



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

CRIMINAL APPEAL NO. 812 OF 2004

Rasiklal S/o Indrabhan Patwa
Age: 40 years, Occu.: Jr.Engineer,
Fuse Call Centre, Aurangpura,
Aurangabad
R/o. Khadkeshwar, Aurangabad.

..Appellant
(Ori. Accused No.1)

Versus

State of Maharashtra

..Respondent

.....

WITH

CRIMINAL APPEAL NO. 813 OF 2004

Balaprasad S/o. Bhikulal Tiwari
Age: 45 years, Occu.: Service as
Line-Helper, M.S.E.B., Fuse Call
Centre, Aurangpura, Aurangabad
R/o. Aurangabad.

..Appellant
(Ori. Accused No.2)

Versus

State of Maharashtra

..Respondent

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Advocate for Appellant in Appeal/812/2004 : Mr. Ambar S. Barlota
Advocate for Appellant in Appeal/813/2004 : Mr. Pravin G. Patil
APP for Respondent-State : Mr.D.R.Korade

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 18 SEPTEMBER, 2024

PRONOUNCED ON : 27 SEPTEMBER, 2024

JUDGMENT :-

1. In both these appeals, there is challenge to the judgment and

order dated 29-11-2004 passed by the learned Special Judge, Aurangabad in Special Case No.1 of 2000 thereby convicting Rasiklal (appellant in Criminal Appeal No.812 of 2004) for offence punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act (PC Act) and convicting Balaprasad (appellant in Criminal Appeal No.813 of 2004) for offence under Section 12 of the PC Act.

FACTS LEADING TO THE TRIAL

2. Appellant Rasiklal Patwa and appellant Balaprasad Tiwari, who are Junior Engineer and Line Helper respectively were chargesheeted for commission of offence punishable under Sections 7, 13(1)(d) r/w 13(2) and 12 r/w 7 respectively of the PC Act on the premise that they demanded and accepted Rs.1,000/- by way of illegal gratification from complainant PW2 Shaikh Jalil for changing meters of his S.T.D. Booth shop and Juice Center.

PW2 Shaikh Jalil reported demand to ACB authorities, who noted his complaint exh.22. ACB authorities planned trap, summoned panchas, explained both complainant and panchas procedure of application of anthracene powder to the currency notes and directed them to pay tainted currency on demand and relay

signal. Accordingly, on 11-05-1999 trap was laid and executed and accused were apprehended.

After investigation, they were chargesheeted and finally tried by learned Special Judge, Aurangabad vide Special Case No.1 of 2000 and finally both appellants came to be convicted and held guilty for above charge, vide judgment dated 29-11-2004.

Feeling aggrieved by the above conviction, Appellant Rasiklal preferred Criminal Appeal No.812 of 2004 and appellant Balaprasad preferred Criminal Appeal No.813 of 2004, thereby challenging impugned judgment.

SUBMISSIONS

On behalf of appellant in Criminal Appeal No.812 of 2004 :

3. Pointing to the evidence of prosecution, Mr.Barlota, learned Counsel for appellant Rasiklal would submit that prosecution has miserably failed to establish the charges beyond reasonable doubt. That at the outset there was no demand of illegal gratification. That amount demanded was towards deposit for changing faulty meters. Secondly, complainant was at arrears towards electricity charges and he was asked to clear the same. That there was uninterrupted supply of electricity to the shops of complainant and he has admitted to that extent. Therefore, there was no question of putting up any demand.

It is pointed out that there is false implication. That important witnesses and panchas, who allegedly participated in raid, are not examined i.e. another Lineman or other staff. Learned Counsel pointed out that appellant Rasiklal, Junior Engineer was not authorized to change meter, rather it was job of Lineman regarding which there is admission. That there are variances in the evidence of complainant and shadow pancha and they are not lending support to each other. That material witnesses not examined.

4. Learned Counsel also questioned the very sanction by pointing out that draft despatched by ACB authority is apparently reproduced for according sanction and as such there is no independent application of mind.

5. Lastly, it is submitted that here neither demand nor acceptance is cogently proved and therefore, it is his submission that learned trial Court ought not to have accepted the case of prosecution. That necessary ingredients to attract the charges were patently missing and hence, he questions the sustainability and legality of impugned judgment passed by learned trial Judge.

