



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 689 OF 2004

Balasaheb S/o Sheshrao Ban
Age: 33 years, Occu.: Service,
Clerk in Tahsil Office, Jintoor,
R/o. Jintoor, Dist.Parbhani.

....Appellant
(Ori. Accused)

Versus

State of Maharashtra

.....Respondent

....

Advocate for Appellant : Mr.S.B.Bhapkar
APP for Respondent : Mrs.Chaitali Choudhari - Kutti

....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 02 SEPTEMBER, 2024

PRONOUNCED ON : 06 SEPTEMBER, 2024

JUDGMENT :-

1. In this appeal there is challenge to the judgment and order of conviction rendered by the learned Special Judge, Parbhani in Special Case No.4 of 2000 recording guilt and convicting present appellant for offence under Section 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

FACTS IN BRIEF LEADING TO TRIAL

2. PW1 Prabhakar was booked by Jintoor Police Station on

complaint of one Ramesh Sapkal, his neighbour and therefore, a chapter case was registered against him in the Court of Executive Magistrate, Jintoor and he succeeded in getting bail. In said proceedings to seek further date, he approached present appellant, a Clerk in the Office of Executive Magistrate / Naib Tahsildar and requested to fix next date in the matter. According to PW1 Prabhakar, appellant demanded Rs.500/- for giving him date and threatened that on failing, he would be sent behind bar. On request of PW1 complainant, appellant agreed to do the needful on payment of Rs.200/- and asked him to come with said amount. Complainant was not willing to pay bribe and therefore, he approached ACB Office, Parbhani and lodged report exh.22, which was entertained by PW4 More (PI), who further summoned and arranged tow Panchas, apprised complainant and Panchas with the procedure of trap, handed over tainted currency to complainant, gave necessary instructions and sent PW1 Prabhakar and PW2 Vilas Sangewar, shadow panch to the Office of appellant and asked them to pay bribe amount on demand and relay necessary signal after acceptance, which would be followed by trap and apprehension.

Accordingly, on 04-01-2000, PW1 Prabhakar and PW2 Vilas approached accused in Tahsil Office, Jintoor. Accused appellant,

while PW1 was in company of PW2 Vilas, demanded amount, accepted it and on signal given by PW1 Prabhakar, raiding party apprehended appellant. Complaint came to be lodged and after completing formalities, seeking sanction, accused was made to face trial before the Special Judge, who appreciated the prosecution evidence and accepted the case of prosecution by rendering judgment of conviction on 30-09-2004.

Feeling aggrieved by the above conviction, appellant has knocked doors of this Court by filing instant appeal.

SUBMISSIONS

On behalf of appellant :

3. Pleading innocence and false implication, Mr.Bhapkar, learned Counsel for the appellant would submit that, prosecution has miserably failed to bring home the charges. At the threshold, he apprised this Court that present appellant is merely working as a Clerk in Tahsil Officer and being at the lower rank in the hierarchy, he was not at all authorized to give any date or to take any action of arrest as is claimed by the complainant. He took this Court through the charge at exh.4 and would point out that there is charge for not doing an official act or not issuing the warrant, however, primary

allegations of prosecution are that bribe was demanded to merely give date for appearance of appellant in a chapter proceedings. Therefore, according to him, very charge is defective and it is misplaced as it is contrary to the very story of the prosecution.

Taking this Court through the testimony of PW1 Prabhakar at exh.21, it is pointed out that testimony of very complainant is unworthy of credence because according to him, demand was allegedly made on 01-01-2000 but complaint is lodged on 04-01-2000 and therefore, it is a delayed complaint and deliberate attempt to implicate appellant.

4. Learned Counsel questioned as to why when trap was planned on 01-01-2000, second trap and complaint was entertained on 04-01-2000 and according to him, it is clear that to see that by hook or crook appellant is trapped and implicated, trap is carried out in a false case. He pointed out that there is no independent or convincing evidence about alleged demand and according to learned Counsel, it is admitted position and it has also come in the cross that, appellant, being a Clerk, was not authorized either to give dates of the hearing or even in position to take any action for not complying with the demand.

