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**(2011) 06 BOM CK 0074**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 162 of 1998**

Manikrao Salunke

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

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**Date of Decision :** 29-06-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Evidence Act, 1872 — Section 114, 8  
Penal Code, 1860 (IPC) — Section 161  
Prevention of Corruption Act, 1947 — Section 5, 5(1)  
Prevention of Corruption Act, 1988 — Section 12, 13(1), 13(2), 19(4), 20

**Citation :** (2012) BomCR(Cri) 113

**Hon'ble Judges :** T.V. Nalawade, J

**Bench :** Single Bench

**Advocate :** S.S. Choudhari, for the Appellant; B.J. Sonawane, APP, for the Respondent

**Final Decision :** Dismissed

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## Judgement

T.V. Nalawade, J.—This appeal is filed against judgment and order of Special Case No. 8/1995 which is decided by Special Judge, Osmanabad. The Appellant is convicted and sentenced for offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 ["PC Act" for short].

2. It is the case of the prosecution that original complainant Prabhakar Kardhore was working in army at the relevant time and he had some matter pending with Tahsil Officer Omerga, District Osmanabad. The complainant belongs to village Katechinholi, District Osmanabad where there was earthquake on 30.9.1993. It is the case of the complainant that he was having a separate house in the village and it collapsed in the earthquake. It is the case of the complainant that partition had taken place amongst complainant and his two brothers in the year 1984 and due to partition he was having 1 H. 34 R. agricultural land in his village.

3. For rehabilitation of persons affected due to aforesaid earthquake from Katechincholi village, the State Government had prepared a scheme. Under the scheme, the villagers who had no agricultural land were to be given house of area of 250 sq. fts and this category was described as category "C". The persons having agricultural land of more than 1 H., but less than 4 H. were to get house of area of 450 sq. fts. and this category was described as category "B". The persons having agricultural land of more than 4 H. were to be given house of area of 750 sq. fts and this category was described as category "A".

4. At different levels the State Government had prepared committees for implementation of rehabilitation scheme. At Tahsil level there was a committee under the control of Tahsildar which was to do the actual work of allotment of the houses as per the criteria prepared by the Government. In the initial list of allotment, house No. 43 was shown to be allotted to complainant and this house was shown to be of "C" category. The area of this house was 450 sq. fts., the area of house of "B" category. The complainant occupied this house. As per the procedure, Kabela, possession receipt was to be issued by Tahsildar. After occupying the house by complainant one Mr. Birajdar came to the house and he said that house No. 43 was allotted to him. Due to this incident complainant realized that change was made in the allotment list and he was allotted house No. 127 having less area, from "C" category. The complainant sent a representation to Tahsildar Office through his commending officer and he also went to Tahsildar Office to express his grievance.

5. It is the case of the complainant that on 8.5.1995 the accused was working as Naib Tahsildar in Tahsil Office Omerga. As per the advise given by Tahsildar Shri. Jadhav, complainant gave application to Tahsildar to allow him to retain house No. 43. On 9.5.1995 when complainant went to house of Tahsildar, he noticed accused near the house and from there they went to a hotel to have tea. In the hotel when complainant requested the accused to see that a house of "B" category is allotted to him, the accused said that he would do the job provided that the complainant was ready to give him Rs. 2000/-. Complainant was badly in need of residential place and he agreed to the demand. As the accused insisted for giving some advance, complainant gave Rs. 500/to accused on 9.5.1995 itself. Complainant agreed to give remaining amount of Rs. 1500/to the accused on 15.5.1995 after noon time in the office of accused.

6. Complainant approached Anti-Corruption Bureau (ACB) Office on 14.5.1995. As he was asked to come on 15.5.1995 he went there on 15.5.1995 and then his complaint was accepted by Deputy Superintendent of ACB Shri. Ambegaonkar. Ambegaonkar collected two panch witnesses who were from Government Office. Information regarding the proposed action and the complaint received from the complainant was given to the panch witnesses. The trap money of Rs. 1500/was supplied by the complainant. Anthracene powder was applied to the currency notes and their numbers also came to be noted when pre-trap panchanama was prepared. Shri. Mali, panch witness, was to remain in the company of

complainant and the complainant was to hand over the amount to accused only after making of demand of the money by the accused. The tainted money was kept in right pocket of pant of complainant and the complainant was expected to use the right hand for taking out the amount. The signal which was given by the complainant after handing over the tainted money was told to the complainant.

