



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 636 OF 2005

Ramesh S/o Digambarrao Zadgaonkar,
Age : 52 years, Occu. Service as Talathi,
at Sajja Irlad & Addl. Charge of
Sajja Manwath, Tq. Manwath,
District Parbhani.

... Appellant
[Orig. Accused]

Versus

The State of Maharashtra
Through Anti Corruption Bureau,
Parbhani.

... Respondent

.....
Mr. S. B. Bhapkar, Advocate for the Appellant.
Mrs. Ashlesha S. Deshmukh, APP for Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 07.10.2024

Pronounced on : 14.10.2024

JUDGMENT :

1. In the instant appeal, there is challenge to the judgment and order dated 23.08.2005 passed by learned Special Judge, Parbhani in Special Case No. 4 of 2005 recording guilt for the offence punishable under Sections 7, 13(1)(d) r/w (2) of the Prevention of Corruption Act, 1988 [P.C. Act].

IN BRIEF, CASE OF PROSECUTION IS AS UNDER

2. Brother-in-law of PW1, namely Gangadhar Gaware, had applied for loan from Annabhau Sathe Vikas Mahamandal. Said corporation had insisted for documents including 7/12 extract of two guarantors. Gaware being illiterate and as was a private driver moving to distinct places, he executed power of attorney in favour of PW1 Kiran Gawli i.e. his sister-in-law, to complete the formalities for loan. In that background, PW1 approached appellant - a Talathi on 25.08.2004 and requested him to issue 7/12 extract. For doing the needful, according to prosecution, accused demanded Rs.1,000/- to endorse charge on the 7/12 extract of Gaware. Finally, complainant agreed to pay Rs.500/-, however, as she was not willing to pay bribe, she lodged report Exhibit 19 with PW4 Prakash Jadhav, P.I. (ACB).

3. Said officer of ACB planned and arranged trap and summoned pancha PW2 Parwatibai. Both, complainant and pancha, were explained the procedure of trap. Complainant and pancha approached accused at his office. There, complainant questioned about 7/12 extract, upon which he asked whether amount was brought. Complainant took out tainted currency, held it before accused. Accused also issued 7/12 extract and they exchanged document 7/12

extract and currency simultaneously, after which pre-determined signal was given by complainant and trap was executed. PW4 lodged report, investigated crime and chargesheeted accused, who was made to face trial before learned Special Judge in Special Case and on appreciating all evidence, accused was held guilty and came to be convicted.

Such judgment and order of conviction is now taken exception to by filing instant appeal.

SUM AND SUBSTANCE OF THE EVIDENCE ON RECORD

4. The role and states of the witnesses examined by prosecution in support of its case, and the sum and substance of their evidence is as under:

PW1 Kiran Gawli is the complainant. In her evidence at Exhibit 16, in para 3, she has deposed as under:

“3. On 25/8/04 I met the accused in his office at Manwat to get the 7/12 extract of Shri Jondhale. I demanded him the 7/12 extract of field Gat No.184 of Shri Jondhale. He asked me for what purpose I wanted it. I told him that my brother-in-law Shri Gavare had submitted application to get a loan of

Rs.1,00,000/-, and hence I need the 7/12 extract. Accused then demanded me Rs.1,000/- to keep the charge on 7/12 extract. I told him that Shri Gavare is a poor person and he cannot pay him Rs.1,000/-. He then told that as we were to get Rs.1,00,000/- as loan then there should be no hitch to pay him Rs.1,000/-. He told me to pay Rs.1,000/- and collect 7/12 extracts. I at last agreed to pay him Rs.500/- after a day. He then told me that give him Rs.500/- and collected the 7/12 extract. I was not willing to pay him any amount of bribe. There were no transactions between us. On 26/8/2004 I then lodged a complaint with Shri. Jadhav, Dy.S.P.Parbhani. I am now shown the said complaint. It bears my signature. The contents thereof are true and correct. It is at Exh.19.”

Further, in para 5, she deposed that :

“5. We then marched by a jeep to Manwat. We reached at main road Manwat at 14.10 hours. Smt. Chauhan and myself then marched towards the office of accused. Shri Jadhav and other members followed us. At about 2.30 p.m. we entered the office. He resides behind his office. We found that the accused was sitting there in chair. He was alone. We wished him and occupied two chairs opposite him. He then called one boy and offered us water. I then asked him as to what had happened of 7/12 extract. He then asked me whether I had brought the amount. I said yes. I again say that accused asked me whether I brought Rs.500/- and I said yes. He then took out a register and prepared the 7/12 extract of the field of Yeshwant Mesaji Jondhale. He signed it and sealed. Accused then demanded me Rs.500/-. I then took out the tainted notes and held it before him. I collected 7/12 extract by left hand. He collected the tainted notes by his right hand and kept it in his left shirt pocket. I stayed for two minutes and came out the house and then transmitted the agreed signal.”

