

BALIRAM S/O IRRAPPA KAMBLE

v.

STATE OF MAHARASHTRA

(Crl. Appeal No.1130 of 2001)

NOVEMBER 20, 2008

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

Prevention of Corruption Act, 1988 – ss. 7 and 13(1)(d) r/w s.13(2) – Demand of illegal gratification – Complaint – Trap arranged – Participation of two independent witness in the trap – Recovery of treated currency from the accused – Conviction by courts below – On appeal, held: Prosecution has established the case of demand as well as acceptance of bribe money – The Anthracene Powder Test gives considerable support to the prosecution version.

Appellant-a Minimum Wages Inspector (Agriculture) was alleged to have demanded illegal gratification from PW-1 (Complainant) for dropping action for not maintaining register with regard to service conditions of his yearly servant. On 20.7.1989, since PW-1 had no money, he was asked to come on 27.7.1989. On 27.7.1989, he made a complaint about the demand. A trap was arranged. In the trap, when the treated currency notes recovered from the pocket of the appellant and his pocket and his hands were put to Anthracene Powder Test, it went against the appellant.

Special Judge held that prosecution proved demand of bribe money, offer of tainted money by PW-1, acceptance of tainted money by the appellant and recovery of the tainted money. The appellant was convicted u/ss. 7 and 13(1)(d) r/w s. 13(2) of Prevention of Corruption Act, 1988. High Court upheld the

A conviction. Hence, the present appeal.

Appellant contended that there was no demand of bribe, as the tainted money was thrust on him; and that after the case against the complainant was closed on 26.6.1989, there was no occasion for making any demand.

Dismissing the appeal, the Court

HELD: The evidence of the witnesses clearly establishes not only the demand, but also the acceptance of bribe money. The Anthracene Powder Test conducted lends considerable support to the prosecution version. The making of demand of bribe money is established from the facts that on 20.7.1989, PW-1 (complainant) had gone to the office of appellant, who demanded Rs.100/- from him. Since PW-1 had no money with him on that day he promised to come later. Appellant asked PW-1 to maintain the register and asked him to come on 27.7.1989. Thereafter, PW-1 contacted Deputy SP (PW-11) and told him about the demand. The complaint was recorded as Exh.16. Two independent witnesses were called from the Accounts Department of Zilla Parishad. They were apprised of the demand of bribe. Trap was thereafter arranged. The fact that in Exh.18 there is an endorsement, is a clear indication that the case against PW-1 was to continue, falsifies the stand of the appellant that no proceeding was continuing. [Paras 4 and 6] [454-B-D; 456-B]

State Represented by Inspector of Police, Pudukottai,
T.N. v. A. Parthiban 2006 (11) SCC 473, relied on.

Case Law Reference:

2006 (11) SCC 473 Relied on. Para 5--

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal

No. 1130 of 2001.

From the final Judgment and Order dated 15.2.2001 of the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Appeal No. 303 of 1990. A

Arun R. Pednekar and V.N. Raghupathy for the Appellant.

Ravindra Keshavrao Adsure for the Respondent. B

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a learned Single Judge of the Bombay High Court upholding the conviction of the appellant for offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 (in short the 'Act'). The learned Special Judge, Osmanabad, convicted the appellant and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1,000/- with default stipulation. C D

2. Prosecution version as unfolded during trial is as follows:

The appellant was appointed as a Minimum Wages Inspector (Agriculture), in the month of June, 1984, by the Deputy Commissioner of Labour, Aurangabad. At the relevant time he was serving at Osmanabad. The appellant visited the land belonging to complainant, Shivaji Bandu Padwal which is situated at village Upala, taluka and district Osmanabad on 22nd of April, 1989. In fact, this land stands in the name of the wife and two sons of Shivaji Padwal in the revenue record. Laxman Kadam (PW-5) was in the employment of Shivaji Padwal on yearly basis. He was present in the field at the relevant time. Appellant made enquiry with regard to his service conditions. Laxman Kadam (PW5) told that his yearly salary was fixed at Rs.3,000/-. He did not supply necessary information with regard to holidays and hours of the work. He was not aware about the register to be maintained by the employer with regard to yearly servants. E F G

The appellant issued a notice dated 24.4.1989 to Shivaji H

- A Padwa1 (PW-1) and asked him to see him in his office in connection with service conditions of his yearly servant. Shivaji Padwal (PW-1) did not respond to the said notice. Thereafter, appellant issued another notice on 25.5.1989 to Shivaji Padwal and asked him to see him in his office with required registers.
- B However, Shivaji Padwal did not respond to the second notice. Shivaji Padwal visited the office of the appellant on 1.6.1989 and 15.6.1989. However, appellant was not present in the office and, therefore, Shivaji Padwal could not see appellant.

