



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

CRIMINAL APPEAL NO. 787 OF 2004

Kiran S/o Madhukarrao Bhavsar
Age: 34 years, Occu.: Service
as Stenographer in the office
of the Sub-Divisional Officer,
Osmanabad, Tq.Osmanabad,
Dist.Osmanabad.

..Appellant

Versus

The State of Maharashtra

..Respondent

.....
WITH

CRIMINAL APPEAL NO. 840 OF 2004

Vijaykumar s/o Dhanyakumar Pawar
Age: 30 years, Occu.: Service as Talathi
on Deputation in the Office of
Sub-Divisional Officer, Osmanabad,
R/o.Tuljapur, Tq.Tuljapur,
Dist.Osmanabad.

..Appellant
(Orig. Accused No.2)

Versus

The State of Maharashtra

..Respondent

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Advocate for Appellant in Cr. Appeal 787/2004 : Mr. M.A.Tandale
Advocate for Appellant in Cr. Appeal 840/2004 : Ms.Pradnya Talekar
h/f. Talekar & Associates
APP for Respondent-State : Mr.S.M.Ganachari

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 12 MARCH, 2024

PRONOUNCED ON : 22 MARCH, 2024

JUDGMENT :-

1. Both convicts for offence under Sections 7, 13(1)(d) r/w Section 13(2) and Section 12 of the Prevention of Corruption Act (PC Act) respectively are hereby questioning judgment and order passed by learned Special Judge, Osmanabad in Special Case (A.C.) No.8 of 2001 dated 29-11-2004.

FACTS IN NUTSHELL

2. PW1 Balasaheb Kutwal, complainant purchased land on 13-01-1983. On his application, mutation entry was certified on 19-03-1996 showing his name in record of rights as the owner. The original vendor Datta Gawali questioned the mutation entry before Sub-Divisional Officer (SDO), Osmanabad seeking cancellation of mutation entry. Proceedings were pending before SDO, Osmanabad of which notice was served on complainant. His Advocate furnished written arguments. Accused no.1, who was working as a Stenographer of the SDO, sent a message to complainant to meet him and so he contacted accused no.1 one month prior to Gudi Padwa. Accused no.1 told that he would recommend SDO for giving favourable decision but for that purpose he demanded Rs.5,000/-.

Complainant responded by saying that land of the price itself was Rs.1,250/- and that demand of Rs.5,000/- was exorbitant and he returned back to Tuljapur. Again complainant received a message through one Sutar, a Clerk from Tahsil Office and he was again asked to contact accused no.1 and so complainant met accused no.1 again upon which accused no.1 told that he would take favourable decision on payment of Rs.3,000/-. Accused no.1 told that it was his own fees. That as complainant was not intending to pay bribe, he approached Anti Corruption Bureau (ACB), who entertained his complaint exh.14, carried out further formalities by arranging pancha and complainant and shadow panch went together to pay bribe on demand. When they approached accused no.1 at SDO Office, Osmanabad, complainant asked whether he should tender application for getting certified copy of decision upon which accused no.1 asked whether he brought the amount as settled. Accused no.1 called accused no.2 Vijaykumar Pawar, who was working in SDO Office and he directed complainant to pay amount to accused no.2 and therefore, complainant, shadow pancha, accused no.2 went to a canteen and there accused no.2 demanded amount and thereafter, caught by raiding party.

PW5 Kalidas Shankarrao Suryawanshi, Investigating Officer,

carried out investigation, sought sanction and chargesheeted both accused, who were tried by learned Special Judge, Osmanabad and on analyzing and appreciating evidence, they both held guilty for the offence stated above.

Said judgment of conviction is now taken exception to by filing instant appeal.

SUBMISSIONS

On behalf of appellant no.1 :

3. Claiming false implication and innocence, learned Counsel Shri Tandale, apprised this Court about background of prosecution case. According to him, complainant deposed about receiving message from accused no.1 to meet him, but through whom said message was received has not been clarified. That even alleged contact between complainant and accused no.1 was one month prior to Gudi Padwa of the year 2001. That demand of bribe was said to be raised at that time, but there was no prompt complaint in that regard. Rather complaint is filed after over one month. That infact accused no.1 had never contacted complainant personally. According to learned Counsel, there cannot be any assurance for giving favourable judgment as accused no.1 is mere a Stenographer and not decision

making authority and therefore, there was no question of assuring favourable order. According to learned Counsel, there is no demand as contemplated under the PC Act. The aspect of very voluntariness is missing. He strenuously submitted that even accused no.1 has not accepted any amount and therefore, he ought not to have been convicted.

