



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPEAL NO. 465 OF 2015**

Kuldip Dyaneshwar Sapkal,  
Age : 28 years, Occupation: Service,  
R/o: Building No.15, Room No.6,  
Police Head Quarters, Dhule.

... Appellant  
[Orig. Accused]

Versus

State of Maharashtra

... Respondents

.....  
Mr. N. L. Choudhari, Advocate for the Appellant.  
Mr. S. M. Ganachari, APP for the Respondent-State.  
.....

**CORAM : ABHAY S. WAGHWASE, J.**

Reserved on : 24.01.2024

Pronounced on : 31.01.2024

**JUDGMENT :**

1. By way of instant appeal, convict for offence under Section 7 of the Prevention of Corruption Act, 1988 [PC ACT] is assailing the judgment and order passed by Special Judge, Dhule dated 22.05.2015 in Special Case No. 114 of 2013.

2. To briefly put, Shirpur Police Station launched prosecution against present appellant alleging that he was working as a constable. On 23.04.2013 he intercepted complainant, who was proceeding on a motorcycle with his friends, for violation of traffic rules. As

complainant was not equipped with documents of the vehicle and driving license, it is case of prosecution that, he was directed to take the vehicle to police station. However, while on way, accused allegedly demanded Rs.500/- to spare the complainant. Complainant agreed to pay at a later point of time. According to the prosecution, accused himself telephoned and asked whether amount has been arranged and thereafter, complainant approached Anti Corruption Bureau [ACB] and lodged complaint. Accordingly, conversation between complainant and accused was recorded in a tape recorder and its panchanama was also drawn and finally investigation was carried out which revealed that accused demanded Rs.500/- for not prosecuting complainant under the Motor Vehicles Act, and therefore he was chargesheeted for offence punishable under Section 7 of the PC Act.

Trial was conducted by Special Judge who, on examining evidence of in all four witnesses adduced by prosecution and after appreciating oral and documentary evidence, held charges proved and convicted appellant to suffer two years imprisonment and to pay fine. Such judgment and order of conviction is questioned by way of instant appeal on various grounds raised in the appeal memo.

3. Heard learned counsel for the appellant, according to whom, it is apparently false implication. That, complainant's version itself shows that there were two constables but complainant did not know name of the person who allegedly demanded money. He further pointed out that there is no explanation from complainant as to from where and how he learnt the name of the constable who allegedly put up demand. According to him, implication is on the sole basis of alleged tape-recorded conversation but said electronic evidence does not meet the legal requirements of Section 65-B of the Indian Evidence Act. He pointed out that material witnesses are not examined. He further submitted that complaint is also lodged after making several attempts which had apparently failed as there was no demand. That, repeated attempts itself show that there was deliberate attempt to implicate appellant. That, learned trial court has not considered and appreciated all such aspects. According to him, there were several lapses and lacuna in the investigation but still learned trial court has held the case proved and erred in recording guilt. Learned counsel for the appellant seeks reliance on the following rulings and prays to allow the appeal:

1. ***K. Shanthamma v. State of Telangana*** 2022 DGLS (SC) 213 ; (2022) 4 SCC 574.

2. *State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede* 2009 DGLS (SC) 1109 ; (2009) 15 SCC 200.
3. *Krishnan Chander v. State of Delhi* 2016 DGLS (SC) 8 ; (2016) 3 SCC 108.
4. *Damu Rama Avhad v. State of Maharashtra* 2022 DGLS (Bom) 1637 ; 2022 (3) Bom.C.R. (Cri) 641.
5. *Sunil Hirasingh Rathod v. State of Maharashtra* 2021 DGLS (Bom) 2367 ; 2022 All MR (Cri) 647.

4. In answer to above, learned APP would submit that evidence of complainant is supported by shadow pancha. There is evidence about initially demand being made of Rs.500/- to subsequently accused agreeing to accept Rs.400/- for not prosecuting complainant. There is tape recorded conversation of such dialogues and same has been proved. Resultantly, he submits that on the strength of four witnesses, prosecution has established the charges and so he prays to dismiss the appeal for want of merits.

5. Learned Special Judge has recorded conviction for offence u/s 7 of the PC Act. Therefore, it is desirable to reproduce the said provision.

