



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

SATISH
RAMCHANDRA
SANGAR

CRIMINAL APPEAL NO.235 OF 2011

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The State of Maharashtra
(Through Police Inspector,
A. C. B., Satara)

...Appellant
(Original Complainant)

Versus

Ramdas Bhagwan Vairat
Age : 45 Years, Occu. : Service,
R/o. : Menavali, Taluka : Wai,
District : Satara.

...Respondent
(Original Accused)

Mr.Hitendra J. Dedhia:-	APP for Appellant – State.
Mr.Vishal Patil:-	Advocate for Respondent.

CORAM : S. M. MODAK, J.
RESERVED ON : 3rd MAY 2024
PRONOUNCED ON : 30th SEPTEMBER 2024

JUDGMENT :-

1. This Court has noticed about cases instituted by the Anti-Corruption Bureau resulted into an acquittal for various reasons. It may be due to unsatisfactory evidence on the point of demand and

acceptance. It may be due to defects / loopholes in the sanctioning process. Sometime, the sanction is granted by an Officer who is not competent to grant the sanction. On other occasions, sanction fails to satisfy the test of reliability on account of non-application of mind by the Sanctioning Authority. On other occasions, the Prosecution fails to adduce evidence on the point of correspondence made with the Sanctioning Authority and failure to prove delegation of power to grant sanction to the Authority. It is surprising to note that these mistakes occur in various cases. This Court is not aware whether the Anti-Corruption Bureau headed by senior most Officer has taken any steps to avoid these loopholes.

2. That is why, while dealing with this Appeal, this Court has taken upon itself the task of bringing the loopholes to the notice of higher officials of the Anti-Corruption Bureau. The Respondent-Accused was tried by the Court of Special Judge No.1 – Satara. The Respondent was acquitted mainly on two grounds. They are:-

- (a) The evidence on the point of demand and acceptance not satisfactory. I do not agree to these findings and I will give reasons hereinafter and
- (b) The sanction ought to have been granted by the Collector but it is granted by the Sub-Divisional Officer.

3. With the assistance of both the sides, I have perused the prosecution evidence. What I find is, the prosecution evidence on the point of demand and acceptance was discarded for some reasons and according to this Court, they are trivial in nature. So to say, the variances in the evidence do not deal with the material particulars. The trial Court has unnecessarily given importance to those minor variances. Even though, this Court do not agree with the findings given by the trial Court on this aspect, when this Court has inquired about competency of the Sanctioning Authority, this Court is unable to reverse that finding. Ultimately, the Appeal has to be dismissed. I will give reasons for this conclusion.

Scope of an appeal

4. When an accused is acquitted, it is said that the presumption of innocence is reinforced and there can be interference only when the findings are perverse. That is to say a judge gives findings even though the evidence is otherwise or not at all considering the evidence. When we have to appreciate the evidence, you cannot interfere in the judgment of acquittal, simply because Appellate Court can take different view. The process of re-appreciation is like this, first to

consider what is the evidence, then to ascertain what can be the inferences and what is the law. If the evidence says one thing and in the judgment you writes other thing, it is not permissible. On this background, the evidence need to be considered.

Prosecution evidence

5. Usually, there are four witnesses examined in a trap case. In this case too. They are as follows:-

- (a) PW No.1–Jaysing Dnyanoba Pharande–***De-facto* Complainant**
- (b) PW No.2–Devidas Babulal Chavan–**Trap panch**
- (c) PW No.3–Ratansing Bhagwansing Rajput–**Investigating Officer**
- (d) PW No.4–Pradipkumar Lalasaheb Patil–**Sanctioning Authority.**

Background of the case

6. Sunanda Shinde is the sister of the *de-facto* Complainant PW No.1 – Jaysing Pharande. She owns a land at Anewadi, Taluka : Javali, District : Satara. She wants to erect a green house. She obtained loan of Rs.4,93,000/- (Rupees Four Lakh Ninety Three Thousand) from Bank of Baroda. It is but natural for the Bank to have their charge on 7x12

extract. That is why, the Revenue Authorities are required to be pursued. The Talathi Anewadi was the necessary Authority. The Respondent was holding the said post till he handed over the charge on 7th June 2004. The said Sunanda has not pursued to the Revenue Authorities but on her behalf, the *de-facto* Complainant Jaysing did the said job. He was not holding any authority from his sister. The learned trial Court made some observations in Page No.25 of the judgment. They are as follows:-

“....In the present case also the sanctioning authority has not seen the 7x12 extract of the house of Jaysing and during investigation he had not found any document to show that Sunanda had given authority to Jaysing Pharande and as per the Land Revenue Code the work of Sunanda was pending on the table of Vairat, but there was no complaint of Sunanda regarding demand of bribe by the accused. The purpose for which the bribe was demanded i.e. for making entry in 7x12 extract of loan of Sunanda and issuing 7x12 extract, but in the whole investigation the 7x12 extract of Sunanda nor Jaysing Pharande has been seized by the investigation officer nor any authority letter issued by Sunanda to Jaysing Pharande has been seized by the Investigating Officer....”

