

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 9 OF 2013

The State of Maharashtra
(Through Police Inspector,
Anti Corruption Bureau,
Kolhapur)

...Appellant

Versus

1. Siddhu Dhondiram Lokare
Age : 44 Years, Occu. : Service,
R/o. : Senapati Kapshi,
Taluka : Kagal, District : Kolhapur.

2. Rajaram Appaji Sankpal
Age : 46 Years, Occu. : Tea Kiosk
Owner, R/o. : Nebapur,
Taluka : Panhala, District : Kolhapur.

...Respondents

Mr. H. J. Dedhia - APP for Appellant - State.
Mr. Ganesh K. Gole a/w Mr. Bhavin Jain and Mr. Ateet Shirodkar -
Advocate for Respondent Nos. 1 and 2.

CORAM : S. M. MODAK, J.

DATE : 25th JANUARY 2024

JUDGMENT :-

1. Heard learned APP for Appellant - State and learned
Advocate Shri. Gole for both the Respondents.

2. The Special Court under Anti Corruption Bureau -
Kolhapur as per the judgment dated 24th December, 2010 has
acquitted both these Respondents for the offences under

Sections 7, 13(1)(d) read with 13(2) and under Section 12 of the Prevention of Corruption Act, 1988 [hereinafter "PC Act"]. Accused No.1 is a public servant working as Police Naik at relevant time at Panhala Police Station - Kolhapur. Whereas, Accused No.2 is an owner of the tea stall located near Panhala Police Station. The background facts for lodging Complaint to Anti Corruption Bureau are as follows:-

- a. Being a public servant, Accused No.1 was conducting an enquiry in respect of a complaint made by one Tatoba Akaram Jadhav, a resident of Panhala Taluka (In this appeal we are not concerned with the grievance made in that complaint but it has relevance only as a background fact).
- b. The said complaint was filed against the *de-facto* Complainant - PW No.1 - Suresh Balwant Patil.
- c. The said Suresh Patil works in State Transport Department as a driver.
- d. An allegation made by the said Jadhav against said Patil is "on 20th July, 2006, the said Patil beat the said Tatoba Jadhav."
- e. The allegation in ACB Complaint is when the Accused No.1 called the *de-facto* Complainant - Suresh Patil in pursuance to the enquiry, he demanded an illegal gratification of Rs.5,000/- (Rupees Five Thousand) for not taking an action.

3. The facts leading to filing complaint to the office of A.C.B., are as follows :--

- a. This first demand for Rs.5,000/- was made at Panhala Police Station on 23rd August, 2006 for not taking an action. There was insistence from the side of the appellant to pay at least Rs. 1,500/-.
- b. Somehow, *de-facto* Complainant paid Rs.1,000/- (Rupees One Thousand). He paid Rs.500/- from his own funds and Rs.500/- from his neighbour Krishnat Dnyanu Patil who also accompanied him at that time.
- c. There is further allegation that Accused No.1 time and again telephoned one Ishwara Tukaram Patil who is uncle of *de-facto* Complainant.
- d. It has not appealed to the conscious of *de-facto* Complainant and that is why, he approached the Anti Corruption Bureau on 3rd October, 2006. His complaint was reduced into writing.
- e. The complaint was recorded by PW No.4 - P. I. - Vasant Bapuso Bagal.

4. The events that took place after lodging of Complaint are as follows:-

- a. He completed the initial formalities of calling the panchas, making them aware about the allegations, exercise about applying anthracene powder and its effect through ultraviolet lamp.

- b. Pre-trap, panchnama was prepared on 4th October, 2006. *De-facto* Complainant produced five tainted currency notes of Rs.100/- (Rupees Hundred) denomination.
 - c. Then, trap was arranged at Panhala Police Station and all raiding party members went there.
 - d. PW No.2 - Dnyanadev Dagadu Mane working in Industrial Training Centre - Kolhapur was one of the pancha (Page No.102).
5. The events that took place at the time of trap are as follows:-
- a. PW Nos.1 and 2 both went inside Panhala Police Station. As instructed, PW No.1 initiated the introductory talks with the Accused No.1.
 - b. Accused No.1 made an enquiry with *de-facto* Complainant about Rs.500/- and when answered in the positive, all the three went near tea stall behind Police Station.
 - c. All of them have taken a cup of tea. Accused No.1 instructed *de-facto* Complainant to handover the amount to one Rajaram Appaji Sankpal who is an owner of the tea stall and who is Accused No.2.
 - d. Accused No.1 instructed Accused No.2 to keep that amount with him and later on, he will collect it.
 - e. As instructed, *de-facto* Complainant paid tainted

currency notes to Accused No.2. He kept that amount in one tiny aluminium tin box. Accused No.1 went to Police Station.