***“7. Public servant taking gratification other than legal remuneration in respect of an official act.—***

*Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine.*

***Explanations.***

*(a) "Expecting to be a public servant" If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.*

*(b) "Gratification". The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.*

*(c) "Legal remuneration" The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.*

*(d) "A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.*

*(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section."*

The necessary ingredients for attracting Section 7 of the Prevention of Corruption Act are as under:

- (i) The accused at the time of offence, was or expected to be, a public servant;
- (ii) That he accepted, or obtained, or agreed to attempt or attempted to obtain from some person a gratification;
- (iii) That such gratification was not illegal remuneration due to him; and

(iv) That he accepted the gratification in question as a motive or reward for

- (a) doing or forbearing to do any official act;
- (b) showing or forbearing to show favour or disfavour to someone in the exercise of his official functions;
- (c) rendering or attempting to render any service, disservice to someone, with the Central Government or any State Government or Parliament or the Legislature of any State or with any public servant.

6. Prosecution in support of its above case has adduced evidence of in all four witnesses i.e. **PW1** Chhatrapalsing Rajput [complainant], **PW2** Dyaneshwar Dahake [shadow pancha], **PW3** SP Pradip Deshpande [Sanctioning Authority] and **PW4** PI Vijay Chaure [Investigating Officer].

7. The primary criticism raised before this court by appellant is that there there was no demand at all. According to him, deliberate repeated attempts were made to bribe and trap appellant. On this count, testimony of PW1 and PW2 is mostly relied and therefore, it would be apt to visit their testimonies and re-appreciate the same.

8. On close and minute scrutiny, from the testimony of **PW1** complainant at Exhibit 8, it is emerging that on 23.04.2013 he was riding motorcycle on which his friends namely Nilesh Patil and Chetan Suryawanshi were pillion riders. His testimony is regarding they all three riding on a motorcycle and when they reached Karvand Naka, they were allegedly intercepted by two constables and were asked to produce documents of ownership of bike as well as driving licence. Complainant himself speaks that he did not have papers as well as licence and therefore, was asked to take the motorcycle to police station. His further testimony is that after crossing some distance "one of the constables gave him advice that they are college going students and to avoid spoiling of career, matter should be settled by give and take method". Said constable demanded Rs.500/- to let them go scot-free. A request was made by complainant that he had to appear for exams but was told that he would be released only on payment of money. Complainant did not have money and then he contacted one Swapnil Jadhav and said Jadhav had conversation with constable. Said constable gave number of his cell phone and asked complainant to make contact on that phone. Complainant reproduced the mobile number to be 9764669494. Complainant also gave cell number of Nilesh Patil to the constable. Thereafter the police officials allowed

him to go only because he told them that after collection of money he would pay in the morning.

According to him, in the morning said constable called on Nilesh Patil's cell phone and made inquiries as to whether Rs.500/- were arranged and was assured to be paid. Complainant claims that after receipt of such call he got frightened and apprehended prosecution and so he came to ACB, Dhule and lodged complaint Exhibit 9.

It has further come in his evidence that **in the night itself he came to know the name of the constable demanding money to be Kuldeep Sapkal** i.e. present appellant. In chief itself he stated that he learnt the name of another constable Rahul Sanap after filing complaint and then panchas was called, who verified the complaint and around 5.00 p.m. they went to Shirpur. Then he got his mobile activated and gave call on the number which was provided. The call was received by Rahul Sanap and introduction was given. Said constable Sanap told that he was on leave and he gave this witness mobile number of Kuldeep Sapkal (appellant) and further directed to meet him and hand over money to him. **In chief itself he stated that he did not remember the number of Sapkal but only knew last three digits to be 420.** They went to police station. His friend Swapnil

Jadhav and PW2 pancha accompanied him. He carried voice recorder. They entered police station and on inquiry they were told that Sapkal was outside the police station and so, after coming out of the police station he made phone call to Sapkal who allegedly asked him to come behind police station near a cottage beneath tamarind tree. After introduction, Sapkal asked about pancha and as to who he was. Conversation took place between Jadhav and Sapkal. Appellant Sapkal allegedly told him that there are instances of stealing two wheeler. Witness then stated that **Jadhav negotiated with Sapkal to reduce the amount to Rs.400/- from Rs.500/-**. He stated that he also requested Sapkal to reduce the demand. Then they went to the jeep and reached ACB office and drew panchanama Exhibit 10. The voice recorded was played and the script of conversation was noted therein.

He further deposed that thereafter he gave money to the ACB officials i.e. currency notes of Rs.100/- denomination, to which anthracene powder was applied and as per instructions, kept in the pocket of complainant and pre trap panchanama was drawn vide Exhibit 11.