Learned Counsel took this Court through cross-examination of PW1 Prabhakar, more particularly in paragraph 5 and would point out that there is clear admission that complainant is not in position to give exact date and time of alleged demand. Learned Counsel pointed out that in between 01-01-2000 to 04-01-2000, complainant has admitted to have approached accused, but on such dates, there is apparently no demand as alleged and therefore, it is his submission that there is no question of putting up any demand of bribe. He also tried to discredit testimony of PW1 Prabhakar by taking this Court through paragraph 8 of the cross-examination on the points of demand and payment of hand-loan advanced by him in support of his defence.

5. Taking this Court through testimony of PW2 Vilas Haribhau Sangewar, it is pointed out that though this witness is shown to have acted as shadow pancha, there is nothing in black and white to show that services of this witness was requisitioned by the Investigating Officer by issuing any communication. He pointed out to communication exh.36, date of reference of letter to ACB authorities by superior of PW2 Vilas is on 01-01-2000 and therefore, he questioned how and on whose decision, second trap was arranged on

04-01-2000. Learned Counsel hasten to add that only when alleged trap of 01-01-2000 was unsuccessful, second trap was laid and therefore, it is his submission that there was deliberate attempt to foist appellant, who was an innocent person. He also pointed out that even this witness PW2 shadow pancha merely stated in his evidence that appellant accused demanded amount from complainant, but for what purpose amount was demanded has not been stated by this witness. Therefore, it is his submission that it cannot be said that the amount demanded was any illegal demand, rather it was amount due from complainant, which was sought back. He also took this Court through paragraph 7 of cross-examination of PW2 Vilas and would submit that this witness has admitted that accused had, in his presence, told this complainant that he would produce him before Naib Tahsildar and as such accused was not at all authorized or empowered to give date or to take action of any sought.

6. Learned Counsel pointed out that there was no demand of bribe, rather amount was deliberately thrust in his pocket. That Panch, who allegedly removed tainted currency from the pocket of accused, is not examined, rather PW4 Investigating Officer and PW2 shadow pancha are giving contradictory versions regarding removal

of tainted currency from accused and for such reason, he questions the prosecution version.

7. His next attack is on the testimony of PW3 as according to him, said Officer, who accorded sanction, was not at all competent because at the time of sanction, this witness had admitted that he was working as Additional Collector and such post was sub-ordinate to Collector. Therefore, sanction given by incompetent authority is not valid. Further it is stated that there is casual approach because what material has been considered has not been spelt out by this witness in his testimony. Therefore, even sanction is improper and according to learned Counsel, for the said reason also case of prosecution ought not to have been accepted by the learned trial Judge.

8. Lastly, learned Counsel took this Court through evidence of the PW4 More, Investigating Officer and would point out that his evidence does not corroborate very prosecution version. There is suppression of material, necessary panchanamas are not brought on record. Another Superior Officer namely Perke, who was party to all the events, is deliberately not examined. Therefore, it is his submission that adverse inference be drawn against prosecution.

Criticizing the judgment of the trial Court, learned Counsel submits that there is total improper appreciation of evidence as well as settled legal position and hence, he prays to set aside the impugned judgment.

On behalf of State :

9. Supporting the judgment learned APP pointed out that prosecution has established the charges beyond reasonable doubt. She would submit that PW1 complainant was accompanied by PW2 shadow pancha, an independent witness and they lend support to each other. That there was demand to favour the complainant by giving date and there were threats to pay bribe or to face dire consequences of going behind bar, therefore, complainant was constrained to succumb to demand, but he has approached ACB authority PW4 More and complaint was lodged and he had called two panchas, they both were apprised of the nature of the complaint and they were introduced to complainant and all of them apprised about procedure of trap. That unfortunately on decided date of trap, accused was on casual leave and therefore, trap was postponed, but consequently trap was carried out on 04-01-2000. That demand was made and it was accepted in presence of PW2 shadow pancha and

the shadow pancha deposed to that extent. That PW2 shadow pancha deposed that there was application of anthracene powder to the currency and traces of the same were found on the currency removed from the pocket of the appellant as well as on the hands of appellant. Therefore, both demand as well as acceptance is proved. That PW3 sanctioning authority, who was authorized and holding post of Collector at the relevant time, had stated that he studied papers and had granted sanction. That there is no infirmity in the sanction order. It is her submission that on availability of overwhelming evidence, learned trial Judge has correctly accepted prosecution version as proved and therefore, she prays to dismiss the appeal for want of merits.