- f. On signal being given by PW No.1, the other raiding party members arrived there. PW No.1 was asked to leave the spot and he left.
 - g. The raiding party members headed by PI Bagal - PW No.4 along with the assistance of another panch has examined the tin box and tainted currency notes were found and its identity was also confirmed. Then all came to the Police Station.
 - h. Accused No.1 was present there. His hands and clothes were examined. They have not shined.
 - i. The hands of accused No. 2 were inspected and they have shined.
 - j. On this background, P.I. - Wakade filed complaint against both the Accused.
6. After investigation, he sought a sanction from Sanctioning Authority who is PW No.3 - Mr.Sukhawindar Singh. There was a delay in granting sanction. Charge-sheet was filed under section 7, 13(1)(d) read with Section 13, Section 12 of the Prevention of Corruption Act against both the Accused.

Prosecution witnesses

7. During trial, the Prosecution examined the following four witnesses :-

- (i) PW No.1 - Suresh Balwant Patil - *de-facto* Complainant.
- (ii) PW No.2 - Dnyanadev Dagadu Mane - Trap panch.
- (iii) PW No. 3 - Sukhawindar Singh - Sanctioning Authority.
- (iv) PW No.4 - Vasant Bapurao Bagal - Investigating Officer.

Findings by the trial Court

8. The trial Court was pleased to acquit both the Respondents. There was an acquittal on following grounds :-

- (a) The foundational facts were not proved so to say the complaint of Jadhav in pursuance to which, *de-facto* Complainant was called was not traced out (this was admitted by the IO PW No.4 on internal Page No.14). There is not a single material to show that in fact, even oral complaint was made.
- (b) Even when the Investigating Officer - PW No.4 tried to collect those papers, P.I. - Panhala Police Station informed there is no such complaint found from the record. The reply dated 17th November, 2006 is at Exhibit-36. PW No.3 has admitted that he has not verified whether Accused No.1 was in charge of the bit or not at the relevant time. During his cross examination, PW 3 has also stated that there is a report by PI Waghmode of Panhala Police Station dated 17th November, 2006. He had also seen that letter.
- (c) The evidence on the point of pre-trap demand on 23rd August, 2006 was found unsatisfactory. It is for

the reason that the person Krishnat Patil accompanying *de-facto* Complainant was not examined and his evidence was not tendered.

- (d) There are materials produced by the Accused No.1 to show that in fact, on 23rd August, 2006, he was not present in the Police Station and station diary to that effect showing that he had gone to Kolhapur for some official work were produced during statement under Section 313 of the Code of Criminal Procedure, 1973 (para number 15 of the judgment). Even IO has admitted that he has made any investigation where Accused No.1 was appointed on 23-10-2006.
- (e) On the point of events that took place on the date of trap i.e. 4th October, 2006, the trial Court found inconsistency in between the evidence of PW No.1 and PW No.2. It is on the point about presence of Accused No.1 at the time of handing over tainted currency notes. (internal page 23 of the judgment
- (f) Trial Court noticed that PW No.1 gave instructions to *de-facto* Complainant to pay the amount to Accused No.2. Whereas, as per PW No.2 accused No.1 has not made demand of the bribe from the *de-facto* complainant.
- (g) Trial Court found the sanction defective for the reason that the Sanctioning Authority has not verified about absence of complaint filed by one Tatoba Jadhav with Panhala Police Station.
- (h) Sanction was granted on 19th June, 2007. This was

not as per the direction given by Government of Maharashtra Gazette dated 20th April, 2002. (Page No.253). There was a delay in according sanction. Trial Court observed delay must be explained. PW No.3 admitted that he granted the sanction after 3 months. (Page No.138).

- (i) The identity of that box that is to say the box which was actually seized and the box which was produced, there is variance. (Page No.251).
- (j) There was no official work pending with the Accused No.1 which will induce him to demand an illegal gratification.

