

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 866 OF 2004

The State of Maharashtra

**...Appellant
(Ori. Complainant)**

Versus

1. Subhash Madhukar Vichare

Age about 47 years.

Occu. Service, Traffic Inspector,
MSRTC Ratnagiri.

2. Subhash Hariba Koli

Age 37 years, Occu. Service,
Assistant Traffic Inspector,
MSRTC Ratnagiri.

**...Respondents
(Ori.Accused Nos.1 & 2)**

....

Mr. Y. Y. Dabake APP for State-Appellant.

Mr. Avinash H. Fatangare Advocate for Respondent No.1.

Mr.Shailesh Chavan i/by Mr.Milind Deshmukh Advocate for Respondent
No.2.

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CORAM : PRAKASH D. NAIK, J.

DATE : 11th JANUARY, 2024

P.C.:-

1. This Appeal is preferred by State under Section 378(1) of Cr.P.C. challenging the Judgment and Order dated 7th April 2004 passed by learned Special Judge, Khed, Dist. Ratnagiri in Special Case No.2 of 2003 acquitting

the accused/Respondent Nos.1 and 2 for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

2. The brief facts of the prosecution case are as under:-

(i) The accused No.1 was the Traffic Inspector and the accused No.2 was the Assistant Traffic Inspector in MSRTC, Ratnagiri. Accused along with Mr.Sawant had checked the S.T. bus on which the complainant was on duty as a conductor. It was found that, two tickets of the passengers of Chiplun were wrongly punched. The accused told the complainant to issue fresh tickets to both passengers. The complainant was required to pay the fare of both the tickets. The complainant was taken to the S.T. depot at Chiplun. He was found in excess with the amount of Rs.7. The complaint of wrong punching was filed against him.

(ii) Secondly, the complainant met the accused. He requested them to settle the case of wrong punching against him. The accused told him that, he would be removed from the service.

(iii) However, if the complainant pays an amount of Rs.10,000/- to them, they would not press hard for removing the complainant from service. The complainant told them that,

it was not possible for him to pay such huge amount.

(iv) The complainant did not meet the accused for a period of three to four months. He could not arrange the cash. The accused were annoyed. They started repeatedly checking bus on which the complainant was on duty. They could not find any fault with the complainant. The accused kept on threatening the complainant that, unless the demand of Rs.10,000/- was fulfilled, they would not stop checking the bus on which he was on duty.

(v) On 12th August 1993, the complainant came to know that, the accused were staying at rest house of Municipality at Chiplun. He met them at rest house. He requested them to drop the case against him. The accused pressed the demand of Rs.10,000/-. The complainant suggested that, the amount would be paid in installment of Rs.2,000/- per months. The accused told the complainant that, they would come to his house in the night of 17th August 1993 and the complainant should make the arrangement of cash.

(vi) The complainant approached the office of ACB on 13th August 1993 and filed complaint against the accused and Mr.Sawant. It was alleged that the complainant was asked to keep the chit in the pan stall of Khedekar near the S.T. stand,

Chiplun by the accused, if the complainant makes arrangement of the payment.

(vii) Pursuant to the complaint, trap was arranged. Currency notes of Rs.2,000/- were marked with applying anthracene powder.

(viii) The complainant and panch No.1 proceeded to the house of complainant at Shirgaon. The police constable from ACB was with them. He was sitting in the kitchen. The accused came to Shirgaon in their jeep at about 09:00 to 09:30. The complainant took accused No.1 to his house. The accused No.1 inquired whether the arrangement of cash has been made. The complainant told him that, cash is ready. He removed the marked currency notes from his pocket, counted them and gave it to accused No.1. The notes were accepted by accused No.1 and kept it in the bush shirt of his pocket. The complainant gave signal to the raiding party. All of them entered into the house. The accused No.1 produced the notes accepted by him. The accused No.1 was brought at the house. His personal search was taken. The currency notes were recovered from accused No.1.