4. He further submitted that here even sanction is invalid as there is no proper application of mind and rather draft sanction has been reproduced in verbatim. That Law does not recognize such sanction to be valid. On this count, he invited attention of this Court to the testimony of PW4 Karle, Sanctioning Authority and the answers given by this witness in cross-examination.

5. Lastly, it is his submission that prosecution has not established its case beyond reasonable doubt. The primary and fundamental burden has not been discharged by prosecution. Prompt statement given by accused no.1, which carried due weightage has been not appreciated by learned trial Judge. Even answers given by prosecution witnesses in cross-examination are not correctly appreciated and so he prays to allow the appeal by setting aside the judgment under challenge.

6. Learned Counsel in support of above submissions seeks reliance on following rulings :

- (a) *P. Satyanarayana Murthy v. The Dist. Inspector of Police & Anr., 2015 ALL SCR 3171.*
- (b) *Mohd. Iqbal Ahmed v. State of A.P., Air 1979 SC 677*
- (c) *State of Maharashtra, Through C.B.I. v. Mahesh G.Jain, 2014 ALL SCR 177.*
- (d) *C.B.I. v. Ashok Kumar Aggarwal, AIR 2014 SC 827.*
- (e) *State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede, 2009 ALL MR (Cri) 3127 (S.C.)*
- (f) *Mukhtiar Singh (Since Deceased) Through His Legal Representative v. State of Punjab, (2017) 8 SCC 136.*
- (g) *Panalal Damodar Rathi v. State of Maharashtra, AIR 1979 SC 1191.*
- (h) *B.Jayaraj v. State of A.P., 2014 ALL SCR 1619.*
- (i) *Ram Prakash Arora v. The State of Punjab, AIR 1973 SC 498*
- (j) *Judgment of this Court dated 12-05-2023 in Criminal Appeal No.338 of 2011 (Rahim Baig Mirza Baig Mogal v. The State of Maharashtra).*
- (k) *Devidas Harichandra Bhaskar v. State of Maharashtra, AIROnline 2020 Bom 2379.*
- (l) *Judgment of this Court dated 21-02-2024 in Criminal Appeal No.277 of 2005 (Mohd. Abdul Naim Mohd. Abdul Halim v. The State of Maharashtra).*
- (m) *Judgment of this Court dated 21-02-2024 in Criminal Appeal No.120 of 2002 (Mahadeo S/o. Sawalaram Tingre and Another v. The State of Maharashtra).*

On behalf of appellant no.2 :

7. Questioning the impugned judgment, Ms.Pradnya Talekar, learned Counsel for accused no.2 would submit that charge against accused no.2 is of only Section 12 of the PC Act. That for attracting said charge, prosecution has to demonstrate and substantiate that there is intentional abetting. There is heavy burden on prosecution to prove availability of necessary ingredients of Section 107 of the IPC. She further submitted that in such circumstance, onus on accused is only to probabalize his defence and that burden on accused is not as high as it is on prosecution. She pointed out that accused no.2 has no nexus with alleged work between complainant and accused no.1. His mere acquaintance with accused no.1 would not make him liable. She further pointed out that there is nothing to show that accused no.2 was even party to any of the conversations between complainant and accused no.1. She strenuously submitted that mere acceptance of amount without knowledge as to said cash was towards bribe, would not itself be sufficient to tie him down unless it is shown that he has connived with main accused or has abetted in any form payment of illegal gratification.

On behalf of State :

8. In answer to above, learned APP submitted that complainant was facing revenue proceedings. He on his own never approached revenue authorities, who were deciding his proceedings. That accused no.1 himself sent a message and called complainant and assured to get decision in his favour, but on payment of gratification. That twice he had called complainant. Initial demand of Rs.5,000/- as bribe was finally brought down to Rs.3,000/- by assuring favourable decision by accused no.1. That accused no.1 was merely a Stenographer. That complainant was forced to believe him. However, complainant was not interested in paying bribe and therefore, he approached ACB, who planned trap, laid trap and succeeded in the same. He further submitted that on behalf of accused no.1 amount was accepted by accused no.2, a Talathi. There is demand as well as acceptance in presence of shadow pancha. They both are consistent. That their testimonies have remained unshaken as regards to demand and acceptance is concerned. That essentials for commission of offence were complete and therefore, both accused were caught raid-handed. That they were duly chargesheeted. That there is no plausible explanation by any of them while answering questions under Section 313 of the Code of Criminal Procedure. That

there is overwhelming evidence about demand, acceptance as well as abetment. Learned trial Court has appreciated prosecution evidence carefully and minutely and by applying correct law, guilt has been recorded. No illegality or perversity is brought to the notice so as to interfere and hence, he prays to dismiss the appeal.

