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

CRIMINAL APPEAL NO.140 OF 2010

State of Maharashtra,
through Anti-Corruption Bureau,
District-Amravati. .. Appellant

.. Versus ..

1] Bhimrao Bhagwan Gaikwad,
Aged about 40 years,
Occupation-Service,
R/o. Sunderkhed,
Tah. & Distt. Buldhana.

2. Rajendra Vishwanath Bhatkar,
Aged about 41 years,
Occupation-Service,
R/o. Ambika Nagar,
Vidhyapeeth Road,
Amravati. .. Respondents

....
Ms. Shamsi Haider, Additional Public Prosecutor for Appellant-State,
Mr. Akshay Pandye, Advocate h/f Mr. Akash Gupta, Advocate for Respondent No.1,
Mr. Abhay R. Sambre, Advocate for Respondent No.2.
....

CORAM : K.R. SHRIRAM, J.
DATED : 21st MARCH, 2023.

ORAL JUDGMENT :

1. By a judgment delivered on 2.5.2009, the Additional Sessions Judge (Special Judge), Amravati, acquitted the respondents who were tried for the offence punishable under Section 7 and 13 (1)

(d) and 13 (2) of the Prevention of Corruption Act, 1988 (for short, PC Act) read with Section 34 of the Indian Penal Code, 1860.

2. Accused no.1 was working as Inspector of Weight and Measurement Department, Chandur Railway. Accused no.2 was serving as Field Assistant in the said office.

3. Complainant Pramod Kadu (PW-1) was working as Agent of one Jharna Instrument Company, M.I.D.C., Amravati. He was in the business of repairing of electronic weight and measures and also doing job of getting certified the weighing scales for its accuracy from the authority of weight and measures office at Amravati and Chandur Railway. PW-1 used to take electronic weighing scales to the Inspector of weight and measures department for getting it certified. For that purpose, he used to pay requisite fees to the office of Weight and Measures Department. It is prosecution's case that when electronic weighing scales were not taken to the office of the Inspector, Accused no.1 used to demand Rs.150/- from PW-1 for passing each plate. Though it is not clear that perhaps is the main part for weight accuracy.

4. On 02.01.2006, PW-1 had a talk with accused no.1 with regard to passing of the plates of the electronic scales. At that time,

accused demanded Rs.150/- extra for passing each plate. Subsequently, on 14.1.2006, PW-1 allegedly talked with accused no.1 over cellphone, at which time accused is supposed to have told him that he would be required to pay Rs.150/- more towards passing each plate. Accused no.1 allegedly told PW-1 to come to his office along with legal fees plus Rs.450/- more for passing three plates. Thus, amount of Rs.450/- was towards illegal gratification and accused no.1 told PW-1 that he would do the work of certification of passing plates after receiving the illegal gratification. As PW-1 did not want to give bribe to the accused, he went to the office of Anti-Corruption Bureau (ACB) on 16.1.2006. He narrated the complaint to PW-5 Bhaskar Tanwar, the Investigating Officer, who reduced it into writing. The report is Exh.11. PW-1, after reading the same, has signed it.

5. Subsequent thereto, PW-5 Bhaskar Tanwar arranged for the trap and called two panchas from Zilla Parishad office, Amravati. Sunil Satpute was the first panch (PW-2) and Sanjay Kothekar was the second panch, who was to accompany ACB staff. Panch No.2 Sanjay Kothekar has not been examined. PW-3 Haribhau Barde, an independent witness was the Proprietor of Jharna Instruments Company, Amravati and PW-1 has claimed to be his Agent. PW-3 was declared hostile by the prosecution because PW-3 very categorically

stated that PW-1 was not his agent at all and PW-1 was not looking after the work of Dhamangaon and Chandur Railway on his behalf. In my view this itself creates a major dent to the case of prosecution. The entire origin of the complaint is PW-1 used to get the weights and measures certified by accused no.1 on behalf of Jharna Instruments Company of PW-3 and during that time accused No.1 demanded illegal gratification.

6. In addition to the four persons mentioned above in para 5 one Ankush Dhanvijay, the Sanctioning Authority was also examined as PW 4.

7. It is prosecution's case that PW-1 and PW-2 went to the office of accused no.1 and accused no.1 asked PW-1 to pay Rs.750/- towards his legal fees and Rs.450/- as bribe amount and then asked PW-1 to pay that amount to accused no.2. Accordingly, PW-1 went to accused no.2 and kept Rs.750/- on the table of accused no.2, at which time, accused no.2 enquired about balance Rs.450/- that accused no.1 is supposed to have told them to pay. Thereafter, PW-1 paid that amount using the marked currency at which time the raiding party recovered the marked currency which was kept on the table and arrested accused no.1 and accused no.2. Thereafter, certain documents

were seized from the office of the Weights and Measures, Amravati, panchanama was prepared, investigation was carried out, the sanction was obtained and prosecution was commenced. The charges were also framed and the plea of both accused were separately recorded. Both accused pleaded not guilty and claimed to be tried.