In her relevant cross, which commences from para 8, she answered that she had submitted relevant documents with the corporation except 7/12 extract of surety and that she was told to submit 7/12 extract of two sureties. She also admitted that she was told that they would send the 7/12 extract of the agriculturists to record charge on the field. That, previously she had submitted extract of one Laxmibai Khedkar and she had also collected it from accused. She answered that while issuing 7/12 extract of Laxmibai, accused had recorded charge thereon. She admitted that before recording charge, mutation has to be recorded and that, on 17.08.2004 she had tendered 7/12 extract of Laxmibai indicating charge. She admitted that she was knowing the necessity to record charge on 7/12 extract of sureties. She also admitted that Gaware had got the loan of Rs.1,00,000/-. She admitted that on Exhibit 18, there is no mention to keep charge of Rs.1,00,000/- on the field of Jondhale and she had not intimated him about it. She admitted that she did not request accused on 25.8.2004 to record charge of Rs.1,00,000/- on the 7/12 extract of Shri Jondhale. In para 11 of her cross, she answered as under:

“On 25/8/04 I firstly met accused for 7/12 extract. It was about 4 p.m. Power of attorney Exh.18 was written at the house of Shri. Jondhale. I again say that I did not met accused at 4 p.m. but met him at 7 p.m. I never had met accused before 25/8/04. It has never so happened that I requested accused to supply the 7/12 extract of Shri. Jondhale on recording the charge thereon. It has never so happened that accused told me that unless a person consents to record the charge in the 7/12 extract and unless there is a letter of Mahamandal for keeping a charge on 7/12 extract, he cannot issue it. I was knowing

that to record a charge a consent of field owner was necessary. I got this power of attorney of Shri Jondhale for his such consent.”

In para 12 she answered that she was not knowing that Jondhale was in arrears of cess taxes to the tune of Rs.510/- with effect from 1998-1999 onwards and that, she did not know whether accused was demanding those charges of Shri Jondhale. Rest all suggestions are denied. She further answered that on 25.8.2004 in the morning, she carried complaint in the morning to the ACB office, but she was told to come on the next day as none of the officers were present and therefore, **she again went on 26.08.2004 and handed over written complaint.**

PW2 Parwatibai, shadow pancha, initially stated that she visited ACB office on 26.08.2004, she agreed to act as pancha, she was introduced to complainant, she went through her complaint and then caused signature over it i.e. Exhibit 19. Then she deposed about pre-trap panchanama Exhibit 25 being drawn, i.e. after necessary instructions and demonstration given by PW4. In para 3, regarding the actual trap, she deposed as under:

“3. We then marched by a jeep to Manwat. We reached there at 2.30 p.m. We got down on road. Smt. Gawli and me then marched on feet towards the office of Talathi. The other members of the staff followed us. We then entered the office of Talathi. Talathi then came there. We were offered water. Mrs. Gawli then demanded 7/12 extract to Talathi. Talathi then told Mrs. Gawli whether she has brought what was told yesterday. Talathi did not disclose the details of that thing. Mrs. Gawli

said 'Yes'. Talathi then prepared a 7/12 extract and handed over it to Mrs. Gawli. Smt. Gawli then took out the tainted notes and offered it to Talathi. Talathi collected those notes by his right hand kept it in his shirt pocket. Smt. Gawli then went out of the office. Shri Jadhav, Shri Kendre and other members of staff came there."

In para 6, she further deposed as under :

"6. I again say that accused Talathi had told Mrs. Gawli whether she brought Rs.500/- as told yesterday. She said 'Yes'. After preparing the 7/12 extract accused again demanded her Rs.500/-. On which Mrs. Gawli handed over me the tainted notes. He then handed over 7/12 extract."

While under cross, she admitted that during their visit to the office of accused, accused had returned after attending meal. She answered that one person was already sitting on the carpet and he was also present there when police caught hold of accused. She had denied all suggestions about complainant telling accused to hand over 7/12 extract by recording charge and he refused to issue the same. She denied suggestion that accused asked complainant whether she brought amount of non-agricultural taxes and complainant handed it over and thereafter receipt of Rs.510/- was issued. Rest is all denial.