(Emphasis laid)

7. I do not agree to the same. The necessary Authority to insist on

the Power of Attorney or Authority letter is the concerned Talathi. In fact, the Respondent has brought on record he has already done his job. This means, he has never refused to do that work for want of authority. **So, why the Court should discard his evidence on that ground, is a question.** The trial Court is not supposed to doubt the veracity of the evidence of Complainant on such flimsy grounds. Law does not require that complaint can be filed with Anti – Corruption Bureau only by a person who is having official work with a government servant. Such complaint can also be filed by a person with whom illegal gratification is demanded.

Case of demand

8. There is only one instance of pre-trap demand. This is on 5th June 2004. The details are as follows:-

- (a) Initially, there was a demand for Rs.5000/- (Rupees Five Thousand Only).
- (b) Later on, it was settled to Rs.500/- (Rupees Five Hundred Only).
- (c) The First-Informant paid Rs.100/- (Rupees One Hundred Only) and there was insistence to pay Rs.400/- (Rupees Four Hundred Only) by the Respondent and then only, he has agreed to do his duty.
- (d) On second occasion, Jaysing and the Respondent met

each other in front of milk dairy at Mouje Raygaon. The Respondent reminded Jaysing to pay remaining amount and also informed that he was transferred to Sajja Shendra but he continues to have charge of Mouje Anewadi.

About trap

9. On this background, Jaysing filed complaint with Anti-Corruption Bureau – Satara on 7th June 2004. A pre-trap panchnama was conducted on 8th June 2004 in the Office of Anti-Corruption Bureau – Satara. *De-facto* Complainant Jaysing produced four currency notes of Rs.100/- (Rupees Hundred) denomination. All procedure was completed in the presence of panchas and one of them is PW No.2 – Devidas Chavan. He works as a Senior Clerk in the Office of Satara Municipal Council.

10. A trap was arranged at the hotel of one Mahadu in front of Anewadi Bus Stand. It was Swaroop hotel. It was morning hours at 09.20 a.m. The Respondent came there on a motorcycle and gave signal to the *de-facto* Complainant. He was accompanied by PW No.2 – Devidas. Jaysing – *de-facto* Complainant inquired with him about 7x12 extract. The Respondent replied, he has done his job and then, he asked about the money. The tainted currency notes were handed over by Jaysing and it was accepted by the Respondent.

11. Pre-decided signal was given and that is how, PW No.3 and other staff came there, introduced themselves and took the Respondent to Swaroop hotel. The trial Court disbelieved the evidence of PW Nos.1, 2 and 3 on account of few variances in their testimonies. They are:-

(a) It relates to the **place where these three witnesses were standing prior to the trap.** They are as follows:-

- (i) **PW No.1** stated that they went to Swaroop hotel at 9.20 a.m., at that time, accused came there.
- (ii) **PW No.2** stated that they stopped their jeep near Vitthal dhaba and again instruction was given to them by ACB Officer and again they waited at the entrance of Anewadi village.
- (iii) **PW No.3** – Investigating Officer stated that they were waiting near about 30 to 40 feet away from the Complainant and Panch (as per PW No.1, distance was 300 to 400 ft., from the spot. (Para No.12 of the judgment).

Trial Court noticed above as a variance. I have perused their evidence very minutely. What it gathers is, the vehicle was parked near Vitthal Dhaba at 9.15 a.m. PW Nos.1 and 2 proceeded towards Swaroop hotel. Respondent came there at 9.45 a.m. and he called PW No.1 and No.2 near Swaroop hotel. As such, there is no variance. Trial Court was

wrong.

