

**(2018) 01 BOM CK 0080**  
**In the Bombay High Court**  
**Case No : 705 of 2002**

Dr. Kiran Anant Deshpande

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

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**Date of Decision :** 20-01-2018

**Acts Referred:**

<a href=3863>Code of Criminal Procedure, 1973</a>, <a href=3863-313>Section 313</a> - Power to examine the accused  
<a href=4162>Evidence Act, 1872</a>, <a href=4162-114>Section 114</a> - Court may presume existence of certain facts  
<a href=6460>Prevention of Corruption Act, 1988</a>, <a href=6460-7>Section 7</a>, <a href=6460-13>Section 13(2)</a>, <a href=6460-13>Section 13(i)(d)</a> - Public servant taking gratification other than legal remuneration in respect of an official act - Criminal misconduct by a public servant - Criminal misconduct by a public servant

**Citation :** (2018) 01 BOM CK 0080

**Hon'ble Judges :** M. G. Giratkar

**Bench :** Single Bench

**Advocate :** Suyash Agrawal, S. V. Sirpurkar, Nikhil H. Joshi

**Final Decision :** Allowed

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## Judgement

1. Appellant assailed the judgment of conviction awarded by the Special Judge, Nagpur in Special Case No. 3/91.

2. The case of the prosecution against the appellant in short is as under. (i) Appellant was working as a Medical Officer at Mental Hospital, Nagpur. On 15.6.1989, complainant Amar Parchake approached to the appellant and requested him to issue medical certificate of his brother who was taking treatment in the Mental Hospital. Complainant required that certificate because he was transferred to Gadchiroli and he wanted to get his transfer cancelled on the medical ground of his brother.

(ii) Complainant requested appellant to issue medical certificate. The appellant told him to pay Rs. 100/.

The complainant was not ready to give that amount as he thought it was a bribe amount. Therefore, he approached the office of Anti Corruption Bureau, Nagpur and lodged the report, Exhibit 44. As usual, pretrap panchanama was prepared by the Investigating Officer Shri Aziz. Panchas were called. Demonstration about trap was given to the panch witnesses and complainant.

Thereafter trap was led at Mental Hospital, Nagpur. Complainant Amar Parchake went to the office of appellant in the Mental Hospital. Appellant demanded Rs. 100/.

He gave the same. Thereafter medical certificate of his brother was issued by the appellant.

(iii) As decided at the time of pretrap panchanama, appellant gave signal to the trap party. Trap party approached to the office of appellant and apprehended him with bribe money of Rs. 100/. Hands of appellant were caught hold. Necessary formalities were carried out. Thereafter posttrap panchanama was prepared. After complete investigation, P.W. 1 lodged the report. Crime was registered. Sanction was obtained from the sanctioning authority. Sanctioning authority granted sanction to prosecute the appellant vide Exhibit 82. After obtaining sanction order from the appointing authority, chargesheet came to be filed in the Special Court at Nagpur.

(iv) Charge was framed at Exhibit 11 for the offences punishable under Sections 7, 13(i)(d) read with Section 13(2) of the Prevention of Corruption Act. The contents of charge were readover and explained to the accused. He pleaded not guilty and claimed to be tried. Defence appears to be that he accepted Rs. 100/ as his outstanding fees and not bribe.

(v) The prosecution has examined following witnesses.

- (1) P.W. 1 Shri Gyanba Rajaram Pagire, PSI (Exhibit 33)
- (2) P.W. 2 Shri Amar Bajirao Parchake (Exhibit 42)
- (3) P.W. 3 Shri Anna Vitthalrao Dhabekar (Exhibit 56)
- (4) P.W. 4 Shri Babarao Dadarao Patil (Exhibit 65)
- (5) P.W. 5 Shri Suresh Santoshrao Lokhande (Exhibit 71)
- (6) P.W. 6 Ujjaykumar Krushnarao Wahane (Exhibit 72)
- (7) P.W. 7 Shri Mohd. Qamar Mohd. Takdir Quereshi (Exh. 75)
- (8) P.W. 8 Shri Mohd. Aziz Sheikh Mehboob (Exhibit 78)
- (9) P.W. 9 Shri Prabhakar Gemu Salve (Exhibit 81) and
- (10) P.W. 10 Shri Prabhakar Ramaji Coreshettiwar (Exhibit 96)

(vi) Statement of appellant was recorded under Section 313 of the Code of

Criminal Procedure. He has specifically stated that he demanded Rs. 100/from the complainant towards outstanding fees because his brother was getting medical treatment in his private clinic. He did not accept that amount as a bribe.