PW3 Madhukar Choudhari was the sanctioning authority, who deposed at Exhibit 29 about receipt of investigation papers from ACB, Nanded, studying the papers and according sanction which he identified to be at Exhibit 31. He also deposed that accused had sent a representation Exhibit 32 and the same to

be considered before according sanction. He further deposed that in para 5 of the sanction order, name of complainant was mistakenly written as Suresh Rupsing Rathod.

While under cross, he answered that he dictated sanction order and at that time he was having case papers. He admitted that there was mistake regarding name of complainant in para 5 of the order. He also admitted that complaint revealed that there was demand of Rs.1,000/-. He was questioned about appointment by Assistant Collector, powers of Sub-Divisional Officer.

PW4 P.I. (ACB) Prakash Jadhav was the Investigating Officer.

SUBMISSIONS

On behalf of the appellant :

5. Criticizing the judgment and submitting that prosecution failed to prove the charges beyond reasonable doubt, learned counsel for the appellant had taken this Court through the entire testimony of complainant PW1 and according to him, her entire testimony is false, afterthought and is not reliable for various infractions in her evidence, which, according to him, are brought in her cross. At the outset, he pointed out that according to this witness, she had tendered written complaint, and she deposed to that extent in her testimony also, but PW4 Investigating Officer testified about he lodging complaint on

narration of PW1. Therefore, according to learned counsel, in absence of any written complaint on behalf of PW1, of which she testified in the witness box, the very complaint allegedly noted by PW4 Investigating Officer comes under shadow of doubt.

6. He further submitted that this witness PW1 came with a case that she was authorized by her brother-in-law Gaware to do the paperwork of sanction of loan, but she was not authorized to lodge complaint by Gaware. Learned counsel pointed out that it is also not clear as to whether Gaware was aware that any bribe was demanded, as Mr. Gaware himself has not been examined to accept her version that she was authorized to act on behalf of him. According to learned counsel, when it was a serious matter of paying bribe, testimony of Gaware was very crucial, but investigating machinery has not examined him in support of case about PW1 acting on his behalf to not only do the office work, but also to lodge complaint or pay bribe. Therefore, he seriously questions the credibility of testimony of PW1.

7. He next submitted that testimony of PW1 is not reliable for another reason as, in one breath she has stated that she approached accused on 25.08.2004 and she alleges demand of Rs.1,000/- to issue 7/12 extract with charge, but complaint is not lodged on the same

day, and according to learned counsel, her testimony that, in spite of her visit on 25.08.2004, her complaint was not entertained for want of presence of officer, is not believable. Learned counsel pointed out that in para 5, PW1 complainant merely spoke about accused asking her whether she brought money. Learned counsel pointed out that there is no clear phrasing about illegal gratification or demand for doing any work. At this juncture, learned counsel pointed out that defence of accused is that 7/12 extract on which charge was to be put up i.e. 7/12 extract of Jondhale, he was at arrears towards agricultural cess and such amount was demanded and so-called conversation between PW1 and accused, which she testified in para 5, was regarding amount towards cess and not illegal gratification.

Inviting attention of this court more particularly to para 12 of complainant's cross, learned counsel pointed out that her cross in this para is with such specific defence.

8. Learned counsel also pointed to the answers given by PW1 in para 11 of the cross and would submit that at one point of time, complainant spoke of visiting appellant at 4.00 p.m. and then she changed her version and stated that she did not meet him at 4.00 but met him at 7.00 p.m. and that, in second breath she answers that she

never met accused before 25.08.2004. Consequently, according to learned counsel, when the witness is not firm and is giving different timings by repeatedly changing it, according to him, she is unworthy of credence.

9. Taking this Court through the testimony of PW2 Parwatibai shadow pancha, more particularly para 3, learned counsel submitted that she has not corroborated testimony of complainant because, according to him, shadow pancha has not whispered about either quantum or bribe amount as, according to him, this witness merely stated that accused asked complainant whether she brought the what was told to her yesterday. He pointed out that in fact, the day on which her testimony was recorded, she had only stated about accused asking whether she brought what was told to be brought and nothing beyond this. But on the next day, attempt has been made to fill up the lacuna and by virtue of evidence in para 6, this witness is made to depose that there was demand of bribe of Rs.500/-. Thus, according to learned counsel, there is a deliberate attempt to falsely implicate the accused.

10. Therefore, on the evidence of PW1 and PW2, learned counsel would submit that their testimonies do not inspire confidence and the

crucial aspect of very demand has come under shadow of doubt. Complainant merely carried authority letter. Her brother-in-law for whom 7/12 extract was expected, is not examined, and therefore, even on account of non-examination of Gaware or Jondhale, adverse inference needs to be drawn by giving benefit of doubt to the accused.

