

---

**(2015) 04 BOM CK 0257**

**In the Bombay High Court**

**Case No : Criminal Appeal No. 204 of 2006**

Mahadeo Bapurao Wadaskar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

---

**Date of Decision : 24-04-2015**

**Acts Referred:**

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 20, 7

**Citation : (2015) 04 BOM CK 0257**

**Hon'ble Judges : P.N. Deshmukh, J**

**Bench : Single Bench**

**Advocate : N.R. Saboo, for the Appellant; T.A. Mirza, APP, Advocates for the Respondent**

**Final Decision : Allowed**

---

## **Judgement**

P.N. Deshmukh, J.—This appeal takes exception to the judgment and order dated 28th of March, 2006 passed by the learned Special Judge, Chandrapur in Special Case No. 1 of 1995, whereby appellant/accused came to be convicted for the offence punishable under Sections 7 of the Prevention of Corruption Act, 1988 and is sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs. 2500/-, in default to suffer Simple imprisonment for three months. Appellant is further convicted for the offence punishable under Section 13(1)(d) read with Section 13(2) of the said Act and is sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs. 5000/- in default to suffer simple imprisonment for six months.

2. In brief, it is the case of prosecution that PW 1 Rajesh Bongirwar, complainant, is an agriculturist residing at village Kothari, Distt. Chandrapur and for the purpose of agricultural work he had engaged two servants namely Baban Sukharam Longagde and Ashok Sakharam Diwate on payment of monthly wages of Rs. 460/-. The appellant was working as a Minimum Wages Inspector. On 29th of July, 1993 the appellant visited complainant's village and enquired about muster and wages paid to the servants deployed by him. Again on 24th of

August, 1993 appellant visited complainant's village and prepared inspection note in respect of wages of complainant's servants. Thereafter appellant issued notices to the complainant on 20th September, 1993, 18th of October, 1993 and 2nd of October, 1993 calling upon the complainant to produce certain documents which he failed to produce. On 26th of November, 1993 complainant received notice from the office of Assistant Labour Commissioner signed by the appellant calling upon complainant to remain present before him on 1st of December, 1993. Accordingly, complainant remained present and produced muster and wages register of his agricultural servants. On perusal of same appellant informed complainant that he has not maintained the register as required and that for this reason he was to forward adverse report against complainant to his Superior Officer to lodge case against him. Complainant therefore requested appellant to not to send any such report and therefore it is the case of prosecution that for not sending adverse report appellant demanded bribe of Rs. 500/- from the complainant directing him to pay the same on that day at 3 p.m. As complainant was not interested to pay the bribe amount he visited to the office of Anti-corruption Bureau at Chandrapur and lodged his report at Exh. 17.

3. Report was recorded by PW 7 Nilkanth Zalke, P.I., A.C.B. and he arranged for two panch witnesses from the office of M.S.R.T.C. Chandrapur being PW 2 Arun Dupare and one Murlidhar. Panchas verified the contents of complaint from the complainant. Complainant has produced currency notes of Rs. 500/- consisting five currency notes of Rs. 100/- in denomination. Police Constable Shri Zade from the office of Anti Corruption Bureau gave demonstration of the effect of phenolphthalein powder with solution of sodium carbonate to the complainant and both the panchas where from they learnt that when said powder comes into contact with solution of sodium carbonate, it turns purple.

4. Thereafter phenolphthalein powder was applied to said currency notes and they were kept in the shirt pocket of complainant. PW 2 Arun was instructed to remain with complainant and to observe conversation whatsoever may take place between appellant and complainant. Complainant was also instructed to give signal by removing his spectacles with his left hand on making payment of bribe to the appellant only on demand. Pre-trap panchanama of above facts was drawn vide Exh. 25 in the office of Anti Corruption Bureau, Chandrapur between 11.30 a.m. and 1.30 p.m.

5. Members of the raiding team - PW 7 Nilkanth-Investigating Officer, complainant and both the panchas thereafter proceeded to the office of appellant in a Government vehicle which was parked near Patel High School where from complainant and PW 2 Arun started walking to the office of appellant where appellant is alleged to have demanded and accepted bribe of Rs. 500/- who came to be apprehended and the bribe money came to be recovered from the top of the cooler upon which solution of sodium carbonate was sprinkled when purple coloured spots appeared thereon. Serial numbers of currency notes tallied with those noted in pre-trap panchanana. Similar spots were found on the shirt of

appellant. Right hand fingers of the appellant when dipped into the solution of sodium carbonate it turned into purple colour. On testing right hand fingers of complainant in the solution of sodium carbonate, it turned purple. Similarly, on sprinkling said solution on the shirt pocket of complainant, purple colour dots appear thereon. Post trap panchanama of the above facts came to be prepared as per Exh. 31 in the office of appellant between 5.20 p.m. and 8.10 p.m.

