

NAYANKUMAR SHIVAPPA WAGHMARE

v.

STATE OF MAHARASHTRA

(Criminal Appeal No. 1352 of 2009)

FEBRUARY 13, 2015

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

Prevention of Corruption Act, 1988 – ss. 7 and 13(1)(d) rw s. 13(2), 20 – Public servant taking gratification for an official act – Complainant alleging that the appellant-public servant demanded and accepted bribe from him for clearing his sister’s pension papers and GPF dues – Trial court acquitting the accused from the charge of offence punishable u/ss. 7 and 13(1)(d) rw s. 13(2) holding that the charge is not proved beyond reasonable doubt – However, High Court convicted and sentenced him u/ss. 7, 13(1)(d) rw s.13(2) – Interference with – Held: Not called for – Apart from the suggestion made on behalf of the accused to the prosecution witnesses and the complainant, the accused admitted that three currency notes were recovered from his pocket by the raiding party – After considering evidence on record in the light of s. 20, the trial court erred in law in giving benefit of reasonable doubt to the accused.

Dismissing the appeal, the Court

HELD: 1.1 After going through the evidence on record it is not a case where two views are possible. As such, there is no illegality in the impugned order reversing the order of acquittal recorded by the trial court. [Para 12] [179-C-D]

1.2 Considering the fact that the statement of the key witness PW-9 was recorded almost after three years of the incident, and the cross-examination was not done

A on the same day when the examination-in-chief was recorded, there was every reason to believe that the witness had lost the interest and won over by the accused. There is nothing on record as to why if the amount was not demanded and the papers relating to post retiral dues were being cleared by the accused, PW-9 made a written complaint to the Anti Corruption Bureau on the date when his sister's papers were being cleared. [Para 14] [179-F-H]

C 1.3 The view of the High Court that the trial court while appreciating the prosecution evidence completely ignored the presumption required to be taken under sub-Section (1) of Section 20 of the Prevention of Corruption Act, 1988, is accepted. Apart from the suggestion made on behalf of the accused to the PW-1, PW-3 and PW-9, it is clear that the accused admitted that three currency notes were recovered from his pocket by the raiding party. After considering evidence on record in the light of Section 20 of Act, the trial court did err in law in giving benefit of reasonable doubt to the accused. Thus, there are no reasons to interfere with the impugned order passed by the High Court convicting and sentencing the appellant u/ss. 7 and 13(1)(d) read with Section 13(2) of the Act. [Paras 15,17,18] [180-A-B, D-E; 181-G-H; 182-E]

F *Himachal Pradesh Administration v. Om Prakash* 1972 (2) SCR 765: (1972) 1 SCC 249 – relied on.

G *Niranjan Hemchandra Sashithal and another v. State of Maharashtra* 2013 (4) SCR 767: (2013) 4 SCC 642 – referred to.

Case Law Reference

	1972 (2) SCR 765	Relied on.	Para 16
H	2013 (4) SCR 767	Referred to.	Para 17

CRIMINAL APPELLATE JURISDICTION : Criminal A
Appeal No. 1352 of 2009

From the Judgment and Order dated 06.02.2009 of the
High Court of Bombay, Bench at Aurangabad in Criminal
Appeal No. 135 of 1997

B

Sudhanshu S. Choudhari for the Appellant.

Amol Chitale, Aniruddha P. Mayee, Charudatta
Mahindrakar, A. Selvin Raja for the Respondent.

C

The Judgment of the Court was delivered by

PRAFULLA C. PANT, J. 1. This appeal is directed
against judgment and order dated 6.2.2009 passed in Criminal
Appeal No. 135 of 1997 by the High Court of Judicature at
Bombay (Bench at Aurangabad) whereby said Court has
reversed the acquittal recorded by Special Judge,
Osmanabad, in Special Case No. 3 of 1993 and convicted
the present appellant Nayankumar Shivappa Waghmare under
Sections 7 and 13(1)(d) read with Section 13(2) of the
Prevention of Corruption Act, 1988 and sentenced him to
rigorous imprisonment for a period of one year and directed
to pay fine of Rs. 10,000/-, and in default of payment of fine, six
months further rigorous imprisonment is directed to be served.