9. Learned APP from the record tried to convince me that the observations are erroneous and there is no proper appreciation of evidence. According to him, first time money was demanded on 23rd August, 2006 and even though there are certain lapses in collecting the materials, why the Prosecution theory of acceptance of the amount by Accused No.2 should not be believed.

10. Whereas, learned Advocate Shri.Gole for both the Respondents submitted that the trial Court has appreciated the evidence properly, the judgment is reasoned one. The inferences drawn by the trial Court were proper inferences and no interference is warranted. Mere recovery will not be useful

unless the ingredient of demand and acceptance are proved. To buttress his submission, he relied upon following two judgments :-

- (i) ***B. Jayaraj v/s. State of Andhra Pradesh***¹
- (ii) ***Soundarajan v/s. State Rep. by the Inspector of Police Vigilance Anti Corruption Dindigul***²

11. With the assistance of both of them, I have gone through the judgment. What I find is that it is most reasoned judgment. What I found is that the inferences drawn by the learned Judge are obvious inferences on the basis of the proved facts. No doubt, there is presumption under Section 20 of PC Act relating to accepting gratification but before drawing that presumption, the foundational facts needs to be proved. The foundational facts mean to say the evidence on the point of demand should be trustworthy as well as satisfactory. The evidence adduced on the date of trap should also be trustworthy, immune from omissions and contradictions.

12. It is always said that *de-facto* Complainant is considered as an interested witness just like an accomplice. So, law expects some sort of corroboration to his testimony. That is why, there is practice of calling government servants from

¹ (2014) 13 Supreme Court Cases 55

² Criminal Appeal No. 1592 of 2022 : 17th April, 2023 : Supreme Court of India

other departments. Law expects the consistency in between the evidence of such *de-facto* Complainant and the independent panch witnesses. It is true that on some occasion, due to error of understanding about the facts and error in grasping the facts, there may be certain inconsistencies in between the evidence of these two witnesses. If they relate to minor particulars, Court does not give weightage to them but if relates to the particulars which are major in nature and which affects the Prosecution case, then these variances assumes importance. However in this case, what I find is that even though inconsistencies in between the contents of trap panchnama on one hand and the evidence of trap panch PWNo.2 on the other hand do not pertain to major aspects, still PWNo.2 was declared hostile. In fact it ought not to have been done.

About complaint lodged against de-facto Complainant.

13. What I further find is that the background relied upon by the Prosecution which induced the Accused No.1 to demand an illegal gratification could not be proved in any manner. When *de-facto* Complainant Shri.Suresh Patil deposed that he was called by Accused No.1 for inquiry in relation to a complaint

filed by Tatoba Jadhav, at least the Investigating Agency ought to have collected a single piece of evidence to support that allegation. Learned Advocate Shri.Gole is right in his submission that neither the Investigating Agency has taken pains in verifying about the lodging of complaint by said Jadhav nor collected the documentary evidence from the Local Police. In fact, there is a letter dated 17th November, 2006 written by the P.I. - Panhala Police Station to Anti Corruption Bureau. It was informed in their record, no such complaint by said Jadhav was found. If such complaint is not at all there, then 'why Accused No.1 has called de-facto Complainant for an enquiry' is an issue. It may also happen that the said Jadhav could have lodged oral complaint and that is why, Accused No.1 might have called the de-facto Complainant. But, the Prosecution cannot take that benefit for the simple reason that this fact is not justified by inquiring with the said Jadhav. He is not examined as a witness. This creates a doubt about the case lodged by the Prosecution on the complaint of said PW No.1.

Evidence on the point of demand

14. Now, when the question of appreciating the evidence on the point of first demand arises. This demand was made on

23/8/2006 when the *de-facto* Complainant went to police station. He was accompanied by Krishna Patil. But he waited outside. But he paid Rs.500/- to *de-facto* Complainant who in turn paid that amount to Accused No. 1. For two reasons the Prosecution case cannot be relied upon.

First, there are materials available to put a full proof case before the trial Court. It is by way of enquiry with the said Krishnat Patil. *De-facto* Complainant himself has mentioned in his complaint dated 3rd October, 2006 (Page No.99) that he took Rs.500/- from the said Krishnat Patil. P.W. No.4 admits about not recording the statement of the witnesses accompanying Accused No.1 on 23rd August, 2006. So, what prevented the Investigating Officer to make an enquiry with the said Krishnath Patil. For the reason best known to them, no such enquiry has been conducted and the trial Court has emphasized on this *lacuna*. It is in Para Nos.17 of the impugned judgment.