(ix) Police Inspector Gaikwad filed the complaint against accused. Investigation was conducted. Sanction to prosecute the

accused was obtained from the Competent Authority. The accused were charge-sheeted.

3 The prosecution has examined Panch No.1 Prakash Ahire (PW-1), (PW-2) Mr.Adhikrao Parlekar Patil is the Sanctioning Authority, Mr.Prabhakar Rathod (PW-3), Abasaheb Chavan (PW-4), Smt. Sindu Chavan (PW-5).

4. The defence of the accused is that, they never demanded bribe with complainant. They did not accept the bribe from him. The behavior of complainant was suspicious. There was departmental enquiry against him about the misconduct. Punishment was imposed upon him. To prevent the report of wrong punching against him by the accused and to pressurise the accused, the complaint was filed by the complainant against both the accused. He called the accused for dinner. The accused had visited his house for dinner. Even in the past, they had visited in the house for dinner. After going to the house of complainant, the currency notes were foisted on the person of accused. Same notes were seized.

5. The trial Court recorded the findings that the sanction to prosecute accused No.2 accorded by PW-3 is not valid. Sanction to prosecute the accused No.1 was valid. The prosecution has failed to prove that the accused demanded the bribe of Rs.10,000/- and accepted the bribe of

Rs.2,000/-. The prosecution has failed to prove that the accused committed an offence punishable under Sections 7 and 13(1)(d) of the Prevention of Corruption Act.

6. Learned APP appearing for State-Appellant submitted that, the judgment of the trial Court is contrary to the evidence on record. The trial Court has not considered the evidence in proper perspective. The accused No.1 had accepted the bribe amount. The accused No.2 was accompanying him. There was demand and acceptance of bribe. The accused No.2 has aided and abetted accused No.1. Tainted currency notes were found on the person of accused No.1. Order of acquittal is perverse. It is against the law. There was sufficient evidence to convict the accused. The judgment of acquittal is contrary to evidence on record. The trial Court has to take into consideration the presumption under Section 20 of the Prevention of Corruption Act. Sanction was valid. The prosecution has proved that the accused demanded bribe of Rs.10,000/- and accepted the bribe of Rs.2,000/-. The trial Court has ignored the evidence of complainant and independent witnesses. The accused had visited the house of complainant. There was no other reason for them to visit the complainant's house. Complainant Abasaheb Chavan (PW-4) has proved that, the accused had demanded and accepted the bribe amount. The accused had failed to rebut the presumption.

7. Learned Advocate for Respondent Nos.1 and 2 submitted that, there is no reason to disturb the judgment of acquittal. The Court should be slow in disturbing the decision of acquittal. There is no perversity in the decision of the Apex Court. The Court has taken into consideration the nature of evidence against the accused. The prosecution has failed to discharge its burden. The judgment does not suffer from conjectures or serious infirmity. The demand is not established. The acceptance of the demand of bribe amount is doubtful. The case suffers from serious infirmities. The appellant has not made out case to overturn decision of the acquittal.

8. Learned Advocate for Respondent No.1 has relied upon the decision of the Hon'ble Supreme Court in the case of **Meena (smt.) W/o Balwant Hemke Vs. State of Maharashtra**¹.

9. Charge was framed against the accused vide order dated 8th May 2000. The accused and complainant were in the employment of MSRTC, Ratnagiri. The complainant was conductor. The accused No.1 was Traffic Inspector and accused No.2 was the Assistant Traffic Inspector. Action was initiated against the complainant for wrong punching. He was directed to issue fresh tickets of two passengers. The complainant was required to incur financial expenses towards issuance of fresh tickets. He has to face

¹ (2000) 5 SCC 21

departmental enquiry for wrong punching. The accused continued to follow up the bus on which the complainant was deputed for duty. It is alleged that, the accused demanded bribe amount. The complainant then called the accused at his residence. The amount was accepted by accused No.1. The accused No.1 were apprehended.