D

E

2. We heard learned counsel for the parties and perused
the record.

F

3. According to prosecution, the appellant was working
in the Finance Section of Zilla Parishad, Osmanabad. He was
handling the cases of General Provident Fund (GPF) and
pension cases of retired members of staff. PW-10 Mirabai N.
Deshpande, who served as Chief Sevika with the Integrated
Child Development Scheme at Bhoom, opted for her voluntary
retirement due to her physical ailments, in July, 1992. She
submitted her pension papers. She was issueless widow. Her

G

H

- A brother PW-9 Anant Deshmukh, who was an ex-serviceman, was requested by her to pursue her papers. He used to work with a private company in Pune. PW-9 Anant Deshmukh, between November, 1992 to January, 1993, went several times to the office of Zilla Parishad to make enquiries regarding her
- B sister's pension and GPF papers. The appellant, who was working in said office, told him that the pension papers were searched but could not be located. On this, PW-9 went to Bhoom and obtained outward number of forwarding letter addressed to Zilla Parishad, Osmanabad along with which the
- C pension papers of Mirabai were sent. Thereafter, pension and GPF papers were located, and the appellant told PW-9 Anant Deshmukh (complainant) to obtain 'No Dues Certificate' from Block Development Officer, Panchayat Samiti, Bhoom. He also disclosed the complainant that there was missing entry in
- D respect of year 1987-88 in the GPF statement. On this, the complainant brought letter of her sister stating that she was ready to accept the amount of GPF excluding the missing credits of the year 1987-88. 'No Dues Certificate' from the Block Development Officer was also obtained and submitted
- E to the office of the Zilla Parishad. When again contacted, the appellant told Anant Deshmukh that GPF clearance would require further 2-3 months, but if the complainant pays Rs. 1,000/- to him, it can be done within 8-10 days. Reluctantly, Anant Deshmukh gave Rs.200/- to the appellant, who asked
- F him to contact after five-six days with rest of the amount. On 30.1.1993, complainant met the appellant Nayankumar Shivappa Waghmare (accused) at 10.45 a.m. The appellant told him that the work has progressed, and papers are lying for signatures of the authority concerned, and asked him to come at 2.30 – 3.00 p.m. with balance amount. The
- G complainant told that he could arrange Rs.300/- only and remaining Rs.500/- be allowed to be paid when the GPF amount is encashed. The appellant asked the complainant that further Rs. 1,000/- would be required separately for pension
- H work which would take about two-three months time. On this,

complainant PW-9 Anant Deshmukh went to Anti Corruption Bureau and met PW-12 P.I. Nandkumar Gadade, and complained about the corruption. PW-12 got the complaint reduced into writing whereafter panch witnesses, namely, PW-1 Uttam Bhutekar and PW-3 Sahebrao Wanve, were called from the Irrigation office. The written complaint was read over to the witnesses in the presence of Anant Deshmukh. A trap was laid by team led by Deputy Superintendent of Police Mr. Shetkar to apprehend the appellant on the same day as the appellant had asked the complainant to come with money in the afternoon. After applying anthracene powder in the three currency notes which were to be handed over by the complainant to the appellant, and preparing panchnama to this effect, as per the plan, PW-9 Anant Deshmukh went to the office of Zilla Parishad along with witnesses Uttam Bhutekar and Sahebrao Wanve. Bhutekar was asked to remain present with Anant Deshmukh during the conversation between him and the accused. Wanve was to follow the three from some distance. When the complainant reached Zilla Parishad Office, the appellant asked him to come out and both of them with Bhutekar went to nearby tea stall. PW-9 Anant Deshmukh, PW-3 Sahebrao Wanve and PW-1 Uttam Bhutekar took the tea and Deshmukh made the payment for it. Thereafter, Deshmukh handed over tainted currency notes to the appellant which he accepted with his right hand and inserted the notes with left hand in his pocket. As per the plan Deshmukh signaled the raiding party by moving his hand on the head. The raiding party immediately rushed and caught hold of both the hands of the appellant and in the presence of the witnesses hands of the appellant were seen in the light of ultra violet lamp and found that the hands showed bluish sparkle due to the anthracene powder with which currency notes were tainted. Three currency notes of Rs.100/-, bearing Nos. 5BQ 075977, 9CA 767761 and 0PN 648332, accepted by the appellant were seized by trap/raiding police party and a panchnama was prepared. A complaint (Ex. 41) was made by PW-12 P.I. Gadade and First

A

B

C

D

E

F

G

H

- A Information Report was lodged. After investigation, all the relevant papers were submitted before the Chief Executive Officer of Zilla Parishad for sanction for prosecution of the appellant, and the same was obtained against the accused and charge-sheet was submitted in respect of offence
- B punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

C 4. It appears that after hearing the parties, the trial court framed charge against Nayankumar Shivappa Waghmare in respect of offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988, on 15.3.1996, to which he pleaded not guilty, and claimed to be tried.

