



{1}

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

CRIMINAL APPEAL NO.14 OF 2018

The State of Maharashtra,
Through Kranti Chowk Police Station,
Tq. and Dist. Aurangabad. ... Appellant

VERSUS

Ramesh Bhagwanrao Gadhe,
Age – 47 years, Occu. Deputy Engineer,
W.S. Sub Division, Z.P. Aurangabad
R/o. Flat No.20, Mistry Building
Adinathnagar, Garkheda Parisar,
Aurangabad. ... Respondent
(Orig. Accused)

.....
Ms. D.S. Jape, APP for Appellant - State
Mr. Joydeep Chatterji, APP for Respondent
.....

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 10 JULY 2025
PRONOUNCED ON : 23 JULY 2025

JUDGMENT :

1. The State has hereby assailed the impugned judgment and order dated 27.04.2017 passed by learned District and Sessions Judge-7, Aurangabad in Special Case (ACB) No.23 of 2013, by which present respondent was charge-sheeted and tried for offence punishable under Sections 7, 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 [PC Act].

BRIEF BACKGROUND OF THE CASE

2. The sum and substance of the prosecution's case before the trial court is that PW2-complainant, who was contractor, had filled a tender floated by the Maharashtra Jeevan Pradhikaran for construction of a water tank. The complainant succeeded in bagging the very tender and undertook the construction work under the supervision of Technospert Ramvikas Pratishtan, who was appointed as the technical consultant, and when the construction work of the tank was completed up to 36%, he demanded the bill amount. The committee directed him to bring a letter from the Deputy Engineer, i.e. present respondent (original accused). In that connection, he approached the present respondent at his office on 21.05.2012.

3. The case of prosecution is that, for signing the measurement book, respondent/accused demanded bribe of Rs.20,000/-. As complainant was not willing to pay illegal gratification, he approached ACB authorities, who planned trap by arranging panchas and giving them necessary instructions. A pre-trap verification was conducted and even a voice recording of the demand was made. The complainant and the shadow

{3}

pancha were made to approach the respondent/accused in his office, where they were instructed to pay the bribe on demand. On visiting, accused demanded the bribe, tainted currency was handed over and the predetermined signal was relayed. Accordingly, the raiding party apprehended the accused and as such, trap was successful. After completing the formality of investigation, accused was chargesheeted and tried by the Special Court vide Special Case (ACB) No.23 of 2013.

4. During trial, prosecution rested its case on the evidence of five witnesses and placed reliance on complaint, various panchanamas and documentary evidence. Apart from the sanction, prosecution rested its case on various grounds. On appreciating the evidence and after hearing each of the sides, learned trial Judge refused to accept the case of prosecution as proved and acquitted the accused. Precisely feeling aggrieved by the same, the State has come in appeal.

SUBMISSIONS

On behalf of the appellant-State :

5. Learned APP would submit that, there is no dispute that complainant was contractor and he was doing construction work

{4}

of water tank in response to acceptance of his tender and was entitled to receive payments for the work done. Present accused was Deputy Engineer and his signature was required on measurement book and for doing the same, it is pointed out that, there was demand of Rs.20,000/- to PW2-complainant. Learned APP further submitted that, after receipt of complaint, independent panchas were called. Both, complainant and pancha, were given necessary instructions. That, while planning the trap, verification was done. That, tainted currency was handed over with instructions to pay it on demand. That, complainant was accompanied by pancha witnesses, who were party to the demand as well as acceptance, and they both have been examined and therefore essential ingredients for the charge are available.

6. Further, learned APP pointed out that, prosecution has also examined the witness who had accorded sanction after applying his mind. That, evidence of this witness is consistent and corroborated by the evidence of Investigating Officer. So also, the complainant and the shadow pancha have lent support to each other. Therefore, with such quality of evidence, it is her submission that, learned trial Court ought to have convicted the

{5}

accused by accepting the case of prosecution. According to learned APP, there is incorrect appreciation of evidence as well as of law. Hence, it is prayed that the impugned judgment and order be quashed and set aside by allowing the appeal.

On behalf of the respondent :

7. Per contra, learned counsel for the respondent, who placed written notes of argument on record, would submit that prosecution has miserably failed to establish the charges. That, evidence of complainant is not lending support to the evidence of shadow pancha. Cross-examination of shadow pancha demolishes the case of prosecution on both counts, i.e. demand as well as acceptance. He took this Court through the answers given by shadow pancha in his cross and pointed out that, at crucial point of time, when there was demand and acceptance, shadow pancha was not present in the room or cabin of the accused and rather, was outside of the room and he candidly admitted about inability to hear their communication. Thus, according to learned counsel, essential requirements of demand and acceptance are not cogently proved. That, there were several other shortfalls in the case of prosecution. He pointed

{6}

out that, in fact, in this case there was no demand itself, and it is also accepted by PW3-shadow pancha in his cross-examination. Therefore, for all above reasons, learned counsel for respondent/accused justifies and supports the impugned judgment and order of acquittal and urges for same treatment in the appeal.

