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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

965 CRIMINAL APPEAL NO. 305 OF 2006

ROHIDAS EKNATH BHOR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.Joydeep Chatterji h/f Mr.Satej S.Jadhav, Advocate for the
Appellants.

Mrs.B.B.Gunjal, APP for the Respondent/State.

(CORAM : SUSHIL M. GHODESWAR, J.)

DATE : 30th SEPTEMBER, 2026

PER COURT :

1. Heard learned Advocate Mr.Chatterji h/f Mr.S.S.Jadhav for the Appellants and the learned APP for State. At the outset, it is pointed out to this Court that Appellant No.2 is expired. Hence the Criminal Appeal against accused No.2 is abated.

2. The appellant is challenging the judgment and order dated 07.04.2006, passed by the Special Judge, Ahmednagar wherein the appellant came to be convicted and sentenced to suffer RI for one year for the offence punishable u/s 7 of the Act and to pay fine of Rs.1,000/- i.d. to suffer RI for 3 months and he is also convicted u/s 13(1)(D) r/w

13(2) of the Prevention of Corruption Act and sentenced to suffer RI for 2 years and fine of Rs.1000/- i.d. to suffer RI for 3 months in Spl.Case No.4/2000.

3. The prosecution case in brief is as under :-

On 02.12.1999, the Anti Corruption Bureau Office got the secret information that the traffic Police deployed at Rahuri were taking illegal money from the drivers. On the basis of said information, the Police Inspector P.W.No.3 Prabhakar Choudhari called 2 independent panch witnesses as per the provisions of Law. On 03.12.1999, accordingly, team arrived near Nandadeep Dhaba at Rahuri and met one driver of the trailer namely Swaminathan. He met complainant and upon his formal complaint, the trap was laid and accordingly 3 signed notes of Rs.50/- denomination were handed over to him for conducting the trap. When the raiding team came near Chaudhari Dhaba, the Appellant/accused, who was deployed at the spot, being a Traffic Police Constable, stopped the trailers. It is the prosecution case that after verifying the papers, the said accused Mr.Bhor demanded Rs. 50/- for each trailer. He also threatened the driver of the trailer to register cases against them if the amount of Rs.50/- per trailer is not paid.

Therefore, the complainant, as per the instructions of accused Mr.Bhor, paid the amount of Rs.150/- to accused No.2 Suraj/Appellant No.2. After handing over the money, the ACB team, upon receiving the pre-determined signal, caught Mr.Bhor on the spot.

4. On the basis of such trap, Crime No.3050/1999 came to be registered at Rahuri Police Station against the accused persons. After completing the investigation, charge sheet was filed. The charge as per Exh.5 came to be framed against the Appellants. As the Appellants pleaded not guilty, they came to be tried. The prosecution, in order to prove the guilt against the Accused persons, examined 4 witnesses. P.W.No.1 Dashrath Bhikaji Patil at Exh.12, who is a panch witness, P.W.No.2 Himanshu Roy, is the Commissioner of Police, Nashik came to be examined at Exh.17, being a Sanctioning Authority. P.W.No.3 Prabhakar Ananda Choudhari is a Police Inspector, who conducted the trap, was examined at Exh.19 and Manohar Shankar Joshi came to be examined as the Investigating Officer and in the capacity of Police Inspector at Exh.42.

5. After recording the evidence of the aforesaid witnesses, and

hearing the learned Advocates for the parties, the learned Trial Court was pleased to convict the Appellants. Being aggrieved by the said judgment and order, the appellants have approached this Court by filing Criminal Appeal.

6. The learned Advocate for the appellants vehemently submitted that the evidence of the prosecution witnesses is neither sufficient nor trustworthy so as to convict the Appellants for the offences punishable u/s 7 and 13 of the Prevention of Corruption Act. He submits that the complainant, who lodged the complaint before Police, is at all not examined.

7. The said complainant was from the other State and was not knowing the local language i.e. Marathi. He further relied upon the testimony of P.W.No.1 panch witness, who has stated in his cross examination that when questioned, Accused No.1 clearly stated that he did not demand money or accepted any amount. It is also admitted position that marked bribe money was not recovered from the pocket of the accused persons. The same was recovered from the pocket of another accused. He further submits that the complaint came to be

registered on the basis of secret information. There was no information as regards or complaint against the present Appellant No.1 before the Anti Corruption Bureau. The ACP *suo-motu* arrived at the spot and conducted the trap. It is also came to be submitted by the learned Advocate for the Appellants that P.W.No.1 Dashrath, panch witnesses came to be relied upon by the prosecution, admitted that he did not know what is actual conversation between the PI and the driver. He also admitted that he cannot tell about the fact that whether the drivers were initially ready to lodge complaint or not. He further takes an exception to the manner in which sanction order is passed. Accordingly, the learned Advocate for the Appellants submits that the Sanctioning Authority did not give any reasons while conducting the raid. It is also came to be submitted that P.W.No.2, the Sanctioning Officer could not confirm that final sanction order was copied from the pre-prepared draft from the CP Office. Thereafter, pointing out to the testimony of P.W.No.3 Prabhakar, the learned Advocate for the Appellants submitted that the said witness has squarely admitted that there is Anti Corruption Manual and everyone has to follow the procedure required in Law. He has also admitted that each ACB office is provided anthracene powder and ultra violet lamp. The said witness

