



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPEAL NO. 79 OF 2004**

1. Vishwambhar s/o. Abaji Bharose,  
Age : 48 years, Occu. : Service,  
R/o. Gajanan Nagar, Parbhani,  
District Parbhani.

2. Dasrao S/o. Ramrao Suryawanshi,  
Age : 45 years, Occu. : Service,  
R/o. Ganeshnagar, Vasmata,  
R/o. Vasmata, Dist. Hingoli.

**... Appellants**  
(Orig. Accused)

**Versus**

The State of Maharashtra

**... Respondent**

...  
Mr. S. P. Chapalgaonkar, Advocate for Appellants  
Mr. A.A.A. Khan, APP for Respondent – State  
...

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

**RESERVED ON : 22<sup>nd</sup> JULY, 2024**

**PRONOUNCED ON : 9<sup>th</sup> AUGUST, 2024**

**JUDGMENT :**

1. Both appellants, who stood convicted by learned Special Judge, Parbhani on 29.12.2003 in Special Case No. 03 of 1999 for offence under sections 7 and 13(1)(d) punishable under section 13(2) and section 12 of the Prevention of Corruption Act, 1988 (P.C. Act), are challenging the impugned judgment by filing instant appeal.

**PROSECUTION CASE IN NUTSHELL IS AS UNDER**

2. Appellants were charge-sheeted on the premise that, appellant no.1 Vishwambhar a Talathi demanded Rs.5,000/- from complainant Rangnath Chavan, since deceased, for effecting mutation entry. Finally, appellant no.1 agreed to bring down the bribe amount to Rs.2,000/- and accepted Rs.1,200/-. Rs.800/- was the balance amount. Complainant approached Anti Corruption Bureau (ACB) authorities, lodged report and in consequence to it trap was planned, procedure was explained to complainant and pancha PW1 Baburao. They both approached appellant no.1. Complainant questioned whether mutation entry has been taken. Appellant no.1 counter questioned whether amount has been brought. When complainant affirmed it, appellant no.1 directed amount to be paid to appellant no.2, who was sitting next to him. Predetermined signal was relayed and raiding party apprehended both accused. Investigating Officer filed complaint and charge-sheeted both accused.

Trial was conducted by Special Judge, Parbhani, who accepted the prosecution case as proved, vide judgment and order dated 29.12.2003, convicted both appellants i.e. for offence under sections 7 and 13(1)(d) punishable under section 13(2) and section 12 of Prevention of Corruption Act, respectively.

Feeling aggrieved by the above judgment and order, instant appeal has been preferred.

### **EVIDENCE BEFORE TRIAL COURT**

3. **PW1** Baburao is a pancha, justified about being called to ACB office, introduced to complainant Rangnath Chavan and being informed about Talathi demanding Rs.5,000/- for effecting mutation entry and finally deal being stuck for Rs.2,000/- and complainant informing this witness about amount of Rs.1,200/- already paid and remaining to be paid on 01.08.1998. He testified about ACB authorities explaining the procedure of application of anthracene powder to the currencies, necessary instructions given by ACB to him and complainant for effecting raid. He deposed that, he and complainant, approached Talathi office, but appellant was not available in the office and they learnt that he was at his residence. So they both went to his house at Ganeshnagar. He deposed that, accused no.1 was sitting on a cot and accused no.2 was sitting on a chair. Complainant asked about his work and accused Talathi asked complainant whether he brought amount as directed. Complainant took out the money, but accused Talathi instead of himself receiving by nodding his head directed it to be paid to accused no.2, who received the amount. After which complainant went out and gave signal and raiding party came and apprehended both accused.

**PW2** Ashok - Sanctioning Authority, who was working as Sub Divisional Officer at Hingoli, testified about receiving papers from ACB, finding case made out for grant of sanction, he accorded sanction, which he identified to be at Exh.60.

**PW3** Vasant Bacchav, Divisional Controller, State Transport, Parbhani deposed about receiving papers from ACB and being competent authority to accord the sanction to prosecute accused no.2 Dasrao Suryawanshi.

**PW4** Rajendra More, the Investigating Officer, who narrated all step taken by him since receiving complaint, laying trap, executing it, apprehending accused and charge-sheeting them.