EVIDENCE BEFORE THE TRIAL COURT

8. In support of its case, prosecution has examined in all 5 witnesses. Their role and status and the sum and substance of their evidence can be summarized as under :

PW1 Radhesham Mopalwar is the sanctioning authority.

PW2 Sushilkumar Shisodiya is the complainant. He deposed at Exhibit 26 as under:

“My education qualification is B.E.(Civil). I am running the business from 2007. On 11.12.2011 one tender notice was published in Daily Mahanayak. It was regarding constructing water tank and supplying water. The costs of the said tender notice was Rs.33,02,160/-. As per the said notice there was pr-conditions of experience of the work. As I was having the said experience and I was fulfilling the terms and conditions of the said tender, I filled the said tender. I submitted the said tender on 17.12.2011 to Water Supply and Sanitation Committee, Gandheli. My tender was accepted as it was of lowest costs. On the same day all the tenders were opened. My tender was accepted as it was of lowest amount.

{7}

- 02] On 23th April 2012 the work order was issued in my favour. As per the said order Tecnosperit Gramvikas Pratishtan was appointed as Technical Consultant. As the period for completion of the said work was nine months, I started doing the work on 24.04.2012. After starting the work Shri Shailesh Sonwane representative of Technical Consultant Institute was present. Similarly, Sectional Engineer Shri Balod of Water Supply Sub-Division and Sanitation Committee Deputy Engineer Gadhe were also present. The construction of the water tank was completed upto bottom slab. I have made the pipe supply for water distribution. As the said work was completed, I demanded bill amount from the Committee. The work which was completed by me was completed upto 36%. The Committee informed me that their bank account is with Bank of Maharashtra, Chikalthana and I should bring the Letter from Deputy Engineer Shri Gadhe for withdrawing the amount from the said bank. The Committee also informed Shri Sonwane Technical Consultant to take the measurement and record the same in measurement book. Accordingly Shri Sonwane carried out the measurement and recorded it in measurement book. Shri Sonwane submitted the measurement book with Shri Balod on 21.05.2012. Shri Balod visited the spot and inspected the work and thereafter signed on measurement book and abstract. He asked me to approach Shri Gadhe for payment of the bill.
- 03] On 31.05.2012 I visited the office of Shri Gadhe alongwith the measurement book. It was about 11.00 a.m. He perused the measurement book and told me that he required 3% amount mentioned in the measurement book. After calculation he demanded Rs.20,000/-. I told him that I have not received amount of any bill and if the amount of this bill will not be sanctioned the work will be stopped. He told me that if I will not agree for this demand he will not sign on the measurement book nor he will sent Letter to the bank for releasing money. I said that amount of Rs.

{8}

20,000/- is more. He told me that he will give me three days but I should come with money on 4th June. I accepted it as I was not having any other alternative and left his office. As I was not willing to give him money I went to the Office of Anti-Corruption Bureau.

04] In that office I met Dy. S.P. Shri Brahmadeo Gawade. He recorded my complaint and gave it to me for reading. After reading the complaint I signed on it. Complaint now shown to me is the same. It bears my signature. Contents are correct. It is at Exh. 27.

05]

06] On 04.06.2012 at about 9.00 a.m. we went in the office of Anti-corruption Bureau. Shri Gawade told me that voice recorder is going to be used. He conducted the demonstration about the working of the voice-recorder. It was also directed to us that I and Shri Gore should go to Water Supply Sub-Division Office, Delhi Gate, Aurangabad. After parking the vehicle I should switch on the voice recorder and should keep it in the left pocket of my shirt. It was also directed to us that after switching on the voice recorder, we should meet Shri Gadhe and communicate with him regarding the work. It was also directed to us that if Shri Gadhe will demand the bribe, we should say that I am not having the sufficient amount and I should take further date, place and time from him. It was also directed to panch Shri Gore that he should accompany me and he should check switching on of voice recorder after parking the vehicle and he should carefully hear the communication in between myself and Shri Gadhe. After receiving this direction we started from anti-corruption bureau at about 9.30 a.m.

07] We reached Water Supply Subdivision Office at 9.45 a.m. I parked the vehicle, switched on the voice recorder and went in the office by walking. I showed Shri Gore from

{9}

outside that Deputy Engineer shri Gadhe is present in the office. After taking permission from Shri Gadhe we went inside the office and sat before Shri Gadhe. Then I asked Shri Gadhe whether he has signed on the measurement book. He asked me whether I have brought Rs.20,000/-. I said that arrangement of that amount is not made, but I will bring it after sometime. Thereafter we again returned to Anti-corruption Office. After reaching there Shri Gawade took the voice recorder from me. So he inquired with Shri Gore as to what has happened there. Then he switched on the voice recorder and heard the communication.

