

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

Criminal Appeal No.1198 of 2012

The State of Maharashtra ... Applicant.
(Orig.Complainant)

Versus

Mohan Vithhal Patil,
Age : 39 years, Occ.:Service,
Residing at Talegaon Dabhade,
Tal.:Maval, Dist.:Pune

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... Respondent.
(Orig.Accused).

Mr RM Pethe, APP for the appellant/State.

Ms Aishwarya Sharma, appointed Advocate, for the accused/
respondent.

Coram : R. N. Laddha, J.
Reserved on : 7 December 2023.
Pronounced on : 5 January 2024.

Judgment :

The instant appeal calls in question the judgment and order dated 08.09.2011 rendered by the Special Court at Pune under the Prevention of Corruption Act, 1988 (for short, 'the PC Act') in Special Case No.12 of 2008, acquitting the accused/respondent for the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the PC Act.

2. The prosecution case, in brief, is that the accused/respondent,

Mohan Vithhal Patil, was working as a Clerk in Block Education Office at Bhore, District-Pune. PW 1 Vasudev Ganesh Mokashi is a complainant. He was working at the relevant time as a teacher at Shirgaon, Taluka-Bhore. The salary of the teachers was drawn from the Block Education Office, Bhore. As the complainant did not receive his salary from 23.4.2007 to 30.4.2007 and for May 2007, he used to visit the office of Block Education, Pune, and meet Raju Roman and the accused, clerks in this office, but they used to give evasive replies about his pending salary bill. On 7.9.2007, the complainant again approached the accused; that time, the accused demanded Rs.500/- from the complainant to clear his pending salary bill. The complainant was further told that his future pay bills would not be accepted unless the bribe as demanded, was paid.

3. The complainant then visited the office of the Anti-Corruption Bureau at Pune and lodged a complaint detailing the facts. Mr Sanjay Bhanudas Barde and Mr Abhijeet Prakash Yadav were appointed as panch witnesses. After verifying the contents of the complaint, a currency note of Rs.500/- denomination smeared with anthracene powder was given to the complainant. Sanjay Bhanudas Barde was to act as a panch and was instructed to accompany the complainant during the trap. The complainant was instructed that only on demand by the accused, he was to take out the tainted money from his pocket and was to give it to the accused.

The detailed pre-trap panchnama was, accordingly, prepared. The complainant, panchas, the investigating officer and other members of the raiding party then went to the office of the accused. The complainant met the accused and asked him about his pending salary bills for April and May 2007, whereupon the accused told the complainant that his work was done and the bills were sent to the office of the Block Development Officer (BDO) and demanded a bribe of Rs.500/-. Thereafter, the accused was nabbed in his office after accepting a bribe. Accordingly, a post-trap panchnama was drawn.

4. A report (Exh.16) was lodged at Bhore police station by Ms Radhika Phadke (PW4), the investigating officer. Based on this report, an offence vide CR No.12 of 2008 was registered against the accused/respondent under Sections 7, 13(1)(d) read with 13(2) of the Act. Mr Shyam Wardhane, the then Chief Executive Officer Zilla Parishad, Pune, accorded sanction to prosecute the accused, and a charge sheet was subsequently filed. The charge came to be framed against the accused for the aforesaid sections. The accused abjured his guilt and claimed trial.

5. At the trial, to substantiate the indictment against the accused, the learned trial Court recorded the evidence of witnesses, namely Shyam Wardhane (PW 1), Chief Executive Officer and the

sanctioning authority; Mr Vasudev Ganesh Mokashi (PW2), the complainant; Mr Sanjay Bhanudas Barde (PW 3), the panch witness; and Ms Radhika Phadke (PW4), the investigating officer. The statement of the accused under Section 313 of the Code of the Criminal Procedure, 1973 (for short, 'CrPC') came to be thereafter recorded, consisting of denial and false implication.

6. After hearing the learned Counsel for the parties, the learned trial Court held that the evidence regarding the demand and acceptance of the bribe was questionable in several significant ways, and the defence put forth by the accused was probable. As a result, the accused was acquitted.

7. Being aggrieved by and dissatisfied with the impugned judgment and order of acquittal, the Appellant/State has preferred this appeal.

8. I have heard Mr RM Pethe, the learned Additional Public Prosecutor for the State and Ms Aishwarya Sharma, the learned Counsel for the accused/respondent and perused the impugned judgment, grounds in the appeal memo, evidence of the prosecution witnesses and the entire material available on record.

9. According to Mr RM Pethe, the Additional Public Prosecutor, the evidence of the prosecution witnesses, taken as a

whole, proves the demand, acceptance and recovery of the illegal gratification sought by the accused. He has also drawn the attention of the Court to the relevant excerpts of the evidence on record. According to him, the trial Court misinterpreted the evidence presented by the prosecution and was swayed by several assumptions not supported by the evidence and record, resulting in a grave miscarriage of justice. The learned APP argued that the accused accepting the bribe itself is conclusive evidence that can not be ignored. The evidence of the complainant and panch witness, Sanjay Barde, confirms the accused's demand and acceptance of the bribe, and the evidence of Mr Shyam Wardhane (PW1) demonstrates that he has thoughtfully accorded the sanction. Ms Radhika Phadke (PW4) testified that necessary procedures for setting up the trap were followed, and the accused was nabbed while accepting the bribe. According to the learned APP, the defence of the accused is not at all probable.