Further witness deposed that he made contact with accused to know his location who told him that he was in bazar. **Complainant speaks about two three attempts of giving phone bell but there was no**

**response to his calls.** On call being made by Swapnil Jadhav, appellant allegedly informed that as he was with his senior officer, he would be unable to come. In spite of waiting when he did not turn up, panchanama Exhibit 12 was drawn.

It has further come in his evidence that **after two days he was called at ACB office Dhule and he himself requested to suspend the matter.** His statement to that effect Exhibit 13 was recorded. On 07.05.2013, he again came to ACB office and gave statement with a request to take action against Sapkal for demanding Rs.400/- as bribe. He also handed over memory card of the voice recorder which was sealed for dispatching it to analyzer. He identified voice sample to be of accused and that conversation in the script was as per the talks between himself, Swapnil Jadhav and appellant.

9. Above witness is subjected to lengthy cross wherein he admitted that he identified voice to be of accused because the recording begins with the voice of Investigating Officer instructing it to be voice recording of Mr. Sanap and to listen to it carefully. In cross he admitted that Swapnil Jadhav had accompanied him to the ACB office as well as court and further admitted that he filed complaint on advice of Swapnil Jadhav. He further admitted that on

23.04.2013 constables stopped his motorcycle as four persons were going on it. He admitted that after being stopped, they were told about instances of theft of motorcycles and he was told to prove that the bike belonged to him. He admitted that constables told him that if he is prosecuted, being a student, his one academic year would get spoiled and **he candidly admitted that from that spot itself they were allowed to go** but he volunteered that prior to it, money was demanded in the incident of talk with Swapnil Jadhav.

In further cross he admitted that after 23.04.2013, except at the time of trap, he did not receive any phone call from phone bearing no. 9764669494. He further admitted that his friend Nilesh and Jadhav did not receive any phone call from said number. He further admitted that on 24.04.2013 for the first time he came to know the name of Rahul Sanap. He further admitted that during conversation between accused and Jadhav, he came to know the name of appellant. He further admitted that after two days of the incident he had become sure that police would not demand money and hence he gave statement to that effect on 26.04.2013. He is unable to state the date on which he subsequently went to ACB office for seeking further action. He also answered that accused might not have any concern with the mobile no. 9764669494.

10. PW2 Dahake, who was working as a Stenographer in Civil Hospital, seems to be used as shadow pancha and he narrated about he being called at ACB office, introduced to complainant, complaint being signed by him and complainant. Regarding occurrence, his evidence is in para 3. According to him, after reaching Shirpur, complainant made phone call on cell no. 9764669494 and the person responding told that he was out of police station and to go to police station and meet Sapkal (appellant). Therefore, this witness himself, complainant and friend of complainant, namely, Sandip went to police station. There complainant was told that appellant was out of police station. The person who attended the call gave number of Sapkal. Witness corrected himself and stated that complainant was accompanied by Swapnil and not Sandip. Swapnil Jadhav telephoned Sapkal who asked them to come under the tamarind tree and all three went there. When Mr. Sapkal was coming from front side on motorcycle, complainant gave him signal. Appellant Sapkal stopped near them. Complainant introduced Swapnil Jadhav and told appellant that he had been to Saptashruni Gad and so he could not pay amount demanded. There were negotiations between the two and Sapkal told to give Rs.400/- instead of Rs.500/-, further informing that Inspector has made the position strict. He deposed that complainant informed that he would bring money after some time

and they came back to the jeep. Recorded conversation was heard and transcribed. He also deposed about tainted currency notes given in possession of complainant, pre trap panchanama Exhibit 11 to be drawn and this witness signing it. This witness in further chief stated that when appellant accused was contacted by complainant, at that time appellant told that he was on patrolling duty and he would not be in position to meet complainant and so pre trap panchanama was drawn. According to him, he heard the conversation between complainant, Swapnil Jadhav and accused to the effect that "give Rs.400/-, Inspector has made position strict" and it to be the voice appellant. He then stated about scene of occurrence panchanama to be drawn which is at Exhibit 16. He further deposed that on 04.07.2013, voice sample of appellant was taken in his presence. After conversation recorded was played and heard by the witness, He identified the voice to be of appellant and panchanama to that extent to be drawn at Exhibit 17.