(b) Another variance is in respect of place of carrying out trap panchnama whether it is in the hotel or in the Grampanchayat Office. (Para No.15). (Whereas, in the trap panchnama (Page No.2), there is a reference about bringing the Respondent to Swaroop hotel after the trap was successful). I have perused their evidence. They are as follows:-

- (i) **According to PW No.1**, Police Officers and Respondent entered Swaroop hotel. PW No.1 was standing outside. Inspection was done and then PW No.1 was called. Thereafter, all went to Grampanchayat Office.
- (ii) Whereas, according to **PW No.2**, all went inside Swaroop hotel for preparing trap panchnama. PW No.1 was standing outside. Whereas, according to PW No.3, all went inside Swaroop hotel. PW No.1 was standing outside. An inspection was done. Panchnama was prepared. Whereas, there is reference in trap-panchnama about completing the formalities in Swaroop hotel.

When above evidence is perused, I find no inconsistency. Trap-panchnama and inspection was done in Swaroop hotel. On this aspect, there is consistency.

12. The identity of tainted currency notes was established. The test of anthracene powder was positive. It resulted into lodging of FIR by Police Inspector – Ratansing Rajput with Bhuinj Police Station for the offences under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988¹. The sanction was obtained and it was issued by the Sub-Divisional Officer–Satara on 6th November 2004 (Exhibit-38). A charge-sheet was filed for those offences.

Defence of accused

13. The Respondent took a defence of denial and defence of implanting. He also took a defence of false implication in view of the action taken by him on the instruction of superiors against the cable operators for recovery of the cable-charges by way of land revenue. He has produced those documents while giving statement under Section 313 of Code of Criminal Procedure, 1973². The *de-facto* Complainant was also asked about the action taken against two persons, one is Dada Patil and another is Pharande. The *de-facto* Complainant during cross-examination has either denied his relationship with them or expressed ignorance about the said action. The trial Court has considered this

1 For short “PC Act”

2 Henceforth, “Cr.P.C.”

reason for falsely implicating the Respondent. It is true that there are materials produced by the Accused. Learned Advocate Shri.Patil invited my attention to **those documents. They are as follows:-**

- (a) Copy of direction given by the Tahsildar – Javali to the Circle Inspector – Anewadi to recover the amount from cable operators.
- (b) Copy of notice issued by the Respondent to one Ravindra Vitthal Pharande – a resident of Anewadi (Page No.60).
- (c) Copy of panchnama thereby sealing the place of cable operation belonging to Pharande.
- (d) Copy of demand notice issued to Ravindra Vitthal Pharande dated 25th May 2004.

14. All these facts are also stated by the Respondent in a separate written statement filed to the questions put to him. The trial Court has considered all this background for disbelieving the case on the point of demand.

Findings of this Court

15. With the assistance of both the sides, when I have perused the evidence of relevant witness PW No.1, what I find, he has expressed ignorance about the show cause notices issued to Dada Patil and one Ravindra Pharande of Vijay Cable Network. No doubt, Dada Patil is

his cousin brother. He has not given any favourable reason which supports the case put up by Respondent about false implication. The burden on the Respondent is not heavy. The test of preponderance of probability has to be satisfied. I disagree with the trial Court on this aspect. The trial Court observed:-

“It shows that all episodes took place in front of the complainant. Not only this, Dada Patil was present in the Court on 5.9.2008 and it is admitted by the P.W. No.1 in his cross examination at Page No.13. Therefore, it is clear that with the help of Investigating Officer Ratansing Rajput, the Dy.S.P. Netaji Shinde complainant Jaysing Pharande lodged false complaint against the accused Vairat at the instance of Dada Patil....”

16. I have perused cross-examination of PW No.1. He answered:-

“On 28.5.2004 I might have gone to the house of Dada Patil. I do not know what talk took place in between Dada Patil and Vairat. I do not know whether hot exchange of words took place in between Dada Patil and Vairat”.

The trial Court has drawn wrong inference by believing that PW No.1 visited the house of Dada Patil and there were talks in between Dada Patil and Respondent. The Respondent has taken that opportunity while cross-examining the *de-facto* Complainant. Except that, on his

own, he has not adduced any evidence to suggest that the incident of trap is an outcome of an action taken by the Respondent. So, the evidence needs to be adduced independently.

17. There is one more reason due to which I disagree to the finding given by the trial Court. The evidence in totality has to be appreciated. I do not find any lacuna in material aspects in the evidence of *de-facto* Complainant. In fact, I find, his testimony reliable and trustworthy. The evidence can be said to be unreliable for two reasons. **One**, the foundation is weak and **second**, improvements in the testimony. Neither of the things are there. He had given all the details of the events earlier to lodging the complaint, the details about lodging the complaint, pre-trap panchnama and about post-trap panchnama.