08]

09]

10] It was also directed to me that if the accused will demand for money I should take out the money from my pocket and should hold it before accused. It was also told to me that if the accused accept the money, I should come out, remove the spectacles by left hand and should indicate the team of anti-corruption as decided. It was narrated to Panch No. 1 Shri Gore to accompany me and to hear carefully the communication in between myself and the accused. Panch No. 2 Shri Ingle was directed to stay with the trap team. Then it was decided to go to Water Supply Department. Then myself and panchas went ahead and the trap team was behind us.

11] After reaching there I switched on the voice-recorder, myself and Shri Gore went in the office of Shri Gadhe. At that place I met the accused. Accused asked whether I have brought money. I took out the money from my right hand and hold it before accused. After accepting the money by accused I came out and indicated as decided. After indication Shri Gawade and other team reached there.

{10}

PW3 Kailas Gore acted as shadow Pancha. He deposed at Exhibit 32 as under:

“In June 2012 I was working as Sectional Engineer in Irrigation Department at Aurangabad. On 02.06.2012 I myself and one Asaram Ingle working in our Department were called in Anti-Corruption Bureau. We met Dy. S.P. Shri Brahmadev Gawade there. He called us on 04.06.2012 at about 09.00 a.m. in the office. Both of us went to Anti-Corruption Bureau on 04.06.2012 at about 09.00 a.m. and met Shri Gawade.

02] At that time Shri Gawade asked us whether we are ready to work as a panch. We consented to work as a panch. Shri Gawade introduced us to complainant Shri Shisodiya. Then we asked complainant Shri Shisodiya about his complaint. Shri Gawade handed over us the written complaint of the complainant. The complaint told 10 us orally and the written complaint were having same contents. The complaint now shown to me is the same. It bears our signature. It is already exhibited as Exh.27. The complaint of the complainant was that he has completed the work and prepared bill of it. Signature of accused was required on the said bill but accused has demanded bribe of Rs. 20,000/- for signing of the bill. So Shri Gawade decided to verify demand of he bribe. Then Shri Gawade informed the complainant about the use of voice recorder. Shri Gawade also directed the complainant to go to the office of accused at Delhi Gate alongwith me. Shri Gawade also told me to park the vehicle near the office and switch on the voice recorder and keep it in the pocket. He also told us that thereafter we both of us should go to the office of the accused. Shri Gawade also told that after going to the office of the accused, complainant should discuss with the accused about his work and if accused will demand bribe, then he should tell him that the arrangement of money is not done and he should ask sometime for payment. I was directed to accompany the

{11}

complainant and to carefully watch and see the discussion in between accused and the complainant.

03] At about 09.40m. I and complainant started by the vehicle of the complainant to Delhi Gate to reach at office of the accused. After reaching there we parked the vehicle near the office of the accused. Thereafter complainant switched on the voice recorder and kept it in the pocket. We started to go to the office of accused. Complainant showed me Ramesh Gadhe who was sitting in the chair. Complainant asked the accused whether we should enter the office. Accused allowed us and so we went inside and sat in front of the accused. Complainant gave measurement book to the accused. Accused enquired about myself. Complainant told that I am working as There was discussion in between accused and his supervisor. complainant about the bill. Complainant told accused to pay the bill. Accused asked me to go out of office. So I waited at the side of the door of the Cabin. I heard their communication faintly. I cannot hear it properly. After Shri Shisodiya came out, both of us went to the office.

04]

05]

06]

07] Then he directed complainant to go to the Office of accused alongwith Shri Gore. He directed us to go to Office of the accused after parking Car and we should talk about the work in the office. He also told us that if the accused will demand money, complainant should give him money kept in the left pocket of his Shirt. It was also directed to complainant that if the accused will demand money, then he should come out of Office and remove his spectacle with his left hand and indicate which can be seen by the member of Anti-Corruption Squad. It was told to me that I should watch carefully the communication in between accused and complainant and I should take

{12}

mental note of it. Another Panch Shri Ingle was directed to remain with the Squad. Accordingly pre-trap panchanama was prepared. Panchanama now shown to me is the same. It bears my signature. Contents are correct. It is at Exh.34.

08] Then we started from there at about 11.30 a.m. We started with another vehicle and remaining persons were going to come after us. We reached near Office of the accused and parked Car there. Then we went in the office of accused. After going in the Office we sit in chairs in front of the accused. Prior to sitting there complainant has switched on the voice recorder. After sitting for 2-3 minutes accused indicated by hand to me and asked me to go out of the room. In those 2-3 minutes, accused was reading the documents given to him such as Measurement Book. While reading those documents, he asked me to go out. Then, I went and stood at a place from where I was able to watch both of them. When I was watching, I noticed that after sometime complainant gave money to the accused. After giving money complainant came out and he indicated as agreed by removing his spectacle. I was standing in front when the Squad came and they went into the office of the accused.

