

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1226 OF 2002

Anandrao Bapu Patil

Since deceased through his LR's.,

A. Sindhutai Anandrao Patil

Age :- 62 years, Occ. Household,

B. Dilip Anandrao Patil

Age : 32 years, Occ. Agriculture

C. Sandip Anandrao Patil

Age 24 years, Occ. Agriculture

Nos. A to C R/o at post Aitawade (Kh.)

Tal. Walwa, District Sangli.

D. Suvarna Pradipkumar Patil

Age :- 39 years, Occ. Household

R/o. Islampur, Tal. Walwa,

District Sangli.

E. Sunita Mohanrao Jadhav

Age -35 years, Occ.: Househld,

R/o. Rahuri, Tal. Rahuti,

District Ahmednagar.

...Appellant

Vs.

The State of Maharashtra

...Respondent

Mr. Umesh Mankapure a/w Ms. Rati S. Sinhasane
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Advocate for the Appellant

Mr. B. V. Holambe-Patil	APP for the Respondent
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CORAM : S. M. MODAK, J.

DATE : 25th JUNE 2025**ORAL JUDGMENT :-**

1. The issue arisen in this appeal is “*whether the prosecution evidence is sufficient to prove that the amount of Rs. 500/- paid by the Appellant-accused to the de-facto Complainant was towards illegal gratification or whether it was towards arrears of water charges?*”.

2. After evidence, the Court of Special Judge, Sangli, as per judgment dated 23.10.2002, was pleased to convict the Appellant for the offences punishable under Sections 7 and 13 (1)(d) read with Section 13 (1)(2) of the Prevention of Corruption Act, 1988. The sentence imposed was rigorous imprisonment for one year and a fine of Rs. 500/-. In case of default in payment of fine, the Appellant was to suffer rigorous imprisonment for six months. This sentence was imposed for each offence. The correctness of the said judgment is challenged by the Appellant by way of this Appeal.

3. I have heard learned Advocate Shri Mankapure for the Appellant

and learned APP Shri Holambe-Patil for the Respondent-State. With their assistance, I have gone through the evidence and the record. The prosecution case, in a nutshell, needs to be restated. It is as follows:-

Prosecution Case

- a) The accused was working as Village Development officer in Haripur Grampanchayat, District Sangli. Whereas de-facto Complainant – Bajrang Pingale -PW No. 1 was interested to delete the entry of the charge in the record of the Grampanchayat in respect of the house property. His father was the owner of the said house.
- b) The loan was repaid and Dinanath Bhosale Co-operative Nagari Patsanstha Ltd. issued a letter dated 28.09.1999, at Exh. 10, addressed to the Village Development Officer requesting to delete the charge from the record.
- c) The de-facto Complainant handed over the letter in the office of the Grampanchayat of Haripur village and one Mr. Kore accepted it. He was the Clerk. Accused was not present in the office on that date.
- d) Next date Complainant-Mr. Pingale met the accused. The

accused was busy in election process. He requested Mr. Pingale to come after one week.

- e) When contacted after one week, accused explained to Mr. Pingale that he is in arrears of water charges. Mr. Pingale was instructed to clear the arrears and then accused will remove the entry of the charge on property extract.
- f) Mr. Pingale was not happy and he assured the accused to clear the water charges afterwards and insisted for removal of entry of the charge on property extract.
- g) At that juncture, accused made demand of Rs. 700/- and during discussion, it was reduced to Rs. 500/-. It is to be paid on the next date.
- h) Being annoyed, Mr. Pingale approached the Anti Corruption Bureau at Sangli and narrated his complaint.
- i) PI-Satish Mane attached to the Office of the Anti Corruption Bureau at Sangli recorded his statement. It is at Exh. 11.
- j) PI Mane called two panchas. One of them is **PW No. 2- Annasaheb Baburao Haringale**. He was from the office of

the District Deputy Registrar, Co-operative Society, Sangli.

- k) Formalities were completed and pre-trap panchnama was prepared.
- l) Then all the raiding party members alongwith Mr. Pingale and two panchas went towards Haripur Grampanchayat. Initially, Mr. Pingale and Haringale went to the office of the Grampanchayat, it was earlier to 04.00 p.m., Mr. Kore was present.
- m) Accused returned to the Office at about 04.30 p.m.. Mr. Pingale and Haringale met the accused.
- n) Mr. Pingale requested for removing entry of the charge on the house property. At that juncture, the accused inquired with Mr. Pingale have you brought the money, as demanded by him.
- o) Mr. Pingale replied in the affirmative and offered the tainted currency notes, five notes of Rs. 100/- denomination. Anthracene powder was applied to it. **The accused accepted the notes and kept them in the cupboard.**
- p) As decided Mr. Pingale went outside the office of the

Grampanchayat and gave the signal. PI Mane and other panch entered the office and searched the accused.