About official work

18. The trial Court disbelieved the prosecution evidence for the reason that the work with the Respondent was finished. The *de-facto* Complainant also agreed, “*the entry was made on 7x12 extract*”. (Portion above Para No.6). He further answered, “*entry was already made on 21st May 2004 and it was certified on 26th May 2004*”. (Page No.13 of his evidence and running Page No.69 of the paper-book).

Whereas, the complaint was lodged with Anti-Corruption Bureau on 7th June 2004. What is important is, when the demand was made, whether the *de-facto* Complainant was aware about making of an entry on 7x12 extract. If the Respondent has completed the work internally and if the *de-facto* Complainant is not aware and if the money is demanded, certainly it is an objectionable act.

19. The Sanctioning Authority has admitted about issuing a written order by the Tahsildar – Javali to the Talathi to recover the charges of cable. He was also aware about the issuance of notice by the Respondent to Ravindra Pharande and closing the cable network and preparing the panchnama. According to him, Sunanda has not made any complaint. The entry was already certified on the date of trap. As said above, it may be an internal exercise. The issue is, whether the *de-facto* Complainant was told about the certification by the *de-facto* Complainant.

20. I have perused the evidence of the panchas. As said above, in view of the inconsistencies noted above, the trial Court has disbelieved the prosecution evidence. I disagree with those findings. These are not major contradictions.

On the point of Sanction

21. As per the provisions of Section 19(1)(b) of PC Act, a Sanction of the State Government is required, if a person is employed with affairs of the State. The Respondent was Talathi working in Revenue department. Whereas, Article 311 of the Constitution gives a protection to an employee from removal / dismissal from an Officer below the rank of his Appointing Authority. He can be dismissed by an Appointing Authority or an Officer above his rank. So, the factors relevant are, who is an Appointing Authority and who is in fact, the Removal Authority. Depending upon these facts, who can be a Sanctioning Authority can be decided. The trial Court held, the Sub-Divisional Officer is not competent to grant sanction. The provisions of Section 7(4) and 13(4) of the Maharashtra Land Revenue Code, 1966³ were considered. For easy reference, they are produced as follows:-

“7. Revenue Officers in district

(1)

(2)

(3)

(4) The Collector may appoint to each district as many

³ Henceforth, “MLR Code, 1966”

persons as he thinks fit to be Circle Officers and Circle Inspectors to be in charge of a Circle, and one or more Talathis for a saza, and one or more Kotwals or other village servants for each village or group of villages, as he may deem fit.”

“13. Powers and duties of Revenue Officers

(1) The revenue officers....

Provided that, the Collector may....

Explanation.- In this proviso,....

(2) The revenue officers....

(3) The Additional Commissioner....

(4) The Sub-Divisional Officer shall subject to the provisions of Chapter XIII perform all the duties and functions and exercise all the powers conferred upon a Collector by this Code or any law for the time being in force, in relation to the sub-division in his charge:

Provided that, the Collector may whenever he may deem fit direct any such Sub-Divisional Officer not to perform certain duties or exercise certain powers and may reserve the same to himself or assign them to any Assistant or Deputy Collector subordinate to the Collector:

Provided further that, to such Assistant or Deputy Collector who is not placed in charge of a sub-division, the Collector Shall, under the general orders of the State Government, assign such particular duties and powers as he may from time to time deem fit.

22. The trial Court also considered, Talathi under Revenue and Forest Department (Recruitment) Rules, 1984⁴. The trial Court emphasised on this aspect. The trial Court observed:--

“The word ‘subordinate’ in Article 311(1) of the Constitution has reference to subordination in rank. In this view of the matter reading Sec.7(4) and 13(4) of the Act and reading both these provisions, subject to Article 311(1) of the Constitution what follows is that the Sub Divisional Officer purporting to act under Section 13(4) of the Code is empowered, no doubt to appoint Talathies in the Sub Division in his charge and by virtue of Sec. 16 of the Bombay General Clauses Act, the power to suspend or dismiss the Talathi so appointed may be ingrafted and included in it. But all the same he being subordinate in rank to the Collector incharge of the District administration, he cannot in the teeth of the Constitution provision of Sec. 311(1) dismiss the Talathi appointed by the Collector, though working under him in his Sub divisions. The powers to appoint the Circle Inspector or Talathies or Patwari by the Collector in his District and by the Sub Divisional officer in relation to his Sub Divisions may be co extensive and concurrent. But the Sub Divisional officer being an authority subordinate to the Collector cannot remove from service the said officer appointed by

4 For short “the Talathi Recruitment Rules, 1984”

the Collector without doing violence to the Constitutional provisions of Sec. 311(1) of the Constitution of India.”