6. On the basis of report submitted by PW 7 Nilkanth Zalke, I.O., offence came to be registered by Chandrapur City Police Station vide Crime No. 219 of 1993 and was further investigated by him during the course of which he forwarded seized muddemal articles to Chemical Analyzer Nagpur for its analysis and took steps for seeking sanction to prosecute appellant from the competent authority. On receipt of sanction (Exh. 51) from PW 6 Vinayak Date, Commissioner of Labour, charge-sheet came to be filed against the appellant before the Special Court, Chandrapur.

7. The charge was framed against the appellant for the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 which he pleaded not guilty and claimed to be tried. It is the specific defence of appellant that complainant forcibly planted notes into his pocket and is falsely implicated in this case.

8. Heard Mr. N.R. Saboo, learned counsel for the appellant and Mr. T.A. Mirza, learned Additional Public Prosecutor for the State.

9. To effectively evaluate the submissions advanced by learned Counsel for both the sides, with their assistance, I have scrutinized the evidence and documents on record.

10. PW 1 Rajesh Bongirwar, complainant, has stated that he was having share in the agricultural land jointly owned by his brothers upon which he has engaged two servants. He stated that prior to the incident appellant in his capacity as Minimum Wages Inspector had visited his field and enquired about records maintained by him regarding the servants engaged by him for agricultural work and asked complainant to come to Chandrapur in his office along with record. It is further stated that appellant has also issued notice to that effect as per Exh. 16 on record. Accordingly, on 1st of December, 1993 complainant attended office of appellant when it was informed by appellant that his case was sent to Superior Officer as the record was not properly maintained by him. Complainant further stated that appellant then demanded Rs. 500/- to him and as he was unable to pay said amount he visited office of Anti Corruption Bureau and lodged his report as per Exh. 17.

Thus, from the evidence of complainant it has come on record that the appellant had demanded Rs. 500/- as bribe on 1st of December, 1993 as it is alleged that record in respect of two servants engaged by the complainant for agricultural work was not properly maintained by him and thus on his visit to the office of appellant on 1st of December, 1993 appellant informed him that his case was

sent by him to his superior Officer. In the light of above evidence, on perusal of charge at Exh. 10 it is noted that what is explained to appellant on framing charge is that on 1st of December, 1993 on complainant's visiting to the office of appellant, he had demanded bribe of Rs. 500/- for not sending report against complainant to the superior officer for obtaining sanction to launch criminal prosecution against the complainant since he failed to maintain record in respect of servants employed by him. No explanation is put forth by prosecution on this material aspect of the case which in fact goes to the root of the case as according to the complainant's evidence, as aforesaid, when he visited office of appellant on 1st of December, 1993 he was immediately informed by appellant that for non-maintenance of record as required, appellant had already sent his case to his superior Officer. In that view of the matter, there appears to be no reason for appellant to demand any bribe from the complainant, as deposed. Even on considering the contents of report (Exh. 17) it is stated by complainant that on visiting office of appellant on 1st of December, 1993 it was informed by appellant that for non-maintenance of record of his servants working on agricultural fields, appellant had forwarded report to his superior officer for obtaining permission to initiate prosecution against the complainant. In that view of the matter, prosecution case appears to be doubtful from its inception.

11. On the point of incident, complainant has stated that from the office of Anti-Corruption Bureau, Chandrapur he along with members of raiding team, PW 2 Arun and co-panch, proceeded to the office of appellant and alighted from the vehicle near Patel High School and from there he along with PW 2 Arun proceeded by walk to the office of appellant where he was present and has stated that on his meeting with appellant he asked him about the record to which he replied in negative and requested appellant to not to take any action against him upon which appellant informed him that he has sent his case to the superior Officer upon which complainant requested appellant to think on this issue and has stated that at that time appellant demanded money which he tendered to him and was accepted by the appellant and thereafter person accompanying him at that time gave a signal on which members of the raiding team rushed in the office of appellant.

12. At the outset it is material to note that though it is the case of prosecution that complainant was given necessary instructions about the proposed signal on making payment in the office of Anti Corruption Bureau of which pre-trap panchanama is drawn, it is stated by complainant that signal was given by the person who was accompanying him i.e. PW 2 Arun who, according to the case of prosecution, was accompanying complainant on the date of incident to the office of the appellant. In fact, I find no reason for PW 2 Arun to give any signal as stated by complainant as according to the case of prosecution what was instructed to PW 2 Arun was to observe the conversation and transaction whatsoever may take place between the complainant and the appellant.