(vii) After hearing the prosecution and defence, learned Special Judge convicted the appellant for the offences charged against him.

3. Heard learned counsel Shri Suyash Agrawal holding for Shri S. V. Sirpurkar, learned counsel for the appellant and Shri Nikhil H. Joshi, learned Additional Public Prosecutor for the State/respondent.

4. Perused the evidence on record. Evidence of complainant itself shows that his brother was getting medical treatment in the private clinic of appellant. As per the advice of appellant, he taken his brother for treatment in the Mental Hospital, Nagpur. Appellant was Medical Officer at Mental Hospital, Nagpur. Complainant was transferred to Gadchiroli from Nagpur. He wanted medical certificate of his brother to cancel his transfer. Therefore, he approached the appellant and requested him to issue medical certificate.

5. Complainant has specifically stated in his evidence that appellant demanded Rs. 100/towards his outstanding fees. The specific defence of the appellant is that he has received Rs. 100/from the complainant towards his fees outstanding against him.

6. Complainant has fully supported the defence of appellant. Other witnesses viz. P.W. 5 Suresh Lokhande, Attendant and P.W. 7 Mohd. Qamar, Medical Officer examined by prosecution have specifically stated that appellant was working as Medical Officer in the Mental Hospital at the time of incident. He was having private clinic at Dharampeth, Nagpur.

7. There is no dispute that appellant has received the amount of Rs. 100/from the complainant. But that amount was for outstanding fees. From perusal of evidence particularly, evidence of Investigating Officer itself shows that he seized material documents from the private clinic of appellant i.e. diary and other documents but those were not produced on record. His admission shows that seized diary show the name of patients which were examined by the appellant. As per the case of the appellant, amount of fees is also written in the diary. Investigating Officer has specifically admitted that diary was seized but not produced on record. Therefore, presumption can be drawn under Section 114 of the Indian Evidence Act for not producing the documents and those were suppressed from the Court. If those documents were produced would have against the prosecution.

8. From the perusal of the evidence of all the witnesses, it is clear that only panch witness has supported to the case of prosecution. It is natural because he is a public servant, he has stated as per panchanamas. Evidence of complainant himself and other witnesses including Medical Officer and Attendant of Mental Hospital clearly shows that appellant was working as Medical Officer in Mental

Hospital and also he was running a private clinic. There is no dispute that appellant was permitted to do private practice. It is also brought on record that appellant not claimed any nonpracticing allowance from the Government.

9. Specific admission of the complainant himself that before admitting his brother in Mental Hospital, his brother was getting medical treatment from private clinic of appellant. Sometimes, he was not having money and therefore, amount of Rs. 100/was due against him. He has specifically admitted that he went to demand medical certificate and appellant has specifically asked him whether he brought Rs. 100/outstanding against him. Specific admission of complainant is also corroborated by other evidence. Admission of complainant get support from the evidence of Medical Officer, P.W. 7 and Attendant, P.W. 5 who deposed that appellant was doing his private practice. Therefore, it is clear that probable defence is proved by the appellant/accused.

10. Now, it is well settled that prosecution has to prove the guilt of accused beyond reasonable doubt. Burden of proof on prosecution is heavy as compared to accused. Accused has to prove his probable defence with preponderance of probabilities. Accused has proved his probable defence that he demanded and accepted Rs. 100/as fee outstanding against the complainant for treatment of his brother and it was not a bribe. This probable defence is not taken into consideration by the trial Court and wrongly convicted the appellant. Hence, the impugned judgment of conviction is liable to be quashed and set aside. Therefore, I proceed to pass the following order. ORDER

(i) The appeal is allowed.

(ii) The impugned judgment of conviction is hereby quashed and set aside.

(iii) Appellant Dr. Kiran Anant Deshpande is hereby acquitted of the offences punishable under Sections 7, 13(i)(d) read with Section 13(2) of the Prevention of Corruption Act.

(iv) Appellant is on bail. His bail bond stands cancelled.

(v) R & P be sent back to the trial Court.

(vi) Fine amount, if paid, be refunded to the appellant.