IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.362 OF 2005

Syed Shaukat Ali S/o. Syed Akhtar Ali, ...**APPELLANT**
Age-47 years, Occu-Junior Engineer, Aurangabad
Municipal Corporation,
R/o. Shah Bazar, Aurangabad
Dist. Aurangabad

VERSUS

State of Maharashtra ...**RESPONDENT**

Mr. V. D. Sapkal, Senior Advocate i/b Mr. S. R. Sapkal, Advocate for the appellant
Mr. K. K. Naik, APP for the respondents/State

CORAM : KISHORE C. SANT, J.
RESERVED ON : 14th AUGUST, 2024
PRONOUNCED ON : 20th SEPTEMBER, 2024

JUDGMENT

1. The original accused, convicted for the offences punishable under sections 7, 13 (1)(d) and 13(2) of the Prevention of Corruption Act, has approached this court challenging the judgment and order dated 13-05-2005 passed in Special Case No. 26/2001, by the learned Special Judge, Aurangabad. By way of impugned judgment he is sentenced to

suffer RI for a period of two years with fine of Rs.2500/- and in default to suffer SI for a period of six months for each of the sections.

2. Prosecution was launched against the appellant with allegations that the appellant while working as Junior Engineer in the Assessment Section of Municipal Corporation had demanded bribe of Rs.8000/- for assessing house tax at a low rate. The complainant /PW-2, therefore, had approached the Anti Corruption Bureau (for short 'ACB').

3. It is this case that the complainant constructed a house. After completion assessment of tax was to be made. He therefore, requested the appellant to assess the tax at low rate. The accused, at that time, demanded an amount by assuring that he would levy the tax at low rate. Alleged demand was made on 02-08-2001 telling that the taxes are increased from 01-04-2001 and the complainant will have to pay tax of Rs.27000/-. If amount of Rs.8000/- is paid, he would assess tax

as per the old rates. In the office of the ACB, the complainant was told to give that amount of Rs.8000/- on 03-08-2001 at his home at the time of measusrement. On the said date, trap was decided. It is alleged that at that time accused demanded and accepted the amount of Rs.8000/-. He was caught hold red handed. After the investigation and filing of charge-sheet the accused was tried. The court as stated above held him guilty and passed the impugned order.

4. Prosecution in support of its case has examined five witnesses. PW-1 is the sanctioning authority, PW-2 is the De-facto complainant, PW-3 is the shadow witness, PW-4 is the Recovery Officer from the Tax Department, PW-5 is the Investigating Officer. Accused examined one defense witness i.e. Yamaji Abhang from the Tax Department.

5. PW-2-the complainant stated that his mother Sushila Patil owns a house at Rajnagar. She sought permission to construct/renovate house on 30-03-2000. House was

constructed. The complainant then wanted a completion certificate. For that purpose for levying taxes, he met the accused. The accused demanded an amount. On that PW-2 lodged a complaint to the ACB. The amount was decided to be paid at the house of the complainant. Therefore, it was decided to lay a trap at the house of complainant. Pursuant to plan raiding party went to the house of the complainant. Panch-Nagre-PW-3 went to the house of the accused alongwith complainant. The Investigating Officer and one constable sat in another room in the house of the complainant, whereas three persons from the raiding party were standing around the house.

6. After sometime the accused arrived at the house. On coming to the home, the complainant asked the accused as to where the amount of Rs.8000/- to be paid. On that accused told that he has properly fixed the amount and told that if amount is paid, taxes would be charged as per old rate and that would save the money. Thereafter, accused carried measurement of the house. After that he demanded amount of Rs.8000/-. The

complainant paid the amount to the accused and gave signal. The raiding party came in the room on receiving a singnal and asked the complainant to go to the other room. After 45 minutes he was called. His fingers of right hand and left shirt pocket were tested under the ultra violet lamp which shown blue shining.

7. In the cross-examination this witness accepted that house was constructed in two phases. He also accepted that no tax was assessed on the five rooms constructed in the second phase. Thus making of the report, he got completion certificate where the accused was not concerned. It is his brother who used to go to the office of the Municipal Corporation for getting permission, completion certificate etc. The application for assessment of tax was made after February, 2001. He could not tell as to when the application was submitted. He could not tell about charges of temporary water connection are more than permanent water connection.

8. He further admitted that a notice was received on 21-08-2001 showing that since 06.06.1993, water charges were being paid as temporary water connection. A notice was received on 03-05-2001 where the amount was shown to be Rs.49,200/- towards temporary water connection. He could not tell as to whether some employee of the corporation had collected Rs.10,000/- to clear the dues and settle the matter and to convert the temporary connection into permanent. He accepted that one Sathe was present at the time of incident of trap. At the time of trap, he asked for a receipt from the accused. Accused had told him that he would get the receipt after Sunday or Monday on getting signature from the Officer & the complainant need not worry. Though he denied that amount of Rs.8000/- was towards tax. He accepted that amount of tax was around Rs.8000/-.