23. Learned APP Shri.Dedhia submitted that as per the Talathi Recruitment Rules, 1984, an Appointing Authority is the Sub-Divisional Officer and hence, sanction is proper. He relied upon the following judgments:-

- (i) *Dattatraya Laxman Bagdi v/s. State of Maharashtra, (Inspector of Police Anti Corruption Bureau, Kolhapur)*⁵

24. Whereas, learned Advocate Mr.Patil relied upon the following judgments:-

- (i) *Punjabrao v/s. State of Maharashtra*⁶
(ii) *Suraj Mal v/s. The State (Delhi Administration)*⁷
(iii) *Suryabhan v/s. State of Maharashtra*⁸
(iv) *Sakharam Tryambak Patil v/s. State of Maharashtra*⁹
(v) *State of Karnataka v/s. Ameerjan*¹⁰
(vi) *State of Maharashtra v/s. Bhikan Bismilla Maniyar*¹¹

25. I have read all these judgments. A slight difference in facts affects

5 2017 SCC OnLine Bom 7979

6 AIR 2002 SC 486

7 AIR 1979 Supreme Court 1408

8 1996(1)BOMCR 46

9 1993(1)Bom.C.R. 134

10 (2007) 11 Supreme Court Cases 273

11 2020 (3) ABR (CRI) 586

the outcome of the decision. It is no doubt true, that as per the provisions of Section 7(4) of the MLR Code, 1966, the Collector is the Appointing Authority for Talathi. Whereas, as per Section 13(4) of the Code, the Sub-Divisional Officer can exercise powers of the Collector. Whereas, as per the Talathi Recruitment Rules, 1984 the Sub-Divisional Officer is the Appointing Authority. It is important to note, that 1984 Rules were framed in pursuance to the power under proviso to Article 311 of the Constitution. Such Rules are always subject to an enactment made by the legislatures as per main provision of Article 311 of the Constitution. There can be various contingencies which may arise. They are as follows:-

- (A) Appointment by Collector and Sanction is by Collector. (There will not be any issue about competency).
- (B) Appointment is by Collector and Sanction is by Sub-Divisional Officer. (He is subordinate to Collector).
- (C) Appointment by Sub-Divisional Officer and Sanction is by Collector. (There will not be any issue because Collector is higher in Rank).
- (D) Appointment by Sub-Divisional Officer and Sanction by him only. (There will not be any issue about competency).

Service Record

26. In this case, there are three documents on record dealing with

service record of this Respondent. They are as follows:-

- (a) Letter dated 3rd January 1983 issued by the Collector Satara thereby posting the newly appointed Talathi for training (Respondent is at Sr.No.8).
- (b) Letter dated 8th May 1984 by the Collector directing Sub-Divisional Officers to appoint the candidates as Talathi (Respondent at Sr.No.8).
- (c) Letter by Sub-Divisional Officer Satara dated 18th June 2004 issued to Police Inspector, Anti-Corruption Bureau informing letter of appointment of Respondent is destroyed due to passage of time.

27. If, we go by the available record, we can find that the Collector has posted the Respondent for training. Admittedly, he is not appointed by Sub-Divisional Officer. Even though, it may be true that Sub-Divisional Officer may be performing duty of the Collector, he cannot be equated with that of Collector. There is **difference** in between ‘*person of same rank*’ and a ‘*person performing the same function*’. The Sub-Divisional Officer even though performing the function of the Collector, he cannot be of rank of Collector. This issue is discussed in the judgment in case of ***Maruti Subrao Shinde v/s. State of Maharashtra***¹². So, I am not agreeable to the submission of learned

¹² 2011 (1) BCR Cri. 751

APP that sanction by Sub-Divisional Officer is valid. In case of *Dattatraya Laxman Bagdi (supra)*, the SDO was Appointing Authority and sanction was granted by him. The facts are different.

28. For the above discussion, the Appeal cannot be allowed. Not only the demand and acceptance is to be proved but sanction must be by Competent Authority. If it is not, then mandate of Article 311 of the Constitution is violated. **There is no merit in the Appeal.** Hence **dismissed.**

[S. M. MODAK, J.]