

hvn

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 954 OF 2009**

Ashok Ravjibhai Thakkar Appellant

Versus

The State of Maharashtra ... Respondent

Mr.Niranjan Mundergi for the appellant.

Mr. V.B.K. Deshmukh, A.P.P. for the State.

**CORAM : M.L. TAHALIYANI, J.
DATED : JUNE 11, 2015**

P.C.

The appellant has been convicted for the offence punishable under section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act. It is the case of the prosecution that one Tanaji, complainant was working as Granthalaya Sevak in the year 1986 in R.A. Poddar Medical College. He had applied for promotion to the post of Assistant Librarian. He was informed by the concerned Directorate that his file was sent to the Medical Education and Drugs Department Mantralaya for opinion. The complainant therefore, started visiting Mantralaya to find out as to why opinion was delayed. It is in this background that he came in the contact with the appellant who was working as Desk Officer in the said department.

2. It is alleged that the appellant had demanded Rs.5,000/- from the complainant P.W. 2 for sending the opinion. The demand was later reduced to Rs.2,000/-. The complainant did not want to pay bribe amount and therefore, approached the Anti Corruption Bureau on 14th March, 2005. His complaint was recorded and he was directed to visit Anti Corruption Bureau on 15th March, 2005. Thereafter two panch witnesses were called by the Investigating Officer/P.W. 5 and they were explained that the trap was to be laid on 15th March, 2005. The amount of Rs.2,000/- was smeared with anthracene powder and the same were kept in the pocket of the complainant and he was instructed to hand over the amount if the demand was made by the appellant. The police officer, panch witness and the complainant proceeded to Mantralaya/Administrative building to apprehend the appellant while accepting the bribe amount. It is the case of prosecution that the complainant/PW 2 had made phone call to the appellant and the appellant had suggested that PW 2 should wait for him near Juice Center. It is further alleged that accordingly the appellant reached the Juice Center and demanded money from the PW 2.. P.W. 2 handed over cash amount of Rs.2,000/- smeared with anthracene powder to the appellant. The appellant collected the said money with his left hand and put in the left side pocket of his pant. At this point of time, a signal was given to the raiding party and all the officers along with panch witness reached the spot. Requisite

panchanama was prepared for apprehension of the appellant and finding in respect of anthracene powder on the pant packet. After completion of investigation and after sanction from the competent authority, prosecution was launched against the appellant.

3. Six witnesses were examined before the trial court. The trial court found the appellant guilty mainly on the basis of evidence of complainant/P.W. 2, pancha P.W. 3 and I.O. P.W. 5. Learned trial Judge came to the conclusion that there was no reason to disbelieve the evidence of P.W. 2 and 3 and that respondent/prosecution had been able to prove the factum of demand and acceptance of bribe money.

4. Learned counsel Mr. Mundergi submits that P.W. 2 is not a reliable witness in as much as falsity of his evidence can be seen from his very conduct that he was not eligible to be promoted as Assistant Librarian. My attention was drawn to cross examination of P.W. 2.. P.W.2 has admitted that he was working as Hamal and not Granthalaya Sevak. It follows that he was not eligible to be promoted as Assistant Librarian. It has also come in the cross examination of P.W. 6 Shinde A.C.P. of Anti Corruption Bureau that P.W. 2 was never working as Granthalaya Sevak. Learned counsel therefore, argued that since he was not working as Granthalaya Sevak, he was not eligible to be promoted as Assistant Librarian. It is further argued

that the question of giving bribe to the appellant did not arise as P.W. 2 did not have requisite eligibility criteria for the promotion.

5. It is also submitted by Mr. Mundergi that to prove the offence under section 7 and 13(2) of the Prevention of Corruption Act, it is necessary for the prosecution to prove the factum of demand. Proof of acceptance of money by itself will not prove the factum of demand. Mr. Mundergi has submitted that in fact there was no demand on the part of the appellant. It is also submitted that the acceptance is also not proved beyond reasonable doubt. It was contended that the evidence will clearly indicate that the money was thrust upon the appellant.

6. Learned A.P.P. has submitted that though there was no verification of demand by recording conversation between P.W. 2 and the appellant, there was no reason to discard the evidence of P.W. 2. P.W. 3, who was an independent pancha witness, has stated that money was demanded by the appellant.

7. I have gone through the evidence of all the witnesses particularly P.W. Nos. 2, 3 and 5. There is no doubt about the fact that P.W. 2 was not eligible to be promoted as Assistant Librarian. It is thus clear that he has given false evidence in this respect. Mr. Mundergi, learned counsel for the

appellant has submitted that in view of this, credibility of the witness is highly questionable.

8. The prosecution has not examined any other witness to establish that P.W. 2 was eligible to be appointed as an Assistant Librarian and that his case was under consideration. There is no evidence on record to show that the opinion of the Government in respect of the case of the P.W. 2 was sought for. Therefore, I find substance in the argument of Mr. Mundergi that unless the case of P.W. 2 had materialized and it was fit to be forwarded to the concerned directorate, why P.W. 2 should pay the amount to the appellant. As far as factum of demand is concerned, there is no explanation at all of any nature as to what prevented the Investigating Officer from verifying the alleged demand made by the appellant. There was sufficient time to do so. The requisite equipments were available in the year 2005 to record the conversation between P.W. 2 and the appellant. It was not impossible for the Investigating Officer to verify the demand made by the appellant even by sending the complainant again to the appellant along with pancha witnesses. As such, the normal practice followed in the case of trap, was not followed in this case for which there is no reasonable explanation. Therefore, it cannot be said with certainty that the appellant had demanded Rs.2,000/- from P.W. 2 for sending the opinion of concerned Directorate.

9. As far as actual acceptance of the bribe money is concerned, my attention was invited to the fact that only upper portion of the left side pocket was found smeared with anthracene powder. If money was really accepted by the appellant and it was put by him in his pocket as stated by P.W. Nos. 2 and 3, the major portion of the pocket should have been found smeared with anthracene powder. P.W. 3 has admitted that only opening of the left pocket was found smeared with anthracene powder when it was checked in ultra violet light. The finding of the anthracene powder on only opening of the pant pocket probalilise the case of the appellant that the money was thrust upon him.

10. As such the credibility of P.W. 2 is found to be highly questionable. The demand is not proved beyond reasonable doubt. The possibility of forcibly putting the money in the pocket of the appellant cannot be ruled out. In the circumstances, it can safely be said that the prosecution has failed to prove the case against the appellant beyond reasonable doubts. I am not inclined to accept the finding given by the leaned trial court. Hence, I pass the following order :

ORDER

Appeal is allowed.

The judgment and order passed by the learned Special Judge in Special Case No. 64 of 2005 of Greater Mumbai is set aside. The appellant is acquitted of the offences punishable under section 7 and 13(2) read with section 13(1)(d) of Prevention of Corruption Act. His bail bonds stand cancelled.

Appeal accordingly stands disposed of.

(JUDGE)