PW4 Mahendrasing Balod, Junior Engineer in Z.P. Aurangabad, who singed the measurement book.

PW5 Bhimrao Gawade, Deputy Superintendent at Anti Corruption Bureau, Aurangabad, is the Investigating Officer.

ANALYSIS

9. Though five witnesses are examined by the prosecution, crucial evidence is of PW2-complainant and PW3-shadow

{13}

pancha, as rest of the witnesses are panchas and Investigating Officer. There is no challenge in the appeal as regards the sanction is concerned. The sum and substance of prosecution case is already dealt above. In cases of such nature, where the complainant is an interested witness, corroboration is necessary, so also, demand and acceptance are *sine qua non*. Therefore, unless the complainant's testimony is corroborated, the prosecution's case cannot stand. Bearing in mind such settled legal position, evidence in the case in hand, more particularly that of PW2-complainant and PW3-shadow pancha is minutely examined.

10. In examination-in-chief, PW2-complainant has stated about the tender for construction of water tank being allotted to him, he undertook the construction work, completing it upto 36% and tendering its bill. The authorities directed him to obtain letter of Deputy Engineer, i.e. present respondent/accused. It is his case that, to do the needful, there was demand of Rs.20,000/-, and therefore he approached ACB authorities, after which ACB authorities summoned two panchas, i.e. PW3 and another pancha.

{14}

11. As stated above, it is to be noted that in examination-in-chief, PW2-complainant and PW3-shadow pancha are not lending support to each other, specifically on the point of demand and acceptance. Learned counsel for the respondent has specifically pointed out that, PW3-shadow pancha was not present at the time of the alleged conversation between the accused and the complainant on 04.06.2012. In the light of such submission, if evidence of PW3-complainant is visited, more particularly paragraph 17, we find complainant admitting that when he and shadow pancha went to meet the accused, accused had asked shadow pancha to go outside the room and accordingly, PW3 went outside the room.

12. PW3-shadow pancha, in his very examination-in-chief itself, in para 3 stated that, at around 9.40 a.m., he, along with the complainant, went to the office of the accused. The complainant switched on the voice recorder and kept it in the pocket. Complainant, accompanied by this witness, went to the office of the accused, who was sitting in his chair. He further deposed that, the accused allowed them to sit in front of him. He further stated that the accused made an inquiry about the shadow pancha, asking who he was, and the complainant

allegedly told him that he was working as a supervisor. Thereafter, a discussion took place between the complainant and the accused regarding the bill. Complainant told accused to pay the bill. He further stated that, thereafter, the accused asked him to go out of the office. He deposed that, he went out of the cabin but claimed to have heard their conversation faintly, and further candidly admitted that he could not hear it properly. Even in paragraph 8, he has reiterated that after sitting in the cabin of accused, accused gestured him to go out of the room and in such 2 to 3 minutes, accused was reading some documents handed over to him, i.e. measurement book, and while reading those documents, accused asked him to go out. So he left the place, but further deposed that, he watched both accused and complainant and noticed that after some time complainant came out and he indicated, as agreed, by removing his spectacles.

While under cross, in paragraph 13, shadow pancha has admitted that, there is no mention in the panchanama (Exhibit 33) that neither there was any discussion between the complainant and the accused about the bill, nor that the complainant himself spoke about the money.

{16}

13. Therefore, in the light of above answers coming from the evidence of complainant, and more particularly from the substantive evidence of shadow pancha, it is clear that shadow pancha was not present in the cabin of accused when complainant and accused were in each other's company. Shadow pancha candidly admitted that he heard the conversation faintly; rather, he could not hear it properly. Therefore, the aspect of very demand comes under the shadow of doubt. On the sole count of establishing demand, the case of prosecution comes under the shadow of doubt.

14. Though, by way of prosecution, the investigating agency handed over a tape recorder to record conversation of demand, the shadow panch has not supported the case, answering that he does not know as to what are the contents of the recording. Even the certificate under Section 65-B of the Evidence Act, required for admitting electronic records as evidence, has not been placed on record. Therefore, on this count as well, the prosecution has suffered a severe blow.

15. To sum up, here, there is no convincing evidence on the point of demand. Therefore, the case of prosecution was rightly disbelieved by the learned trial Judge. The view taken by the

{17}

learned Trial Judge cannot be faulted at as the prosecution failed to discharge the burden of proving its case beyond reasonable doubt. There being no merit in the appeal, it requires to be dismissed. Accordingly, I proceed to pass the following order:

ORDER

The appeal is dismissed.

**ABHAY S. WAGHWASE,
JUDGE**

S P Rane