11. While under cross, shadow pancha PW2 was unable to give details as to who gave mobile number 9764669494 to complainant. He admitted that prior to 22.04.2013 he had not heard voice of complainant, accused and Swapnil Jadhav. According to him, on 03.07.2013, Swapnil Jadhav was not called in police station. He

admitted regarding reference in the complaint about Swapnil Jadhav had been to Saptashruni Gad on 23.04.2013. He answered that since 24.04.2013 to 04.07.2013 he was called to ACB office five to seven times. He admitted that when they went to the tamarind tree, complainant did not have tainted currency notes. He was unable to give details of the currency notes and its numbers. He also admitted that his signature was not obtained over the currency note.

12. Above two testimonies are of significance. Remaining two witnesses are the sanctioning authority and the Investigating Officer.

### **ANALYSIS**

13. On re-appreciation of evidence of PW1 and PW2, here, it is emerging that complainant was intercepted by two constables on 23.04.2013. Complainant in examination-in-chief stated that three of them were occupying motorcycle and therefore they were intercepted. However, in cross he admitted that four of them were traveling on motorcycle. Therefore, here it is clearly emerging that interception by police constables was for violation of traffic rules. According to complainant, one of the two constables suggested to settle the matter by give and take method to avoid spoiling of career. Which of the two said this is apparently not stated by the complainant. It is common

knowledge that there is a name plate worn and affixed on the uniform shirt of police. It has not come in his evidence that the constables were on uniform. Complainant in chief itself stated that, that night he learnt the name of appellant. From which source or from whom he learnt has not been clarified by him. However, he stated that one of them was appellant and other was Sanap. It has come in the evidence that his friend Swapnil Jadhav was appraised about the proposed action and there was dialogue between Swapnil Jadhav and said constable.

14. Evidence of complainant also shows that it was agreed to pay later on and therefore, complainant claims that he approached ACB office and lodged complaint. He admits that at the time of lodgement of complaint, he was not knowing name of other constable Sanap. This further creates doubt about veracity of his evidence. After complaint with ACB, complainant, shadow pancha PW2 and Swapnil Jadhav seem to have approached appellant beneath tamarind tree but testimony of complainant further shows that his friend Swapnil Jadhav negotiated with appellant for reducing the amount. This clearly shows that attempt to bribe is not by complainant but by Swapnil Jadhav and he is not examined by the prosecution for the best reasons known to it.

15. On careful analysis, it is further emerging that complainant deposed that as appellant did not make demand for two days, he himself went to ACB office on 26.04.2013 and gave statement that he wanted to withdraw the complaint with a further request to suspend the matter, but his evidence shows that again he approached ACB office at later point of time to initiate action.

16. Cross of PW2 shadow pancha discussed above also shows that he does not know who gave mobile number 9764669494 to complainant, over which there was said to be conversation. Even the police personnel who gave this number has not stepped in the witness box. His chief para 3 itself shows that it is complainant who had **allegedly negotiated with appellant for reduction of amount, however this is contrary to the version of complainant according to whom, negotiations were done by Swapnil Jadhav.** It has come in the evidence of PW2 shadow pancha that there was conversation with appellant who informed that he was on patrolling duty and as such would not be in a position to meet. It further goes to show that there were no talks about amount or demand. Therefore, for material contradiction, testimonies of PW1 and PW2, who claim to be together, renders prosecution version more doubtful.

17. Learned counsel for appellant also pointed out that transcript of alleged voice recorder ought not to have been taken on record and ought not to have been relied by trial Judge as it was not accompanied by certificate under Section 65B of the Evidence Act. Such submissions have not been countered by learned APP while opposing the appeal.

18. Keeping the above discussed evidence in juxtaposition with necessary ingredients required to attract offence of Section 7 of the PC Act, in the considered opinion of this court, offence cannot be said to have been brought home. No doubt Section 20 of the PC Act permits drawing of presumption and the same to be rebuttable, however, here, the very foundational facts emerging from the evidence of PW1 and PW2, are rendering their testimonies doubtful. So called trap has apparently failed. There is no concrete evidence suggesting demand being put up by appellant.

Resultantly, on re-appreciation and re-analysis, there is no convincing, conclusive evidence as is required by law. It is a fit case for grant of benefit of doubt for the reasons discussed in aforesaid paras. Hence, appellant succeeds. Accordingly, I proceed to pass the following order:

**ORDER**

- I. The appeal is allowed.
- II. The conviction awarded to the appellant Kuldip Dyaneshwar Sapkal by learned Special Judge, Dhule in Special Case No. 114 of 2013 on 22.05.2015 under Section 7 of the Prevention of Corruption Act stands quashed and set aside.
- III. Appellant stands acquitted of the offence punishable under Section 7 of the Prevention of Corruption Act.
- 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.]**