



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

965 CRIMINAL APPEAL NO. 256 OF 2005

The State of Maharashtra
Through Police Inspector
Anti Corruption Bureau,
Aurangabad

.... APPELLANT
(Original Complainant)

VERSUS

Gitaram s/o Rangnath Maladode,
Forest Guard, Mhaismal Beat,
Khultabad Forest Range Office,
District : Aurangabad

.... RESPONDENT
(Original Accused)

...

Mr. Rajdeep D. Raut, APP, Advocate for Appellant-State
Ms. M. N. Bagwe, h/f Mr. C. P. Sengaonkar, Advocate for
Respondent

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 28/02/2025.

JUDGMENT :

1. The appellant-State has challenged the acquittal of respondent / accused - Gitaram Rangnath Maladode from the offence under Section 7, 13(2) of Prevention of Corruption Act, 1988 (the Act), recorded by the learned 2nd Special Judge, Aurangabad in Special Case No.25 of 2003 under the judgment and order dated 28/12/2004.

2. As per the case of prosecution, complainant Babulal (PW-1), who was running a Tea-stall in land of his son -Santosh i.e. block No.115 of Mhaismal, Taluka Khultabad. The complainant had cut some wooden logs from forest for having a shed to the said Tea-stall. However, the respondent / accused being a Choukidar of Forest Department, after getting knowledge of the act of the complainant, went to him and demanded bribe of Rs.2,500/- for not to register any crime against the the complainant. Thereafter, on negotiation, the complainant got agreed for paying bribe amount of Rs.1000/-. The complainant then lodged Report Exhibit -8 on 12/08/2003 against the respondent / accused with Anti Corruption Bureau, Aurangabad. Accordingly, a trap was set up and respondent / accused was caught with the bribe amount by the ACB raiding party. The learned Special Judge conducted the trial and acquitted the respondent / accused.

3. The learned APP vehemently argued that all the prosecution witnesses have supported the prosecution case and the accused was also caught alongwith the bribe amount by the raiding party. According to him, the evidence of complainant was corroborated by panch No.1 - Deepak Pawar (PW-2). Moreover, Ratnakar Bhoite (PW-3), who was watching the incident from some distance, also deposed as per the prosecution story. Thus, he prayed that the acquittal be set aside and respondent / accused be convicted for the offence under Section 7, 13(2) of the Act.

4. On the contrary, the learned counsel for the respondent / accused strongly supported the impugned judgment and submitted that though the witnesses have deposed as per the prosecution story in their respective chief examinations, but the complainant – Babulal (PW-1) in his cross-examination has given so many vital admissions, which falsified the entire prosecution story. According to her, the prosecution has not adduced satisfactory evidence in respect of first demand made by the respondent / accused. Further, there was no verification of demand at pre-trap stage. The evidence of complainant is also not satisfactory on the aspect of demand on the very day of trap. Further, in respect of the acceptance of bribe, there are material contradictions between the evidence of complainant Babulal (PW-1) and panch No.1 - Deepak Pawar (PW-2). She pointed out that the sanctioning authority examined as PW-4, has also admitted that the offence for cutting the wooden log was already registered against the complainant and therefore, no question arose for demanding the bribe amount from the complainant. With these submissions, she prayed for dismissal of the appeal.

5. Heard rival submissions. Also perused the impugned judgment alongwith the record and proceedings.

6. It is extremely important to note that for recording conviction for the offence under Section 7 and 13(2) of the Act, it is necessary for the prosecution to establish aspects of demand and acceptance of the bribe

amount, beyond all the reasonable doubts. On the contrary, the accused in such cases, can rebut the evidence of the prosecution on the basis of preponderance of probabilities. No strict proof is required from the accused to show that he is not guilty for such offence. Thus, let us considering the evidence on record to ascertain as to whether the prosecution has established the guilt of accused.

7. In the instant matter, the prosecution has examined in all five witnesses. Out of them PW-1 is the complainant – Babulal, whereas PW-2 is panch No.1 – Deepak. PW-3 – Ratnakar, who had kept close watch on complainant and panch No.1 as well as the accused, PW-4 Sanctioning Authority and last one is PW-5 i.e. Investigating Officer.

