



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 835 OF 2005

The State of Maharashtra,
Through Anti-Corruption Bureau,
Latur.

... Appellant
(Orig. Complainant)

Versus

Trimbak S/o. Madhavrao Waghmare,
Age : 44 years, at present residing
Sajja Gaundagaon, Tq. Udgir,
Dist. Latur.

... Respondent.
(Orig. Accused No.1)

.....
Mr. S. M. Ganachari, AGP for Appellant - State
Mr. H. I. Pathan, Advocate for Respondent
.....

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 16 JULY 2025
PRONOUNCED ON : 29 JULY 2025

JUDGMENT :

1. State is hereby questioning the judgment and order dated 30.08.2005 passed by learned Special Judge/Additional Sessions Judge, Latur in Special Case No. 1 of 1991 acquitting respondents from charge of offence under sections 7, 13(1)(d) read with section 13(2) of Prevention of Corruption Act.

PROSECUTION CASE IN BRIEF IN TRIAL COURT IS AS UNDER

2. Complainant's aunt Kewalbai held agricultural land

which had a well. She intended to install electric motor for pumping water, for which she required 7/12 extract carrying entry regarding well and also entry in the revenue record to that extent. She accordingly had applied. On her behalf her nephew complainant PW1 Tukaram took follow up by visiting Tahsil office and he too made another application to issue the document. It is the case of prosecution that, to issue 7/12 extract accused initially demanded Rs.500/- and on negotiations it brought down to Rs.400/-. Accused put up demand to pay Rs.200/- on Monday i.e. on 19.02.1990 and remaining amount asked to be paid after work is over. PW1 Tukaram as was not willing to pay bribe, he approached ACB authorities, lodged report, followed by laying of trap by engaging independent panch and issuing necessary instructions to both, complainant and panch to go together and to offer bribe on demand and relay signal. Accordingly, after drawing pre-trap panchanama, both approached accused. However, accused no.1 though raised demand, directed currency to be paid to accused no.2. Accused no.2 accepted the currency and accused were apprehended and finally tried by learned Special Judge, Latur, who was pleased to acquit them. Hence, the instant appeal.

SUBMISSIONS

3. Sum and substance of arguments advanced by the learned APP is that, accused no.1 is a Talathi, whereas, accused no.2

is his acquaintance and though a private person, he used to accept bribe on behalf of accused no.1. Here, there is demand which is categorically reported and even deposed in the testimony by PW1 Tukaram in his evidence at Exh.79. That, shadow panch, who had accompanied him, has also deposed about accused no.1 demanding bribe and at the time of it was being handed over, he directed it to be paid to accused no.2. That, both these witnesses i.e. complainant PW1 and shadow panch PW2 Bhimrao are consistent. That, initial amount of Rs.200/- was already accepted from PW1 Tukaram to the extent of which PW1 Tukaram has categorically stated. Learned APP pointed out that, in presence of PW2 Bhimrao accused no.1 directed amount to be handed over to accused no.2. Thus, there was both convincing and cogent evidence regarding demand and acceptance. Both of them were lending support to each other on the core of prosecution case, but the same has not been considered and appreciated by learned trial Judge.

4. Taking this court the observations of Hon'ble learned trial court in paragraph 20 and would submit that, trial court has misread and misinterpret the evidence of complainant and shadow panch while recording finding that they are not consistent. Learned APP would pose a question when there was no ill intention, why accused no.1 asked shadow panch to leave. Therefore, according to

him, all these circumstances ought to have been correctly appreciated, but according to him, the same has not been done.

5. Taking this court through the answers given by accused nos.1 and 2 under section 313 of Cr.P.C., he would submit that, question nos. 20 and 21 put to accused no.2 were duly answered which clearly established the case of prosecution. That, even statement of accused no.2 recorded immediately after the trap, clearly indicates that he acted at the instance of accused no.1. That, in spite of such quality of evidence, learned APP would submit that, surprisingly the trial court has disbelieved the prosecution case and hence he urges for interference by allowing the appeal.

6. Learned counsel for respondent original accused supported the findings of learned trial Judge and would submit that the conclusion drawn by the trial court is the correct view that could emerge with such quality of evidence. It is doubtful whether there was any demand at all. Rather, he pointed out that, evidence of complainant categorically shows that, being previously acquainted complainant and accused no.2 were lending financial support to each other as and when required. He pointed out that, complainant himself admitted to that extent in paragraph 13 of cross-examination. He further pointed out that, shadow panch was not present nor was in

the company of complainant and accused at relevant time. Thus, there is no corroboration to the testimony of complainant which is essential. That, while concluding it is submitted that evidence on behalf of prosecution was full of doubts and therefore, learned trial court committed no error whatsoever in acquitting the accused and he prays to dismiss the appeal for want of merits.