- q) **The accused produced Rs. 500/- from the cupboard.** Its identity was established, and it was seized. The trap panchnama was then performed.
- r) **PI Mane lodged the complaint** with Sangali Rural Police Station and FIR for the offences punishable under Sections 7, 13(1)(d) read with Section 13 (1) (2) of the Prevention of Corruption Act, 1988, was registered.
- s) PI Mane obtained sanction from the **Chief Executive Officer, Zilla Parishad, Sangli.** He is PW No. 3-Dr. K.H. Govindraaj. He granted the sanction.

Defence

4. The charge-sheet was filed, and the charge was framed for those offences against the accused. Just like other accused, he has not taken the defence of denial. **In fact, he admitted that he accepted Rs. 500/- from Mr. Pingale. However, according to him, this was not towards illegal gratification, but was part of the arrears of the water charges.** During the evidence, the prosecution examined the following

witnesses:-

Prosecution Witnesses

PW No. 1	Bajrang Dinkar Pingale	De-facto Complainant	On the point of demand and acceptance	Page No. 37
PW No. 2	Annasaheb Baurao Haringale	Junior Clerk in the office of the District Deputy Registrar, Co- operative Society, Sangli	Trap Panch	Page No. 61
PW No. 3	Dr. K. H. Govindraaj	Chief Executive Officer	Sanctioning Authority	Page No. 91
PW No. 4	Satish Balasaheb Mane	Police Inspector, Solapur	Investigating Officer	Page No. 93

5. The defence taken by the accused does not appeal to the conscious of learned trial Judge, and he arrived at the conclusion of guilt. With their assistance, I have gone through the judgment. The main reasonings given by the trial Court are as follows :-

Trial Court Judgment

- (i) The learned Judge accepted the evidence on the point of demand of money. According to him, it was true, because there is a letter issued by Patpedhi at Exh. 10 for removal

- of entry of the charge from property extract. (para no. 9)
- (ii) The learned Judge also emphasized on the repeated attempts made by Mr. Pingale to meet the accused with a request to delete the entry of the charge from the property extract. (para no. 10)
- (iii) The learned Judge found the evidence of Mr. Pingale as reliable because learned Judge did not find any reason for Mr. Pingale to falsely involve the accused. (para no. 10)
- (iv) The learned Judge also considered the conduct of the accused in issuing the property extract earlier and without any difficulty. That is why learned Judge does not find any enmity to support a false accusation. (para no. 10)
- (v) The learned Judge found evidence of the panch witness reliable, and it corroborates with the testimony of Mr. Pingale. (para no. 12)
- (vi) There was certain improvement in the evidence of the panch witness, but according to the learned Judge, when the evidence is given after gap of three years, it is but natural that such improvement may occur in the

evidence. (para no. 12)

(vii) The learned Judge finds this improvement is not sufficient to raise a doubt about veracity of the panch witness. (para no. 12)

(viii) About reliability of the defence taken by the accused in para no. 16, the learned Judge finds that the amount of Rs. 500/- was received by the accused towards the water charges, but when the defence was tested on the principle of the preponderance of probability, the learned Judge found it improbable (para no. 18).

(ix) There was an amount of arrears of Rs. 1080/- towards the water charges, and the amount offered was Rs. 500/-. The learned Judge finds that the accused will not accept part of the amount (para no. 19).

(x) When the accused asked Mr. Kore and Mr. Sherikar to prepare a receipt, learned Judge opined that it must be for payment of the fees for deleting the charge on the property extract.

According to learned Advocate Mr. Mankapure, this is one of the

reason for issuing the receipt, but there was also another reason for preparing the receipt that is for payment of other dues. According to him, this was the answer given by Mr. Pingale, **but was not considered by the trial Court.**

(xi) The learned Judge emphasized that the accused has not examined Mr. Sherikar or Mr. Kore in order to prove the instructions given by the accused for the preparation of receipt (para no. 20).

(xii) The learned Judge found the sanction as valid as he was serving as a public servant during the relevant time. (para no. 23)

For the above reasons, the learned Judge concluded that the offence is proved and the guilt of the accused is established.