### **SUBMISSIONS**

#### **On behalf of Appellant :**

4. Learned counsel apprised this court about prosecution version and would submit that, there is no dispute that, appellant no.1 was officiating as Talathi. He pointed out that, here, prosecution evidence is without complainant's evidence. According to him, therefore testimony of shadow pancha and sanctioning authority only remains for appreciation. He would strenuously submit that very foundational facts of demand which are *sine qua non* has not been proved by prosecution for want of testimony of

complainant. According to learned counsel, pancha has hearsay information, and therefore, it was not open for prosecution to rely on uncorroborated testimony of pancha and thereby he questions the very prosecution itself.

5. Learned counsel next submitted that, there is no evidence that, for carrying out mutation entry, there was demand or even part payment. That, no circumstances are brought on record to substantiate visit of deceased complainant to appellant Talathi. He pointed out that, at the threshold granting mutation entry was not within the jurisdiction and power of appellant, who was a Talathi, rather it was the duty of higher revenue authorities, and therefore, according to learned counsel very aspect of demand has come under shadow of doubt.

6. He further pointed out that, prosecution's evidence itself shows that there was no acceptance by appellant no.1., even pancha witness admits that, amount was not accepted by appellant no.1 Talathi and therefore learned counsel questions the implication and guilt, as according to him, here, both demand and acceptance, which are *sine qua non* for recording the guilt, are not proved.

7. Learned counsel's second attack was on the sanction accorded by PW2 S.D.O. Ashok Singare for prosecution of appellant no.1. Apart from questioning the authority and power of PW2 S.D.O. Singare to grant sanction, he would forcibly submit that, there is non application of mind and sanction is granted in mechanical manner. He invited attention of the court to the very sanction (Exh.60) and would submit that, title of the sanction itself is shown to be a draft. Therefore, he submits that, there are strong reasons to hold that sanction has been granted without proper verification or application of mind.

8. As regards to appellant no.2 is concerned, learned counsel submitted that, he is admittedly at the relevant time working in State Transport Department. He had no nexus with revenue department. That, there is no material on behalf of prosecution to show nexus between appellant nos.1 and 2. Learned counsel emphasized that, to connect appellant no.2, it was expected of prosecution to prove that with complete knowledge he had accepted the bribe amount. Learned counsel pointed out that, there is no evidence to show that, the appellant no.2 had no knowledge as to whether the amount he took that day was towards illegal gratification. That, there is nothing to show that he was acting on behalf of appellant no.1. Consequently, learned counsel

questions his implications and also brought to the notice that even in sanction accorded to him by PW3 Vasant Bacchav, draft has been approved and dispatched and as like that of appellant no.1, his sanction is also without application of mind.

9. Lastly, he submitted that, in the light of above quality of evidence, prosecution has miserably failed to establish not only demand, but even acceptance by adducing cogent and reliable evidence. According to him, still learned trial Court accepted the prosecution version and erred in convicting appellants and so he prays to interfere by allowing the appeal.

**On behalf of State :-**

10. Learned APP would point out that, though unfortunately complainant had expired and was not available for evidence, but it is submitted that through the very complaint to which PW1 Baburao was also a signatory, prosecution version is cogently proved. Learned APP took this court through the testimony of PW1 Baburao and would submit that, he had interacted with complainant. He had participated in the process of instructions given by Investigating Officer while planning and executing the raid. That, he accompanied complainant and is party to the demand by accused no.1 and acceptance by accused no.2 on

direction of accused no.1. Therefore, trap is successful. That, accused no.2 acted on instructions of accused no.1. That, they both being public servants, prior sanction for prosecuting them was obtained. According to learned APP, both sanctioning authorities of accused nos.1 and 2 are explained by prosecution. That, there is evidence of Investigating Officer. That, their versions have not been rendered doubtful, and therefore, according to learned APP, there is no illegality or perversity at the hands of learned trial Judge and consequently there are prayers for dismissal of appeal for want of merits.

### **ANALYSIS**

11. Unfortunately, during pendency of trial, original complainant Rangnath Chavan has expired and was thus not available for evidence. Consequently, evidence of prosecution is without testimony of original complainant. Very recently the Hon'ble Apex Court in the case of *Neeraj Dutta v. State (Govt. of N.C.T. of Delhi)*, (2023) 4 SCC 731, has elucidated certain principles and manner of appreciation of trap cases in paragraph no.68, which are as under :-

“68. ....