10. It is apparent that, the complainant was at receiving end for wrong punching and required to face the inquiry. The action was initiated on the basis of the incident of wrong punching for which the action was initiated by the accused.

11. I have scrutinized the evidence adduced by the prosecution. The evidence does not inspire the confidence. The trial Court has rightly acquitted the accused. No case is made out to interfere in the decision of acquittal.

12. The trial Court gave a finding with the sanction to prosecute. The accused No.2 was bad in law. There was non-application of mind in according sanction to prosecute the accused No.2.

13. The accused No.2 was not in a position to remove the complainant from services. The accused No.1 was empowered to file report against

complainant. Thus, the accused was not in a position to show any favour to complainant by accepting bribe. The accused No.2 has not accepted the bribe. The prosecution case is that, the accused No.1 has accepted the bribe.

14. From the evidence of PW-3 it is evident that, there was departmental enquiry against the accused No.2 about present incident. He is still on duty. Thus, nothing transpired against the accused No.2 in the departmental enquiry.

15. The prosecution has relied upon the evidence of complainant (PW-4), Smt. Sindhu Chavan (PW-5) and Prakash Ahire (PW-1). The prosecution has not examined Inspector Damodar Gaikwad. He has filed the complaint in the present case on behalf of the State. It was reported that he was absconding. He was involved in the case of murder. He was not traceable. The complainant had stated that, along with the accused, there was another person whose name was disclosed as Sawant, who was present on each time of demand. He has not implicated as accused. The complainant had stated that, both the accused came to his house. They came by jeep. Mr. Kore was the driver of the jeep. He was in jeep when the accused No.1 and 2 had enquired whether the arrangement of cash has been made by the complainant. Mr. Kore has not been examined by the prosecution. His statement was not recorded during investigation. The prosecution is

relying upon the sole testimony of the complainant to establish the demand and acceptance.

16. The complaint was lodged after four months of checking of the bus. Since then, till filling of the complaint, there was no demand of bribe with complainant. According to complainant, the accused came to his village. They got down from the jeep. Accused No.2 enquired whether arrangement of the cash has been made. Accused No.2 then stated that, he would come to the house after purchasing some medicine. Accused No.1 did not make any demand of bribe with complainant. It was the accused No.2, who enquired with the complainant whether arrangement of cash has been made. This incident took place away from the house of complainant. The cash was with complainant. If the complainant wanted to pay bribe to accused to trap them, it was not necessary for him to bring the accused at his house. When both accused had been there for accepting the bribe, there was no need for them to visit the house of complainant. The complainant and accused No.1 went to the house of complainant first, then the accused No.2 told them that he would follow them after purchasing the medicine. According to complainant, there was demand of bribe by accused No.2. The bribe was paid to accused No.1 at his house. According to complainant, after April 1993 till the date of complaint, the accused did not demand the bribe. The version of the complainant is doubtful. Apparently, accused No.2

had taken leading part. Hence, the acceptance of bribe by accused No.1 is doubtful. PW-4 had admitted that, both the accused had been to his house on several occasions before the incident. Subsequently, he denied the said fact to his admission in complaint shows that the accused were on visiting terms to his house even prior to the incident. The prosecution is relying upon on the chit written by complainant in the name of accused No.1 and 2 inviting them to his house on 17th August 1993. According to complainant, the accused told him to keep the chit at the pan stall informing them whether they should come to his house on 17th August 1993. This had happened on 12th August 1993. From 12th August 1993 to 17th August 1993, the complainant and accused were not in contact with each other. The complainant was not aware whether the accused had received the chit written by him. The owner of the pan stall has not been examined.

17. The trial Court has rightly observed that, evidence of chit appears to be concocted to bring on record the connection of the facts that the information was given to the accused to visit the house of complainant on 17th August 1993. In the absence of chit, there was no evidence with regard to the fact that the accused would be visiting the house of complainant on 17th August 1993.