Submissions

6. According to learned Advocate Mr. Mankapure, when it has come in the chief-examination of Mr. Pingale that accused insisted on Mr. Pingale to clear the water dues and at the same time, accused demanded Rs. 700/-, later reduced to Rs. 500/- towards illegal gratification, it was bounden duty of the prosecution to prove that the

demand made by the accused was not for clearing the arrears of the water charges but only by way of illegal gratification.

7. In respect of the panch witness, he submitted that panch has not clarified for what purpose demand was made by the accused. The panch is the witness, who has heard the conversation in between Mr. Pingale and the accused. According to Mr. Mankapure, the evidence of the panch witness does not support the prosecution. On the point of discharge of the burden, he submitted that burden on the defence is not heavy. To buttress his submission he relied upon the observations in case of *Trilok Chand Jain Vs. State of Delhi*¹. According to him, the trial Court was expected to consider the explanation offered by the accused for accepting Rs. 500/- and ought to have tested the prosecution evidence on that aspect.

8. He relied upon the observations in case of *Onkar Tukaram Ramteke Vs. State of Maharashtra*² and more specifically para no. 46. According to him, when it is unclear for what purpose the money was accepted, the benefit has to be given to the accused. To buttress this submission, he relied upon the observations in case of *Mohmoodkhan*

1 (1975) 4 SCC 761

2 2022 SCC OnLine Bom 685

*Mehboobkhan Pathan Vs. State of Maharashtra*³. According to him, even though the acceptance of money is not challenged, it cannot be considered in favour of the prosecution because evidence on the point of the demand is insufficient. To buttress his submission, he relied upon the observations in case of *State of Punjab Vs. Madan Mohan Lal Verma*⁴ On the point of corroboration by independent witnesses, he relied upon the observations in case of *Mukhtiar Singh (thr. Lrs.) Vs. State of Punjab*⁵.

9. As against this learned APP Mr. Holambe-Patil submitted that the evidence of Mr. Pingale is clear in respect to the demand, and the demand was made only when the accused insisted for getting property extract without clearing the water charges. According to him, the issue of the water charges and issue of illegal gratification are two separate issues and they cannot be mixed up. According to him, there is corroboration in the form of the panch witness and the conclusion of the guilt was arrived at after proper appreciation of the evidence and no interference is warranted.

3 (1997) 10 SCC 600

4 (2013) 14 SCC 153

5 (2017) 8 SCC 136

Consideration

10. The law on the point of proof of demand is well settled. It is true that in cases under the Prevention of Corruption Act, generally, there is evidence of the demand for money made to the *de-facto* Complainant prior to his approach to the Anti Corruption Bureau. At that time, it is only interaction in between him and the accused. The law requires corroboration of the testimony of the *de-facto* Complainant, because the *de-facto* Complainant is the person who offers the bribe to the Public Servant. That is why the prosecution tries to verify the allegations of demand by asking the independent panch witness to accompany the *de-facto* Complainant. It is also true that on some occasions, prior to arranging the trap, the prosecution arranges for verification of the demand and then trap is arranged. In this case, there is no such evidence of the verification of the demand. However, such verification is not required in each and every case.

11. The Court, while appreciating the evidence, tried to ascertain whether **the *de-facto* Complainant** has deposed before the Court on the same line as what he has stated before the Anti Corruption Bureau. The Court tries to ascertain whether the particulars about demand

given by the *de-facto* Complainant are minute or whether they are vague in nature. The Court tries to ascertain whether **the panch witness** has deposed about the interaction in between the *de-facto* Complainant and the accused on the point of demand. In such cases, where the accused comes with such a specific defence or explanation that has to be considered by the Court while appreciating the evidence.

12. It is also settled law that the demand and acceptance needs to be corroborated with each other. There cannot be a conviction merely on the basis of acceptance, if the evidence on the point of demand is not satisfactory. It is also true that the Court can take help of the presumption under Section 20 of the Prevention of Corruption Act. The Hon'ble Supreme Court in case of *State of Punjab Vs. Madan Mohan Lal Verma*⁶ has elaborated the law in respect of the presumption and when it can be drawn. It can be drawn when the foundational facts are established.

13. When considered the provisions of the Section 20 to the facts of this case, there is no doubt about acceptance of the amount by the accused. **The dispute is whether it was illegal gratification or payment**

6 (2013) 14 SCC 153

of arrears of the water charges. The prosecution has to prove that the amount was towards illegal gratification. It is true this case involves the appreciation of the evidence of the *de-facto* Complainant and panch witness on one hand, and the explanation offered by the accused on the other hand. Such evidence needs to be tested under the provisions of Section 3 of the Indian Evidence Act. The Court has to apply the test of a prudent man. While doing this exercise, the human conduct plays a very important role.