EVIDENCE ADDUCED IN TRIAL COURT

9. Status and sum and substance of the prosecution witnesses is as under :

10. **PW1** Balasaheb Sarjerao Kutwal claims that he purchased agricultural land at Tulajapur from Datta Gawali and on the strength of sale deed, on his application, mutation entry was certified and his name appeared in record of rights as owner. Original vendor challenged the same before SDO and so he engaged Advocate, who put up his written arguments. He received message from accused no.1, Stenographer of SDO, to meet him and accordingly, when he went, accused no.1 told that he would recommend SDO to give favourable judgment but for that purpose he demanded Rs.5,000/-. Finding the amount huge, complainant returned back to Tuljapur. However, again he received message from accused no.1 through one

Clerk namely Sutar. Therefore, he again contacted accused no.1, who told that his work would be done for Rs.3,000/-. Complainant claims that he got assured whether the amount was to be parted to SDO, but accused no.1 told that it was his own fees. On getting confirmed that accused no.1 was demanding bribe, and not legal fees and as he was not intending to pay bribe, he approached ACB, who noted his complaint and arranged trap. When he and shadow pancha approached accused at SDO Office, accused no.1 was asked whether there is need for tendering application for copy, accused no.1 again asked whether amount has been brought and on answering in affirmative, accused no.2 was called and complainant was asked to pay amount to accused no.2, who took complainant, shadow pancha for taking tea. There again complainant asked whether his work would be done, accused no.2 also assured that it would be done and thereafter, he accepted the tainted currency, pre-determined signal was given and raiding party caught accused no.2 and subsequently accused no.1 also.

11. **PW2** Waman Ganpatrao Kadam, SDO deposed that accused no.1 was serving as a Stenographer. That being SDO, he is appointing as well as removing authority of Talathi. On 06-04-2001,

ACB authorities sent him letter and papers seeking sanction to prosecute accused no.2. After minutely studying the papers, he issued sanction order.

12. **PW3** Marotirao Raoji Koprekar, shadow pancha stated that he was instructed to attend ACB office, introduced to complainant, apprised about his grievance, he and complainant apprised about the procedure of application of anthracene powder to the currency, which was to be paid on demand. Pre-trap panchanama being drawn and he and complainant visiting SDO office. Accused no.1 interacted with complainant regarding need for application. Accused no.1 asked whether he brought the amount. This witness stated that he also requested for reduction of amount to which accused no.1 refused. Accused no.1 assured and guaranteed to do the work within two days, accused no.1 called accused no.2 and asked him to accept the money. He complainant, accused no.2 proceeded to canteen. Again complainant getting assured about his work and accused no.2 also giving assurance and then at Pan stall, accused no.2 asking complainant to pay amount to him, accepting it and thereafter, signal being given and ACB authorities apprehending accused no.2 and ACB authorities completing further formalities.

13. **PW4** Shirish Namdeorao Karle, Sanctioning Authority of accused no.1, deposed that he received papers from ACB, studied the file, got himself satisfied and then issued sanction order.

PW5 Kalidas Shankarrao Suryawanshi and **PW6** Dilip Chintamanrao Shephal, are the Investigating Officers.

ANALYSIS

14. Challenge of accused no.1 is primarily on the ground that he is a mere Stenographer. There is inordinate delay in lodging complaint. He personally did not accept bribe. Question is also raised about validity of sanction as Sanctioning Authority allegedly referred draft.

15. On complete re-appreciation of complainant's evidence, it is emerging that he is a party to revenue proceedings instituted by the vendor from whom he allegedly purchased land. In substantive evidence, complainant speaks about he receiving message from accused no.1 to come and meet him and when he went, accused no.1 told him that he would recommend SDO for giving a decision in his favour and thereby demanded Rs.5,000/-. Complainant claims that he expressed his inability, demand being huge and returned back to

Tuljapur. His evidence further shows that second time, complainant received message through a Clerk working in Tahsil Officer, whose name is also given in the evidence, to come and see accused no.1 and that time demand was brought down to Rs.3,000/-. Complainant very specifically deposed that he got himself confirmed that the amount demanded was not any fees but it was a bribe and so he contacted ACB. As far as demand part is concerned, obviously complainant is the only witness, but on visiting cross-examination faced by him, there does not seem to be any serious challenge regarding above testimony pertaining to demand.

Submission made in appeal that he was mere a Stenographer and was not a decision maker and therefore, there is no question of giving assurance, has no force. Accused no.1 is admittedly a Stenographer to SDO. As stated above, he has not once but twice on his own sent message to complainant and after complainant approached him, he has assured favourable judgment but on paying bribe of Rs.5,000/-. Consequently, submission made before this Court that there is no reliable evidence about demand has no substance.