EVIDENCE ON RECORD

7. In trial court, prosecution seems to have rested its case on the evidence of following witnesses :-

PW1 Tukaram is the complainant. His evidence at Exh.79.

PW2 Bhimrao is the shadow panch.

PW3 Honaji Jawale is the Sanctioning Authority.

PW4 Shankar Gute, is the Investigating Officer and his evidence is at Exh.104

SUM AND SUBSTANCE OF EVIDENCE OF PW1 AND PW2

8. Re-appreciated and reanalyzed the evidence. PW1 Tukaram is the complainant. PW2 Bhimrao is the shadow panch. PW3 Honaji Jawale, is sanctioning authority and PW4 Shankar Gute is the Investigating Officer. In view of nature of the complaint, evidence of complainant and that of shadow panch is crucial. It is

settled principle that complainant being interested party, law requires corroboration to his testimony, more particularly from shadow panch, who is expected to be party to the demand as well as acceptance.

On visiting evidence of PW1 Tukaram, in his examination-in-chief, he has reiterated that he approached accused on 15.02.1990 on behalf of his aunt for 7/12 extract and claims that accused put up demand of Rs.500/- for the said work. On negotiations, brought down the figure at Rs.400/- and directed complainant to pay Rs.200/- in advance on Monday i.e. 19.02.1990 and remaining after the work. So complaint Exh.80 was lodged with Anti Corruption Bureau, who planned trap. It has come in his evidence that, he and shadow panch approached office of Talathi and then claims to have made inquiry with accused and further claims accused inquiring him whether amount is brought as demanded. That, accused also questioned complainant as to who shadow panch accompanying him and thereafter they went to hotel to take tea and then going to cloth shop of one Babu Yellale and again going to take tea stall and on the way they meet accused no.2. It is his case that, at that time, accused no.1 told complainant to pay amount to accused no.2. While they were entering Marathwada footwear, accused no.1 asked PW2 Bhimrao to stay back and only he himself, accused no.1 and accused no.2 entered the shop. He further deposed that, in the shop accused no.1 asked

him to deliver amount of Rs.200/- to accused no.2 and accordingly it was done and accused no.2 accepted the currency. After which, both accused left the shop and he gave signal, after which raiding party apprehended both accused.

While under cross, in paragraph 13 complainant has admitted his acquaintance with accused no.2 and accused no.2 to be a businessmen and that whenever accused no.2 needed money, he took it from him as well as whenever he himself needed money he took it from accused no.2. In further cross-examination he admitted that, after approaching accused no.1 in the office, he allegedly told that after election, 7/12 extract be collected. Surprisingly, in further cross, he admitted that after taking tea in the hotel, accused no.1 alone left the hotel, saying that, he is going. He further answered that, accused no.1 entered the shop of Babu Yellale and he and panch followed accused no.1 and spent 10 minutes in the cloth shop. He answered that in said shop again accused told him to come after election. He again answered that, only accused no.1 left the cloth shop also and started walking and that time accused no.2 met him. He claims that, thereafter again accused no.1 took accused no.2 with him in the hotel for tea and he answered that thereafter again he himself and panch, both too entered the hotel. Witness does not speak about asking accused also to join them in the hotel. He further

answered, after spending 25 to 30 minutes in the hotel, accused no.1 alone entered footwear shop. Then he answered in paragraph 14 that accused no.2 asked him to pay amount of credit as he was in need of Rs.500/- to Rs.1000/- to go for shopping at Nanded. He further answered that, he told accused no.2 that, he does not have such amount and he only posses Rs.200/- and after conversation, he gave it to accused no.2. Paragraph 16 are omissions, but the same are not to material.