- C Shivaji Padwal went to the office of the appellant on 22.6.1989. He met accused in the office at about 2.00 p.m. Appellant made enquiry with Shivaji Padwal and asked him whether he had maintained register with regard to service conditions of his yearly servant Laxman Kadam. Shivaji Padwal told appellant that he had not maintained a register. However,
- D he promised him to keep the register in future and produce the same before him for the purpose of inspection. It is the prosecution's case that appellant demanded Rs.100/- from Shivaji Padwal for dropping the action for not maintaining the register. Shivaji Padwal had no money that day and therefore
- E promised him to pay Rs.100/- later.

- On 20.7.1989, Shivaji Padwal went to the office of the appellant. Appellant demanded Rs.100/- from him. Shivaji Padwal (PW1) had no money with him that day, however, he promised appellant to fulfil his demand. Appellant asked Shivaji Padwal (PW 1), to maintain register and asked him to come on 27.7.1989. On 27.7.1989 at 10.30 a.m. Shivaji Padwal (PW-1) went to the office of Anti Corruption Bureau and contacted Dy. S.P. Shetkar (PW 11) and told him about the demand of appellant for illegal gratification. Shetkar (PW-11) recorded the
- F complaint Exh. 16 lodged by Shivaji Padwal (PW-1). Dy. S.P. Shetkar (PW 11) immediately called two independent panchas, namely, Kashinath Gore (PW-2) and Madhukar Kulkarni from the Accounts Department of Zilla Parishad. In response to the requisition, Kashinath Gore (PW-2) and Madhukar Kulkarni
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- H appeared in the office of the Anti Corruption Bureau. Shetkar

apprised them about the complaint of Shivaji Padwal. Shetkar (PW-11) then arranged a trap. Shivaji Padwal presented one currency note of denomination of Rs.50/- and five currency notes of denomination of Rs.10/-. The currency notes were treated with anthracene powder. Shetkar (PW-11) told Shivaji Padwal and two panchas about the properties of anthracene powder. He told them that if treated currency notes are seen by naked eye in ordinary light, the currency notes do not emit any light or shining. He further told them that if the treated currency note is examined in the light of ultraviolet lamp, the treated currency notes emit a particular colour or shining. He gave a demonstration with the help of an ultraviolet lamp. He gave usual instructions to the members of the raiding party. Treated currency notes were kept in the right side pant pocket of Shivaji Padwal. Complainant Shivaji Padwal (PW-1) was asked to offer the treated currency notes to appellant only on demand. Panch Kashinath Gore was asked to accompany Shivaji Padwal. Panch Madhukar Kulkarni was asked to accompany the members of the raiding party. A detailed pre-trap panchanama Exh.20 was prepared.

Shivaji Padwal (PW 1) and Kashinath Gore (PW 2) went to the office of appellant at 3.45 p.m. on 27.7.1989. Appellant was not present in the office. Shivaji Padwal and Panch Kashinath Gore contacted Dy. S.P. Shetkar (PW 11) and told him that accused was not present in the office. Shetkar (PW-11) asked them to wait in the office of appellant and accordingly both of them returned to the office of the appellant. After some time, appellant came to the office and occupied his chair. Shivaji Padwal (PW 1) and panch Gore (PW-2) sat on the Bench. Shivaji Padwal (PW-1) opened the topic. Appellant asked him whether he had brought the money. Shivaji Padwal replied in the affirmative. Appellant then took out Exh. 18 and made endorsement. Appellant put his signature (Exh. 17). Thereafter, Shivaji Padwal took out the treated currency notes from his right side pant pocket and offered the treated money to the appellant. The appellant accepted the treated money with

A his right hand. Appellant counted the currency notes by both the hands and kept the currency notes in the right side pocket of his pant.

After delivery of the tainted money, Shivaji Padwal gave signal to the members of the raiding party. The members of the raiding party immediately entered the office of the appellant. Police Head Constable Mane immediately caught both the hands of the appellant. On enquiry, appellant told Shetkar (PW-11) that currency notes were in the right side pocket of his pant. Shivaji Padwal was asked to go outside the office and accordingly he went outside the office. Inspector Gaedade who was member of the raiding party put on the ultraviolet lamp and in the said light hands of all the members of the raiding party including two panchas and Shetkar (PW-11) were examined. Anthracene powder was not seen on the hands of the members of the raiding party. Thereafter, both the hands of accused were examined in the light of ultraviolet lamp. Anthracene Powder was found on both the hands of the appellant. In the light of ultraviolet lamp, the finger tips of both the hands of the appellant emitted a particular shining. Shetkar (PW-11) then asked panch

E Madhukar Kulkarni to take out the treated currency notes from the right side pocket of the pant of the appellant and in response to the instructions, Panch Madhukar Kulkarni took out the treated currency notes. The treated currency notes and the inner portion of the right side pant pocket of the appellant were examined in the light of ultraviolet lamp. The treated currency notes and the inner portion of the right side pant pocket of the appellant emitted a shining. A currency note of denomination of Rs.2/- which was found in the right side pant pocket of the accused was also recovered and was examined in the light of ultraviolet lamp. The currency note of Rs.2/- emitted a shining. However, anthracene powder was not noticed on the remaining three currency notes of Rs.2/- which were found kept inside the fold of the upper currency note of denomination of Rs.2/- which emitted the shining. All the articles were attached under panchnama. The document i.e. Exh. 18 on which appellant had

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made endorsement was also attached from the custody of the appellant. Complainant Shivaji Padwal was called inside the office. His right hand and inner portion of his right side pant pocket were examined in the light of the ultraviolet lamp. The finger tips of his right hand and inner portion of the right side pocket of his pant emitted shining. A detailed post trap panchnama Exh. 21 was prepared.

