



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

60 CRIMINAL APPEAL NO. 374 OF 2004

The State of Maharashtra,
(Through A.C. B. Jalgaon)

..Appellant
(Ori. Complainant)

VERSUS

Sau. Dr. Kalpana Nivrutti Pohare,
Age : 38 Years, Occ. Medical Officer,
Primary Health Center, Kinhi,
Tq. Bhusawal, Dist. Jalgaon

.. Respondent
(Ori Accused)

.....

A.PP for Appellant : Mr. R. B. Dhaware
Advocate for the Respondent : Mr. Tapan Kishor Sant

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**CORAM : SANDIPKUMAR C. MORE, J.
DATED : MARCH 03, 2025**

JUDGMENT-

1. The appellant/State has challenged the acquittal of respondent/accused Kalpana Nivrutti Pohare from the offences under Sections 7, 13(1) (d) read with 13(2) of the Prevention of Corruption Act, 1988, (for short, 'the Act'), recorded by the learned Special Judge and Additional Sessions Judge, Jalgaon, in Special Case No. 14 of 2001.

3. According to the prosecution, the respondent/accused was serving as a Medical Officer, in Primary Health Centre at Kinhi, Taluka Bhuswal, District Jalgaon from 21.07.1995 to

09.10.2000. The complainant Devidas Laxman Bhosale i.e. P.W.-1 was also serving as Junior Assistant in the same Primary Health Centre in Establishment Department. He was assigned with a duty of preparing pay-bills, T.A. bills and other bills of the staff members working there. According to the complainant, the respondent/accused used to demand percentage for sanctioning the amounts of bills of staff members. He used to collect the said percentage amount from the concerned employees and to give it to the accused. The bills for five to six months for the year 2000, amounting to Rs. 5300/- were to be approved by the respondent/accused and, therefore, 10% of the amount from those bills i.e. Rs. 500/- was to be paid to the accused by the complainant. Further, according to the prosecution, when the complainant went for approval of aforesaid bills to the accused on 03.10.2000, he paid earlier percentage of Rs. 700/- first to the accused. However, the respondent/accused did not approve the bills of Rs. 5300/- for want of receipt of percentage amount. Thereafter, on 06.10.2000, the respondent/accused told complainant through one Adakmol to pay the percentage amount. Therefore, the complainant lodged report with Anti Corruption Bureau, Jalgaon on 08.10.2000. Thereafter, on 09.10.2000, Anti Corruption Bureau, Jalgaon set up a trap

against the respondent/accused and caught her with the bribe amount of Rs. 500/-. The learned Special Judge, Jalgaon, conducted the trial against the respondent/accused, but acquitted her from the aforesaid charges.

4. The learned A.P.P. strongly submitted that, the respondent/accused was caught while accepting the bribe amount, and it was also recovered from her in presence of Panch No.2. As such, the presumption under Section 20 of the Act can be drawn about the guilt of the accused. As such, he prayed for reversal of the impugned judgment.

5. On the contrary, the learned counsel for the respondent/accused supported the impugned judgment by contending that there are so many vital contradictions between the evidence of complainant and P.W.-2 in respect of alleged demand and acceptance. Further, the sanction accorded in this matter was also not proper, as the officer who accorded the sanction was not the appropriate authority. He pointed out that though it was contended that the respondent/accused had demanded bribe amount on several occasions from the various staff members for approving their bills, but none of those staff members was examined by the prosecution. He further submitted that, the respondent accused had in fact examined

two of such staff members, from whom the respondent/accused had allegedly made demand of bribe, but they supported the accused and deposed that the amounts which were being accepted by the respondent/accused were towards contribution to *Sallagar Samiti*, appointed by the staff members. Thus, he submitted that there was no reliable evidence in respect of the alleged demand and acceptance. As such, he prayed for dismissal of the appeal.

6. Heard rival submissions and also perused the record and proceedings along with the impugned judgment.

7. It is the case of the prosecution that, the respondent/accused was asking for money in percentage of the bills of staff members. The particular trap in this case had been set up in respect of sanctioning the bills of Rs. 5300/- and demanding bribe amount of Rs. 500/- thereof. The prosecution has examined in all seven witnesses. Out of those, P.W.-1 is the complainant Devidas Bhosale, who was actually staff member and used to put up the bills for approval before the respondent/accused. Whereas P.W.-2, Bhaskar Pawar was the panch No.1, who had accompanied the complainant at the time of trap. However, there are vital discrepancies in their evidence. According to the prosecution, the complainant and

panch No.1 had entered into the office of respondent/accused and the complainant paid the bribe amount to her. However, as per the version of the complainant, the accused did not ask him to come after some time, but he himself told the accused that there was rush in her office at the relevant time and, therefore, he would come there for paying the bribe amount after some time. At the same time, panch No.1 i.e. P.W.-2 Bhaskar Pawar is saying that, it was the accused who had in fact told the complainant that there was a rush in her office and he should come after some time. As such, it appears that, when the complainant and panch No.1 had entered into the office of respondent/accused, she had not demanded bribe amount initially, but the complainant must have made second attempt to persuade her to accept the bribe amount. It is significant to note that, there was no verification of the demand of bribe by the accused, on the part of the investigating officer at the pre-trap stage.

