IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 364 OF 1994

1. Ravindra Narayan Joshi
2. Narayan Shriram Mane
Both r/o Ujjani Quarters Kurul .....Appellants

V/s.

The State of Maharashtra ....Respondent

WITH
CRIMINAL APPEAL NO. 371 OF 1994

Satish Chintamani Lad
Since deceased through his
legal heir :
Smt. Usha Satish Lad
R/o : c/o Sou. Sandipa Nitin Bahirshet
Shital New Colony, before Navnath Temple,
Mhasoba Road, Gokul Shirgaon, Kolhapur ….Appellant

V.s

The State of Maharashtra ….Respondent

Mr. P. D. Deshpande for Appellants
Ms. P. P. Shinde APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
RESERVED ON : 20th NOVEMBER, 2014.
PRONOUNCED ON : 10th AUGUST, 2015.

JUDGMENT:

1) Appellants herein are convicted for offence punishable under section 7 and offence punishable under section 13 (1) (d); (i) and (ii) punishable under section 13 (2) of Prevention of Corruption Act. Appellants are sentenced to suffer rigorous imprisonment for five years each and fine of Rs. 5,000/- each i/d to suffer further rigorous imprisonment for 15 months for offence punishable under section 7 of Prevention of Corruption Act. Both accused are sentenced to suffer rigorous imprisonment for three years each and fine of Rs. 3,000/- each i/d to suffer further rigorous imprisonment for 9 months in Special Case No. 12 of 1991 by Special Judge Solapur vide Judgment and Order dated 28/06/1994. Hence, this appeal. Such of the facts necessary for the decision of this appeal are as follows.

2) It is the case of prosecution that one Ramesh Ganpat Gurav, an agriculturist also works as contractor. He filed a tender for excavation of the canal and construction of walls of canal in Kurul sub-division no. 20 in June 1986. Appellant no. 1 Ravindra Joshi was serving as an Assistant Engineer in Sub-division no. 20 and Shri. Narayan Mane was serving as Junior Engineer in the same office. Work order was issued in favour of complainant by Shri.

Joshi in August 1986. Complainant had commenced the work and completed the same within 2 months. Shri. Mane was supervising authority. He has taken measurement. Mr. Gurav insisted upon junior engineer Shri. Mane to prepare the bill, however, Shri. Mane did not prepare the bill for 6 months. Shri. Gurav had refused to pay customary commission to the junior engineer prior to preparing of the bills. Shri. Gurav therefore met Joshi & Mane in the first week of June and agreed to pay customary commission. He had expressed his inability to pay commission at that time and had agreed to pay the commission after receipt of the bill amount. First bill was prepared for Rs. 24,702/-, whereas second bill was of Rs. 7610/- as per the measurement, and they were then sent to Divisional Office for approval. One Shri. Satish Lad was working as a clerk in the said Divisional Office. Shri. Lad demanded Rs. 100/- for endorsing upon the bill from Shri. Gurav.

3) The marriage of daughter Shri. Gurav was fixed on 19/06/1987. Hence, Shri. Gurav was badly in need of money. He paid Rs. 100/- to Lad for passing the bill and also agreed to pay Rs. 100/- after receipt of the bill. Shri. Lad had promised to give cheque within 2-3 days. Shri. Gurav did not receive the cheque till 15/06/1987. Gurav approached a clerk namely Ingale who handed

over cheques to Shri. Gurav. Cheque was drawn for sum of Rs. 21,365/- in stead of Rs. 32,312/-. Upon inquiry made from Shri Lad, Shri. Gurav showed him the bill and measurement book. There were erasures made in the said measurement books. Shri. Lad informed that erasures and modifications were made by Shri. Mane. Shri. Gurav was constrained to report about it to Shri. Joshi who did not pay an heed. That Shri. Gurav was constrained to encash the cheque. Thereafter, Shri. Joshi & Shri. Mane had demanded their customary commission and told him that in the eventuality that the commission is not paid, he would not be alloted any further work. Shri. Lad had also demanded Rs. 100/- towards the remainder.