16. Complainant has categorically stated as he was not inclined to

pay bribe, he approached ACB and lodged complaint and then ACB authorities conducting further procedure of planning and arranging trap, procuring services of shadow pancha. Therefore, here there is clear evidence that by assuring favourable judgment in a revenue proceedings, accused no.1, a Stenographer attached to the authority, who was to decide the proceedings, has put up demand of bribe.

17. As regards to acceptance is concerned, again we need to fall back on the testimony of PW1 Balasaheb, complainant as well as that of PW3 Marotirao, shadow pancha.

PW3 Marotirao, shadow pancha has also in his substantive evidence narrated about his visit to ACB, being introduced to complainant, going through the complaint, ACB authorities explaining both of them procedure, drawing pre-trap panchanama and both PW1 Balasaheb, complainant and PW3 Marotirao, shadow pancha made to go together to pay bribe on demand. Evidence of PW3 Marotirao is also remained virtually unshaken. He is an independent witness. He had no axe to grind. There is no reason for falsely deposing nor there is any specific suggestion to this witness while under cross-examination.

18. PW1 Balasaheb, complainant and PW3 Marotirao, shadow pancha are consistent that at around 05:20 p.m. they reached SDO Office. They both are further consistent about complainant and accused no.1 greeting each other. According to complainant, he initially asked whether he should tender any application for copy of decision upon which accused no.1 asked whether amount is brought as settled and when it was answered in affirmative, accused no.1 called accused no.2, who was also working in SDO Office. Accused no.2 came and stood near accused no.1. PW3 Marotirao, shadow pancha asked accused no.1 as to whether decision would be in favour on accepting the amount and thereafter, accused no.1 gave assurance that there is guarantee of the decision to be in his favour and thereafter, accused no.1 asked complainant to pay amount to accused no.2. Thereafter, complainant, shadow pancha, accused no.2 went to take tea. There again complainant asked accused no.2 whether decision would be in his favour upon which accused no.2 said that accused no.1 is a nice person and after he gets the amount, there is guarantee that decision would be in his favour. At Pan stall, accused no.2 was asked whether amount should be paid to him upon which accused no.2 asked him to give him amount. On handing over the amount, accused no.2 accepted in right hand, counted it and

thereafter, signal was given.

PW3 Marotirao, in paragraph 3 of his examination-in-chief has narrated like PW1 Balasaheb about accused no.1 interacting with complainant regarding copy application, accused no.1 asking whether amount is brought. There was attempt by PW3 Marotirao to get the amount minimized, but it was refused by accused no.1. Even PW3 Marotirao seems to have sought assurance from accused no.1 about favourable decision. Thereafter, accused no.1 called accused no.2 and asked him to accept the amount from PW1 Balasaheb, after which they went to take tea and there PW1 Balasaheb asking accused no.2 as to whether accused no.1 would do his work with guarantee upon which accused no.2 told that there is guarantee that accused no.1 would do the work. At Pan stall, complainant asked accused no.2 whether he should pay amount to him upon which accused no.2 told to give amount to him and even accepted and counted it.

Resultantly, PW1 Balasaheb and PW3 Marotirao are lending support to each other on all crucial aspects of demand being made, accused no.2 being called by accused no.1 and he being told by accused no.1 to accept the amount from complainant and he did accept the amount.

Though PW1 Balasaheb and PW3 Marotirao are subjected to

extensive cross-examination, the above deposition of PW1 Balasaheb and PW3 Marotirao is not rendered doubtful.

19. To sum up on the issue of demand of illegal gratification sought by accused no.1, there is clinching evidence that in capacity of Stenographer to the SDO, who was seized with proceedings initiated against complainant, twice complainant was approached and called on assurance of favourable decision and in that background, demand of bribe was sought. Complainant has lodged prompt complaint. Both pre-trap and post-trap panchanamas are successful. On the day of trap, accused no.1 directed complainant to pay amount demanded to accused no.2 on his behalf. Hence, there is both demand as well as acceptance.

20. Learned Counsel for the appellants have burdened this Court with as many as 13 citations. They are on the settled legal position of which there is no dispute. Firstly facts in those cases and the case in hand cannot be equated.

In the rulings of *Devidas Harichandra Bhaskar* (supra) as well as *B.Jayaraj* (supra) there were repeated raids. Accused himself was not shown to be present in the office and raids being repeated, serious doubt was entertained in each of the above cases respectively.

Here facts are otherwise. Hence, this ruling does not come to rescue of appellants herein.