8. It is significant to note that as per the complaint, the complainant had brought wooden logs from forest area on 04/08/2003 and on the very next day, respondent / accused approached him and demanded bribe of Rs.2,500/-. However, while deposing before the court the complainant admitted in the cross-examination that he had cut the wooden logs just two days prior to lodging of the complaint. It is to be noted that complaint was lodged on 12/08/2003 and therefore, as per the admission, the complainant must have cut the wooden logs on 10/08/2003, which is definitely contrary to the contents of the complaint. Complainant is saying that the respondent / accused demanded the bribe amount on the very next day of cutting the wooden

logs. Thus, the bribe amount appears to have been demanded on 11/08/2003, which is completely contrary to the complaint. As such, considering these aspects, the evidence of the prosecution in respect of initial demand, is not convincing.

9. Admittedly, the record shows that there was no attempt of verification of demand of the bribe on the part of investigating officer. Per contra, it appears that complainant and panch No.1, were directly sent to the accused with the bribe amount on the day of trap. If the evidence of complainant in respect of the actual trap is perused, then it is evident that complainant stated that when he alongwith the panch No.1 approached respondent / accused, he himself told the respondent / accused that he had arranged the bribe amount of Rs.1,000/- and then asked to accept the same. Thus, on the day of trap also there was no prior demand of the bribe amount by the respondent / accused. On the contrary, it appears that the complainant had persuaded the accused to accept the bribe amount. Further, the complainant is saying that the accused took the said bribe amount by his right hand and kept the same in his right pant's pocket. However, in the cross-examination the complainant has put up a different story by way of admission that when he had gone to the accused alongwith the panch No.1, grand-daughter of the accused was with the accused and he was holding her in his right hand. It is clearly admitted by the complainant – Babulal (PW-1) in the cross-examination that the accused / respondent, after the pre-

determined signal is made by him, handed over his grand-daughter to somebody else. If it is taken as true, then it reveals that the grand-daughter of the accused / respondent was with him even at the time of acceptance of the alleged bribe amount. It is highly impossible for a person to accept bribe amount with his right hand and to keep it in his right pant's pocket simultaneously holding a child by right hand itself. Thus, the evidence of complainant on the aspect of acceptance of the bribe amount by the respondent / accused, is also not convincing. It is extremely important to note that PW-2 i.e. panch No.1, who accompanied the complainant at the time of the trap, is not deposing anything about the respondent / accused having grand-daughter with him. Therefore, both these witnesses have stated differently and contradictory on the aspect of demand and acceptance. Further, the evidence of PW-3, is also not in consonance with the admissions given by the complainant in the cross-examination. Thus, it appears that there was no reliable evidence brought on record about the initial demand of bribe amount by the respondent / accused. Further, there was no verification of demand of the bribe to ascertain as to whether respondent / accused had really made such demand of bribe. Moreover, on the day of trap also there was no demand from the accused as per the evidence of the complainant but the complainant himself told the respondent / accused to accept the bribe amount. Further, there are vital contradictions in the evidence of complainant, panch No.1 and PW-3 in respect of demand and acceptance of the bribe amount.

10. It is most surprising to note that the evidence of PW-4 i.e. Deputy Conservator of Forest at the relevant time, who had accorded the sanction for the prosecution, clearly indicates that the complaint in respect of wooden logs cutting, was already filed by respondent / accused against complainant – Babulal (PW-1) and others. If that was so, then there was no reason for the respondent / accused to ask for the bribe, specially for not to register crime against complainant – Babulal (PW-1). This very admission on the part of PW-4 i.e. the sanctioning authority has completely shattered the case of the prosecution. Mere recovery of the bribe amount from the person of accused is not sufficient to hold him guilty unless there is trustworthy and reliable evidence on record in respect of demand of the bribe amount. Therefore, considering all these aspects and the evidence on record, it is clearly evident that the prosecution has miserably failed to establish the guilt of accused beyond all reasonable doubts. As such, no interference is required in the impugned judgment and order of the learned Special Judge, Aurangabad, whereby the respondent / accused is acquitted. Accordingly, the appeal stands dismissed.

(SANDIPKUMAR C. MORE, J.)