4) On 29/06/1987, Gurav had been to Sub-division No. 20 at Kurul at 11.00 am. Shri. Mane had taken him to Joshi's office. They both demanded commission and had also assured that they would make adjustment in the next bill. Shri. Mane demanded commission of Rs. 1100/- for Shri. Joshi and Rs. 700/- for himself. Shri. Gurav agreed to pay Rs. 500/- to both the accused. Shri. Joshi insisted upon payment of Rs. 500/- to each. Gurav finally agreed to pay Rs. 500/- to Shri. Joshi & Rs. 400/- to Shri. Mane on the next day. Mr. Gurav had been to office of Executive Engineer Shri. Kulkarni and at that

time, Shri. Lad had demanded Rs. 100/-. Shri. Lad informed Shri. Gurav that he would not be allowed to meet executive engineer till Rs. 100/- was paid. Upon assurance, Mr. Gurav was allowed to meet executive engineer. Mr. Gurav approached office of Anti Corruption Bureau on 29/06/1987. He gave his written complaint on 30/06/1987.

5) After following initial procedure, it was decided to lay a trap. On the next day, trap was laid. Complainant was given specific instruction by A.C.B. Complainant was directed to go to Kurul and first contact Mr. Mane and give him Rs. 400/- out of 1,000/-, only upon making a demand. That thereafter, he should contact Mr. Joshi and give Rs. 500/-, upon making a demand. Complainant was further directed to signal to the raiding party after amount is accepted. P. W. 1 was directed to act as a shadow witness. Complainant was also instructed that after completing the work at Kurul, he should go to Solapur, office of Ujani Canal, Division No. 1, he should meet Shri. Lad and give the remainder amount of Rs. 100/- to him upon demand and then signal the raiding party. Raid was conducted and according to the prosecution, raid was successful. The tainted notes were found with the accused persons. Then Shri. Wadekar lodged a report at Mohol Police Station on the basis of which

crime no. 115 of 1987 was registered against accused for offence punishable under section 161 of Indian Penal Code and section 5 (1) (d) and section 5 (2) of Prevention of Corruption Act, 1947. Investigation was completed and charge-sheet was filed. Charge was framed against accused under section 7, 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988. Case was registered as Special Case No. 12 of 1991. Prosecution has examined as many as 5 witnesses to bring home the guilt of the accused.

6) P. W. 1 Ramesh Gurav is the de-facto complainant. He has deposed before the Court that he is basically an agriculturist. He also takes contracts. He had taken contract of project of Ujani Canal Sub-division. He had filled in the details. He was given work order. Shri. Ravindra Joshi, accused no. 2 was Assistant Engineer at Ujani Canal Sub-division no. 20 whereas Shri. Narayan Mane, accused no. 1 was Junior Engineer in that division. P. W. 1 had given work order in August 1986. He has commenced the work immediately and had completed the work within one and half month. Accused no. 1 was supervising and drawing the measurements of the work completed. After completion of the work, complainant had insisted upon him to prepare the bill, however, accused no. 2 had protracted it for six months and therefore, P.

W. 1 was constrained to complain about it to the accused no. 1. That pursuant to the complaint by the complainant, accused no. 1 prepared the bill. Measurements of the work done were recorded in the measurement book. Accused no. 2 had prepared the first bill for Rs. 24,702.87 and the second bill for Rs. 7,610/-. Complainant had seen the bills and had specifically noticed that there were no erasures on page no. 20585. The bills were sent to accused no. 1 and thereafter, forwarded to Divisional Office.

7) P. W. 1 has further stated that Shri. Lad (who is appellant in criminal appeal no. 371 of 1994) was working as a clerk in the divisional office. It was his duty to verify the bills and forward the same to the audit department. Complainant had contacted Shri. Lad. That there was a demand of Rs. 100/- per bill from Shri. Lad. Complainant had informed him that he had no money.

8) On 15/06/1987, complainant had met Shri. Lad and it was informed that the cheque for Rs. 21,000/- was ready. Complainant had a grievance that cheque was for a lesser amount than the bill which was drawn. Shri. Lad had shown the complainant the measurement book, more particularly page 20585. Complainant had found erasures on that page. Upon enquiry, he was informed by Mr. Lad that accused no. 2 had made the said erasures. Complainant had