In support to his submissions, he relied on the following rulings :

(i) *Soundarajan v. State Rep. By the Inspector of Police Vigilance Anti corruption Dindigul*, (2023) 4 S.C.R., 133

(ii) *Neeraj Dutta v. State (Govt. of N.C.T. of Delhi)* (2023) 2 S.C.R., 997.

On behalf of appellant in Criminal Appeal No.813 of 2004 :

6. Mr.Patil, learned counsel for appellant Balaprasad also made submissions on similar lines. According to him, there is no convincing and legally acceptable evidence. That there was no demand or acceptance. That his client is mere Line Helper and therefore, there is no question of he putting up any demand. He further pointed out that there is nothing to show that amount accepted was only and only bribe and not otherwise, as according to him, complainant has admitted that he was at arrears towards electricity bills and that it was necessary to deposit amount towards changing of Meters. Consequently, even he criticized the findings and guilt recorded by the learned trial Judge.

In support to his submissions, he relied on the following rulings :

(i) *Prabhat s/o. Ram Ambhjulkar v. State of Maharashtra*, 2023 DGLS (Bom.), 3980.

(ii) *Anilkumar Uttareshwar Nilakhe v. State of Maharashtra*, 2023 DGLS (Bom.) 3694.

On behalf of State :

7. Supporting the impugned judgment, learned APP submitted that complainant faced electricity supply issues. That when he contacted appellants, who are staff of M.S.E.B. Department, bribe amount was demanded. That after settlement, amount was reduced. That complainant promptly lodged report with ACB authorities and accordingly, trap was planned by PW4 Borse (PI). Learned APP pointed out that services of independent panch witnesses were procured as shadow panchas. They both were party to the transaction of demand and acceptance. That appellant Rasiklal directed complainant to pay amount to appellant Balasaheb. That appellant Balasaheb also demanded bribe on behalf of appellant Rasiklal. That trap was successful. According to learned APP, sanctioning authority, after application of mind, granted sanction, and as such according to learned APP, charges were duly established in trial Court and hence, prosecution case was accepted as proved. Resultantly, he prays to dismiss the appeal for want of merits.

WITNESSES IN TRIAL COURT

8. In support of its case, prosecution has adduced evidence of in all five witnesses. Their status and role is as under :

PW1 Sadashiv Trimbakrao Muley is sanctioning authority, who accorded sanction to prosecute accused.

PW2 Shaikh Jalil s/o Shaikh Abdul Raheman is complainant who lodged report exh.22.

PW3 Murlidhar Bhagwat Palkar is shadow pancha, who accompanied complainant.

PW4 Ashok Ganpatrao Borse (PI) is the Investigating Officer.

PW5 Pramod Raghopant Babrekar is Junior Engineer of M.S.E.B.

ORAL EVIDENCE BEFORE TRIAL COURT

9. Here evidence of **PW1** Muley (sanctioning authority), **PW2** Shaikh Jalil (complainant) and **PW3** Palkar (shadow pancha) is of the significance and therefore, the same is re-appreciated carefully.

PW1 Muley, sanctioning authority, in his evidence at exh.14 deposed as under :

“I was serving as Executive Engineer, MSEB (Urban Division), Aurangabad. I was empowered to appoint a person on the post of Line Helper and also to remove him. I received the papers of investigation in crime no.3025/2000 of Police Station City Chowk, Aurangabad. I studied those papers. I have applied

mind and found a necessity to accord a sanction for the prosecution of Shri Tiwari.”

PW2 Shaikh Jalil is complainant. He deposed as under :

“I run STD PCO in one shop and juice centre in another shop. There are two electric meters in both the shops. Before about 25 days of 10-05-1999, the electricity supply of STD PCO shop was off. It was reported on phone at Fuse Call Centre. Lineman Shinde and Tiwari had come for checking. They told that a wire of meter was taken out. They checked meter in both the shops. They told that both the meters are faulty. They advised me to change both the meters and meet Jr. Engineer Shri Patva.

On the next day, one Officer came, He checked the meter. He advised me to change the meter. I learnt that he was Jr.Engineer Patva. He told that I will have to deposit Rs. about 5000 to 6000/- to change the meter.