Evidence of de-facto Complainant

14. With this exercise, when the evidence of the *de-facto* Complainant is perused, we can find in his examination-in-chief itself that he has said about the arrears of the water charges. Later on, he clarified it is Rs. 1,080/-. It is true during his cross-examination, he has admitted Mr. Pingale got such extracts earlier without any difficulties. The trial Judge emphasized such difficulty has arisen on this occasion due to demand for illegal gratification only. It is true during cross-examination, he has said that atleast on five occasions, he has met the accused for getting the property extract. It will be relevant to reproduce the words used by the *de-facto* Complainant thereby explaining the

demand.

- a) When both of them met earlier to trap, there was a discussion about clearing the arrears of the water charges and there was also discussion about payment of Rs. 500/- for doing the official work of issuing property extract.
- b) Whereas when they again met each other on 02nd November 1999 in the office of the Grampanchayat, what are utterances by Mr. Pingale are relevant. **They are as follows:-**

“I asked the accused to remove entry of the charge on the house property and to give me fresh property extract”.

“The accused asked me, if I had brought the money as demanded by him”.

“I told the accused that I brought the amount. He demanded Rs. 500/- from me and I paid the said amount”.

15. According to learned Advocate Mr. Mankapure while making the demand for money, at the time of trap accused has not said whether it is for illegal gratification or for clearing the arrears of the water charges.

Whereas according to learned APP Mr. Holambe-Patil, this was only by way of illegal gratification. The evidence has to be appreciated in its totality.

16. It is important to note that the amount of Rs. 500/- was not kept by the accused with him, but he has kept in the cupboard. According to learned APP Mr. Holambe-Patil, on many occasions, the culprits tried to disown the money. It has come in his cross-examination that Mr. Sherikar and Mr. Kore, who are the colleagues of the accused, were also present in the Office, at the time of trap. It has come during his cross-examination, after accepting the amount, the accused instructed Mr. Sherikar and Mr. Kore to prepare receipt for payment of the fess for getting copies of the property extract and payment of other dues.

17. The learned Judge while believing the testimony of the *de-facto* Complainant, opined when instructions are given to prepare a receipt for issuing copies of the property extract, the *de-facto* Complaint needs to be believed. Whereas according to learned Advocate Mr. Mankapure even though one of the reason for preparing the receipt was towards issuing copy of the property extract, however, the *de-facto* Complainant has also said that the receipt was to be issued for payment

of the other dues. **However, the second reason was not considered by the trial Court.** It is true that the trial Court has considered only one reason and not the other. It finds place in para no. 19, on running page no. 132. This conduct of the accused to give instructions to his colleagues for issuing receipt is also important.

Evidence of Panch Witness

18. When I have gone through to the evidence of the **panch witness**, his evidence is material on the point **hearing the conversation in between *de-facto* Complainant and the accused.** No doubt, he has said about the insistence by Mr. Pingale on accused to do his job and accused inquired with Mr. Pingale whether he has brought the money and then the money is offered. **It is very well true that this panch witness has not clarified for what purpose the money is to be paid.** Panch can tell about this only if the reason for demand of money is reiterated either by *de-facto* complainant or the accused. If no one has said about this, it cannot be expected from the panch witness to say something about reason for demand. Except for telling the reason of demand, the evidence of the panch witness do corroborate with the evidence of the *de-facto* Complainant. **As said above, at the time of the**

trap, accused has also reiterated the demand for money, but for what reason, he has not stated.

19. The evidence of the panch witness was challenged on the point of two improvements. Whether these facts were stated in a Police statement or not, he has stated that those facts were stated by him to the Police, but he could not explain, the reason as to why they were not recorded. The learned Judge considered this improvement as natural improvement which are occurred by passage of time. Though one of the reason for improvement may be passage of time, however in this case, the accused has not proved this improvement by putting it to the investigating officer. So it cannot be treated as improvements. **Be that as it may, the interaction only talks about the demand for money and not for what purpose the money is demanded.**

Not examining two witnesses

20. The learned Judge has put burden on the accused and blamed him for not examining the two witnesses that **Mr. Sherikar and Mr. Kore.** They were present at the time of trap and it is undisputed. Even they were instructed by the accused to prepare the receipts, reasons may be different. The learned Judge was cautious of the fact about the

nature of the burden on the accused. It is not as heavy as that on the prosecution. It is only test of the preponderance of probability. Furthermore, it is the *de-facto* Complainant himself who has admitted about the arrears of water charges and demand made by him to clear it. There is nothing wrong on the part of the accused in insisting for clearing the water dues, because it is part of his duty only. Now the issue is whether the learned Judge was wrong in blaming the accused for not examining these two witnesses.