complained about the same to the accused no. 1 who had told him that it was futile to express grievance at that stage as bill was ready. Complainant had encashed cheque of Rs. 21,356/-. Daughter of the complainant was to get married on 19/06/1987. After few days, he had been to meet Mr. Mane and questioned as to why the bill was prepared for a lesser amount. Complainant was informed that cheque has been drawn for correct bill. That accused no. 2 had demanded gratification. Since the cheque was drawn for a lesser amount, complainant had denied to give him any gratification. Complainant had then been to the office of accused no. 2 on 29/06/1987. Accused no. 2 had questioned him as to whether he had brought his amount. Complainant had informed accused no. 2 that he would give amount on the next day. P. W. 1 then contacted Mr. Lad in Divisional Office. He had also questioned as to whether amount was brought. P. W. 1 also assured Mr. Lad that he would give money on the next day. On the next day, P. W. 1 contacted A.C.B. Office at 4.30 p.m. Complainant met Shri. Wadekar and disclosed to him the reason for approaching anti corruption bureau against accused no. 1 & 2 and Lad. That Wadekar recorded the statement of complainant in short. In the examination-in-chief, P. W. 1 was confronted with the said statement which he verified to be true. Said complaint is at exhibit 56. According to the complainant, Wadekar had called upon two panchas and introduced the complainant to the panchas. Thereafter, complainant was apprised of steps to be taken in conducting the raid. On the next day, i.e. on 30/06/1987, complainant followed the directions given by A.C.B. Along with shadow witness, i.e. panch, complainant went to the office of accused no. 1. There was a enquiry about the identity of the present accompanying complainant. P. W. 1 informed accused no. 1 that he was his friend. P. W. 1 further informed accused no. 1 that he had brought the amount pursuant to earlier day's stock. P. W. 1 also asked accused no. 1 whether he should give the money. According to P. W. 1, accused no. 1 had nodded in affirmative and therefore, complainant had drawn Rs. 500/- from his right trouser pocket and handed it over to accused no. 1. It is admitted that amount was Rs. 450/- and not Rs. 500/-. That accused no. 1 had accepted the amount and kept the same on the table.

9) P. W. 1 has further deposed that thereafter, he had been to office of accused no. 2 along with panch and had informed accused no. 2 that he had brought amount as per earlier day's discussion. Accused no. 2 asked him to give the amount and accordingly he was paid. Amount of Rs. 450/- was given

to accused no. 2, although, he was directed to pay Rs. 400/-. He then gave a signal to the raiding party. Raid was successful and Investigating Officer had taken further steps.

10) In the cross-examination, P. W. 1 has admitted that he was to receive Rs. 32,310/- towards his bill. That his daughter was to get married on 19/06/1987. That there were friendly relations between P. W. 1 and accused no. 1 & 2. That they had mutually exchanged dinner parties.

11) It is pertinent to note that P. W. 1 has specifically admitted in the cross-examination that he had borrowed Rs. 500/- from accused no. 1 before passing of tender and he had also borrowed Rs. 500/- from accused no. 2. According to P. W. 1, he had returned the amount to accused no. 2. P. W. 1 has further admitted to have borrowed Rs. 100/- from Mr. Lad before the tender was passed. He had made plans for his daughters marriage and had drawn the budget accordingly, since he was to Rs. 32,312/-. He was shocked when he received the cheque for an amount of Rs. 21,000/-. That he felt cheated. He was annoyed with both accused. There was a verbal altercation between him and the accused persons and he had decided to teach them a lesson. P. W. 1 has also admitted in the cross-examination that accused were insisting upon

him to return hand loan which he had taken. P. W. 1 had felt sorry as he could not perform the marriage as planned for want of funds and therefore, he had decided to teach a lesson to the accused persons. He had arrived at a conclusion that only because he has not repaid the amount which was borrowed from accused persons, the cheque for a lesser amount was drawn and therefore, he has approached A.C.B. It is pertinent to note that P. W. 1 has admitted in the cross-examination that he had informed the A.C.B. that accused persons had cheated him only because he could not return the borrowed amount and therefore, he has suffered loss. He had specifically informed the officer that he had borrowed amount of Rs. 500/-, 400/- and 100/- respectively from accused persons. He has admitted that he has signed his statement given before A.C.B. office without going through the contents. In the cross-examination, P. W. 1 has almost resiled from his examination-in-chief as he has admitted that there were personal transactions between accused persons and P. W. 1/complainant. P. W. 1 was confronted with his previous statement and has contradicted himself. There are inherent contradictions in the substantive evidence of P. W. 1. He has further reiterated that his statement was recorded under section 164 of Code of Criminal

Procedure, 1973 and that the said statement was tutored by police. According to him, police had threatened him that they would take him in police custody, if he does not give the statement as told by them.