8. It is the case of accused no.1 that an amount of Rs.1225/- was required to be paid for going on the spot at Dhamangaon Railway and when accused no.1 refused to certify the plates without inspecting the measures as demanded by PW-1, and actually accused no.1 very clearly told PW-1 that issuance of certificate without inspecting the measures would be illegal and he will not do, the accused have been falsely implicated in this case.

9. The entire basis of prosecution's case was that PW-1 was the Agent of PW-3 and when he wanted the Weights and Measures of PW3 to be certified, accused no.1 demanded illegal gratification. But PW-3 has stated that accused no.1 was never his Agent and he never gave him any job to get measures certified, which itself creates doubt what was PW 1 doing in the office of Weights and Measures and on whose behalf did he approach accused no.1 to have the plates certified. Certain documents were found as Exhs. 16 to 18 which were given by

the actual users namely one Jaimatadi Shop, one Gauri Kirana Shop and one Jain Traders. None of them were examined and these applications were made by PW-1, but in the name of the users.

10. In the evidence of PW-4, the Sanctioning Authority has admitted that for verification of the measures in the office, which are produced by the users, a fee is prescribed. If there is delay, delay fee is prescribed and it is required to be paid, if the weight and measures are not verified within the prescribed period. Renewal fees and delay fees is also required to be paid in some cases. PW-4 has also stated that he instructs the inspector to visit the site where the weighing scales are kept. The Inspector visits the place for which there is also visit fees prescribed. Spot inspection fees are also prescribed. The user has to pay the handling charges and T.A., D.A. charges to the inspector and his assistant. PW-4 has stated that if the inspector has to visit the site where the weighing scale is kept, then all the charges have to be paid. PW-4 in clear terms has stated that only when the plates are produced before the inspector, that Inspector is supposed to stamp the plates. Inspector has right to inspect the weighing scale. Therefore, it is clear from the submission of PW-4 what PW-1 was wanting to do was something illegal and that he wanted accused no.1 to certify on record without producing for examination the weighing scales. PW-4 has also

stated in his evidence that for the three applications found approximately charges payable would be Rs.1200/- i.e. Rs.750/- + Rs. 450/-.

11. The law as laid down by the Apex Court in the case of **T. Subramanian .vs. State of Tamil Nadu**[1] states that if accused offered reasonable and explanation based on the evidence that the money was accepted by him, other than as an illegal gratification, accused would be entitled to acquittal. In such cases where two views reasonable possible from the very same evidence, the interest of justice will tilt in favour of the accused. In the case at hand, the amount paid was Rs.1200/- and the explanation offered by the accused No.1 in that regard appears to be reasonable.

12. Moreover, PW-1 in his testimony, has stated that he went to the office of the accused at about 11.00 to 12.00 noon and he was in conversation with accused no.1 during that time, but the panchanama Exh.26 shows that it was written in the office of Anti-Corruption Bureau between 10.15 to 12.00 noon. If PW-1 was at Amravati till 12.00 noon he could not have been physically present in Chandur Railway between 11.00 to 12.00 noon. Thus a material discrepancy which affects the case of the prosecution.

1 2006 (1) SCC (Cri.) 401

13. PW-2, was the shadow witness. He says that he went with PW-1 to the office of accused no.1, where accused no.1 asked PW-1 to fill up the form and give it to accused no.2. PW-2 then said that accused no.1 told PW-1 to give Rs.750/- to accused no.2 together with extra fee of Rs.450/-. Therefore, this amount of Rs.450/- appears to have been towards extra fees and not any bribe.

14. The Apex Court in the case of **Pannalal Damodhar Rathi .vs. State of Maharashtra,**[2] held that on facts, there has to be corroboration of the testimony of PW-1 regarding the demand of money by the accused. If it is not so corroborated, the evidence of the complainant on this aspect cannot be relied upon.

15. As regards the recovery of the marked currency, PW-1 said in his cross-examination that on the direction of accused no.1, accused no.2 accepted the money. PW-1 paid Rs.1200/- to accused no.2. Undisputedly, the fact is there are no allegation against accused no.2 in the complaint. Accused no.2 was working as Field Assistant and his duty was to assess the inspection. In the absence of allegation against accused no.2 in the complaint itself, it can safely be said that accused no.2 only acted on the instructions of accused no.1 and cannot be

2 **1980 SCC (Cri.) 121**

accused of offences under P.C. Act. Further when accused no.1 himself has given reasonable and probable explanation that Rs.450/- was to be paid by PW-1 towards legal fees, then in that case, accused no.2 cannot be alleged to have demanded and accepted any bribe.

16. The Trial Court has also found fault with the sanction that was given by PW-4, because PW-4 has accepted that he did not have all facts based on which the prosecution's case was commenced. This also indicates non application of mind.

17. As noted earlier, PW-4 has already admitted that tentative amount towards legal fees would be amount of Rs.1200/-, which is also an indicator that both accused cannot be stated to be guilt beyond reasonable doubt. In the circumstances, the Trial Court has correctly acquitted both the accused.

18. Appeal dismissed.

19. The Government/Appropriate Authority shall pay over to respondents, 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 respondents.

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

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.)

Gulande