Complainant has further stated that in the office of appellant, Investigating

Officer has seized certain papers from him which consisted of Inspection Book, Register of wages, attendance and wages Card and other papers which were carried by him in one bag which are marked on record at Articles C-1, C-2, C-3 and C-4, respectively and are stated to be in his handwriting. In the circumstances, evidence of the complainant to the effect that on his arriving to the office of appellant, appellant has asked him whether he has brought the record, upon which he replied in negative, does not appear to be truthful. No explanation is put forth by prosecution on this aspect for complainant's not producing record before the appellant on his visit to the office of appellant on 1st of December, 1993, more particularly when it is the case of prosecution that appellant visited the office of appellant on 1st of December, 1993 in response to notice (Exh. 16) dated 22nd of October, 1993 vide which complainant was called in the office of appellant along with record. In fact, from seizure panchanama (Exh. 18), it is seen that complainant had carried above stated record to the office of appellant. Case of prosecution even otherwise does not appear to be convincing, as against probable defence set out on behalf of the appellant of his false implication by complainant, forcibly planting notes in his pocket when complainant in his cross-examination has admitted that prior to incident he has never maintained record of minimum wages. Said admission of complainant's failure to maintain record carries much importance in view of his own evidence and the case of prosecution of appellant before issuing notice (Exh. 16) calling upon complainant to the office on 1st of December, 1993, on two earlier occasions has personally visited the village of complainant for inspecting minimum wages record, if maintained by the complainant in respect of servants deployed by him and before issuing notice dated 22nd of October, 1993 had sent earlier notices dated 20th of September, 1993, 2nd of October, 1993 and 18th of October, 1993. In that view of the matter and in view of complainant admitting fact of his not maintaining record in respect of minimum wages of the servants deployed by him prior to the incident, the probable defence set out by the appellant appears to be more reasonable on this count alone.

Evidence of complainant even otherwise does not appear to be convincing when he has admitted in the cross-examination that on 1st of December, 1993 he visited office of appellant and from there to the office of Anti Corruption Bureau along with his companions namely one Asutkar and Dewadkar. Admittedly, neither of them are being examined to corroborate the version of complainant on the point of appellant demanding bribe as alleged or complainant's visiting office of Anti Corruption Bureau. Complainant has stated that on 1st of December, 1993 he went to the office of Anti Corruption Bureau for lodging report at 1.00 p.m. and gave his report to PW 7 Nilkanth and returned back. According to him, he has informed the Investigating Officer that he was being harassed by the appellant since he has sent him 4 -5 notices prior to 5th of January, 1993 and has further admitted that after receiving so many notices he was sure that he was being unnecessarily harassed by the appellant. Above aspect also further probabalize the defence of the appellant of his false implication.

Moreover, complainant has further admitted that the incident deposed by him with reference to visit of appellant to his village Kothari and about appellant enquiring him with reference to maintenance of record etc. is of the year 1992 which also substantiates the case of appellant that till the date of incident i.e. on 1st of December, 1993, complainant did not comply with the directions of appellant by not maintaining the necessary records in respect of servants employed by him and has falsely implicated the appellant on 1st of December, 1993. Complainant has stated that on 1st of December, 1993 he visited office of Anti Corruption Bureau at 1.00 p.m. however, on perusal of report Exh. 17 same is dated 1st of December, 1993 and time mentioned therein is 10.30 a.m. which aspect also goes unexplained.

13. Even the case of prosecution that on 1st of December, 1993 complainant by visiting office of Anti Corruption bureau lodged report does not appear to be convincing for the reasons already stated above and also for the reasons that complainant has further admitted that while going to the office of Anti Corruption Bureau he has taken along with him written report against the appellant and submitted it to the office of Anti Corruption Bureau. He has admitted that he had written said report in his village itself and further admits to have left his village at 10 a.m. on motorcycle and required one hour for reaching Chandrapur from his village Kothari. He further admits that on reaching Chandrapur from village Kothari he completed other pending work and thereafter at 1.00 p.m. he went to the office of Anti corruption Bureau. From the above admission it is thus clear that the complainant had intended to falsely implicate the appellant on that day and as such while coming from his village Kothari had come along with report Exh. 17 and submitted it to the office of Anti Corruption Bureau at 1.00 p.m. on the basis of which trap came to be laid. In view of above admission, entire case of prosecution as stated by complainant of alleged demand by appellant on 1st of December, 1993 does not appear to be convincing at all. On the contrary, it appears that complainant to falsely implicate the appellant had brought report Exh. 17 which was written by him at his village Kothari itself and submitted it to the office of Anti Corruption Bureau. Case of prosecution is even otherwise doubtful when complainant has further admitted that on the date of trap, after the trap was over, his signature was obtained on Exh. 17 in the office. This admission further establishes that the complainant on 1st of December, 1993 submitted his report (Exh. 17) to the office of Anti Corruption Bureau having no signature upon it and after falsely getting appellant trapped in the office of Anti Corruption Bureau his signature was obtained on report (Exh. 17).