10. Ms Aishwarya Sharma, the learned Counsel for the respondent/accused, supported the trial Court's reasoning to acquit the accused/respondent. She argued that the prosecution failed to prove any demand for the alleged illegal gratification. Therefore, the vitally essential ingredients of the offences under Sections 7 and 13 of the PC Act were conspicuously absent. The appellant has been rightly acquitted of the charge on both counts. She submitted

that the alleged recovery of tainted notes from the accused/respondent, *sans* the proof of demand, is not sufficient to bring the accused within the purview of Sections 7 and 13 of the PC Act. The learned Counsel submitted that the prosecution claimed to have recorded the conversation in a digital recorder, but it was not produced before the trial Court, and different versions are coming on record in this respect.

11. The learned Counsel submitted that the sanction order incorrectly states that the accused committed the alleged illegal act on 12.10.2007 or thereabout. She submitted that the last pay certificate was received by the clerk, Raju Roman, in June 2007, and the salary bill was pending before the BDO since July 2007, and no matter was pending before the accused in respect of the complainant's bill. These facts demonstrate the non-application of mind by the sanctioning authority.

12. In support of her contentions, the learned Counsel relied on the following decisions: *i) P. Satyanarayana Murthy Vs. District Inspector of Police, State of A.P. and Anr.*¹; *ii) Neeraj Dutta Vs. State (Govt. of NCT of Delhi)*²; *iii) K. Shanthamma Vs. State of Telangana*³; and *iv) The State of Maharashtra (ACB CR No.20/2002) Vs. Ramesh*

1 (2015) 10 SCC 152.

2 2023 SCC OnLine SC 280

3 (2022)4 SCC 574

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13. Admittedly, the accused/respondent was a public servant as defined in Section 2(c)(i) of the PC Act at the time of the incident. Mr Shyam Wardhane (PW1), the then Chief Executive Officer Zilla Parishad, Pune, accorded permission to prosecute the accused, which is not seriously disputed by the defence. Mr Shyam Wardhane (PW1) testified that he received papers from ACB on 10 March 2008, and after reviewing them, he found a *prima facie* case against the accused and granted permission to prosecute. The sanction order stated that the alleged incident occurred on or around 12.10.2007, which was later found to be incorrect. The FIR revealed that the last pay certificate was issued by the clerk, Raju Roman, in June 2007. The record demonstrates that the complainant's file was sent to the BDO on 21.7.2007 and has been pending with him since then. These admissions clearly indicate that the accused was not responsible for the pending bill of the complainant, nor was he the in charge of dealing with it at the Block Education Office. Given the above, the learned trial Court rightly observed that the sanctioning authority did not apply his mind while granting the sanction.

14. The complainant (PW1) deposed that he did not receive his salary between 23.4.2007 to 30.4.2007 and May 2007. As a result,

4. Cri.Appeal No.372 of 2006, Bom HC dated 5.3.2021.

he met with Raju Roman and the accused on multiple occasions. During a meeting on 7.9.2007, the accused demanded a bribe of Rs 500/- to process the complainant's salary bill. The accused also threatened to withhold future bills unless the complainant paid Rs. 500/-. However, there is no corroborating evidence available on record to substantiate this alleged fact.

15. During the trial, the complainant testified that he submitted his last pay certificate to the inward clerk of the Block Education Office on 12.6.2007. He also admitted that on 18.6.2007, the inward clerk sent his last pay certificate to clerk Raju Roman, who was responsible for sending it to the Taluka Master, Aapti. The Taluka Master prepared the pay bill and sent it to the concerned clerk of the Block Education Office. The bill then went to the account section and finally to the Block Development Officer before the alleged demand was made on 7.9.2007 or the complaint on 10.9.2007. This itself indicates that no matter was pending before the accused in respect of complainant's bill.

16. The panch, Sanjay Barde, in his cross-examination admitted that the ACB officials instructed him to go to the office of the accused and meet Raju Roman before the trap. However, upon reaching the office, the complainant enquired about Raju Roman and then came out and met the raiding party. At that time, he was

instructed to meet the accused and to enquire with him. This clearly demonstrates that the trap was against Raju Roman, and as he was not there, the trap was arranged against the accused. During the trial, the panch witness testified that the accused had enquired about the complainant's work. The witness also stated that the complainant had responded by saying that his work was done, which was not mentioned in the complainant's statement or the post-trap panchnama.

17. The suspicion created in this situation is further reinforced by the fact that the digital tape recorder, which was in the hands of the investigating agency, was not presented as evidence and was kept back from the trial. It is the duty of the prosecution to present all the facts before the Court. In these circumstances, an adverse inference needs to be drawn against the prosecution, and it can be presumed that the prosecution suppressed this evidence of the digital recorder as it would not have favoured its case.

18. In such circumstances, the trial Court, in my considered opinion, rightly found that the accused/respondent was not guilty of the offence for which he was tried.

19. Resultantly, this appeal fails and is hereby dismissed.

[R. N. Ladhha, J.]