D 5. On this, prosecution got examined PW-1 Uttam Bhutekar (panch witness), PW-2 Bhimrao (Junior Assistant in Zilla Parishad), PW-3 Sahebrao Wanve (Panch witness), PW-4Riyaz, PW-5 Bharat, PW-6Nagnath (all three officials of Zilla Parishad), PW-7 Rajiv (Chief Executive Officer of Zilla Parishad), PW-8 Baburao (Chief Accountant), PW-9 Anant

E Deshmukh (complainant), PW-10 Mirabai (pensioner whose GPF papers were processed), PW-11Ramdas (police Head Constable) and PW-12, P.I. Nandkumar Gadade (head of the raiding party). Oral testimony of the witnesses and

F documentary evidence was put to the accused, in reply to which he admitted that Mirabai N. Deshpande (PW-10) did seek voluntary retirement and the fact that on the request of complainant, pension papers of Mirabai were searched. However, as to the rest of evidence regarding demand and

G acceptance of bribe, the accused stated that the same was not true. No evidence in defence was adduced.

H 6. The trial court, after considering the evidence on record and submissions of the parties, acquitted the accused (Nayankumar Shivappa Waghmare) from the charge of offence punishable under Sections 7 and 13(1)(d) read with Section

13(2) of the Prevention of Corruption Act, 1988 vide judgment and order dated 18.1.1997, holding that the charge is not proved beyond reasonable doubt. A

7. State of Maharashtra challenged the order passed by the trial court recording acquittal of the accused, before the High Court. The High Court, after hearing the parties, came to the conclusion that the trial court has erred in law in acquitting the accused giving him benefit of doubt. It held that the charge is proved on the record against the accused Nayankumar Shivappa Waghmare and convicted and sentenced him under Sections 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988, to rigorous imprisonment for a period of one year and directed to pay fine of Rs.10,000/-, and in default of payment of fine the convict was directed to undergo rigorous imprisonment for a further period of six months. Hence this appeal by the convict. B C D

8. On perusal of the evidence we find that PW-9 Anant Deshmukh has stated that Mirabai (PW-10) was his elder sister who sought voluntary retirement on 15.7.1992 on account of her illness. She was an issueless widow. It was further stated by this witness that Mirabai used to live with him, and she asked him to pursue her pension papers and amount relating to her GPF dues. The witness further told that from November, 1992 he started making enquiries from the office of Zilla Parishad, Osmanabad regarding the post-retiral dues of his sister. He narrated in detail as to his meetings with the appellant who used to work in the office of Zilla Parishad. He further told that on being asked he obtained 'No Dues Certificate' from the office of Block Development Officer, and letter from his sister regarding her readiness to accept the amount of GPF without contribution of the year 1987-88. PW-9 further told that Rs.1,000/- were demanded by the accused (appellant) for clearance of amount of GPF. He also stated that he gave Rs.200/- to the accused, and for rest of the sum it was agreed E F G H

A that the same would be paid after a week. The witness further narrated that on 30.1.1993 when he again went to the office of Zilla Parishad, he was asked to come again around 3.00 p.m. with balance Rs.800/-, and he was further told that Rs.1000/- would be separately required for clearance of pension papers
B which would take another two to three months. PW-9 Anant Deshmukh further stated that, on this, he went to Anti Corruption Bureau and made a complaint. He further told that he came along with panch witnesses and vigilance team, and trap was laid. He further told that he gave Rs.300/- to the accused after
C having tea in the nearby tea stall on which trap party apprehended and recovered amount from the accused. However, at the end of the cross-examination this witness stated that the accused did not demand the amount.

D 9. The statement of PW-9 Anant Deshmukh, as recorded in the examination-in-chief, regarding the payment of bribe and recovery of three currency notes, is fully corroborated from the statements of PW-1 Uttam Bhutekar and PW-3 Sahebrao Wanve. The prosecution story is further corroborated from the
E statements of PW-10 Mirabai and PW-12 P.I. Nandkumar Gadade.

F 10. The oral testimony of above witnesses gets further corroboration also from the panchnama (Ex. 22), complaint (Ex. 23), second panchnama (Ex. 24) and other papers on record.

G 11. Learned counsel for the appellant argued before us that since the trial court has acquitted the appellant giving him benefit of reasonable doubt, the High Court erred in law in convicting him as it is settled principle of law that where two views are possible, the finding of the trial court should not be disturbed.

H 12. The above argument advanced on behalf of the appellant, in the present case, is misconceived for the reason

that if the same is accepted, there cannot be any case where appeal against acquittal can be allowed, and the error committed by the trial court can be corrected. The perusal of the impugned judgment shows that after discussing the evidence on record, the High Court has come to a definite conclusion that the trial court has erred in law in coming to the conclusion that the charge in respect of offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 is established. The High Court has clearly held that the trial court erred in law in giving benefit of reasonable doubt to the accused in the present case. After going through the evidence on record we are also of the opinion that it is not a case where two views are possible. As such, we do not find any illegality in the impugned order reversing the order of acquittal recorded by the trial court.