has also admitted that the bribe amount was not acquired from Accused No.1 and that the complainant namely Swaminathan is from Tamilnadu and he does not know Marathi language and his complaint came to be recorded in Marathi language rather than in his own language. He, therefore, submits that the aforesaid clarity of evidence, which is apparently found that the impugned order passed by the learned Sessions Court is not sustainable in the eyes of Law. Apart from the said submissions, the learned Advocate for the Appellants also submitted that the amount, which is allegedly to be offered to the accused, cannot be defined as Bribe, prescribed under the Act. He further submits that in order to prove the guilt of the Appellants before the Court, the prosecution is required to establish the case beyond all reasonable doubts. He further submits that as there are so many lacunas in the investigation and as the testimonies of the witnesses are not found to be trustworthy and sufficient enough to prove the offence under the provisions of the Act, the Appellants deserved to be acquitted and prayed for allowing the instant appeal.

8. Per contra, the learned APP for the State vehemently opposes the instant appeal. According to her, though the prosecution

has not examined the complainant, the case of the prosecution is still made out against the Appellants. The prosecution case can be proved on the basis of other reliable evidence, even if the complainant is not available for examination. She further submits that the case of the prosecution is as regards demand and acceptance of the bribe amount, and it is very much proved against the Appellants. The Appellants having found accepting the bribe amount, is therefore, rightly convicted by the Trial Court. She has taken this Court through the testimony of all the witnesses. She also relied upon the testimony of the panch witness to prove the guilt of the accused.

9. With the help of those witnesses, the prosecution, according to her has established it's case beyond all reasonable doubts. In support of her submissions, she is placing reliance of the judgment passed by the Hon'ble Apex Court in **Neeraj Dutta Vs. State (Govt. of N.C.T. of Delhi)**, [(2023) 4 SCC 731] to contend that even in absence of the complainant, the case of the prosecution can be proved by the circumstantial evidence.

10. She further submits that the Appellant was found to be

threatening to the drivers of the trailers, if the amount claimed by him is not paid, he would register the cases against them. She further submits that the evidence of panch witness No.1 is fully corroborated by the other witnesses. She further submits that there is no any room for any doubt as regards the commission of the aforesaid offence and as such prosecution has proved it's case beyond reasonable doubt. Therefore, the Trial Court has rightly convicted the Appellants and no interference is required at the hands of this Court as prayed for.

11. After hearing the learned Advocates for the parties and on going through the record, it is found that the Appellant to be punished for the purpose of attracting the offence u/s 7, the prosecution required to prove that Appellant No.1 while performing his official duty, has received certain amount. The word gratification is not defined under the Act, however, it has been understood in its literal meaning. In Section 4 sub section 1 of the Act to denote acceptance of amount to the satisfaction of the recipient. In this case, when the accusation as regards accepting the amount is not clear before that the said amount was demanded towards any favour or gratification. The amount came to be offered by the driver of the trailer. However, in exchange of the

said amount, what was promised to do or not to do, is not made clear before this Court. It is well settled position in Law that in order to prove the offence u/s 7 of the Act, the prosecution is required to prove the valid demand and the said offered amount is accepted by the accused considering it as a gratification for doing certain favour to the complainant. It is also clear and well established that the recovery of the bribe amount from the person of the accused is not sufficient to hold the appellants/accused guilty for the offence punishable u/s 7 of the Act.

12. In this case, it is tried to be brought by the prosecution before this Court that upon secret information received by the Officer of the Anti Corruption Bureau that certain Policemen are trying to extract amount from the drivers of the trailers and on the basis of said information, a trap came to be laid in which Appellant No.1 / Accused, who was deployed at Rahuri Naka and was performing his duty, at the same time, the trapping party conducted the raid on the basis of complaint made by the driver from Tamilnadu State and alleged to have been stopped by the Appellants/Accused/Traffic Constable and demanded the bribe amount. However, there is no communication

shown before this Court as to why that amount was demanded or accepted by the Appellants/Accused from the complainant. Moreover, the said amount came to be recovered from Accused No.2. It is also not brought before this Court that the relation was between the appellant with said accused No.2.

13. Another aspect, which is also equally important to observe here that while according sanction by the Sanctioning Authority, there are no reasons came to be given as regards reaching to the conclusion to accord sanction to prosecute the Appellants. On this aspect also, in various cases by the Hon'ble Apex Court, it is well established that the Sanctioning Authority should apply it's own mind while according sanction and also required to disclose it's reasons for according such sanction. The said aspect is missing in the sanction order and therefore the sanction also cannot be considered to be a valid sanction in the eyes of Law.

14. In view of the aforesaid observations, the case against the Appellants cannot be said to have proved beyond reasonable doubts. It is cardinal principle of Criminal Jurisprudence that in order to hold the

accused guilty, the prosecution must prove it's case beyond all reasonable doubts.

15. As noted above, there are certain doubts and therefore this Court is taking other view from the view taken by the learned Trial Court. Hence the instant Appeal is allowed.

[a] The judgment and order dated 07.04.2006 passed by the Special Judge, Ahmednagar in Spl.Case No.4/2000, convicting the Appellant, is hereby quashed and set aside.

[b] The Appellant, if not required in any other crime, be set free.

[c] Bail bonds, if any, stands cancelled. Surety, if any, stands discharged. Fine amount, if deposited, be refunded to the Appellant.

[d] R & P, if any, be sent back to the concerned Court.

(SUSHIL M. GHODESWAR, J.)