courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 15/08/2026

**(2016) 01 BOM CK 0163**

**In the Bombay High Court**

**Case No :** Criminal Appeal No. 430 of 2004

Bhaskar APPELLANT

Vs

State of Maharashtra RESPONDENT

**Date of Decision :** 20-01-2016

**Acts Referred:**

Prevention of Corruption Act, 1988 — Section 13(1)(d), 7

**Citation :** (2016) 2 AIRBomRCri 560 : (2016) ALLMRCri 4871

**Hon'ble Judges :** M.T. Joshi, J.

**Bench :** Single Bench

**Advocate :** G.A. Kulkarni, Advocate holding, Mr. R.S. Deshmukh, Advocates, for the Appellant; Mr. A.R. Kale, A.P.P, for the Respondent

**Final Decision :** Allowed

## Judgement

M.T. Joshi, J.(Oral) - Heard both sides.

2. Aggrieved by the recording of conviction for the offences punishable under section 7 and 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, the present appeal is preferred by the original accused. The appellant/ accused was directed to suffer rigorous imprisonment for six months and one year and to pay a fine of Rs.50/, respectively on each count. Both the substantive sentences were directed to run concurrently.

3. The prosecution case, in short, is as under:

That, PW5 Bhanudasrao Sonwane, Police Inspector of Anti Corruption Bureau, Aurangabad learnt that some traffic police officials were extracting money from the drivers of the vehicles passing through Aurangabad under the threat that if the money was not paid, they would prosecute them. None of the drivers was coming forward to lodge complaint. Hence, the investigating officer himself thought that he should nab them in the public. Therefore on 30th March, 2000, he requisitioned three public servants from various offices, which included PW2 Gangadhar Thombre, PW3 Kachru Bhalerao and one Mr. Raut. Out of them, PW2

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/bhaskar-appellant-hash-state-of-... 

Gangadhar Thombre was projected as complainant and the rest of the persons were decided to be the panch witnesses.

The investigating officer himself spared an amount of Rs. 400/for using it as decoy money. The anthracene powder was applied to the decoy money. Panch witness PW2 Gangadhar Thombre was directed to proceed by a truck along with another panch witness PW3 ? Kachru Bhalerao. They were also provided with a tape recorder loaded with a cassette so that the conversation, if any with traffic police official who would demand bribe can be recorded. The panchanama of all these activities was recorded.

Thereafter, the raiding party proceeded to Beed bye-pass. At that time, they found mini truck bearing registration no. MH16/B2003 was proceeding from Aurangabad town. It was carrying certain passengers. The driver ? Vishnu Jive was driving the same while owner Ashruba Jive was travelling by the said goods tempo. The investigating officer requested both of them to help him in his mission. Accordingly, PW2 ? Gangadhar Thombre and PW3 ? Kachru Bhalerao boarded in the cabin of the truck. Some of the members of raiding party sat in the truck as passengers.

The mini truck proceeded through Beed bye-pass road. Near Mahanubhav Ashram at about 7.00 p.m., two traffic police officials stopped the truck and allowed to proceed further. Thereafter, one police constable in uniform asked the driver to stop the mini truck near Walmi stop. Vishnu, the truck driver stopped the truck and went towards said police constable. PW2 Gangadhar Thombre joined them posing himself to be owner of the truck. Another panch witness PW3 ? Kachru Bhalerao also joined them.

The present appellant/accused examined the driving license of Vishnu made enquiry as to what was loaded in the truck. When he found that the persons were being taken, he made a demand of Rs.150/towards fine amount and Rs.100/towards entry fees. Upon that, PW2 Gangadhar Thombre took one currency note of Rs.100/from the tainted notes and handed over the same to the appellant/accused. He collected the same and put it in his right fists. Thereupon, PW2 Thombre gave signal to the raiding party on which investigating officer and other members of the raiding party rushed there. The currency note was taken away from the fists of the appellant by PW3 Kachru Bhalerao. Thereafter, the next of the exercise of the examining of the person and the relevant part of the cloths of the witness and the appellant/accused was carried which confirmed the above activities. Thereupon, the complaint was lodged at exhibit 19 with Chhavni Police Station.

The investigating officer took over the investigation. He recorded the statements of the witnesses and sent a requisition for grant of sanction to prosecute the present appellant. Accordingly, PW1 Prakash Shegaonkar, the then Deputy Commissioner of Police, Aurangabad accorded the sanction to prosecute the appellant at exhibit 10 and thereafter, the charge-sheet came to be filed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/bhaskar-appellant-hash-state-of-… 

4. The defence of the appellant/accused was that he had stopped the truck and enquired about the driving license. There was darkness at that time. The panch witness, however, handed over a currency note of Rs.100/to him and when he found that it was a currency note, he threw it away immediately. However, he was immediately caught by the investigating officer.

5. Before the learned Special Judge, both panch witnesses, the truck owner PW4 Ashruba Jive and the investigating officer were examined besides sanctioning authority ? PW1 Prakash Shegaonkar. The learned Special Judge came to the conclusion that the prosecution has proved its case beyond reasonable doubt and therefore, the conviction as stated above came to be recorded.

6. Mr. G.A. Kulkarni, learned counsel for the appellant submitted before me that the learned Special Judge has not appreciated the evidence on record in correct perspective. The learned Special Judge himself found that the independent panch witnesses had made contradictory statements regarding the vital facts. The learned Special Judge also remarked that their story is twofold.