SUM AND SUBSTANCE OF EVIDENCE IN TRIAL COURT

10. **PW1** Prabhakar Rangnathrao Kuptekar, complainant, in his evidence at exh.21 stated that on complaint of his neighbour Ramesh, chapter proceedings were initiated against him in the Court of Executive Magistrate. He was arrested and produced before the Court on 07-12-1999 and released on bail. Thereafter, he approached accused, who was working in that Section and asked him to give next date fixed in the matter. He deposed that accused said

that he will give date later on. Therefore, he again approached him and requested to give next date in the matter. At that time, it is alleged that accused demanded Rs.500/- for giving next date in the proceedings and also threatened to put him behind bar, if he fails to pay the amount. Complainant deposed that he told accused that he would pay Rs.200/- on the next date. That on 04-01-2000, complainant approached ACB, lodged report exh.22. That ACB authorities called two panchas, panchas heard grievance of complainant, verified complaint lodged by him, he gave currency to ACB authority, anthracene powder was applied to the currency, ACB authority explained him and panchas procedure of trap and instructed PW2 Vilas, shadow pancha, to accompany complainant and hear and witness the transaction and complainant was asked to give signal after accused demands and accepts money.

Accordingly, PW1 complainant and PW2 Vilas approached Tahsil Office at Jintoor. PW1 complainant went to accused and asked to give next date in the matter. Accused asked whether he brought the amount and he replied in affirmative. Thereafter, accused removed file from steel cupboard, wrote complainant's name on a white paper and asked him to put his signature against his name and then accused asked the complainant to pay the amount.

Complainant removed the amount kept in his left chest pocket of shirt by right hand and paid it to the accused, who accepted the said amount by his left hand and kept it in left hand chest pocket of his shirt, upon which signal was given and raiding party came and caught accused. He identified complaint exh.22.

11. **PW2** Vilas Haribhau Sangewar is shadow pancha. He deposed that on 04-01-2000, Chief Officer, Municipal Council, Parbhani directed him and Mohd. Abdul Mukhtasir to visit ACB Office. There, they were introduced to complainant as well as shown written complaint exh.22. In his presence, complainant gave two currency notes of Rs.100/- each to which ACB authorities applied anthracene powder, demonstration was given and necessary instructions were given. Thereafter, he and raiding party alongwith complainant proceeded in a private Jeep to Tahsil Office, Jintoor. After reaching Tahsil Office, he and complainant approached accused, after exchange of greetings, accused told that he was busy and to come after 15 minutes. Therefore, he and complainant went out to take tea and returned, after which accused asked complainant whether he brought the amount. Thereafter, accused removed a file kept in the cupboard and obtained signature of complainant and thereafter,

accused asked complainant to pay amount to him and complainant removed the amount from his left chest pocket of his shirt and paid amount to accused, who accepted the amount and kept it in left chest pocket of his shirt. After complainant gave signal, raiding party came and asked complainant as to who took the amount and he pointed out towards the accused. Then amount, which was kept by accused in his pocket was removed. Currency notes as well as hands of accused examined under the UV light and thereafter, ACB Officers conducted search and seized documents. He identified panchanama exh.32, 33.

12. **PW3** Yeshwant Eknathrao Kerure, Sanctioning Authority, deposed that he was holding charge of post of Collector, Parbhani from 10-01-2000 to 30-04-2000. On 17-02-2000, papers were received from ACB Office alongwith draft sanction. He went through the papers. He took sufficient time to study the papers and thereafter, he deposed that he was satisfied that there was sufficient proof in the allegations against accused. Accordingly, he issued sanction, which he identified at exh.39.

PW4 Rajendra Madhavrao More is the Investigating Officer.