9. PW2 Bhimrao in his evidence at Exh.92 deposed about being summoned to ACB office, introduce to complainant, hearing his case causing signature over the complaint. He further deposed about the procedure of application of anthracene and instructions issued by Investigating Officer. That, he was instructed to accompany complainant and to be watchful and PW1 being provided with mini tape recorder to record conversation. He further deposed that at around 8:45 a.m., he and PW1 Tukaram went near the house of one Narba Gunale and entered the office, which was on upper story. He further stated that, accused took them to have a tea near the hotel. After tea, witness deposed that accused no.1 started walking and went to cloth shop and he himself and PW1 Tukaram following him. He further stated that, accused had asked cloth shop owner Babu Yellale to verify whether this witness was really maternal uncle of

PW1 and accordingly Babu making inquiry with him. (evidence of PW1 is silent on this aspect). He further stated that, PW1 Tukaram told accused that as told by him, he has brought the amount and to take the amount of Rs.200/- otherwise it would be spent. Thus, apparently, from such version of this witness, it is clear that even before making demand by accused no.1, PW1 himself has offered bribe. It is further stated that, at that time, accused demanded Rs.400/- and that he should give whole amount. This is contrary to it PW1 has already stated that only Rs.200/- were paid on Monday and remaining Rs.200 were to be paid after work is to be done. Witness further stated that, while he and PW1 Tukaram were following accused, accused no.2 met them and again PW1 Tukaram and he himself returned to the said hotel. He deposed that both accused took tea, after which accused no.1 and PW1 Tukaram went inside the hotel while he himself and accused no.2 sitting in the hotel itself. He further deposed that, both accused and PW1 asked him to wait there only, but he claims that in spite of it, he followed them to the footwear shop and while he was on the staircase, there were talks between accused no.1 and PW1 Tukaram. What was the actual conversation is not stated by this witness. He stated that, PW1 Tukaram took out amount from watch pocket and headed it over to accused no.2, who accepted it, followed by signal relayed by PW1 Tukaram and raiding party approached him.

Answers given in paragraph 9 of cross examination of this witness, to which attention of this court is invited, are relevant. It is noticed that, this witness in cross examination admitted that, during their visit to the office of accused, he told them that work would be done after election is over. He admitted that, in the office, accused no.1 had not raised any demand. He also admitted that, during their first visit to the hotel for taking tea also, there was no demand. He further admitted that they were not instructed to follow accused no.1. He answered that after taking tea in the hotel, accused no.1 started proceeding alone and that in the cloth shop, he and PW1 Tukaram went on their own accord and they were not called by accused, even when he went to tea stall for the second time. He fairly admitted that he does not know what talks took place between PW1 Tukaram and accused no.1.

ANALYSIS

10. Therefore, on complete and careful scrutiny of evidence of above evidence which is crucial, it does emerge that these witnesses are not consistent. It is conspicuously emerging from the answers given in cross examination, more particularly that of PW2 Bhimrao that there was no demand from accused no.1 either at the office or at the tea stall or shops. *Secondly*, answers given by PW2 Bhimrao while under cross examination and clear admission that, he

did not hear the conversation between accused no.1 and PW1 Tukaram, casts a serious doubt about demand or acceptance. What is stated by PW1 Tukaram about demand of Rs.400/- being made and Rs.200/- agreed to be paid on Monday and remaining after the work is over is not finding place in the testimony PW2 Bhimrao, who claims to have heard the story from complainant during first visit to ACB office. From the answers given by PW2 Bhimrao coupled with his admission that they themselves on their own accord followed accused and that they were not asked to join clearly shows that desperate attempt was made to make the trap successful. PW1 Tukaram seems to have on his own accord offered bribe, even when there was no demand saying that accused should accept Rs.200/- or else it would be spent. For above reasons, the very aspect of demand has come under shadow of doubt. Admittedly, accused no.1 has not accepted the cash.

11. Though case of prosecution is that on behalf of accused no.1, accused no.2 accepted, there is no foundation to show that accused no.2 acted at the instance of accused no.1, being fully aware that the amount accepted by him was illegal gratification. On the contrary, PW1 Tukaram himself has admitted in paragraph 13 that there were previous relations between him and accused no.2 and they both were raising money from each other whenever required.

He has stated that accused no.2 had borrowed Rs.500/- to Rs.1000/-, but PW1 Tukaram informing his inability to meet such demand and rather he could pay Rs.200/-, which he was equipped with. With such quality of evidence, even if there is acceptance of cash by accused no.2, it has not been proved beyond reasonable doubt, accused no.2 was fully aware that the amount accepted by him was nothing but bribe. Although the owner of the cloth shop and the owner of the footwear shop were crucial witnesses, they were not examined.

12. On complete re-appreciation of the evidence, this court is more than convinced that, evidence on behalf of prosecution in trial court against accused persons is patently weak and fragile. It is unreasonable to expect conviction with such quality of evidence. The view taken by learned trial Judge is the only view that could emerge from such evidence. As no case for interference is made out, I pass following order.

ORDER

The criminal appeal is dismissed.

(ABHAY S. WAGHWASE, J.)