7. The raiding party reached the office of Tahsildar Omerga at about 3.45 p.m. Complainant and panch witness Mali went ahead and others got disbursed near the office. The complainant called accused from his office by giving signal and accused came out of the office. Complainant, witness Mali and the accused went to nearby hotel to have a tea. Shri. Vedpathak, colleague of accused, also went with them to hotel. Complainant spent for tea of Vedpathak and accused and complainant purchased Pan for Vedpathak. Separate amount for this purpose was kept in other pocket of complainant.

8. After having tea and Pan, Vedpathak left first for his office. When complainant, accused and panch witness Mali reached near the room of the office of the accused, the complainant asked about his aforesaid work to the accused. The accused said that the work was not yet done, but it would be done. Accused then asked whether complainant had brought the remaining amount. Complainant then took out the tainted money from his right pocket of pant by using right hand and he handed over the money to the accused. The accused accepted the tainted money by using his left hand. The complainant gave predecided signal and then the members of raiding party accompanied by second panch rushed to the spot. The members of raiding party held the accused when accused was still holding the money in his left hand.

9. Ambegaonkar took a room from a Tahsil Office where in presence of panch witnesses posttrap panchanama came to be prepared. First the complainant was kept outside of the room and during his absence the search of the accused was taken by using ultraviolet light. Anthracene powder was detected on the left hand of the accused and the tainted money having anthracene powder was also recovered from the left hand of the accused. The numbers of these currency notes tallied with the numbers noted in pre-trap panchanama. Anthracene powder was not detected on any other part of the body including the clothes of the accused. Search of complainant was then taken and it was noticed that the tainted money which was kept during pre-trap panchanama in right pocket of pant of complainant was not there. Anthracene powder was however detected on the right hand and right pocket of pant of the complainant. The tainted money came to be seized under the post trap panchanama. The file concerning the work of the complainant which was in the custody of the accused was also taken over. Ambegaonkar made inquiry with regard to the incident to panch witnesses and explanation of accused was also obtained. Ambegaonkar then gave report to Police Station about the incident and the crime at Cr. No. 31/1995 came to be registered in Omerga Police Station. Ambegaonkar produced aforesaid muddemal property in the police Station.

10. During the course of investigation map of scene of offence came to be prepared. Ambegaonkar collected documents like copy of appointment order in respect of the accused, copy of duty list in respect of the accused and other relevant documents. After completion of investigation, Ambegaonkar sent the matter to Divisional Revenue Commissioner of this region for getting sanction. The Divisional Commissioner accorded sanction to prosecute the accused for aforesaid offences. Then the chargesheet came to be filed.

11. Special Court framed charges for aforesaid offences and the plea came to be recorded. The accused pleaded not guilty. The prosecution examined in all six witnesses before the Trial Court. The statement of accused came to be recorded u/s 313 of the Criminal Procedure Code. The accused then examined himself in defence. The accused took defence that the complainant had thrust the amount into the left hand of accused and there was no demand made by the accused.

12. The Trial Court has held that the case of demand of money on 9.5.1995 is not proved. The Trial Court has however held that the incident dated 15.5.1995 is proved and so the conviction is given for both offences. In the appeal both the sides are heard.

13. It was mainly submitted for the Appellant that only Tahsildar had the authority to make the order of allotment and so there was no question of demand of bribe and the offence cannot be made out against the accused. It was also argued that immediately after the incident defence was taken by the accused that the amount was thrust into his hand by the complainant and this act was done to pressurize the authority as the complainant wanted to get house of "B" category. Argument was also advanced to challenge the sanction accorded by authority by contending that the authority did not apply the mind.

14. The APP argued in support of the decision of the Trial Court. The APP submitted that most part of the incident is admitted by the accused. He also submitted that the conduct of the accused of coming out of his office and going to hotel to have tea with the complainant itself shows that the accused wanted to extract money for doing his job. He also submitted that there is corroboration of evidence of panch witnesses to the evidence of complainant. He submitted that there is sufficient material to show that the accused was involved in the process of allotment of house and so the offence is proved against the accused. The APP took the support of duty list.

15. It is not disputed that the complainant was eligible to get a house from the scheme prepared by the Government. It is not disputed that as per the scheme of the Government the persons who had land admeasuring 1 H. or more were to get the house of size of 450 sq. fts. and the persons who were having less than that area or no land were to get house from "C" category, having area of 250 sq. fts. Exh. 28 shows that the name of complainant was included in "C" category and house No. 43 was allotted to him initially. At Exh. 30, there is a copy of order dated 3.2.1995 showing that the committee was of the opinion that there was

mistake committed in allotting house No. 43 to the complainant and he was from "C" category. By the order shown in this document, the previous allotment which was made in favour of complainant of house No. 43 was cancelled and he was to be allotted house No. 127. Admittedly, the area of house No. 43 is 450 sq. fts. though it was shown as house of "C" category in Exh. 28.

