



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 5 OF 2005

	Deepak s/o Laxman Shinde, Age; 33 years, Occ; Service as Junior Engineer, M.S.E.B., District Ahmednagar. R/o; 23/1, Model Colony, Savedi, Ahmednagar, Tq. & Dist. Ahmednagar.	...<u>APPELLANT</u> (Original Accused)
	V E R S U S	
	The State of Maharashtra	...<u>RESPONDENT</u>

...
Advocate for Appellant : Mr. N.R.Dhorde (Senior Advocate) i/b Mr.
V.R. Dhorde a/w Mr. S.P. Nimbalkar
APP for Respondent/State : Mr. S.K. Shirse
...

CORAM : KISHORE C. SANT, J.

Date of Reservation : 21.08.2024
Date of Decision : 12.11.2024

JUDGMENT

1. The appellant is before this Court challenging the judgment and order dated 14.12.2004, passed by the learned

Special Judge, Ahmednagar, in Special Case No. 10 of 1998. The appellant is held guilty of the offences punishable under Section 7, 13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act and is sentenced to suffer R.I. for 3 years and to pay fine of Rs. 2,000/-, in default to suffer R.I. for 6 months for each of the offences. The sentences are directed to run concurrently.

2. The case of the prosecution in brief is that the appellant at the relevant time was working as Junior Engineer with the then M.S.E.B. at Karjat, District Ahmednagar. The informant Gautam Dagadu Shelke approached Anti Corruption Bureau (ACB) on 09.02.1998 and lodged a report. It is informed that the said informant had applied for electricity connection for installing an electric motor pump of 5 H.P. on the well situated in his land. There were also applications made by the others persons for getting electricity connections. On making an application the informant also deposited amount as per quotation. He was told in the MSEB office that he will receive letter from their office and thereafter he will have to again to approach MSEB office. The appellant (for short accused) asked the informant to come along with other persons in group. On that, he went to one Balasaheb Yadav, the Sarpanch of

the village, who also wanted to get electricity connection. Along with Sarpanch he approached to the office of MSEB Karjat, where it was told that they have to pay Rs. 1,000/- each, for getting electricity connection. Thereafter, the line was taken after bringing material, like wire and other instruments. Line was given to one Sandipan Toradmal by taking wire till his line so the informant was also given connection. Even after getting connection the motor of the informant did not work and therefore, again he went to the office of the accused along with said Balasaheb Yadav. At that time, the accused demanded amount of Rs. 500/-. It is on that the complaint came to be lodged with ACB. On receiving the complaint, ACB decided to lay a trap. It is held that the trap was successful and the prosecution was launched.

EVIDENCE BY PROSECUTION

3. The prosecution in its support examined four witnesses. PW-1 is the defacto informant namely Gautam Shelke. He stated the facts, lodging of complaint, laying of the trap and about actual happening of the incident etc. He deposed that on the date of incident the raiding party left the ACB office at 8 a.m., by Government Jeep and reached Karjat at around 11 a.m. He was

accompanied by Balasaheb Yadav & pancha No. 1. The raiding party was following them. On reaching to the office, they found that accused was present in the office. Balasaheb asked the accused as to when connection would be given. On this accused told that unless the amount is paid the connection will not be given. On that the informant placed the amount on the table, the accused picked up the amount and kept in the bag on the table. Thereafter, the informant came out and gave signal to the raiding party. On that the raiding party came in the office. The informant was asked to go out and again was called after some time. After returning, his hands were tested under the Ultra Violet lamp and anthracene powder was seen to his right hand.

4. In the cross-examination he accepted that he had fixed a starter for the connection. One Mr. Babar from MSEB had been to his field for giving connection. He could not tell as to whether said Babar had come on 02.02.1998. He denied that said Babar had again come on 24.01.1998. He accepted that the starter and other things were brought, however, were not fitted. He could not remember whether said Balasaheb Yadav was with him when the persons from the group had been to the accused on earlier occasion.