Lineman Shinde and Tiwari came to my shop and asked me whether I was depositing money or not. I went on saying that I would deposit money. I met Shri Patva in the office. He advised me to change a meter and deposit the money. I told him that I was unable to deposit money. He told me to deposit

Rs.4000/- but I agreed to deposit Rs.2000/-. He said O.K. hence, I returned.

On the next day Shinde again came to my shop. He then made a phone call. He told that Saheb was not there but Tiwari was on phone. He asked me about the money. I told him to have presented a cheque and may get in the afternoon. He then put off the phone. I was prepared to deposit the said amount. I was to pay the said amount to a person making demand.

On 10-05-1999 I had lodged a report in ACB Office.”

PW3 Murlidhar Bhagwat Palkar, shadow pancha, who was working as a Junior Clerk, in his evidence at exh.27, initially deposed about visiting ACB office, meeting P.I. Borse on 11-5-1999, going through the complaint filed by complainant to whom he was introduced, demonstration of application of anthracene powder, necessary instructions issued by Investigating Officer, pre-trap panchanama being drawn. In paragraph 4, he deposed about trap i.e. complainant approaching accused Patwa. He deposed that complainant told Patwa that he has brought Rs.1,000/- and asked whether he should pay him now, upon which Patwa told that he would send

Lineman Tiwari for installing meter and amount be given to him. Tiwari approached shops installed the meters, and told complainant about Patwa demanding Rs.1,000/-. Signatures of complainant were obtained on blank forms exh.23, 24, 25. Complainant gave signal and raiding party carried out the raid.

10. After going through the above evidence, it is emerging that complainant runs a STD PCO Booth and a Juice Center and is a consumer of electricity. His meters were reported to be faulty and therefore, when he approached accused, illegal gratification was said to be demanded and therefore, he lodged report.

Specific defence of accused is that demand and acceptance is not proved, appellant Rasiklal being Junior Engineer, was not authorized to change the meter, rather it was job of Lineman. Evidence of complainant and pancha clearly shows that there was no demand. Complainant was at arrears of electricity bills. Therefore, prosecution launched was itself unwarranted and moreover, conviction recorded is also contrary to the evidence.

11. Here admittedly appellant Rasiklal was Junior Engineer, whereas appellant Balaprasad was Line Helper and as such they both

were employees of the then M.S.E.B.

On carefully going through evidence of PW2 complainant, it is seen that on 10-05-1999, there was no electricity supply to his STD PCO shop and so he lodged complaint. According to him, Lineman Shinde and Tiwari came, checked wire of meter and informed that both meters were faulty and advised him to change meters and to approach Junior Engineer i.e. appellant Rasiklal Patwa.

Next day, appellant Patwa allegedly visited his shop and when he was requested to change the meters, he allegedly told him that he will have to deposit Rs.5,000/- to Rs.6,000/- for changing the meters. Again Lineman Shinde and Tiwari came and asked whether he was depositing money, therefore, he approached appellant Patwa in office. In paragraph 4 of examination-in-chief, his testimony is as under :

“4. Line men Shinde and Tiware came to my shop and asked me whether I was depositing money or not. I went on sayng that I would deposit money. They had visited my shop for about 7 to 8 times duinr period of 10 to 15 days. They had also told me to meet their Officer. I met Shri Patva in the office. He advised me to change a meter and deposit the money. I told him that I was unable to deposit money. He told me to deposit Rs.4,000/- but I agreed to deposit Rs.2,000/-. He said O.K. hence I returned. Ater some days Lineman Tiwari came to my shop. He made a phone call and handed over me a receiver. I did not ask him the name of the other person. I had talked with that person. Sai person asked me about my meter. I told him that I could not raise money.”

In further examination-in-chief, he stated about visit of Shinde asking him to deposit half of the amount i.e. Rs.1,000/- (Shinde is not examined). **He testified that again Shinde visited his shop on next day, made a phone call, told that Saheb was not there but Tiwari was on phone. He asked him about money upon which witness claims to told the person on phone that he has presented a cheque and may get in the afternoon and thereafter, phone was switched off. As he was not ready to give amount to a person making demand, he lodged report exh.22.**

In para 9 of his examination-in-chief, he deposed as under :