12) P. W. 2 Popat Kadbane was working as a clerk in Tahsildar Office. On 29/06/1987, as per the directions of his superior, he had been to A.C.B. office. He was directed to act as panch. He was present when procedure was being explained to P. W. 1 and other panchas. He has acted as shadow witness at the time of raid. He has deposed before the Court that on the day of raid, accused no. 2 (Hence, since deceased) Mr. Mane was present, but accused no. 1 was absent. Upon being called, accused no. 1 had arrived and occupied his chamber. Accused no. 1 had enquired about the identity of P. W. 2 and was informed that he is a local person. P. W. 2 has categorically stated that P. W. 1 had told accused no. 1 that he had brought money as discussed. Accused no. 1 had nodded affirmatively. That accused no. 1 had asked P. W. 2 to leave the office and while departing, he had seen that P. W. 1 had given the amount to accused no. 1 and he had accepted the same. That accused no. 1 had kept those notes at a register on the table. Complainant had also then left the office of accused no. 1. He had then called accused no. 2 and informed him that he

has brought money. Accused no. 2 had said that it is alright and the money was handed over to accused no. 2 which he kept in his left shirt pocket. Thereafter, a signal was given to the raiding party and accordingly, raid was conducted. In the cross-examination, P. W. 2 has admitted that there was no conversation between him and the complainant in the A.C.B. office or in the jeep, neither he had any conversation with accused no. 1.

13) P. W. 3 Vidhyadhar Wadekar was working as Dy.S.P. A.C.B. and is also Investigating Officer. He has deposed before the Court the steps taken by him before conducting the raid. He has proved the contents in the F.I.R. which is at exhibit 64. It is admitted in the cross-examination that soon after the raid, Investigating Officer i.e. P. W. 3 had obtained explanation from accused persons and they both had categorically stated immediately that on 30/06/1987, complainant had returned the amount borrowed from them. He had recorded the statements of concerned persons in Kurul office.

14) P. W. 4 Mh. Murtuja Abdul Hamid was working as Deputy Secretary, Health Department, Mantralaya, Mumbai. He was serving as Assistant Secretary, Irrigation Department from September 1988 to 1991. He has deposed before the Court that Director of A.C.B., Bombay had received

investigation papers in crime no. 114 of 1987 and crime no. 115 of 1987 of Mohol Police Station. The said papers were sent to Home Department, they were then relegated to Irrigation Department after approval by Additional Chief Secretary, Bombay. P. W. 4 had referred to these 2 matters for Law Judiciary Department for opinion. On 21/10/1989, Law and Judiciary Department had given consent for prosecution. Thereafter, he had submitted the proposal, to the government. He had arrived at a conclusion that it was a fit case for according sanction. He had seen the draft sanction. The then Chief Minister Shri. Sharad Pawar signed the sanction letter. The signature was identified by P. W. 4. It is specifically admitted that Law and Judiciary Department had made some corrections in the draft sanction and sent the same to P.W. 5. It is admitted that since accused persons were gazetted officers, Government was appointing and removing authority. P. W. 4 as admitted in the cross-examination that he had received draft sanction in an envelope along with papers of investigation. He was unaware of the provisions of section 165 (A) of Indian Penal Code or 120 (B) r/w 34 of Indian Penal Code.

15) P. W. 5 Shrinivas Shintre was working as Under Secretary in Irrigation

Department. He had received papers of investigation along with draft sanction. Sanction was accorded by the government through Chief Minister. He had accorded sanction for prosecution of the accused persons after obtaining approval from respective departments.

16) Perused records and proceedings. It appears from the records that date of offence is 30/06/1987. Prosecution was launched against accused under section 5 (1) (d) and section 5 (2) of Prevention of Corruption Act, 1947, however, in the present case, charge was framed against the accused on 19/08/1992 for offence punishable under section 7, 13 (2) r/w section 13 (1) (d) of Prevention of Corruption Act, 1988. In fact, the charge ought to have been framed under provisions of Prevention of Corruption Act, 1947, since Prevention of Corruption bill was passed by both the Houses of Parliament received the assent of President on 09/09/1988. It is rightly submitted that in fact, the charge ought to have been framed in consonance with date of offence and not in consonance with the day and date of which charge is framed. However, from the records, it appears that there was no challenge to it at the time of trial. In any case, the said error is curable and it would not vitiate proceedings, however, it would cause prejudice to the accused persons.