18. The complaint was lodged on 13th August 1993. It was stated that, the accused would come to his house on 17th August 1993. From the

evidence of complainant it is apparent that the accused were on visiting terms in the house of complainant. They were knowing the location of his house. They disclosed to complainant that they would come to the house of complainant on 17th August 1993. The complaint did not disclose that, the accused would be visiting the house of complainant on 17th August 1993, positively. It is mentioned that, the complainant was asked to keep chit if the arrangement of cash is made. There was no communication between them. The accused were not aware that, the arrangement of cash would be made on 17th August 1993. The chit being kept at the pan stall is doubtful. The case of the prosecution suffers from suspicion.

19. The defence of the accused is that, the notes were thrust in his pocket by the complainant. There was no demand made by the accused. PW-No.1 was sitting in the leaving room. Police constable was sitting in the kitchen of the complainant. After coming to the house, the accused No.1 enquired whether arrangement of cash is made. It is difficult to accept that the inquiry would be made after reaching the house of the complainant as the complainant went to receive the accused No.1 and 2 at their jeep on the road.

20. PW-1 is the panch witness. His conduct and version is totally different against the post trap panchnama and deposition of PW-4. PW-1

was directed to sitting in the living room being a panch No.1 to witness the demand and acceptance of the bribe by the accused. He was sitting in the living room. The constable was sitting in the kitchen. Thus, the complainant's version is that the demand and acceptance of cash has been witness by panch Ahire by sitting in the living room. Post-trap panchanama mentions that, the complainant Chavan and panch No.1 Ahire were in the living room. Head Constable Tadale was in the kitchen. When the raiding party entered the house, panch No.1 was sitting on the mattress in the living room. When accused No.1 and complainant came in the house, panch No.1 was in the living room. He heard the conversation between complainant and accused No.1. He had allegedly seen the acceptance of cash by accused No.1. However, panch No.1 has not stated all these facts. According to him, he went to the house of complainant. It was decided to withdraw the trap as the accused had not come to the house of complainant. When the raiding party was about to disperse, jeep of the accused came there and the constable went in the kitchen. PW-1 was in the window of the kitchen. Accused No.1 and complainant had talked with each other. The complainant gave notes to accused No.1. He has not heard anything about the demand and acceptance of the bribe. He does not corroborate the version of PW-4. Thus, there is no independent corroboration about the demand of bribe by panch witness. He was independent person at the time of trap.

21. PW-5 is the wife of PW-4. According to her, PW-4 returned to the house with two unknown persons. One of them was sitting in the living room and other one in the kitchen. Her husband went out to the house and came back with another unknown person. The accused No.1 enquired with her husband whether cash has been arranged. Her husband came in the kitchen and removed the cash and gave it to accused No.1. The complainant told accused No.1 to believe him and he would deceive him. Accused No.1 accepted the cash. The complainant told accused No.1 to count the cash. She has not stated that, she has seen the incident and heard the conversation. According to PW-1, he was in the window of the kitchen. The constable was sitting near the kitchen. PW-5 was not knowing the accused. In the cross-examination she stated that, some third person was sitting in the living room. It is difficult to accept that, she must have heard the conversation which took place in the living room between accused No.1 and PW-4.

22. The trial Court has analysed the evidence in proper perspective and gave benefit to the accused and acquitted them. The trial Court has opined that, the entire story of the trap is doubtful. The version of complainant (PW-4), panch No.1 (PW-1), wife of complainant (PW-4) is contrary and inconsistent with each other.

23. In the light of the aforesaid circumstances, I do not find any reason to interfere with the impugned judgment of acquittal, appeal is required to be dismissed.

ORDER

Criminal Appeal No. 866 of 2004 stands dismissed and disposed off.

(PRAKASH D. NAIK, J.)