“9. We then came at Janta Bazar in a jeep. As per the instruction panch Palkar and me marched towards the phuse call center of Aurangpura, Aurangabad. Shri Patva was sitting there. I wished him. He offered me a chair. He asked me about the work. He told me that my meters are kept there and he would depute Tiwari to install there. He told me to go at shop and he would sent Tiwari. I told Patwa to have brought Rs.1000/- and should I give it. He told me to give it to Tiwari. Then Palkar and me left Phuse Call Center and came on foot at my shop. We sat for some time. Wireman Tiwari came there with one wireman and two meters. Tiwari asked me where to install the meters. I told him that he knows better where to install. Tiwari then installed one meter at pan stall and another meter at Juice Center. He told me to sign some papers. I signed it. He then demanded me money. I took out the tainted notes and held in my right hand before him. He collected those notes by his right hand and kept at the back pocket of his pant. I then transmitted the agreed signal.”

While under **cross-examination**, in paragraph 10, complainant answered that electricity charges of Rs.5,000/- to Rs.6,000/- for a period of ten months of Juice Center was in arrears and he further admitted that appellant Patwa asked him to clear the amount. He admitted that there were no talks between him and Patwa till 11-05-1999. He admitted that on 11-05-1999 appellant Patwa told him that **any of the Lineman Shivaji Shinde and Barsavane** would come to install meters. He answered that appellant Patwa on his own did not talk of money. **He admitted that Patwa told not to pay him money.** He further answered that he had asked appellant Patwa whether he should pay the amount to Lineman upon which appellant Patwa told him to do whatever he likes.

12. On scrutiny of evidence of **PW3**, he testified in para 4 as under :

“4. We then marched by a jeep towards Janta Bazar, Aurangpura, Aurangabad. Sk. Jalil and me then went on 1st floor of gallery know as Nath Super Market. There was a fuse call centre. We found one person sitting in chair. SK.Jalil wished to him while referring him name as Patwas Saheb. I therefore, thought that he was Patwa. Sk.Jalil asked to Patwa what had happened about installation of the meter. Two meters were llying on the table of Patwa. Patwa told that a lineman Tiwari and one more person would come and install the meter. Sk.Jalil told Patwa to have brought Rs.1000/- as settled and should he pay him now. Patwa told him to send

Rs.1000/- to a lineman Tiwari who would install the meter. We then went at the Juse Center of Sk.Jalil in vegetable market. It was about 12.00 noon. At about 1.15 p.m. two persons came there with meter boxes and wire. Sk.Jalil wished them. One of them was Tiwari. Tiwari told Sk.Jalil that Shri Patwa had sent him to install the meter. We then went in another shop of Sk.Jalil. Another man installed a meter there. We then came back to juse center. Said person installed another meter in that shop. Said person who installed the meter left the shop. Tiwari then told Sk.Jallil that Shri Patwa had demanded him Rs.1000/- for installing the meter and give it to him. Tiwari then obtained the signatures of Sk.Jalil on two blank forms. They are now shown to me. They bear out signatures. They are at exh.23, 24, 25. Tiwari collected those forms. Tiwari then demanded money. Sk.Jalil then took out the tainted notes and held before Tiwari. Tiwari collected those notes by his right hand and kept them in the back pocket of his pant. Sk.Jalil then came out of the shop and transmitted the agreed signal.”

In **cross-examination**, in paragraph 10, he admitted that during talk with complainant, he could not know who was to accept the money to change the meters. He admitted that Patwa never had talk about money on his own. That complainant asked he had brought Rs.1,000/- and asked what he should do. Rest is all denial.

ANALYSIS OF EVIDENCE OF PW2 AND PW3

13. PW2 Complainant’s evidence shows that initially two lineman namely Shinde and Tiwari advised him on 10-05-1999 to get both the meters changed and to meet junior engineer Patwa i.e. appellant. According to him, next day, appellant Patwa came, checked the

meters and he too advised him to get the meters changed and further told him that he will have to deposit Rs.5,000/- to Rs.6,000/- for changing the meters. Paragraph 4 of his evidence shows that thereafter, two lineman Shinde and Tiwari came, questioned him whether he was depositing money or not. Again he visited appellant Patwa at his office and again he was advised to change the meters and deposit the money. He expressed his ability to deposit only Rs.2,000/-. After some days, appellant Tiwari came to complainant and seems to have had telephonic talk with one person. He has not named appellant Patwa to be the person with whom he talked. Next day another lineman namely Shinde visited complainant's shop and told him to deposit Rs.1,000/- first. Again on next day, same person namely Shinde seems to have connected call and it was not so called "Saheb" but it was Tiwari and complainant deposed that he was asked about the money.