21. In case of *Mohmoodkhan Mehboobkhan Pathan Vs. State of Maharashtra(Supra)* a representative from the Sub-Registrar Office faced the prosecution as per the provisions of the Prevention of Corruption Act. He was entrusted of the responsibility of issuing certified copy. He accepted certain amount towards illegal gratification. He came with the case that the money was accepted towards advance charges for certified copies. On this background, the Hon'ble Supreme Court explained "the benefit of doubt has to be given to the accused and the gratification denotes the acceptance of something to the pleasure or satisfaction of the recipient".

22. The prosecution can claim the benefit of the presumption only

when it is proved that the money was towards illegal gratification. If the evidence of '*de-facto Complainant*' and the '*panch witness*' are read together, what we find is at the time of trap, what has come in the evidence is "*money was demanded by the accused and Mr. Pingale paid Rs. 500/- to the accused*". The reason for the demand earlier to the trap is important, because it sets the Criminal law in motion. At the same time, what is important is the actual conversation in between the *de-facto Complainant* and the accused and what was heard by the independent witnesses.

23. If considered from this angle, I think the prosecution ought to have clarified that the money was demanded on 02.11.1999 for none other than by way of illegal gratification for issuing the property extract and it was not for clearing the water charges. If there is some material in the evidence of the *de-facto Complainant*, the accused is going to take benefit of it. The accused is going to put a stress that the money which he demanded was not for illegal gratification but for clearing the legal dues.

24. This is not the first time when the investigating agency has faced with such a situation. As said above, it has happened in the case of Sub

Registrar also. It was foremost duty of the prosecution to prove that the money was demanded as illegal gratification. It was foremost duty of the prosecution to examine either of the witnesses from Mr. Sherikar and Mr. Kore, who were very much present at the time of the trap. The learned Judge put a burden on the accused for not examining them. But first there is burden on the prosecution and then on accused. As per the Indian Evidence Act, if a party on whom burden lies has not discharged the burden, then he failed in proving that particular fact. When law is well settled, the burden on the accused is not heavier than that of the prosecution, then, blaming the accused in not examining them, it amounts to putting a burden on accused to prove it beyond reasonable doubt. That is not the law. The learned Judge committed wrong in putting the burden on the accused and blaming him. In fact the prosecution ought to have examined either of the witnesses. They have failed.

25. Just because earlier when the property extract were issued by the accused there was no difficulty, but the difficulty arose only on this occasion, it cannot be considered against the accused, because the conduct at the time of the demand and at the time of the trap is

important.

26. I do not think that the *de-facto* Complainant is to be disbelieved or he has to be blamed and the Panch witness is to be blamed. After reading their evidence. They have done their job. But who has failed is the prosecuting agency, while proving the case before the trial Court. It was the prosecutor, who conducted the prosecution and ought to have examined the witnesses to corroborate the version of the *de-facto* Complainant. This has not been done.

27. It is very well true that Mr. Pingale met the accused five times for pursuing his work. Even though it may be true the doubt about '*reason for demand*' is not clarified during evidence. What I find is that the instructions given for those two persons to prepare the receipt also find in favour of the accused. So entire evidence is perused in totality, I find the learned Judge has committed wrong in arriving at guilt of the accused.

28. In an Appeal against conviction, the entire evidence can be appreciated afresh. The test which is applicable for an Appeal against acquittal is not applicable in such an appeal. So when I have done this exercise, I find that the prosecution could not prove that the money

demand was for issuing the property extract by the accused. So benefit of the doubt has to be given to the Appellant.

29. In view of that, the judgment requires interference. Hence, the Appeal deserves to be allowed. Hence, the following order is passed:-

ORDER

- (i) The Appeal is allowed.
- (ii) The judgment dated 23.10.2002 passed by the Special Judge, Sangli in Special Case No. 7 of 2000 is set aside.
- (iii) The Appellant/Accused is acquitted for the offence punishable under Sections 7, 13 (1)(d) and 13(1)(2) of the Prevention of Corruption Act, 1988.
- (iv) Fine paid, if any, be returned to the Appellant.

30. With these observations, the Appeal is disposed of.

[S. M. MODAK, J.]