17) Evidence of P. W. 1 would clearly indicate that he had borrowed hand loan from accused persons. That the cheque which was drawn against his bill was for a lesser amount. He had suspected that accused persons have drawn the cheque for a lesser amount only because, he had not repaid hand loan taken from them. The admission of P. W. 1 that he had also informed Dy.S.P. Wadekar that the amount which he had paid on the day of incident was towards returning of the hand loan. Moreover, P. W. 1 was directed to pay the amount in the form of gratification only upon there being a specific demand from accused to that effect, however, it is admitted by him that he had voluntarily informed both the accused that he had brought the money as promised on the earlier date. There was no demand at the time of acceptance and therefore, it cannot be said that amount was accepted pursuant to a demand. Evidence of P. W. 1 is also corroborated by shadow witness P. W. 2 wherein P. W. 2 has also admitted that it was P. W. 1 who had informed accused that he has brought the money and had handed over the amount without there being a specific demand. That it is a settled law that mere recovery of amount divorced from the circumstances under which it was paid would not be sufficient to convict the accused when the substantive evidence

is not reliable. Demand is a sine-qua-non for acceptance.

18) Learned counsel for the appellants has submitted that evidence of P. W. 4 & 5 would show that there is no proper application of mind while according sanction. However, the issue of conviction need not be considered in the present case for the simple reason that charge was framed under provisions of Prevention of Corruption Act, 1988.

19) Section 19 (3) (a) of Prevention of Corruption Act, 1988 contemplates as follows:

> “(3) Notwithstanding anything contained in the code of Criminal Procedure, 1973,-
>
> (a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby”.

20) In the facts of the present case, it would be necessary to take recourse to section 19 (3) (a) for the simple reason that in the present case, prosecution has failed to establish that amount received by accused on 30/06/1987 was in the nature of illegal gratification, bribe or demand as contemplated under the provisions of Prevention of Corruption Act, 1947 or 1988.

21) The Law contemplates that upon accused being found in possession of

the total amount, presumption under section 20 of Prevention of Corruption Act, 1988 becomes obligatory. It is presumption of law and it casts an obligation on the Court to apply it in every case under section 7 of the Act. However, the said presumption is rebuttable presumption. The accused shall demonstrate the preponderance of probabilities and the onus caste upon the accused to discharge the presumption is of a much lesser degree than that which is caste upon the prosecution. In the present case, the Court cannot be oblivious of the fact that soon after the raid, Investigating Officer had obtained explanation from the accused and they had candidly submitted that the said amount was accepted by them as return of hand loan taken by the complainant. The said explanation has been proved by substantive evidence. Learned Special Judge has not considered the explanation given by the accused soon after the incident. By offering the said explanation instantaneously, accused have rebutted the presumption which was to be drawn under section 20 of the said Act. It would be obligatory on the part of the Court to consider the explanation offered by the accused under section 20 of the said Act and the said consideration of the explanation has to be on the anvil of preponderance of probabilities. Upon analysis of the evidence adduced by the prosecution, it is clear that prosecution has miserably failed to establish its theory that there was a demand of gratification.

22) There is no cogent and convincing proof of any demand of gratification. Evidence of shadow witness independently would indicate that there was no demand, but the complainant had voluntarily offered the amount by referring to the earlier discussion.

23) Prosecution has failed to prove that on the earlier occasion there was any demand. Hence, it would be clear that P. W. 1 had in fact attempted to wreck vengeance, since the cheque was drawn for a lesser amount and that he could not perform the marriage of his daughter as planned. In view of the observations made herein above, appeal deserves to be allowed.

O R D E R

(i) Appeals are allowed.

(ii) The conviction recorded by Judgment and Order dated 30/04/1994 passed in Special Case No. 12 of 1991 and Judgment and Order dated 30/04/1994 passed in Special Case No. 7 of 1991 by Special Judge, Solapur is hereby quashed and set aside.

(iii) Appellants are acquitted for offence punishable under section 7 and offence under section 13 (1) (d) : (i) and (ii) punishable under section 13 (2) of Prevention of Corruption Act.

(iv) Fine amount, if paid, be refunded.

(v) Bail bonds of appellants stand cancelled.

(vi) Appeals stand disposed of.

(SMT. SADHANA S. JADHAV, J.)