14. Evidence of complainant about his giving written report (Exh. 17) is further doubted as according to the evidence of PW 7 Nilkanth, I.O. on 1st of December, 1993 complainant visited his office and made oral complaint which was reduced into writing by him, while according to the complainant he from his village itself came with written report (Exh. 17) and submitted it to the Anti Corruption Bureau.

15. PW 2 Arun Dupare has stated that on the day of incident he was working in the office of M.S.R.T.C. and on instructions of his superior visited to the office of Anti Corruption Bureau, Chandrapur along with co-panch. He has further stated about the demonstrations given to him of effect of phenolphthalein powder with solution of sodium carbonate and on the point of incident has stated that on his accompanying complainant to the office of appellant they went on the first floor where one person was sitting, who was pointed by complainant to be the accused and to whom the complainant wished by offering "Namaskar" who offered them chairs in front of his table which were occupied by them. Contradicting evidence of complainant, PW 2 Arun has stated that complainant was having with him register which he showed to appellant and requested him to do his work upon which appellant got up from his chair and said to the complainant that since he wanted to talk to him, the complainant should come to Varandah of the office. He has further stated that appellant then went to Varandah and stood there to whom both of them followed while one person was sitting in the office of appellant. He further stated that on appellant enquiring about the money complainant replied in the affirmative and tendered the same which were accepted by the appellant and came to be trapped. He has stated that thereafter complainant requested the appellant to not to send adverse report to his superior officer. He further stated that thereafter complainant demanded back notice from appellant upon which appellant informed that there was no necessity for him to fill the register and he will file the case of complainant and shall not report to the Superior officer. Above evidence of PW 2 Arun does not corroborate the evidence of complainant on any aspect as already discussed above. In the light of above discussed evidence on record, I find it useful to refer to the case of Sat Paul Vs. Delhi Administration, AIR 1976 SC 294 : (1976) CriLJ 295 : (1976) 78 PLR 194 : (1976) 1 SCC 727 : (1976) SCC(Cri) 160 : (1976) 2 SCR 11 . The ratio in the said judgment is that it is necessary to see whether there is corroboration to the evidence of complainant regarding bribe by other witnesses. Having considering evidence of complainant together with evidence of PW 2 Arun, there appears to be no consistency in the evidence of both these witnesses. On the contrary, for the reasons already stated above, evidence of complainant appears to be unreasonable and in fact substantiates the probable defence put forth on behalf of the appellant of his false implication by planting notes in his pocket since complainant prior to the incident, in spite of appellant visiting his field and sending number of notices to comply with it, had failed to comply with the same and therefore appears to have come prepared from his village itself by bringing written report (Exh. 17) prepared by him at his village against the appellant and had falsely implicated appellant on the basis of same which from the evidence of complainant appears to have signed by complainant after trap came to be materialized in the office of Anti Corruption Bureau.

16. Above evidence thus establishes that case of appellant as set out about his false implication is more probable than the case of prosecution, which in the

given circumstances is found to have miserably failed to prove the charge levelled against accused beyond reasonable doubt. On the contrary, from the above stated evidence, there appears sufficient material to indicate that defence version is probable and in that view of the matter it is safe to take a view that defence has ably established that the presumption under Section 20 of the Prevention of Corruption Act, 1988 is rebutted, particularly in view of infirmities in the case of prosecution, which, on the contrary, are found to be consistent with the defence version.

17. Having discussed above said evidence, the explanation put forth by the appellant that money was forcibly planted in his pocket, therefore, appears to be the probable defence. Under these circumstances, appellant is found entitled for benefit of doubt. The judgment and order of the Trial Court is liable to be set aside. In the result, I pass the following order.

#### ORDER

Criminal appeal No. 204 of 2006 is allowed.

The conviction and sentence imposed upon the appellant for the offence under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 is hereby quashed and set aside and the appellant is acquitted of the offences with which he was charged and convicted.

Fine, if any, paid by the appellant be refunded to him.

His bail bond stands cancelled.