He could not tell as to whether Balasaheb was present when the accused made alleged demand of Rs. 1,000/-. However, he was present while taking connection. The informant accepted that on 07.02.1998 he had been to the ACB office alongwith Balasaheb. He had not decided to go to ACB office but it was Balasaheb who went to the ACB office with informant. When the complaint was lodged Balasaheb was present, he was knowing the ACB office. He could not remember as to whether Balasaheb accompanied him at the time of raid. On 10.02.1998 Balasaheb was present in ACB office. He could not tell as to whether he was present while drawing pre trap panchanama. He also could not tell as to whether he on his own had been to the ACB office on 10.02.1998. He could not tell as to whether Balasaheb was present in the jeep with raiding party.

5. PW-2 Balasaheb Yadav is a Member of Grampanchayat, Bhairobawadi. He stated that on 7.2.1998 he had gone with the informant to see the accused. The accused told that the work would not be done unless the applicant and he himself have paid him Rs. 1,000/- each. The informant paid Rs. 1,500/-. The informant told him that he would pay remaining amount of Rs. 500/- on Monday. On Monday the informant requested this witness Balasaheb to

accompany him and asked him to come near the College on Tuesday. On 11.02.1998 he had been to the MSEB Office at around 11.00 a.m. and met the accused. The accused told him that he would come around 11.30 a.m. The Complainant at that time came there with one unknown person. This witness told accused to look into the work of the informant. The accused on that questioned as to whether the informant has brought the amount. This witness answered in affirmative, on that the informant kept amount on the table of the accused, the accused picked that amount by his hand and kept the amount in a bag on the table. He again said that the amount was kept by the accused in a bag over the table. Thereafter, the informant immediately went and signaled the raiding party. The raiding party came on the spot.

6. In the cross-examination, he stated that for the first time he met the accused on 07.02.1998 and that was Saturday. His statement was recorded by Dy. Superintendent of Police, ACB. It has come in his evidence that he did not state in police statement that the amount of Rs. 1,000/- was demanded by the accused. The amount of Rs. 1500/- was paid in a month prior to 07.02.1998 and it was paid by the informant to the accused. He denied that the

accused was not present in the office on 7.02.1998. He was not knowing about the lodging of the complaint with ACB office till 10.02.1998. On 10.02.1998 he met informant and Mr. Mane in the office of ACB as he was specifically called for that purpose on 10.02.1998. He denied the suggestion that he had a quarrel with the accused over giving connection and he has falsely implicated the accused through informant.

7. PW-3 is Bhumayya Ramayya Yamul a panch. He was asked by his superior to attend the ACB office. Therefore, he went to the ACB office. There was one more person present namely Mr. Sonar. They both went to the ACB office. There they met Mr. Mane. Their consent was taken to act as pancha. They were thereafter, called by ACB at 6.a.m. on 10.02.1998. For some reason the second pancha was substituted and therefore, the second pancha Mr. Malwade went to the office of ACB. The informant narrated the complaint and the same was reduced into writing. After taking decision to go for raid they left the office of ACB at 8,30 a.m. by private jeep. Near the office of MSEB, Balasaheb was also present. He was introduced by the informant. Thereafter, they went to see the accused. Balasaheb Yadav asked the accused as to what

happened about the work of the informant, on that the accused demanded bribe amount. The Complainant gave the amount to the accused. The accused accepted the amount and kept the same in a bag which was on the table. On that, Balasaheb told the accused to do the work of the informant. Saying that the informant went out and the gave signal to the raiding party. The raiding party arrived. The I.O. asked this witness as to who accepted the amount, he told that the accused had accepted the amount and kept the same in a bag which was on the table. Thereafter the hands of the accused were tested under the Ultra Violate Lamp and those shown blue shining under the said lamp. Thereafter, the shirt of the informant was checked, and anthracene powder was found even on the shirt pocket of the informant. Thereafter, all went to Police Station and lodged the complaint.