9. So far as PW-3 is concerned, he deposed as to how he was called to act as panch and about actual trap. He deposed that on coming in the room, the accused told Patil to obtain a

signature of the mother of the complainant on the receipt. The complainant got the signature of his mother towards receipt of map. The complainant then took out tainted notes. The accused collected said notes. The complainant then asked the accused about receipt, on which, the accused told that he would get receipt within 2-4 days. On getting amount, the raiding party caught hold the accused. He deposed about further procedure.

10. In the cross-examination he stated that when the accused came alongwith Panch Sathe the complainant offered him water. After arrival of the accused, the complainant went to give a signal after half an hour. The accused also had asked the complainant as to whether he has paid the taxes of the adjoining plot. On that complainant shown him receipt in respect of adjoining plot also. At the time of all these events Sathe was present. He also told that accused collected the amount and on that the complainant asked when receipt would be passed. He also gave admission that before entering into the witness-box, he was shown the panchanama to recollect the contents of

panchanama etc.

11. PW-4 in his evidence stated that he had received application from mother of the complainant for assessment of taxes of her house. The accused had not submitted assessment report to him till trial. The accused was not authorized to collect the amount towards payment of tax and there was no scheme in August, 2001 to recover the taxes. In the cross he accepted that the taxes for the house of the complainant Rs.8167/- were due. He also accepted that there is no restriction on the Municipal employees to collect the money of the house taxes.

12. PW-5 the Investigating Officer stated about the procedure followed for laying the trap after receipt of complaint of the complainant. He proved the panchanama and other documents. In the cross-examination, he accepted that it transpired during investigation that the complainant had asked as to when accused would give the receipt for the amount. He denied that the amount was given towards taxes. He accepted

that he did not verify the name of Municipal employee who used to accept the money and pass receipt. Nothing more is taken in the cross.

13. The defense of the accused was that amount was towards house taxes and it was usual practice of the Municipal employees to collect the amount of taxes etc from the people. In support of his case, he examined defense witness who was serving as Zonal Officer in Zone No.6 in which the house of the complainant comes. He stated that the complainant had been to his office after receipt of notice Exh.18. This notice was in respect of arrears of taxes. This witness told the complainant that till complainant pays the house taxes and obtains the completion certificate, he has to pay water charges as temporary water connection. On that the complainant asked this witness for assessment so he can deposit the house tax. It is upon that this witness instructed the accused to inspect the house of the complainant for the purpose of lavying taxes. He also deposed that complainant used to recover taxes while discharging his

duties. After depositing the said amount, he used to give receipts to the house owners, after getting same signal from the cashier. In the cross-examination, it is taken that there are other employees for recovery of taxes. PW-4 was the Tax Collection Officer.

14. Thus on taking this court through the evidence the learned Senior advocate for the appellant submits that amount was not an amount of bribe, but it was of taxes. In the entire deposition of the complainant and shadow witnesses, there is no word as bribe has come for the said amount, in fact the amount was simply forwards house taxes. From PW-4, it is taken that amount of tax was Rs.8167/-which matches with the amount given to the accused. Accused was accompanied by one more municipal employee namely Sathe. His presence is duly proved, still statement of Mr. Sathe is not recorded by the Investigating Officer and he is not examined before the court. There was a demand of receipt by the complainant which clearly shows that amount was towards taxes of legal dues. PW-4 accepted in the

cross-examination that there is no restriction on any of the employees from collecting the amount of tax from the people. PW-3 has also stated that on making payment of the amount, the complainant asked for receipt for the said amount. Had the amount been towards alleged bribe, the complainant would not have asked for a receipt. From the evidence of defense witness, he submits that it is clearly brought on record that the complainant was in arrears of house taxes since long. After receipt of notice demanding arrears of taxes towards temporary water connection, he met a superior officer of the accused in the corporation, where he realized that unless assessment is done and completion certificate is granted, his water connection would not be treated as regular water connection. Till such time, the rate for water connection charges, would be as applicable to the temporary water connection at higher rate. It has come on record that accused was sent for measurement of the house of the complainant. The complainant has given the amount without there being any demand from the accused.

15. So far as sanctioning authority is concerned, he submits that sanctioning authority could not prove that sanction was granted by application of mind. There is nothing on record to show that all the documents were produced before the sanctioning authority while giving the sanction. The sanctioning authority had no power to accord sanction as approval of standing committee is necessary for removal of permanent class-III employees. No proposal was sent by the Municipal Commissioner to the standing committee seeking approval to accord the sanction. He could not tell how many papers he had received while obtaining sanction. Submission is therefore, that prosecution has failed to prove that a sanction was valid sanction. He submits that Exh.18 i.e. a notice is on record demanding Rs.49,200/- towards temporary water connection. Thus, there is ample evidence to show that amount was towards property taxes.