OBJECTIONS RAISED BY APPELLANT

13. Pointing towards the above evidence, fundamental objections raised by the learned Counsel for the appellant is that **firstly**, prosecution version and charge do not match, and accused appellant was not authorized or competent to give date or take action, **secondly**, there is no reliable evidence of demand, **thirdly**, there was no complaint on alleged date of demand i.e. 01-01-2000, **fourthly**, amount was thrust in the pocket of accused and there was no demand or acceptance, **fifthly**, amount accepted was towards hand-loan due towards complainant and **lastly**, invalid sanction.

ANALYSIS

14. Here prosecution version is that PW1 complainant was booked for chapter proceedings on account of complaint by his neighbour. Testimony of complainant commences with such background. Such aspect of action taken by Executive Magistrate / Naib Tahsildar has not been challenged by the appellant in the trial Court. Version of complainant that accused demanded Rs.500/- to give date of proceedings and threatened him to put him behind bars, if he fails to meet demand, is also not rendered doubtful. Mere submissions advanced are that alleged demand is of 01-01-2000, but complaint is

of 04-01-2000. Merely on such count, prosecution version cannot be doubted. Similarly, this Court does not find any defect in the charge as very case of prosecution is that for giving date in chapter proceedings, bribe has been demanded from complainant. After deal, amount was brought down from Rs.500/- to Rs.200/- on 03-01-2000, so complainant has approached to ACB authorities and lodged complaint exh.22. Such version of complainant has not been disturbed or challenged in the entire cross-examination. Complainant has narrated in his testimony that after lodging complaint, ACB authorities summoned two panchas and he and panchas were introduced to each other, they were explained procedure of trap and necessary instructions were given to both complainant as well as shadow pancha. Cross-examination of complainant, more particularly, paragraph 6 clearly shows that visit of complainant to Tahsil Office on 04-01-2000 is got confirmed as entire set up and location of Office of accused is brought in cross-examination and all suggestions and questions are answered by complainant. Complainant has categorically stated that after he wished appellant, appellant asked him to come after 15 minutes as he was busy in other work. PW1 Complainant and PW2 shadow pancha spent time outside for taking tea and thereafter, they claim to

have returned and PW1 complainant has also, on query, introduced PW2 shadow pancha to be his nephew. So much part of his testimony has not been shaken or rendered doubtful. Therefore, complainant and shadow pancha both went to the Office of accused and there presence is not rendered doubtful. Complainant has categorically stated that accused demanded amount and it was removed from his pocket and handed over to accused after causing signature on the document. Therefore, some official act has been performed and thereafter, demand has been raised and it has been complied with and accused has accepted the amount and kept in left side pocket of his shirt. The amount has been recovered from pocket of accused. Both i.e. his shirt pocket and hands are demonstrated to be carrying anthracene powder traces thereby confirming both demand and acceptance.

15. Testimony of PW2 shadow pancha lends full support to the version of PW1 complainant as he has also narrated that after visiting Tahsil Office, Jintoor, complainant was asked to wait for 15 minutes by the accused as he was busy in official work and they returned back after taking tea. In presence of this witness, demand was made and it was complied, accused accepted amount and even he stated that

accused accepted the amount and kept in left chest pocket of shirt after which signal was relayed and raiding party successfully completed raid. Testimonies of PW1 complainant and PW2 shadow pancha about demand and acceptance have virtually remained intact. There is little or no cross-examination on demand or acceptance.

FIRST OBJECTION :

16. Prosecution version and charge do not match, and accused appellant was not authorized or competent to give date or take action,

This ground has no force for the simple reason that there is no denial that appellant was working in Tahsil Officer as a Clerk. He was assigned duty of doing “Kamgiri” i.e. daily work of chapter proceedings allotted by the Magistrate. He has demanded money for giving date. The question whether he was authorized to give date or that he was not competent to give date becomes insignificant because prosecution version is that, for giving date in a chapter proceedings, bribe amount has been demanded. No doubt authority to conduct chapter proceedings was with Executive Magistrate, but he being subordinate to Magistrate and when there is no denial that he was doing “Kamgiri” work, there is reason for him to put up demand for giving

next date and i.e. precisely case of prosecution.