11. As regards the testimony of sanctioning authority is concerned, learned counsel pointed out that sanction is granted in mechanical manner. He pointed out that in the very sanction order, name of one Suresh Rathod is reflected as complainant, whereas name of complainant is Kiram Keshavrao Gawli. Therefore, according to him, it is doubtful whether the documents allegedly stated to be verified by this witness were pertaining to appellant, and therefore, he questions the validity of sanction by submitting that it is explicit that there is non-application of mind.

12. Lastly, while criticizing the judgment impugned herein, learned counsel submitted that above aspects have not been correctly appreciated by learned trial Judge. Judgment is based on assumptions, presumptions and conjectures. That, learned trial court failed to consider that case has to be proved beyond reasonable doubt. That, here prosecution had failed to do so and therefore, he

questions the legality and maintainability of this judgment by praying to allow the appeal.

On behalf of the Respondent-State :

13. Learned APP, who supports the judgment, would submit that there is clear demand. Demand was raised while complainant was accompanied by shadow pancha PW2. They both are lending support to each other. On this count, learned APP also took this Court through the substantive evidence of PW1 and PW2 and she submits that there is consistency in their version as regards the demand is concerned. Moreover, there is acceptance in presence of PW2, an independent witness. That, hands of accused were found to be carrying shining of anthracene powder which is a proof of acceptance. She submitted that false defence has been put up, as in the very statement recorded immediately, different theory of hand loan is put forth. Therefore, finding testimony of PW1 and PW2 convincing, learned APP submitted that, there is cogent and reliable evidence of demand and acceptance. She also pointed to the evidence of PW3 sanctioning authority and submitted that after due verification and satisfaction, sanction has been accorded. He was competent. According to her, minor typing mistakes in the name would not be sufficient to overshadow overwhelming evidence and as such, she prays to dismiss

the appeal for want of merits. Learned APP placed reliance on the following rulings :

1. ***Appasaheb Narayan Jadhav v. The State of Maharashtra*** [Criminal Appeal No. 1261 of 2004 decided by the Single Judge of this Court at Principal Seat on 23.08.2013]
2. ***Dattatraya Laxman Bagdi v. State of Maharashtra*** 2017 DGLS (Bom.) 643.

ANALYSIS

14. Re-appreciated the evidence in the line of above arguments advanced by both sides. Admitted position is that complainant PW1 was acting on behalf of Gaware and Jondhale. She is equipped with authority letter. Her version is that when she approached appellant for endorsement/remark of charge on 7/12 extract, there was demand of Rs.1,000/-, but was agreed and brought down to Rs.500/-, of which she lodged report.

15. It is fairly settled position that complainant being always looked as an accomplice, it is expected of prosecution to support complainant's version with independent testimony, and in cases of such nature, it is always pancha who accompanies complainant. Therefore, it is to be seen whether in the case in hand, testimony of complainant about bribe demanded and accepted is supported by

shadow pancha. Relevant testimony regarding visits and interactions is already reproduced in aforesaid para.

16. Regarding demand, PW1 has deposed in para 3 wherein she stated that accused demanded Rs.1.000/- to keep charge on 7/12 extract and finally he agreed to accept Rs.500/- and then to issue 7/12 extract. All this seems to have happened on 25.08.2004. On 26.08.2004 i.e. next day, she carried tainted currency while she was in the company of PW2 shadow pancha and regarding this, she has deposed in para 5. She has testified that accused resides behind his office. When they went, he was already sitting on a chair and he was alone. The conversation between both of them, as is emanating from her testimony is, *"I then asked him as to what had happened of 7/12 extract. He then asked me whether I had brought the amount. I said yes. I again say that accused asked him whether I brought Rs.500/- and I said yes. He then took out a register and prepared 7/12 extract of the field of Yeshwant Mesaji Jondhale. He signed it and sealed. Accused then demanded Rs.500/-. I then took out tainted notes and held it before him. I collected 7/12 extract by left hand. He collected the tainted notes by his right hand and kept it in his left shirt pocket. I stayed for two minutes and came out of the house and then transmitted the agreed signal"*.

17. PW2 Parwatibai – shadow pancha in para 3 of her examination-in-chief, testified that she and complainant marched towards office of Talathi. They entered office. She stated that then Talathi came there. The complainant demanded 7/12 extract to Talathi. She deposed that, *“Talathi then told Mrs. Gawli whether she has brought what was told yesterday. Talathi did not disclose the details of that thing.”* Talathi prepared 7/12 extract, handed it to complainant, she took it. She took out tainted currency, offered it to accused who collected it, and then complainant went out of the office.