**“(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.**

**(b) In order to bring home the guilt of the accused, the prosecution**

*has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.*

*(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.*

*(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:*

*(i) if there is an **offer to pay by the bribe giver without** there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is **a case of acceptance** as per Section 7 of the Act. In such a case, there need not be **a prior demand** by the public servant.*

*(ii) On the other hand, **if the public servant makes a demand** and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is **a case of obtainment**. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.*

*(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13(1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the Act.”*

*(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been*

*proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.*

*(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.*

*(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1)(d)(i) and (ii) of the Act.”*

In the same judgment the Hon’ble Apex Court in paragraph no.70 has observed as under :-

“70. ....

*In the absence of evidence of the **complainant** (direct/primary, oral/documentary evidence) it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act based on **other evidence** adduced by the prosecution.”*

12. Thus, it is emerging that, here, complainant because of his demise is not available.

In view of judgment of Hon’ble Apex Court, circumstances regarding demand and acceptance can also be taken

into account in eventuality of evidence of complainant being not available. Therefore, prosecution ought to have at least brought other circumstances in support of contention that on 30.07.1998, complainant had approached accused and above demand was made.

13. Admittedly, even as per PW1 Baburao shadow panch, when complainant was about to handover currency, accused no.1 allegedly gestured towards accused no.2 i.e. by nodding and thereafter, according to PW1 Baburao, accused no.2 accepted the currency. Such evidence itself shows that, there is no acceptance by accused no.1. Admittedly, recovery of currency is from possession of accused no.2, who was said to be sitting there.

14. Second feature of the case is that, here, accused no.2, who was said to be in the company of accused no.1 on the day of trap and though he is shown to have accepted the tainted currency and it is recovered from him, it has not been demonstrated that accused no.2 was acting in concert or directions of accused no.1 and with specific knowledge that the amount taken by him was towards illegal gratification, charge cannot be fastened against him. It is expected of prosecution to first prove that specific knowledge that the amount which he is receiving, was towards

illegal gratification. This aspect is not proved. There is no evidence in this direction. Mere acceptance is not sufficient, as it is further expected to be proved that acceptance was of bribe amount and not otherwise. Therefore, such evidence on record, renders case of prosecution doubtful.

15. As pointed out by learned counsel for appellants, here, there is mechanical sanction as both authorities PW2 Ashok and PW3 Vasant, who have accorded sanction to prosecute both accused nos.1 and 2, though deposed that they studied the papers received from Anti Corruption Bureau, they have admitted about receiving draft sanction and surprisingly sanction orders are itself typed with title as 'Draft Sanction Order'. Therefore, there is no due care on the part of both the authorities which gave reason to the defence to agitate and lay stress on non application of mind, which does become obvious in view of above title of sanction orders. Typing mistake at the hands of one authority can be understood, but surprisingly both authorities, who are distinctly placed and are two distinct departments, have typed the sanction orders as 'Draft Sanction Order'. This also is a good ground to doubt the prosecution version on the point of sanction.

16. In the considered opinion of this court, because of

above lapses, case cannot be said to be proved beyond reasonable doubt. There is no acceptance by accused no.1 and there is no cogent and reliable evidence that accused no.2 acted in concert at and on behalf of accused no.1 and with complete knowledge he had accepted the amount to be a bribe amount. Consequently, it is a case of benefit of doubt and the same goes to accused.

17. Perused the judgment. Apparently there is improper appreciation of evidence. The above discussion and features noticed by this court on re-appreciation are not taken into account by learned trial Judge and hence interference is called for. Hence, the following order :-

#### **ORDER**

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to appellants, namely, (i) Vishwambhar s/o. Abaji Bharose and (ii) Dasrao S/o. Ramrao Suryawanshi in Special Case No. 03 of 1999 by learned Special Judge, Parbhani on 29.12.2003 for the offence under sections 7 and 13(1)(d) punishable under section 13(2) and section 12 of Prevention of Corruption Act, 1988, stands quashed and set aside.
- III) The appellants stand acquitted of the offence under sections 7 and 13(1)(d) punishable under section 13(2) and section 12 of Prevention of Corruption Act, 1988.

- IV) The bail bonds of the appellants stand cancelled.
- V) The fine amount deposited, if any, be refunded to the appellants after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of *muddemal*.

**(ABHAY S. WAGHWASE, J.)**