8. In the cross-examination, he accepted that while drawing pre trap panchanama the informant told that Balasaheb would be with them. Balasaheb only talked with Shelke. He could not remember that twice they entered the room of the accused. It was tried to show that the portion was shown from the panchanama where it was written that they once again entered the office. He

accepted that during that period Balasaheb, informant and himself were sitting in the room. It is taken in his cross-examination that the accused had given his written say and the same was signed by this witness, which is marked as Exh. 51.

9. PW-4 Ramchandra Supali a Sanctioning Authority, was working as Joint Secretary in the MSEB. In his evidence he stated that he is appointing and removing authority of the Junior Engineers. He had received papers from ACB office for sanction. He perused the statements, report and thereafter came to a conclusion that it was a fit case to accord sanction and accordingly he granted sanction. This witness proved the sanction order. Nothing much is asked to this witness in cross.

10. PW-5 Sharad Mane, the I.O., stated in his evidence about receiving complaint, calling of the panchas, about the process of conducting raid and collecting evidence. He filed the charge-sheet. He stated that the anthracene power was found to the hands of the accused. Even bag of the accused in which the money was kept and the table which was also checked under the ultra violate lamp. They found the traces of the anthracene power on the said pocket as

well as on the table cloth. Those were attached to the panchanama.

11. In the cross-examination he accepted that he did not record the statement of Sandipan Toradmal, from whom demand was made and who also had paid amount. He could not remember whether Balasaheb had come along with informant Shelke for lodging the complaint. He accepted that the Balasaheb Yadav was not present when the pre-trap panchanama was drawn and it was not decided that Balasaheb Yadav should accompany the informant for raid. This Balasaheb Yadav went along with informant on his instructions. It is taken that he did not peruse the muster roll to see whether the accused was on duty on that day. There was also statement recorded of Mr. Ashok Navgire. This witness proved the complaint, /report of the District Collector and that he had gone to the field of informant on dated 09.02.1998. On that the complaint of the accused that the informant had assaulted the employee Babar when he had gone to the field of the informant. There is one more complaint made by this Babar on 09.02.1998 that when he had seized the material alongwith motor that was illegally fitted on his field, that time said Babar was threatened.

DEFENCE OF THE ACCUSED

12. It is the defence of the appellant/accused that while working in the MSEB had taken action against many persons for illegal installation of motors in their fields by putting hooks on wire. One such person was Balasaheb Yadav, who happens to be influential person being member of the Grampanchyat. There was action taken against this Balasaheb Yadav as well and therefore, it is at his instance a complaint was lodged by the informant. It is further a case that on the date of demand on 07.02.1998 the accused was not on duty and was not present in the office of MSEB as there was some marriage in his family on 05.02.1998 and therefore, he had gone to his native place. His further defence is that on the date of incident the amount was thrust by the informant and was kept below the bag on the table. He had not accepted the said amount, neither there was any demand of the amount. The entire story of the prosecution is concocted.

SUBMISSIONS BY APPELLANT

13. Learned Senior Advocate Mr. Dhorde, made submission. He submitted that there is no specific date of the demand of

amount. He relied on Exh. 22, a letter by which the informant was informed on 16.10.1997 that he will get the pump installed before 15.11.1997 and to submit its report. If the said exercise is not done, then the informant will have to apply afresh for the connection and thereafter, it will be given as per seniority list. Secondly Balasaheb Yadav happens to be a local leader, who made the informant to lodge a complaint and therefore, he was accompanying him on the date of trap though the ACB had not directed. On 07.02.1998 there was 'Satyanarayan Pujan' after the marriage of nephew of the accused at Newasa, therefore, he was at his native place. From the duty chart it is clear that the accused was not present on the date of alleged first demand.

14. Said Balasaheb Yadav has accepted in his evidence that he was helping the informant. It is the case of the accused that as per action taken by him against the Balasaheb, he was falsely implicated in the crime. On 13.11.1997 said Balasaheb had threatened the employee namely Mr. Babar. There was report 13.11.1997 showing that Mr. Babar was threatened by Balasaheb Yadav.