16. In support of his submission the learned senior advocate relied upon following judgments:

1. 2002 Bombay CR (Cri) 661 Tryambak Lilaji Binnar Vs State of Maharashtra

2. 2019 (1) Mh.L.J. Cri 355 Nivrutti Ganpati Sadekar Vs State of Maharashtra

3. 2015 (3) Mh.L.J Cri 424 Suresh Purushottam Ashtankar Vs State of Maharashtra and another

4. 2006 (2) Mh.L.J. (Cri) 1210 Sharad Namdeorao Shirbhate Vs State of Maharashtra

17. Learned APP opposed the appeal stating that prosecution has clearly established its case. Defense taken is not probable. Sanctioning authority had granted sanction on going through all the papers in the proposal and after satisfying itself of the fact that case is made out for grant of sanction. About demand, it is submitted that amount was demanded for assessing tax of the house as per old rates. In the evidence of PW-3, it has come that there was bargain to reduce the amount. This itself shows that amount was towards bribe. There is no question of reducing amount of taxes. Had it been the amount of

tax, it would have been paid in the office. He also submitted written notes of argument.

18. This court has gone through the evidence and submissions of the learned senior advocate and learned APP. So far as judgments relied upon by the appellant are concerned, those are discussed here. In the case of *Trimbak Lilaji Bankar (supra)* after payment of amount towards alleged bribe the complainant had asked for receipt of the said amount. This court held that had the amount been towards bribe, there was no question to ask for a receipt. On that count, the court held that amount was not amount towards bribe. In the case of *Nivrutti Ganpati Sadekar (supra)*, the court considered that demand of illegal gratification was '*sine qua non*' to establish an offence under the provisions of the Act. Court has to see that demand and acceptance of the amount both are satisfied and it is only thereafter the court can invoke the presumption under Section 20 of the Act. Before asking the accused as to how he received the amount, foundational facts must be established by the

prosecution. In this case, the court discarded the evidence of one of the witnesses i.e. sanctioning authority for the reasons that before stepping into the witness box, he has perused the file that was with the APP and it is, thereafter, he deposed before the court. The court held that there is nothing wrong in the witness refreshing his memory but that should be done before the court and not out side the court. Witness has to depose by recollecting facts by his memory.

19. Thus, considering all the evidence and judgments in the present case what transpires is that there was a demand of Rs.49,200/- towards arrears of water connection charges. A notice was therefore issued by the corporation. The complainant went to the office of corporation to make enquiry to that effect. In the corporation, he was told that unless completion certificate is obtained, the water connection will be treated as temporary water connection and he will have to pay the tax at higher rate. It was, therefore, necessary to get the completion certificate to convert temporary water connection into permanent. For getting

the completion certificate, it was necessary to get measurement of the house done and to get the taxes assessed. The complainant, therefore, had made an application to the corporation. The concerned officer therefore directed the accused to go and carryout measurement of the house. The accused alongwith one other employee Mr. Sathe went to take measurement of the house for the purpose of assessing the taxes. There talks were about rate of taxes and the measurement and in that context discussion was about the amount. The complainant handed over the amount to the complainant without any specific demand. On handing over the amount, he asked for receipt for the said amount. This fact clearly shows that the complainant was expecting a receipt of the amount.

20. PW-4 though stated in his evidence that for recovery there is other staff, however, in the cross, he accepted that there is no prohibition from collecting the taxes by the employees of the Corporation from the tax payers. In this context, the defense evidence needs to be considered. The defense witness is a

Superior Officer of the accused working in the corporation. He stated that usually the employees collect the taxes while discharging their duties. He also stated that he has sent the accused for measurement to the house of the complainant with one more employee Mr. Sathe of the corporation. This employee Mr. Sathe was present with the accused at the time of alleged incident. He is still not examined in the court. Panch witness has also not stated that amount was demanded by the accused at the time of trap. In the present case, previous demand is not proved. There is no demand verification report/panchanama. From the discussion of the judgments, it is clear that when witness is given the material to refresh his memory before entering into the witness box, his evidence cannot be relied upon. In the present case, it has come on record that sanctioning authority was given documents to refresh his memory before entering into the witness box. Sanctioning authority was thus not deposing from its memory, but was deposing after going through the papers.

21. Considering all above, certainly a doubt is created

about the case of the prosecution. This court has no hesitation in holding that the prosecution has failed to prove the offence beyond reasonable doubt. Assuming the argument of the learned APP is correct, at the same time, it has come on record that the complainant had asked for a receipt of the amount which certainly creates doubt about prosecution story. Therefore, this court finds that prosecution has failed to prove the offence beyond reasonable doubt. This court is, thus, persuaded to allow the appeal by quashing and setting aside the impugned judgment and order dated 13-05-2005 in Special Case No.26-2001 of conviction & imposing sentence on the applicant. The appellant stands acquitted of the charges under Sections 7, 13 (1)(d) read with section 13 (2) of the Prevention of Corruption Act. Amount of fine, if paid, be refunded to the appellant.

22. The appeal stands disposed off.

23. Interim application, if any, stands disposed off.

[KISHORE C. SANT, J.]