15. There is one more reason to doubt the theory of the first initial demand of Rs.5,000/- and insistence on Rs.1,500/- on 23rd August, 2006. There are certain extracts of station diary from Panhala Police Station of the date 23rd August, 2006 produced in a statement recorded under Section 313 of Cr.P.C. Whereas, there are certain chart showing allotment of duties to the

Police staff attached to Panhala Police Station on 22nd August, 2006 and 29th August, 2006. (Page Nos.141 of paper-book). They were collected by the Investigating Officer during investigation. In fact, the Investigating Officer was also put questions on this line during cross-examination. (Page No.171). He also admits that he has not collected the station diary entries dated 23rd August, 2006. He has not inquired with Accused No.1 about his nature of work on 23rd August, 2006.

16. Learned trial Judge has rightly observed in the judgment about difference in between standard of proof on the Prosecution on one hand and standard of proof on the Accused on the other hand (Para No.23). Before expecting justification from receiver of the bribe, the foundational facts must be proved. Unfortunately, it is not proved in this case. I agree with the findings of the trial court.

17. Here, Accused No.1 is not required to prove that in fact on 23rd August, 2006, he had gone to Kolhapur by examining necessary witness. Suffice to say that he could rely upon the documents not of his own creation but created in the ordinary course by the persons who have been given the responsibility to maintain that station diary entry. So, they can be considered sufficient to raise a doubt in the Prosecution case that on 23rd

August, 2006, the Accused No.1 was present at Panhala Police Station.

An incident of 4th October, 2006

18. It will be material to consider the evidence of PW No.1 and PW No.2 on this aspect.

Evidence of PW No.1

19. During his examination-in-chief he has deposed that he and panch witness went to Panhala Police Station on 4th October, 2006, they met Accused No.1, enquiry was made by Accused No.1 about bringing remaining amount of Rs.500/- and then going to tea stall situated behind the Police Station. He has further deposed that Accused No.1 instructed PW No.1 to handover the amount to Accused No.2 and further instructions given to Accused No.2 to keep that amount with him. He has further deposed about accepting the amount by Accused No.2 and keeping it in aluminium tin. When other raiding party members came there after getting a signal, at that time, Accused No.1 had already left for Police Station. Whereas, during cross-examination, PW No.1 had given answers which are damaging the facts stated during chief-examination. According to him, the Accused No.1 never made a initial

demand when they went to Panhala Police Station. Twice, he has reiterated this fact. Till arrival at tea stall, Accused No.1 never made a demand at Police Station. At the tea stall, only Accused No.2 was present at the time of handing over of the amount. He wants to suggest that Accused No.1 was not present. Whereas, when it comes to the testimony of **PW No.2** - Panch witness, it is clear that there was an occasion for learned APP to declare him hostile.

Testimony of **PW No.2**

20. During chief-examination, he has deposed that 'making an enquiry by Accused No.1 with PW No.1 about bringing of the amount' and it was answered in the affirmative. He has further deposed that '*all went towards tea stall*'. Further, he has deposed about instructions given

'by Accused No.1 to tea stall holder to accept the amount'.

21. As per the chronology of events, first Accused No.1 went to Police Station and then *de-facto* Complainant took out the amount from his pocket and accepted by the tea stall owner. It was kept in one tin box. With the assistance of both of them, I have read his evidence. What I find that PW No.2 has not supported the Prosecution case only in respect of few

particulars. Whereas, for rest of the particulars, he has supported the Prosecution case. Learned APP before the trial court sought permission to declare him hostile and instead of putting questions on those few particulars have put questions on all the particulars. It was not required. The variance is as follows :-

- (a) In trap panchnama on Page No.130, reference is as follows :-

“Accused No.1 told the *de-facto* Complainant - Suresh Patil to pay the amount to tea stall vendor and then I will take it from him. (“तुमच्या कडील पैसे चहाटपरीवाल्याकड द्या, मी त्यांचेकडून नंतर घेवून जातो”).”

- (b) Whereas during Chief, PW No.2 deposed :-

“Accused No.1 asked tea stall vendor to receive the amount”.