Dy. S.P. Shetkar lodged FIR, Exh.39 on 28.7.1989. On the basis of FIR Exh.39 crime No.29/1989 was registered under Section 7, 13(1)(d) read with Section 13(2) of the Act. Dy. S.P. Shetkar (PW-11) carried out the investigation of the crime. After obtaining the sanction (Exh.37) from Dy. Commissioner of Labour, Aurangabad, Shetkar submitted charge sheet on 31.12.1989. Learned Special Judge, Osmanabad, framed charge (Exh. 10) against the appellant, who pleaded not guilty to the charge and claimed to be tried.

In order to prove the guilt of the accused, prosecution examined 11 witnesses. The appellant accused put forth the plantation theory. According to him, Shivaji Padwal forcibly inserted treated currency notes into his right side pant pocket on 27.7.1989. He offered resistance to Shivaji Padwal at that time. In the process of resistance, the anthracene powder was transmitted to the finger tips of both his hands.

The learned Special Judge held that the prosecution proved the demand of bribe money, offer of tainted money by PW 1 and acceptance of tainted money by the appellant and recovery of tainted money from the person. Accordingly, he was convicted.

The stand of the appellant before the High Court was that money was thrust on him and there was no scope for making any demand. The relevant dates are 24.4.89, 25.5.89, 1.6.89 and 15.6.89. That being so, the complaint which was filed on 27.9.89 appears to be *mala fide* and which is apparent from the fact that the raid was made on 27.7.89. The endorsement

A on Exh.18 on 26.6.89 has not been established to have been done by the appellant. After the case was closed on 26.6.89, there was no occasion for making any demand.

B 3. Learned counsel for the respondent on the other hand supported the judgment of the High Court.

C 4. So far as the stand that there was no demand made, as noted above on 20.7.1989, PW-1 had gone to the office of appellant who demanded Rs.100/- from him. Since PW-1 had no money with him on that day he promised to come later. Appellant asked PW-1 to maintain the register and asked him to come on 27.7.1989. Thereafter, PW-1 contacted Deputy SP (PW-11) and told him about the demand. The complaint was recorded as Exh.16. Two independent witnesses PW 2 and one Madhukar Kulkarni were called from the Accounts Department of Zilla Parishad. They were apprised of the demand of bribe. Trap was thereafter arranged. The fact that in Exh.18 there is an endorsement, is a clear indication that the case was to continue, falsifies the stand of the appellant that no proceeding was continuing.

E 5. So far as the question regarding no demand is concerned, this Court in *State Represented by Inspector of Police, Pudukottai, T.N. v. A. Parthiban* (2006 (11) SCC 473) observed as follows:

F "5. The stand that respondent could not have been simultaneously convicted for offences relatable to Section 7 and Section 13(2) read with Section 13(1)(d) of the Act, as held by the High Court is clearly unacceptable. Section 71 IPC provides the complete answer. The same reads as follows:

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"71. *Limit of punishment of offence made up of several offences.* – Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished

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with the punishment of more than one of such his offences, unless it be so expressly provided.

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Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

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where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

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the offender shall not be punished with a more severe punishment than the court which tries him could award for any one of such offences."

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8. Every acceptance of illegal gratification whether preceded by a demand or not, would be covered by Section 7 of the Act. But if the acceptance of an illegal gratification is in pursuance of a demand by the public servant, then it would also fall under section 13(1)(d) of the Act. The act alleged against the respondent, of demanding and receiving illegal gratification constitutes an offence both under Section 7 and under Section 13(1)(d) of the Act. The offence being a single transaction, but falling under two different Sections, the offender cannot be liable for double penalty. But the High Court committed an error in holding that a single act of receiving an illegal gratification, where there was demand and acceptance, cannot be an offence both under Section 7 and under Section 13(1)(d) of the Act. As the offence is one which falls under two different sections providing different punishments, the offender should not be punished with a more severe punishment than the court could award to the person for any one of the two offences. In this case, minimum punishment under Section 7 is six months and the minimum punishment

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A under Section 13(1)(d) is one year. If an offence falls under both Sections 7 and 13(1)(d) and the court wants to award only the minimum punishment, then the punishment would be one year."

B 6. The evidence of the witnesses clearly establishes not only the demand, but also the acceptance. The anthracene powder test conducted lends considerable support to the prosecution version.

C 7. Above being the position, there is no merit in this appeal which is dismissed accordingly.

K.K.T.

Appeal dismissed.