16. At Exh. 31 there is a copy of representation made by the complainant to Collector on 29.5.1995 i.e. after the incident. It is the case of the complainant that he was in possession of more than 1 H. land and so he was entitled to get house from "B" category of area of 450 sq. fts. At Exh. 32, there is a copy of application sent by the complainant through his commending officer and it is dated 2.9.1995. This letter was received by the committee created at Tahsil level. It is also not disputed that the complainant had already occupied house No. 43. Even at present the complainant is living there.

17. The tenor of cross examination of the witnesses shows that the accused has taken the defence that after receipt of the representation of complainant, the accused had processed the matter and he had placed the matter before the Tahsildar. The record and evidence given by the accused in defence show that submission was made before Tahsildar that there was record to show that complainant was having land admeasuring 1.34 H., but it was necessary to ascertain as to whether this land was standing in the name of the complainant on relevant date i.e. on 30.9.1993. This submission prepared by the accused was accepted by Tahsildar and accordingly Talathi was expected to supply a copy of mutation. It is the case of the accused that he had sent the letter to the complainant also to produce copy of mutation. At Exh. 38, there is a copy of submission prepared by accused and at Exh. 39, there is a copy of letter sent on the basis of submissions and the order made by the Tahsildar. This submissions and the defence taken by the accused show that he was involved in the process of the allotment of houses atleast as an Officer working under the Tahsildar. Tahsildar did act on the basis of submissions prepared by the accused. At Exh. 37, there is a copy of circular dated 16.4.1994 issued by Collector. In this circular the work regarding the rehabilitation of earthquake affected persons from Omerga Tahsil was distributed. This circular shows that accused was put in the charge of the work of allotment of plots and work of preparation of records of rights.

18. Tahsildar Jadhav (PW 2) has given evidence that at the relevant time the accused was working under him as Naib Tahsildar and both of them were incharge of the work of making allotment of the house to earthquake affected persons. The Tahsildar has however admitted in the cross examination that Tahsildar prepares final list and on the basis of such list, Collector issues certificate. The concerned file was taken over from the custody of the accused. This evidence and the circumstances are sufficient to infer that the accused was involved in the process of the allotment of houses to the earthquake affected persons.

19. On the aforesaid point, the prosecution has relied on the case reported as 2006 ALL MR (Cri) 3452 [Shriram S/o. Timaji Chachane v. State of Maharashtra]. In this case defence was taken by the accused in a trap case that he had no authority to sanction the TA bill of the complainant and so he had not committed any offence under this Act. The work was with a colleague of the accused and the evidence showed that the accused had walked with the complainant to a hotel where the transaction took place. In view of the circumstances and facts of that case, this Court held that the defence taken by the accused that the accused had no power to sanction the bill cannot be considered. This point can be considered from other angle also.

20. The charge was there for two offences punishable under Sections 7 and 13 [13(1)(d) read with 13(2)]. Section 13(1)(d) shows that there is no need for prosecution to prove that the accused was in position to do any such favour to the complainant. However, the wordings of Section 7 shows that the prosecution is required to prove that some favour could have been done by the accused to the complainant. Section 5 (1) (d) of old PC Act is very much similar to Section 13(1)(d) of the new Act. In the case reported as Dhaneshwar Narain Saxena Vs. The Delhi Administration, the Apex Court has observed that the offence u/s "5 of the old Act" is wider and not narrower than the offence of bribery defined in Section 161 of the Indian Penal Code. In this case and in the case subsequently decided by the Apex Court reported as Shiv Raj Singh Vs. Delhi Administration, , the Apex Court has observed that when a public servant is charged u/s 161 of IPC and it is alleged that illegal gratification was taken by him, it is not necessary for the Court to consider whether or not the accused as a public servant was capable of doing such an act. Similar observations are made in case reported as Chaturdas Bhagwandas Patel Vs. The State of Gujarat, Thus, if the accused has used his official position, post in the Government office to extract illegal gratification, requirement of the law is satisfied. Only for proving the offence u/s 7 of the PC Act, it is required to be proved that the accused as a public servant was capable of doing any official act of favour or disfavour. The relevant circumstances are already quoted and they show that the accused was in a position to do favour or disfavour in the present matter. So for both the offences there is no probability in favour of the accused.