15. On 24.01.1998 Mr. Babar had given connection to one Mr. Toradmal and on 02.02.1998 This Mr. Babar had visited the field of the informant, however, he did not find Starter and the Main Switch as well as Capacitor on the well and therefore, he did not give connection to the informant. At that time Mr. Balasaheb had again threatened this employee. A complaint was determined to implicate the accused by hook or crook. He thus, submits that the entire action is with malice. The learned trial Court failed to appreciate evidence in its proper perspective and has believed the story of the prosecution witnesses. He relied upon the following judgments :

(a) In **Mukhtiar Singh (Since Deceased) Thorugh his Legal Representative Vs. State of Punjab - 2017 (8) SCC 136**

(b) In **Babu Lal Bajpai Vs. State of U.P. - AIR 1994 SC 1538**

(c) In **Mr. Khushalchand Yashwant Gaikwad Vs. The State of Maharashtra - 2018 ALL MR (Cri.) 3711**

(d) In **Suryakant Shankarrao Gaikwad Vs. The State of Maharashtra - 2016 ALL MR (Cri) 1844**

(e) In **Dagadu Paku Dhebe Since (D) thr. LR's Vs. State of Maharashtra - 2022 ALL MR (Cri) 4055**

(f) In **Samsul Haque Vs. State of Assam - 2019**

(18) SCC 161

(g) In Kalicharan and Others Vs. State of Uttar Pradesh - 2023 (2) SCC 583

(h) In Bhikaji Vishnu Patil Vs. The State of Maharashtra - 2022 ALL MR (Cri) 3765

(I) In Govind Yeshwant Adsule Vs. The State of Maharashtra - 2023 ALL MR (Cri) 2905

(j) In State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede - 2009 AIR SCW 5411.

SUBMISSIONS BY THE STATE

16. Learned AGP vehemently opposes the appeal. He submitted that the prosecution by examining five witnesses has proved the guilt of the accused beyond reasonable doubt. The story of the prosecution is that the accused was falsely implicated is only after thought. Consistently all the witnesses i.e. the informant, Balasaheb Yadav, the panch witness Bhumayya Ramayya Yamul are consistent on the point of demand and acceptance of the amount. From the cross-examination of the informant it has come that the Starter was fixed by him on his well and still connection was not given to him, thus the defence is falsified. There was specific demand of the amount. The accused took the amount by

his right hand and the said fact is clearly mentioned in the depositions of the witnesses. Therefore, the presumption under Section 20 is clearly attracted. It has come on record that the quotation was filled in by the informant long back, still no connection was given to him. It is stated that there was enmity in between Balasaheb Yadav and the accused. This story put up by the accused is not probable. The pre-trap panchanama and the post trap panchanama are duly proved by all the witnesses. The defence is not improbable. From the explanation it is clear that there was already Switch and Starter fitted by the employee Babar who was already sent to the spot but the work was still pending. He submits that the judgments relied upon by the learned Senior Advocate are not applicable to this case.

JUDGMENTS RELIED UPON

17. In **Mukhtiar Singh** (supra) the Hon'ble Apex Court held that to prove offence under Section 7 and 13 (1) (d) r/w 13 (2) proof of demand and acceptance of the amount is indispensable and the bald allegations about the demand and acceptance, if not corroborated, will not prove the offences. Considering the facts of

that case the acquittal was recorded.

18. In **Babu Lal Bajpai** (supra), the Hon'ble Allahabad High Court held that when there is no motive of demand and acceptance of bribe, there has to be acquittal. It was the case that no bill of complainant contractor was pending with accused. It was held when there was no bill pending with the accused, there was no question of asking for a bribe for sanction of the bill. In that view the judgment was delivered.

19. In **Mr. Khushalchand** (supra), the informant had admitted in the cross-examination that the accused did not accept his request by not sending proposal to Tahsildar, there was grudge in his mind against the informant. The Court drawn inference that it is because of the grudge in the mind of the informant he lodged the complaint.