In second ruling of *P. Satyanarayana Murthy* (supra), prosecution had failed to prove very demand. Hence, judgment and order of conviction was set aside. Here PW1 Balasaheb and PW3 Marotirao, who were party to the demand, are both in unison deposing about complainant seeking assurance and it being given and demand being made. Consequently, even said ruling is of no avail to the appellants.

In the rulings of *Mohd. Iqbal Ahmed* (supra) and *Ashok Kumar Aggarwal*, (supra) and *Mahesh G.Jain* (supra) sanction was not valid and therefore, conviction was not upheld. Here sanction is valid. Therefore, even said rulings do not come to the aid of appellants.

Likewise, in the ruling of *Panalal Damodar Rathi* (supra), very version of complainant regarding conversation with accused was found to be not consistent and Hon'ble Apex Court entertained grave suspicion about prosecution case. Hence, accused was acquitted. Here, PW1 Balasaheb, PW2 Marotirao, as stated above, are consistent. There is no infirmity. Demand and acceptance is proved.

In the ruling of *Mukhtiar Singh (Since Deceased) Through His*

Legal Representative (supra) prosecution had failed not only on crucial aspect of demand and acceptance, but there were material contradictions in the prosecution witnesses. Therein prosecution had also failed to prove their case beyond reasonable doubt. In the case in hand, it is not so and it is infact otherwise.

21. As regards to learned Counsel for accused no.2 is concerned, her argument is that accused no.2 has no concern with the matter. He has been charged and held guilty for commission of offence under Section 12 of the PC Act. That there is no evidence about abetment or aiding and that he is not a party to the demand and he intentionally did not accept the amount knowing to be bribe amount.

After carefully examining the role of accused no.2, which is emanating from testimony of PW1 Balasaheb and PW3 Marotirao, in the considered opinion of this Court, the above submission also has no force for the simple reason that, evidence of PW1 Balasaheb, complainant clearly shows that after meeting accused no.2, complainant got himself reassured that accused no.1 would do the work. He was present when accused no.1 instructed complainant to pay the amount to him and he has accompanied by PW1 Balasaheb, complainant, PW3 Marotirao, shadow pancha for tea. At the canteen also accused no.2 was asked by complainant whether decision would

be in his favour upon which accused no.2 told that accused no.1 is a nice person and after he gets the amount, there is guarantee that decision would be in his favour. After being asked by complainant, whether amount should be paid to him, he has categorically asked complainant to pay amount to him. He not only accepted currency but even counted it.

PW3 Marotirao, pancha witness, who is also party to the meeting with accused no.1, accompanied accused no.2 to canteen to have tea and interaction between complainant and accused no.2, which took place at Pan stall, and complainant asking whether he should pay amount to him and accused no.2 telling complainant to pay amount to him and further accepting it, confirms that accused no.2 is well aware that he is accepting amount on behalf of accused no.1.

Therefore, with such material, it is not open for him to agitate on the ground that he is not a party to demand and nor a party to the work. His role, more particularly of inducing PW1 Balasaheb and reassuring him that accused no.1 is a nice person and that his work would be done, itself is sufficient to bring him under Section 12 of the PC Act.

22. As regards issue of invalid sanction raised by learned Counsel

for accused no.1 is concerned, also, this Court is not impressed that there is non-application of mind and mere draft has been used by Sanctioning Authority. Though Sanctioning Authority has received a copy of draft, it has not been brought in the evidence of Sanctioning Authority that virtually draft has been reproduced and that there is no application of mind. Both Sanctioning authorities i.e. of accused no.1 and of accused no.2 are found to be very categorical about studying the papers and then granting sanction. Consequently, even above ground raised before this Court has no significance.

CONCLUSION

23. None of the ground raised by each of the Counsel is convincing so as to interfere in the conclusion reached at by trial the Court. Findings no merits in the appeals, following order is passed :

ORDER

Criminal Appeal Nos.787 of 2004 and 840 of 2004 are hereby dismissed.

(**ABHAY S. WAGHWASE**)
JUDGE

24. On pronouncement of this Judgment, Mr.Tandale, learned Counsel for appellant in Criminal Appeal No.787 of 2004 and Mr.Ajinkya Kale, learned Counsel holding for M/s.Talekar and Associates for appellant in Criminal Appeal No.840 of 2004 pray for six weeks time to surrender so as to enable them to approach the Hon'ble Apex Court.

25. Learned APP strongly opposes the same.

26. Considering the above request made by both the learned Counsel for the appellants, six weeks time is granted for the appellants to surrender.

(ABHAY S. WAGHWASE)
JUDGE