21. The defence has admitted the pre-trap panchanama and so there is no need to discuss more the plan prepared and other contents of the panchanama. The complainant Prabhakar (PW 1) has given evidence that panch witness Mali (PW 2) was in his company at the relevant time. Complainant has given evidence that he, Mali, accused and colleague of accused namely Shri. Vedpathak went to hotel. Complainant has given evidence that he spent for giving tea to accused and Shri. Vedpathak and he also spent for giving Pan for Vedpathak. He has given evidence that Vedpathak left the hotel first and then the remaining three started for the office of the accused. Evidence is given that the hotel is situated at the distance of hardly 100 fts. from the office of the accused.

22. Evidence is given by the complainant that when he, Mali and accused reached near the office of accused, he asked to the accused about the work. He has deposed that accused said that the work was not yet done, but he would do the work. Complainant has then deposed that the accused asked him to pay the amount, if the complainant had brought the amount. The complainant has deposed that after this demand, he took out the tainted amount of Rs. 1500/ from right side pocket of pant and he gave the amount to the accused. Complainant has deposed that the accused accepted this amount by using left hand. Complainant has deposed that he then gave predecided signal and then police rushed forward and held the accused. Complainant has deposed that when the accused was held, he was still holding the tainted money in his left hand and during inquiry accused showed this amount to police. Panch witness Mali (PW 2) has given similar evidence on material points and his evidence gives corroboration to the version of complainant. Thus, the evidence is given both on demand made by the accused and acceptance of the tainted money by the accused.

23. Mali (PW 2) has given evidence that the tainted money was recovered from the left hand of the accused during preparation of the post trap panchanama. Panch witness has given evidence that anthracene powder was detected only on the left hand of the accused in addition to the tainted money. He has deposed that currency notes were the same which were kept in pocket of complainant during pre-trap panchanama. The post trap panchanama is proved as Exh. 24 and it is consistent with the evidence given by panch witness. There is signature of accused on panchanama in token of having received copy. There is evidence of Ambegaonkar on the recovery of tainted money from the possession of the accused and his evidence also gives corroboration to the evidence of complainant. Ambegaonkar has given evidence that he had seen the complainant and the accused having talk near the office. He has deposed that they rushed forward only after receipt of signal from the complainant. The report given by Ambegaonkar is duly proved and it is also consistent with the version given in the Court.

24. Thus, there is the evidence of three prosecution witnesses which include the evidence on demand made by the accused and the recovery of tainted money from the possession of accused. It is only suggested during cross examination of these witnesses that the tainted money was thrust into the hand of the accused by the complainant. The suggestions to that effects are denied by the prosecution witnesses. The evidence and the panchanama show that no anthracene powder was detected on left pocket of pant of the accused.

25. The accused has examined himself on oath. He has admitted that at the relevant time he had left the office for going to the hotel with the complainant. He has also admitted that he and his colleague Vedpathak had taken tea offered by the complainant. He has deposed that the amount was thrust into his hand. He has also deposed that he had already prepared the office note and the

complainant was directed to produce copy of mutation. He has deposed that only to take revenge, the complainant has falsely implicated him in the case.

26. If there was some dispute over the production of copy of mutation and the accused was insisting such production, he would not have left the office for taking tea offered by the complainant. Admittedly, when police held the accused, tainted money was still in his hand. The aforesaid circumstances show that no probability is created that the complainant thrust the tainted money into the hand of the accused. This evidence is sufficient to prove that near the office, the accused made the demand of remaining amount of Rs. 1500/- and when the complainant gave the amount, accused accepted it by using left hand. The record taken over from the accused shows that the copy of partition document prepared in the year 1984 was produced by the complainant to show that from 1984 he was having more than 1 H. of agricultural land. The admission given by the complainant and the record however show that the mutation to that effect was not effected. In such a case it is not necessary to consider as to whether work could have been done on the basis of the record produced by the complainant.

27. For prosecution a case reported as T. Shankar Prasad Vs. State of Andhra Pradesh, was cited. In this case the Apex Court has observed that when tainted amount is recovered from the possession of accused, there is compulsory presumption u/s 20 of the PC Act against the accused. In this case, the Apex Court has further discussed factual presumption is available u/s 114, illustration (1) of the Evidence Act. For accused, the cases like Panalal Damodar Rathi Vs. State of Maharashtra, Jaswant Singh Vs. State of Punjab, Darshan Lal Vs. The Delhi Administration, were cited. In these cases, the Apex Court has observed that in such a case the Court must look for corroboration to the evidence of complainant on material particulars. This proposition cannot be disputed. The corroboration may be in the form of oral evidence or it may be in the form of some documents or circumstances. The material which is consistent with the version of the complainant is already discussed.