18. As pointed out and submitted by learned counsel, shadow pancha has deposed in ambiguous manner which is reproduced as above. Shadow pancha does not speak, as like PW1 complainant has stated that when they visited, Talathi was sitting on his chair. However, version of PW2 is different as, according to her, when they went in the office, thereafter, he arrived. Whatever PW1 stated about ‘accused asking whether she brought Rs.500/- and 2nd time, after signing 7/12 extract, he again demanding Rs.500/-’, is apparently not coming from the mouth of PW2, and it is clear from her above testimony. Therefore, as regards the actual demand is concerned, both are not consistent. It is pertinent to note that testimony of PW2

was recorded on 12.07.2005 and the matter was adjourned for want of *muddemal* and it was posted on next day i.e. 13.07.2005. On the said day, by virtue of examination-in-chief para 6, PW2 has deposed saying that, “she again says, accused asked complainant whether Rs.500/- is being brought as told”. Therefore, this is clear attempt to fill up the lacuna which was missed by her in her earlier day’s testimony. PW2 is not specific about demand of gratification. Here, defence is that Jondhale was at arrears and he was expected to pay it. Consequently, PW2 ought to have been specific.

19. Here, testimony of complainant, more particularly answers given by her in para 10, wherein it is noticed that she was changing timings of the visit allegedly paid by her to accused on 25.08.2004, also creates doubt. Initially, she stated about visiting accused at 4.00 p.m.. Then she stated that she did not meet him at 4.00 p.m., but met him at 7.00 p.m.. Such timing goes beyond office timings. She again stated that she never met accused prior to 25.08.2004 and in her examination-in-chief, she has already stated that she had been to the office for getting 7/12 extract of Laxmibai and Yashawant Khedkar. In para 12, she answered that on 25.08.2004 in the morning, she had carried complaint to the ACB. Going by such date, it is clear that if complaint is to be lodged, then there has to be previous visit to

accused. As stated above, she has denied meeting accused prior to 25.08.2004.

20. As pointed out, again, complainant is very categorical about approaching ACB office with a written complaint, but according to the Investigating Officer PW4, he noted the complaint as narrated by her. Therefore if she had carried written complaint, question is, where was it? Her evidence in para 12 shows that twice visits were paid by her to the ACB office i.e. on 25.08.2004 as well as 26.08.2004. Again while under cross at the hands of accused, in para 14, she has admitted about not mentioning in the complaint regarding demand of Rs.1,000/- by accused for supplying 7/12 extract.

Therefore, with such quality of evidence, as pointed out, there is force in the submission that evidence on the point of very demand is weak. Complainant's evidence is not finding support on actual demand of bribe by accused. Legal position is settled that demand is the essence and gravamen of the charge and that has to be proved beyond reasonable doubt. Here, for above reasons, it is not so.

21. Equally, objection raised is regarding validity of sanction. The testimony of PW3 sanctioning authority does go to show that in para 5 of the sanction order, name of complainant is shown as Suresh, whereas name of appellant is not so. However, this could be attributed to typing mistake. Therefore, it is not appropriate to give undue importance to typographical mistake.

22. To sum up, here, firstly, as pointed out, neither Gaware nor Jondhale, for whom PW1 was acting, are examined. Their testimonies were essential because question of 'whether they also authorized complainant to pay bribe and whether the amount arranged for application of anthracene powder was at their behest', is a crucial question. Secondly, testimony of PW1 on the point of demand is not supported by PW2, who has apparently deposed to that extent, but at subsequent point of time, which amounts to filling up lacuna; thirdly, complainant is changing versions about timing and visits to ACB office. Therefore, for above reasons, prosecution story is not inspiring confidence and case is not proved beyond reasonable doubt. Hence, it is a fit case for extending benefit of doubt. Accordingly, I proceed to pass the following order :

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellant Ramesh S/o Digambarrao Zadgaonkar, by learned Special Judge, Parbhani in Special Case No. 04 of 2005 under Sections 7 and 13(1)(d) r/w (2) of the Prevention of Corruption Act, 1988 on 23.08.2005 stands quashed and set aside.
- III. The appellant stands acquitted of the offence punishable under Sections 7 and 13(1)(d) r/w (2) of the Prevention of Corruption Act, 1988.
- IV. The bail bonds of the appellant stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]