13. Our attention has been drawn on behalf of the learned counsel for the appellant to the last sentences in the cross-examination of PW-9 Anant Deshmukh (complainant) wherein he has taken a somersault and told that the amount was not demanded by the accused. It is on the basis of this part of the statement on which benefit of reasonable doubt appears to have been given by the trial court. It is contended on behalf of the appellant that demand of bribe is not proved on the record.

14. In our opinion, considering the fact that the statement of the key witness PW-9 Anant Deshmukh was recorded almost after three years of the incident, and the cross-examination was not done on the same day when the examination-in-chief was recorded, there was every reason to believe that the witness had lost the interest and won over by the accused. There is nothing on record as to why if the amount was not demanded and the papers relating to post retiral dues were being cleared by the accused, PW-9 Anant Deshmukh made a written complaint to the Anti Corruption Bureau on the date when his sister's papers were being cleared.

A 15. In this connection, we agree with the High Court that
the trial court while appreciating the prosecution evidence
completely ignored the presumption required to be taken under
sub-Section (1) of Section 20 of the Prevention of Corruption
Act, 1988. Sub-section (1) of Section 20 provides that where,
B in any trial of an offence punishable under section 7 or section
11 or clause (a) or clause (b) of sub –section (1) of section 13
it is proved that an accused person has accepted or obtained
or has agreed to accept or attempted to obtain for himself, or
for any other person, any gratification (other than legal
C remuneration) or any valuable thing from any person, it shall
be presumed, unless the contrary is proved, that he accepted
or obtained or agreed to accept or attempted to obtain that
gratification or that valuable thing, as the case may be, as
a motive or reward such as is mentioned in section 7 or, as the
D case may be, without consideration or for a consideration
which he knows to be inadequate. Apart from this suggestion
made on behalf of the accused to the PW-1 UTtam Bhutekar,
PW-3 Sahebrao Wanve and PW-9 Anant Deshmukh, it is clear
that the accused has admitted that three currency notes were
E recovered from his pocket by the raiding party. In such
circumstances, in the present case, there was no question of
giving benefit of reasonable doubt to the accused.

F 16. In *Himachal Pradesh Administration v. Om Prakash*¹, explaining the expression “reasonable doubt”, this Court has observed as under: -

G “It is not beyond the ken of experienced able and astute lawyers to raise doubts and uncertainties in respect of the prosecution evidence either during trial by cross-examination or by the marshalling of that evidence in the manner in which the emphasis is placed thereon. But what has to be borne in mind is that the penumbra of uncertainty in the evidence

H ¹(1972) 1 SCC 249

before a court is generally due to the nature and quality of that evidence. It may be the witnesses as are lying or where they are honest and truthful, they are not certain. It is therefore, difficult to expect a scientific or mathematical exactitude while dealing with such evidence or arriving at a true conclusion. Because of these difficulties corroboration is sought wherever possible and the maxim that the accused should be given the benefit of doubt becomes pivotal in the prosecution of offenders which in other words means that the prosecution must prove its case against an accused beyond reasonable doubt by a sufficiency of credible evidence. The benefit of doubt to which the accused is entitled is reasonable doubt — the doubt which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy — though unwittingly it may be — or is afraid of the logical consequences, if that benefit was not given. Or as one great Judge said it is “not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and idle scepticism”. It does not mean that the evidence must be so strong as to exclude even a remote possibility that the accused could not have committed the offence. If that were so the law would fail to protect society as in no case can such a possibility be excluded. It will give room for fanciful conjectures or untenable doubts and will result in deflecting the course of justice if not thwarting it altogether.”

A

B

C

D

E

F

G

17. In view of law laid down by this Court, as above, and after considering evidence on record in the light of Section 20 of Prevention of Corruption Act, 1988, we hold that the trial court did err in law in giving benefit of reasonable doubt in the present case relating to corruption. In the case of *Niranjan*

H

A ***Hemchandra Sashithal and another v. State of Maharashtra***², this Court has discussed gravity of the corruption cases in following words: -

B “26. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes
C the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered.”

D 18. For the reasons, as discussed above, after going through the record of the case, and considering the rival submissions of learned counsel for the parties, we find no reasons to interfere with the impugned order passed by the
E High Court convicting and sentencing the appellant under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. Therefore, the appeal is liable to be dismissed.

F 19. The appeal is accordingly dismissed. The appellant Nayankumar Shivappa Waghmare is on bail. His bail is cancelled. He shall surrender before the court concerned to serve out the remaining part of the sentence.

Nidhi Jain

Appeal dismissed

²(2013) 4 SCC 642