28. One case reported as Maha Singh Vs. State (Delhi Administration), was cited for accused. In this case, the Apex Court has observed that in such a case conduct of accused is also relevant u/s 8 of the Evidence Act. The Apex Court has observed that if the complainant had inserted something into the pocket of clothes of accused and immediately after that the accused has uttered some words or made some gestures, that is relevant piece of evidence. This proposition cannot be disputed, but the accused has nothing in support of such case. Accused has examined himself, but no such specific defence is taken by the accused. In the evidence, the accused has tried to say that when he noticed that the amount was inserted into the left hand, the members of raiding party rushed towards him and after that he was not allowed to shout or to do anything. Thus, the evidence shows that virtually no reaction was there from the accused, indicating that he was surprised due to handing over of the amount to him by the complainant. In the case reported as Gulam Mahmood A. Malek Vs. State of



Gujarat, the Hon"ble Apex Court has held that the background of the case needs to be kept in mind at the time of appreciation of the case. This proposition also cannot be disputed and the relevant facts of the present case are already discussed.

29. In the case of T. Shankar Prasad cited supra for prosecution, the Apex Court has observed that the presumption available u/s 20 is compulsory presumption. Section 20 of the PC Act shows that this presumption is available for proving the offence punishable u/s 7 read with 12 of the Act, but this presumption is not available for offence punishable u/s 13(1)(d) of the Act. Though Section 20 is not available for the offence u/s 13(1)(d) of the PC Act, in the case reported as Hazari Lal Vs. State (Delhi Administration), the Apex Court has observed that when there is a recovery of marked currency notes from the possession of public servant and there are allegations that public servant has demanded and received the amount, the presence of amount in the custody of public servant is *res ipsa loquitor* and Section 114 of the Evidence Act can be used by the Court to draw inference against such public servant. Thus, when there is a recovery of tainted money from possession of the accused, the Court can draw the presumption available u/s 114 of the Evidence Act. As there is no plausible explanation from the side of the accused, this Court has no hesitation to hold that Section 114 of the Evidence Act needs to be used against the accused for the proof of other offences also. From the evidence on record, it can be inferred that the accused obtained the amount which is shown to be recovered from his possession in the post trap panchanama.

30. The advocate of Appellant has made some submissions in respect of sanction order also and so some discussion needs to be made with regard to evidence given on sanction. The sanctioning authority M. Rameshkumar (PW 5) was working as Divisional Revenue Commissioner at the relevant time. There is no dispute that he was competent authority and had the power to remove the Appellant from service. He has given evidence on nature of duties which were assigned to the accused. He has deposed that after receiving the proposal, he scrutinized the papers of investigation and he formed opinion that it was a fit case to accord sanction. Letter of sanction at Exh. 50 is proved in his evidence and this document shows that all material points were considered by this witness. In view of these circumstances, this Court holds that there was application of mind and no error can be found in the sanction accorded by this witness.

31. In the case reported as 2004 (4) Crimes 7 (SC) [State v. T. Venkatesh Murthy] the Apex Court has observed that in view of the new provisions of the PC Act viz. 19 (3) (a) (b) and Section 19(4) the Court is required to give finding as to whether the failure of justice has been caused due to error, if any and if there is no such failure of justice, the Court can decide the case on merits. In the present case, no error at all was found in the sanction accorded against the accused. Further, no circumstance was pointed out to show that due to any

lacuna in the sanction order, there has been failure of justice. Thus, there is no case to Appellant on this point also.

32. On the point of sentence submission was made for the Appellant that he is old and sick person and so lenient view needs to be taken. The incident is of 1995 and Special Judge decided the case in the year 1998. This Court is deciding the appeal in 2011. Though delay is caused in deciding the case and also the appeal, in such cases no lenient view can be taken in favour of the accused. In such cases, the delay always helps the accused and in some cases the Government even reinstates the accused when the case is pending due to such delay. Thus, the delay generally does not cause suffering to the accused in such a case. This Court has no hesitation to hold that in such cases lenient view cannot be taken even when there is some record to show that the accused is sick or suffering from some physical ailments.

33. In the result, the appeal stands dismissed.