

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPLICATION NO.347 OF 2013
(For Leave to Appeal)

The State of Maharashtra

...Applicant/Org.
Complainant

V/s.

Sanjay Taru Wagh and Anr.

...Respondent
(Orig.Accused Nos.1 and 2)

Mrs.Anamika Malhotra, APP for the State.

Mr.Sushant Karandikar for the Respondent No.1.

Mr. Manoj Shukla for the Respondent No.2.

CORAM : A.R.JOSHI, J.

DATE : 16.06.2015.

P.C.:

. Heard the learned APP for the State. Also heard the learned counsel for both the respondents/original accused.

2. This is an application for leave to file appeal preferred by the State challenging the judgment and order of acquittal of the respondents in the matter of offences punishable under sections 7, 13(1)(d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988.

3. According to the case of prosecution, the respondent/original accused No.1 being an officer from the office of Weights and Measurement Department, a Government office, had demanded bribe of Rs.6,000/- from the employer of the complainant. The said employer Mr.Doshi was running a company and manufacturing industrial adhesive gum powder and by law was supposed to get the weighing scales checked and inspected by the Weight and Measurement

Inspector. The said inspection was required to be done yearly. The inspection for the year 1997 was done and thereafter it was not done due to inadvertence and as such there was an opportunity for Respondent No.1 to demand for the bribe for getting the said inspection work done subsequently.

4. According to the case of prosecution, the demand was then lowered from Rs.6,000/- to Rs.5,500/-, out of which an amount of Rs.1,500/- was towards official charges and Rs.4,000/- was towards bribe. According to the case of prosecution, PW-1, an employee of the Company attended the office of accused No.1 in November 1998. However, accused No.1 assured him to inspect the scales on 26/11/1998 but on that date also accused No.1 telephonically informed his inability to come to the Company and according to the prosecution at that time the amount so demanded was reduced from Rs.6,000/- to Rs.5,500/-. Lastly on 24/12/1998, the complainant met accused No.1 and on that day the complainant was told to bring the weighing scale to the office and also at that time asked to bring Rs.5,500/-. As the employer of the Company was not ready to give bribe, intimation was given to Anti Corruption Bureau, Thane and a trap was laid.

5. It is a factual position that on the day of the trap, the Respondent/accused No.1 was not at the office but instead the Respondent/accused No.2 was present. In fact, all along it was not the case of the prosecution till actual time of the trap that accused No.2 was also involved in the matter as an associate of accused No.1 or otherwise. The case of prosecution is that it was demand of accused No.1 and he was to be paid the bribe amount. Factually, at the office or outside the office premises of accused No.1 the money was handed over

to respondent/accused No.2 by the complainant. According to the complainant, the currency notes of Rs.5,500/- with anthracene powder thereon were initially kept in the envelope and the envelope was given to accused No.2. Accused No.2 took out the money and counted the notes by his hand. So far as substantive evidence of panch witness is concerned, he does not speak of the envelope. So also during the said trap, the said envelope was not seized and not brought before the Court during the trial. The factual position remains that according to the case of prosecution the money was handed over to accused No.2 who was then present in the office of accused No.1. Apparently, accused No.2 being a licensee to do the work of inspection of weights and measurement and to do effective stamping etc, it is defence of accused No.2 that he has to charge for the work assigned to him regarding the said measurement. So far as involvement of accused No.1 is concerned, initial demand of Rs.6,000/- and further reduction brought down to Rs.5,500/- is not established. The best material or in fact the only material of the prosecution was the transaction between the owner of the Company i.e. Mr. Doshi and accused No.1. However, Mr. Doshi is not examined and as such the prosecution evidence is deficient on this aspect.

6. So far as PW-1 is concerned, his evidence on the aspect of demand and reduction of the amount is hearsay as held by the Trial Court. Secondly, according to the prosecution link of accused No.1 with the acceptance of money by accused No.2 is by way of instructions allegedly given by accused No.1 over telephone to PW-1 to hand over money to accused No.2. In order to establish this link, the substantive evidence of grocery shop owner, from whose shop telephone call was

allegedly made by accused No.2 to accused No.1, was of importance, but that evidence was not before the Trial Court. Even there was no record as of call log of the concerned telephone installed at the grocery shop in order to substantiate the case of the prosecution as to the last moment instructions given by accused No.1 for giving the bribe amount to accused No.2.

7. Apart from the above, during the argument learned counsel for Respondent No.1 stated that even there is no concrete material to come to the conclusion as to at which exact place there was handing over of money. So also there is nothing on record, that the money was accepted by accused No.2 on instructions and for and on behalf of accused No.1.

8. Considering the non examination of Mr.Doshi, owner of the Company and there being no link established between accused No.1 and accused No.2, so far as the acceptance of money by accused No.2 is concerned, the Trial Court came to the conclusion as to failure of the prosecution to establish the charge of demand and acceptance. In the opinion of this Court, the view taken by the Trial Court is possible and can not be treated as perverse so as to alter the same by allowing the State to proceed further with the appeal. As such there is nothing in this application to grant leave. As such the application is dismissed and disposed off.

(A.R.JOSHI, J.)