What is emerging from above testimony of PW2 complainant is that repeatedly, complainant has been asked to deposit amount for changing meters and finally, he was directed to pay Rs.1,000/-, but that too by Lineman Shinde, but Shinde is not examined in this case. His examination-in-chief does not show that there was demand of bribe either by appellant Patwa or appellant Tiwari. Complainant has

admitted about appellant Patwa not directly demanding bribe. He himself has offered appellant Patwa whether he should pay Rs.1,000/-. Further it is noticed from paragraph 10 of cross-examination of PW2 complainant that appellant Patwa had told him that Lineman by name Shivaji Shinde and Barsavane would come to install meters. Admittedly, these two persons did not visit and are also not examined i.e. inspite of visit of appellant Tiwari several times in the company of Shinde. In paragraph 10, PW2 complainant has also admitted that there was no demand by appellant Patwa to pay him money. Consequently, there is no demand by appellant Patwa. Rather evidence suggests talks regarding asking complainant to deposit money for change of meters.

PW3 shadow pancha has also admitted that after approaching appellant Patwa, complainant himself has offered to pay Rs.1,000/- without there being any demand raised by appellant Patwa and this is clear from paragraph 4 of examination-in-chief of PW3 shadow pancha.

Going by above nature of material, apparently there is no demand by appellant Patwa.

14. As regards to appellant Tiwari, he is admittedly a Line Helper.

In paragraph 6, PW2 complainant deposed about talking with appellant Tiwari on phone dialed by Lineman Shinde. As stated above, Shinde is not examined. In paragraph 6, PW2 complainant has stated that he asked about money. In paragraph 4 of examination-in-chief, PW2 complainant has already admitted that Shinde and appellant Tiwari, after visiting his shops, asked him whether he was depositing money or not. Therefore, taking such material into account, there is also no convincing evidence that Tiwari accepted Rs.1,000/- at the behest of appellant Patwa, who admittedly has never put up demand.

On the contrary, what is emanating from the evidence is that for changing meters, complainant is directed to deposit amount. He also has admitted that he fell in arrears of electricity bills and was directed to clear the same. Therefore, regarding payment of money, there are other reasons for PW2 complainant to pay, which complainant has not refuted.

Thus, here from above discussed evidence, prosecution version fails to inspire confidence as regards to demand of bribe. There is nothing to show that appellant Patwa and appellant Tiwari acted in concert and amount accepted by appellant Tiwari on behalf of appellant Patwa was only and only illegal gratification and bribe.

15. Learned Counsel for appellants have also raised ground that there is non-application of mind by sanctioning authority and sanction is granted in mechanical manner. He invited attention of the Court to answers given by PW1 sanctioning authority in cross-examination.

Cross-examination of this witness PW1 sanctioning authority does go to show that he got draft sanction typed and signed over it. His such answer creates doubt as to whether before according sanction, he really applied independent mind or not.

SUMMATION

16. To sum up, here there is no demand. There is no acceptance by appellant Patwa. Complainant himself seems to have offered amount without there being any demand. Sanction is apparently based on draft received by PW1 sanctioning authority. For above reasons, prosecution version comes under shadow of doubt.

17. Perused the impugned judgment. The above aspects do not seem to have been appreciated. Answers given by witnesses in cross-examination are also not appreciated in correct manner and hence, interference is called for as case is not proved beyond reasonable doubt. Accordingly, I proceed to pass following order.

ORDER

I) Criminal Appeal Nos.812 of 2004 and 813 of 2004 are allowed.

II) The conviction awarded to appellant – Rasiklal Indrabhan Patwa for the offence punishable under Sections 7, 13(1)(d), 13(2) of the Prevention of Corruption Act, and the conviction awarded to appellant – Balaprasad Bhikulal Tiwari for the offence punishable under Section 12 of the Prevention of Corruption Act, by the learned Special Judge, Aurangabad on 29-11-2004 in Special Case No.1 of 2000, stands quashed and set aside.

III) The appellants stand acquitted of the offence punishable under Sections 7, 13(1)(d), 13(2) and 12 respectively of the Prevention of Corruption Act.

IV) **The bail bonds of 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)
JUDGE