8. It is to be noted that, there is also variance in the evidence of prosecution on account of recovery of the bribe amount. The prosecution is claiming that, after the demand, the accused accepted the bribe amount and put it at the left side of her blouse. However, though the complainant had

stated in his examination-in-chief that after accepting the bribe amount, the accused put the same in her blouse in his presence, but in the cross-examination, the complainant had again changed his version, by stating that the bribe amount was not kept by the accused in her blouse in his presence or before him. This admission is also contrary to the evidence of P.W.-2 Bhaskar, who stated that bribe amount was kept by the accused in her blouse in his presence, and also in presence of the complainant. It is significant to note that PW-4 Mamta Patil, Panch No.2 is saying that, money was recovered by her from the blouse of accused and then the door was opened. However, Panch no.1 Bhaskar i.e. PW-2 is saying that, the bribe amount allegedly recovered from the accused was in the hands of lady constable when the door was opened. Thus, it falsifies the version of panch No.2 Mamta that when she took out the bribe amount from the blouse of accused, the door was opened. Moreover, PW-4 has also stated that complainant alone had entered the office of accused at the time of giving bribe amount. It has also come on record that panch No.1 had waited at the door of the said office. Thus, the evidence of prosecution as regards the demand and acceptance of bribe amount by the accused, is not convincing.

9. Further, the sanction accorded in this matter is also not properly accorded, since PW-3 Jaywant Dinakr Kamble, who had accorded the sanction, was only the Under Secretary. From his evidence, it is revealed that, the Secretary was the sanctioning authority at the relevant time. In the evidence of sanctioning authority, it is has come on record that the sanctioning authority was in fact a Secretary, but the powers of Secretary were delegated to him through Joint Secretary. However, there is absolutely no evidence on record that the Secretary had delegated powers to Joint Secretary and the Joint Secretary further delegated those powers to Deputy Secretary, who in turn delegated the same to P.W.-3. Thus, *prima facie* the sanction is faulty. In many cases, it has been settled by the Hon'ble Apex Court as well as this Court that if the sanction is found inappropriate, then it vitiates the entire proceedings.

10. It is extremely important to note that the prosecution claimed that, the respondent/accused was accepting the bribe amount while approving the bills of staff members. There were in all 25 staff members present in the Primary Health Centre at the relevant time. It is important to note that, the allegations made against the respondent/accused that she was

receiving percentage, in the form of bribe for clearing the bills of the employees even before the present incident. However, not a single complaint is there on record or any grievance by those employees, that the respondent/accused used to harass them.

11. The defence of the accused on this count is of very much importance. She has raised the defence that the employees or staff members were in fact contributing the amounts for expenses of *Salagar Samiti* for proper functioning of the office, by meeting the expenses for repairs of furniture, and other office expenses. It is also important to note that despite accepting such amounts from the staff members, in the form of alleged bribe, the prosecution did not care to examine any of such employees, who according to it, were aggrieved by the demand of the respondent/accused. On the contrary, it appears that, the accused has in fact examined two of her employees as defence witnesses. These two witnesses have categorically stated that, respondent/accused never demanded 10% amount of T.A. bills as bribe amount. On the contrary, they stated that they were contributing the amounts voluntarily to meet the usual office expenses, such as repairs of furniture and cleaning of wash rooms and for paying some

miscellaneous bills.

12. It is also claimed by the complainant that, initially the respondent/accused had demanded bribe amount through one Adakmol, i.e. one of the staff members. However, the prosecution has not examined him to establish the initial demand by the respondent accused. Therefore, mere recovery of the alleged bribe amount from the respondent/accused cannot be taken as full-proof of demand of bribe, unless there is satisfactory and reliable evidence to that effect. As such, considering the contradictions and discrepancies among the prosecution witnesses, as regards the demand and acceptance of the bribe amount, it is rather unsafe to convict the respondent/accused. The evidence on record thus definitely indicate that the prosecution has not established the guilt of accused beyond reasonable doubt. On the contrary, it appears that, respondent/accused has successfully discharged the burden of proving herself non-guilty, by examining two defence witnesses from the staff members. It is to be noted that the prosecution had also alleged that the respondent/accused had in fact demanded the bribe amount for clearing the bills of these defence witnesses.

13. Considering all these aspects, the respondent/accused

is definitely entitled for benefit of doubt, and therefore, the acquittal recorded against her, by the learned Special Court needs no interference. Resultantly, the appeal stands dismissed.

(SANDIPKUMAR C. MORE, J.)

Y.S. Kulkarni