Further, though as per the prosecution case, the tape recorder was used during the exercise of trap, the cassette was not placed before the Court by the investigating officer on the ground that nothing could be recorded in the same. PW2 ? Gangadhar Thombre, the independent panch witness, however, has deposed that the recorded version could be understood. However, the same is not placed on record.

Mr. Kulkarni further submitted that the prosecution witnesses have even supported the defence that the tainted note was found on the ground as against the prosecution case that the tainted note was recovered from the fists of the appellant. For all these reasons, he submitted that benefit of reasonable doubt ought to have been given by the learned Special Judge. He submitted that the appeal be allowed and the appellant be acquitted of the offences.

7. The learned A.P.P., on the other hand, submitted that though some of the prosecution witnesses have given twofold story of the events, the learned Special Judge has taken efforts to appreciate their evidence. Certain contradictions are bound to happen in a case. The Court is, therefore, required to appreciate the evidence on record, as a whole. Therefore, relying on the ratio laid down in the case of "Manik s/o Uttamrao Solav v. State of Maharashtra", reported in 2011 (5) LJSOFT 64, he submitted that the variation in the evidence being not fatal, there is no need to interfere in the final conclusion arrived at by the learned Special Judge. He, therefore, submitted that the appeal be dismissed.

8. On the basis of above material and the submissions advanced on behalf of both sides, following points arise for my determination :

(I) Whether the prosecution has proved that the present appellant, on 30th March, 2000, had made demand of Rs. 250/and thereafter accepted Rs. 100/as a gratification other than legal remuneration ?

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/bhaskar-appellant-hash-state-of-… 

(II) Whether the present appellant has obtained the said amount of Rs. 100/as pecuniary advantage by using corrupt and illegal means and committed criminal misconduct by abusing his position as a public servant ?

My findings to both the above points (I) and (II) are in the negative. The appeal is, therefore, allowed and the appellant is acquitted of the offences, for the reasons to follow.

REASONS

9. The salient features of the case would show that though the tape recorder was used at the time of trap for nabbing certain police traffic officials who were making demand of gratification, as per the prosecution case, no audible conversation was found recorded in the said cassette. Therefore, even the said cassette was not seized and hence, was not produced on record.

10. PW2 ? Gangadhar Thombre, however, deposed that when the cassette was replayed during the exercise of recording of the panchanama, he could understand the conversation recorded in the cassette when it was played in his presence. It is to be noted that the present case is based completely on the version of the panch witnesses since there is no complainant in the case. The panch witness, however, was specific in stating that the conversation could be understood.

11. When the prosecution case itself is that during the exercise, the tape recorder was used, it would have been better for the investigating officer to place the cassette before the Court and it could have been left to the discretion of the court to find out as to whether any recording in the cassette was there which would corroborate or otherwise the prosecution case.

12. The depositions of the concerned witnesses, as detailed earlier, would show that the defence of the appellant that he immediately threw the currency note on the ground, was accepted by the witnesses in the court. The learned Special Judge, however, did not give any importance to the said fact which would rather probabalize the defence.

Further, though it is prosection case that the present appellant had demanded an amount of Rs.250/i. e. Rs.150/towards fine and Rs.100/towards the entry fees, only amount of Rs.100/was handed over to him. In natural course, the appellant without any protest would not have accepted the said amount as it was less than the demanded amount. The prosecution case, therefore, that the appellant silently accepted the said amount, appears to be doubtful.

13. Learned A.P.P. submitted that a reasonable and practicable approach is required to be adopted. The statements of witnesses are required to be read in their entirety to examine their truthfulness and veracity or otherwise. Insignificant contradictions or variations in the depositions should not be given undue importance. Further, the contradictions or omissions which do not go to the root of the matter and minor contradictions and omissions are required to be

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/bhaskar-appellant-hash-state-of-… 

ignored. For this purpose, learned A.P.P. relied on the ratio laid down in the case of "Manik s/o Uttamrao Solav v. State of Maharashtra" (cited supra).

14. One cannot be oblivious of the fact that the witnesses are required to be reproduced for stating the events as seen by them, after a long gap from the date of occurrence, in the Court. In the circumstances, certain minor variations or contradictions are bound to take place. If all the witnesses would speak about the incident in chorus, then it would amount to parroting and that itself would be a ground for suspicion.

15. In the present case, we have found the salient features of the case that there are vast contradictions between the statements of the witnesses. Besides, the fact of not placing the cassette before the Court also goes to the root of the case. In that view of the matter, in my view, the learned Special Judge ought to have extended benefit of reasonable doubt to the appellant/accused. In the circumstances, the prosecution has failed to prove its case beyond reasonable doubt. The appeal, therefore, succeeds. Hence, the following order.

16. The Appeal is hereby allowed. The order passed by the learned Special Judge, Aurangabad in Special Case No. 8 of 2000, thereby convicting and sentencing the present appellant for the offence punishable under section 7 and 13 (1)(d) read with section 13 (2) of the Prevention of Corruption Act, is hereby set aside.

17. Instead, the appellant ? Bhaskar s/o Laxman Gaikwad is hereby acquitted of the offences punishable under section 7 and 13 (1)(d) read with section 13 (2) of the Prevention of Corruption Act. His bail bonds, if any shall stand cancelled.

18. The appeal is accordingly allowed and disposed of.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/bhaskar-appellant-hash-state-of-…