SECOND OBJECTION :

17. There is no reliable evidence of demand.

As regards this objection, here there is PW1 complainant's version finding support from PW2 shadow pancha, independent witness, who was from Municipal Council and also Government official. He had no axe to grind against appellant. He has also supported complainant on the part of demand and he has not only heard complainant's version in ACB Office but also seen complaint and accompanied complainant during trap. He is a star witness for prosecution. Therefore, there is no force in the submission that there is no convincing evidence on the point of demand. Here there is not only demand of amount but even acceptance and possession of tainted currency from appellant.

THIRD OBJECTION :

18. There was no complaint on alleged date of demand i.e. 01-01-2000.

As regards to no prompt complaint on 01-01-2000 and complaint to be of 04-01-2000, it is true that complainant has not lodged report on 01-01-2000, but apparently report has been

entertained and registered on 04-01-2000 and on same date two panchas from Office of Municipal Council are also summoned and they are explained procedure of trap. Merely because there was no complaint uptill 04-01-2000 itself would not render entire prosecution version doubtful. Immediately after lodgment of report on 04-01-2000, ACB authority has acted, planned trap and even succeeded in catching hold of accused after he had demanded and accepted bribe amount.

FOURTH AND FIFTH OBJECTIONS :

19. Amount was thrust in the pocket of accused. Amount accepted was towards hand-loan due towards complainant.

It is surprising that two contrary grounds are raised i.e. amount being deliberately thrust in the pocket of appellant and amount demanded to be against hand-loan extended previously. Therefore, such self contradictory stands taken by accused itself shows that he has accepted the amount. Moreover, immediately after arrest on trap, he has not offered explanation that the amount accepted by him was the dues returned by the complainant. Details of the amount of hand-loan and when it was taken, has also not been satisfactorily explained. The defence that amount was thrust in his

pocket loses its significance once fingers / hands of appellant are carrying traces of anthracene powder. Both PW1 complainant and PW2 shadow pancha categorically stated that after demand, PW1 complainant took out tainted currency from his pocket and handed over to appellant, who accepted it with his hand and then pocketed it. Therefore, there is both demand as well as acceptance and as such offence is complete.

SIXTH OBJECTION :

20. Invalid sanction.

The ground about invalid sanction also has no force. PW3 Kerure was holding charge of Collector from 10-01-2000 to 30-04-2000. He has received papers from ACB Office on 15-02-2000 while he was acting as Collector. He has claimed that he studied the papers and took sufficient time to get himself satisfied and thereafter, he accorded sanction. Therefore, on the date of sanction, he was officiating as Collector and as such was competent and his testimony shows that on getting satisfied, sanction has been accorded. Therefore, it cannot be said that there is no application of mind as it put-forth by learned Counsel for the appellant.

SUMMATION

21. To sum up, evidence of PW Prabhakar, complainant finding support of PW2 Vilas, shadow pancha, independent witness clearly shows that there is demand of illegal gratification by the appellant, who was working as a Clerk and as such a public servant. There is demand as well as acceptance. There is recovery of tainted currency from his pocket. Panchanama to that extent was drawn. PW4 More, Investigating Officer, who planned and arranged trap, has also stepped into witness box and even his evidence remained intact on crucial points. After investigation, sanction has been obtained from PW3 Kerure, competent authority and therefore, when all necessary ingredients for attracting charges are palpably available on the record, learned trial Court, in the considered opinion of this Court, committed no irregularity or error in accepting case of prosecution as proved. No case is made out on merit to interfere in a well reasoned judgment. Consequently, appeal deserves to be dismissed. Accordingly, I proceed to pass following order :

ORDER

Criminal Appeal No.689 of 2004 is dismissed.

(**ABHAY S. WAGHWASE**)
JUDGE

22. On pronouncement of this Judgment, learned Counsel for the appellant prays for eight weeks time to surrender so as to enable him to approach the Hon'ble Apex Court.

23. Learned APP strongly opposes the same.

24. Considering the above request made by learned Counsel for the appellant, eight weeks time is granted for the appellant to surrender.

(ABHAY S. WAGHWASE)
JUDGE

SPT