20. In **Suryakant** (supra) it was the case that even after obtaining the bribe, the work of the informant was impossible to be done. In this case it is held that in such cases it would be improbable that the accused would make any demand. In **Dagadu**

Paku (supra) it is held that the Complainant was disparate to involve the accused in the trap case. In **Samsul Haque** (supra) it is held that in 313 examination accused was not given an opportunity to explain the incriminating circumstances and in that view the Hon'ble Apex Court allowed the appeal of the accused. In **Kalicharan** (supra) it is held that the relevancy of circumstances appearing were not put to the accused in 313 examination. It is held that the accused could not get an opportunity to explain the circumstances against him and in that view the acquittal was recorded.

21. In **Bhikaji** (supra) it is held that there were discrepancies in the evidence of witnesses and the benefit was given to the accused. In **Govind Adsule** (supra) it is held that when genesis of story of demand of illegal gratification itself is untrustworthy, then the entire prosecution must fail. In **State of Maharashtra Vs. Dnyaneshwar Wankhede** (supra) it is held that illegal gratification is sine-qua-non for the constitution of offence under Prevention of Corruption Act. Before the accused was called upon to explain as to how the amount in question was found in his possession, the fundamental facts must be established by the prosecution. Presumption under Section 20 cannot be raised unless fundamental

facts are proved.

DISCUSSION

22. Considering the above judgments, this Court has only to see that as to whether the case is made out of acquittal. In the present case evidence of PW-1, 2 and 3 i.e. the informant, PW-2 Balasaheb Yadav and another pancha witnesses is consistent and corroborative on all material aspects on the point demand acceptance by the accused and putting the amount by the accused himself in the pocket on his table.

23. This Court finds that even on examination of the table cloth and the bag shown glitterance of anthracene powder under the ultra violet lamp. The fingers of the accused were found with anthracene powder. There is no explanation as to how there appears anthracene powder to the fingers of the accused. He has also not explained as to how the anthracene powder was found to the table cloth and also to the bag on the table. This evidence is consistent with version of PW-1, PW-2 and PW-3.

24. So far as the explanation given by the accused is concerned it is only tried to show that there was grudge in the mind of Balasaheb Yadav and therefore, he made the Complainant to file a complaint. However, no grudge is shown in the mind of the informant. The accused has merely tried to show that the complaint was lodged at the behest of Balasaheb Yadav. This defence does not appear to be probable looking to the other evidence on record.

25. This Court finds substance in the submissions of the learned APP that specific demand was made by the accused. No case is made out by the appellant/accused to show that the informant himself had any reason to falsely implicate him in this case. There is also no case that the informant was desperate to involve the accused in the trap case. It is not pointed out that as to which of the circumstances are not proved under Section 313 examination. So far as the immediate explanation is concerned, though the accused has stated that because of the grudge, the complaint is lodged, but the alleged grudge was in the mind of Balasaheb Yadav and not the informant. From the said explanation it is not clear as to how the main Switch and Starter were installed

on the well of the informant. In view of the immediate explanation the defence that the accused was at Newasa for family function also goes.

26. The explanation is silent about as to how the fingers of the accused received anthracene powder. If at all the theory of the thrusting of the amount by the informant is accepted then the question remains of getting the fingers of accused in contact with the anthracene powder. The accused in the explanation stated that the amount was put in the bag by the informant himself. Looking to the evidence of the witnesses who have specifically stated that the accused himself accepted the amount by his hand in their presence and kept it in the bag on the table. So far as the sanction is concerned, the authority is not even cross-examined on the point of sanction. There is no case made out that the genesis of the story itself is untrustworthy. Thus all these probable reasons, this Court finds that the judgments relied upon by the appellant/accused are not applicable to this case. In the present case the fundamental facts are thus established by the prosecution, therefore, the presumption under Section 20 is rightly invoked. Thus, no case is made out by the accused to invoke presumption under Section 20.

This Court finds that the prosecution has clearly proved guilt of the accused. The appellant has not pointed out any illegality or perversity in the judgment. Hence the appeal needs to be dismissed and the same is hereby dismissed.

27. The accused to surrender to his bail bonds within six weeks from today.

(KISHORE C. SANT)
JUDGE

mahajansb/