For this omission, he was cross-examined by learned APP.

During cross-examination, suggestion was put to him :--

“whether Lokare told *de-facto* Complainant to pay the amount to tea stall holder and thereafter, he will receive it from the said person?

He answered that it is true. Even if we read contents of trap panchanama and chief examination together, what we find is that :--

In the panchanama, there is a reference “Accused No.1 told *de-facto* complainant to pay the amount to Accused No.2 to tea stall holder and then he will accept the amount”. Whereas during chief examination, he told Accused No.2 to accept the amount.

22. In fact, the difference in those utterances is not material. It may be possible due to passage of time also. In fact learned A.P.P., ought not to have declared him hostile. Because the effect of declaring a witness hostile is, all the questions put thereafter are in the form of suggestions and the answers given during such questioning is having less evidentiary weightage which is otherwise available. But this irregularity now cannot be cured and even if it is cured, it will not affect the outcome of the appeal because there are other areas wherein the prosecution evidence is not acceptable.

23. There is one more aspect on which PW No.2 was declared hostile. During chief-examination, panch witness has not specified about enquiry by PW No.1 relating to the amount as Rs.5,000/- (he only asked have you brought the amount Pg.105). Furthermore, PW No.1 has also referred about demand of Rs.5,000/-. In fact, trap panchnama does not disclose that Accused No.1 inquired with PW No.1 “have you brought Rs.5,000/-”. In fact, it is not expected in a trap

panchnama to have such a reference. The reason is obvious. The events that took place in the presence of *de-facto* Complainant, trap panch and accused persons took place when other raiding party members are not supposed to be there. So, it is illogical to compare what trap panch has said about events that took place at the time of actual demand and handing over the tainted currency notes on one hand and what trap panchanama mentions. So, learned APP was not justified in declaring him as hostile and putting questions during cross-examination.

24. Whereas, this panch witness during cross-examination (Pg. 113) conducted on behalf of the defence has again taken U-turn and deposed that at the Police Station, Accused No.1 never demanded any amount. Even at tea stall, Accused No.1 has not demanded any amount from the *de-facto* Complainant. The above areas create doubt about reliability of this panch witness. The trial Court has rightly disbelieved him.

About involvement of Accused No.2

25. So, there is a serious doubt in Prosecution case about demand by Accused No.1 on the first visit of PW No.1 to Panhala Police Station and on the date of trap. Accused No.2 is facing prosecution for abetment of the main offence. By way of

accepting the illegal gratification, he has abetted and assisted the Accused No.1 to commit the main offence. The trial Court in Para No.21 has dealt with evidence against him. Trial Court has noticed about discrepancy in the tin box. Trial Court has also noticed that recovery from Accused Nos. 2 is not proved. It is a settled law that mere recovery is not sufficient unless the evidence on the point of demand and acceptance are satisfactory and reliable. It is observed in case of ***B. Jayaraj v/s. State of Andhra Pradesh*** (supra). So also, on the basis of observations in case of ***Neeraj Dutta v/s. State (Govt. of NCT of Delhi)***³ (which was decided after constitutional bench pronounced its verdict). Hon'ble Supreme Court in case of ***Soundarajan*** (supra), has dealt with this aspect that is to say, mere presumption will not be useful to prosecution unless the evidence on the point of demand and acceptance are satisfactory.

26. It is true that the sanction plays an important role. It is expected from the Sanctioning Authority to go through the papers, apply mind and then to take appropriate decision. It is expected from an Investigating Agency to send the relevant papers for perusal of the Sanctioning Authority. The

³ 2022 SCC OnLine SC 1724

Sanctioning Authority-PW No.4 has admitted that he has not perused Exhibit-36 that is letter written by the P.I.-Panhala Police Station to Anti Corruption Bureau. It is in respect of absence of any materials relating to complaint filed by the said Jadhav against *de-facto* Complainant. Those foundational facts for lodging the prosecution case were not proved. The trial Court has discussed about the *lacunae* in sanction and the responsibility performed by the Sanctioning Authority in Para No.22.

27. For the above discussion, I am unable to accept the contention of learned APP. The judgment is reasoned one and the conclusions are arrived at after proper appreciation of evidence. I do not find any reason to disagree with those conclusions. I find no merit in the Appeal. Hence, it is dismissed.

[S. M. MODAK, J.]