

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.: 494 OF 2003

The State of Maharashtra,
(Through Police Station,
Biloli Dist. Nanded).

... **APPELLANT**
[ORIG.APPLICANT]

VERSUS

Vilas Ganpatrao Pujari,
Age: 35 years, Occu: Service,
Block Development Officer,
Panchayat Samiti, Biloli,
Dist. Nanded.

... **RESPONDENT**
[ORIG. ACCUSED]

APP for the Appellant: Mr. P. N. Mule.
Advocate for the Respondent: Mr. R. S. Deshmukh.

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CORAM:- T. V. NALAWADE, J.
DATED:- 5th AUGUST, 2015.

ORAL JUDGMENT:

1. The appeal is filed against judgment and order of Special Case No.1 of 2001 which was pending in the Court of learned Additional Sessions Judge, Biloli (Special Judge appointed under Prevention of Corruption Act, 1988). The trial Court has acquitted the Respondent of the offence punishable under sections 7, 13 (I) (d) r/w 13 (2) of

Prevention of Corruption Act, 1988 (hereinafter called as the Act). Both the sides are heard.

2. It is the case of the complainant shriram that he was managing affairs of one cooperative society of ladies which was run under name Jijamata Mahila Mandal. To this society the work of construction of 200 toilet blocks was given by Panchayat Samiti, Biloli. It is the case of the complainant that the construction was completed about 4 months prior to the date of the incident and the amount of Rs.3.75 Lakh was already paid. More amount was due and probably Rs.1 Lakh. According to the complainant, the accused was working as Block Development Officer and he was avoiding to make payment of remaining amount due to the contractor as he wanted to extract bribe money of Rs.20,000/-. According to him, the amount of Rs.5,000/- was already paid and the remaining amount was to be paid on 4th of October, 2000. As the complainant had no intention to pay this bribe money, he approached the A.C.B. Office.

3. As per the information of the complainant the trap was to be laid on 4th October, 2000. One reporter was helping the complainant and as per the information

collected, the accused was not available in office on 4th October, 2000 and so the trap was postponed to 5th October, 2000. On 5th October, 2000 trap was laid and it is the case of the prosecution that the demand of Rs.20,000/- was made but as the complainant told that he had already paid Rs.5,000/- the amount of Rs.15,000/- was accepted as bribe money by accused and he had kept the amount in the drawer of the table. According to the prosecution this incident of demand and acceptance of bribe money took place in the presence of one Panch witness. Anthracene powder was detected on three fingers like thumb, index finger and middle finger of accused. Anthracene power was detected on nob, handle of the drawer in which the tainted money was found and anthracene powder was found inside the portion of the drawer.

4. Prosecution examined the complainant (P.W.1), Panch witness (P.W.2) and the Investigating Officer (P.W.3). Sanction was proved by examining P.W.4.

5. The complainant was declared hostile and learned A.P.P. cross examined the complainant. Complainant avoided to give evidence on the demand and he tried to

say that he had learnt from the others that the accused is in habit of taking money for giving the bill amount and so with that presumption he had gone to the office to pay the money. He gave evidence that he had kept the wad of amount Rs.15,000/- on the table of the accused and then he had left the chamber of accused for giving the signal.

6. As against the aforesaid evidence of complainant, the Panch witness stuck to the incident described in the post trap Panchanama. Panch witness gave evidence that in his presence the aforesaid demand was made and the amount of Rs.15,000/- tendered by the complainant, was accepted by the accused by using his hand and the accused had kept the tainted money in the drawer of his table.

7. The evidence of the Investigating Officer and the cross examination of the complainant shows that the record with regard to the work already executed by the aforesaid society is not collected. There is clear admission from the Investigating Officer that the inquiry revealed that the work was still incomplete and there was also no budgetary provision for making payment to the contractor. Even if it is presumed that some work was already executed and running bill was submitted by the contractor,

it was necessary for the Investigating agency to recover record of the running bill and on the basis of such record it could have been ascertained as to whether some amount was really due to the contractor. Further, the record of availability of funds could have also been collected but that is also not collected. For proving the offence punishable under section 7 of the Act the prosecution is required to prove not only the demand from the accused but also the acceptance, in connection with some work which the complainant had with the public servant. Such record was not collected.

8. The trial Court has considered the circumstance that anthracene powder was detected only on three fingers of the right hand of the accused like thumb, index finger and middle finger. The trial Court has considered the circumstance that anthracene powder was found on the nob of the drawer and thus observed that there is possibility that the accused had touched the nob of the drawer and due to that some anthracene powder was found on these three fingers. In ordinary course when amount is accepted by using hand, anthracene powder can be found on other fingers also and not only the three

fingers like in the present case. Such observations made by the trial Court needs to be accepted in view of the circumstances of the case. The trial Court has considered one more circumstance like the availability of toilet block in the chamber of the accused. The accused has come with a defence that behind his back the amount was probably kept in the drawer of the table. To a specific question put to the Panch witness with regard to the finding of anthracene powder on the fingers of accused, the Panch witness has given answer that he is not able to say as to how the anthracene powder was found on the three fingers of right hand of the accused.

9. For drawing the presumption available under section 20 of the Act it is necessary for the prosecution to establish that the tainted money was recovered from the possession of the accused. In view of the aforesaid circumstances which have created reasonable doubt it cannot be said that the prosecution has proved beyond reasonable doubt that the tainted money is recovered from the possession of the accused. Thus, the provision of Section 20 is not available to the prosecution in the present case and so no explanation was warranted from the accused.

10. Though for the proof of the offence under section 13 (I) (d) read with section 13 (2) of the Act it is not necessary that there should be some work with the accused and it is sufficient for the prosecution to prove that the accused had obtained the money, which amounts to misconduct, the prosecution was required to prove at-least the obtaining the tainted money. From the aforesaid evidence, it cannot be said that the prosecution has proved the obtaining of money from the complainant.

11. The aforesaid discussion shows that both the offences are not proved beyond reasonable doubt. The trial Court has given benefit of doubt to the accused. In view of the aforesaid discussion, there is no need of discussing the evidence on sanction.

12. In the result, appeal stands dismissed.

[T. V. NALAWADE, J.]

Dated:05/08/2015.
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