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

CRIMINAL APPEAL NO. 363 OF 2002

Rajesh Nashir Dongarde,
Age: 34 years, Junior Engineer,
Building and Construction Department,
Resident of Jalgaon

..APPELLANT

VERSUS

The State of Maharashtra

..RESPONDENT

Mr R. S. Deshmukh, Advocate for appellant;
Mr N. T. Bhagat, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

**Date of reserving
the judgment : 21st March, 2016**

**Date of pronouncing
the judgment : 23rd March, 2016**

JUDGMENT :

By this appeal, the appellant-accused, who stands convicted for offence punishable under sections 7, 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.700/-, in default to suffer simple imprisonment for fifteen days, by the Special Judge & Additional Sessions Judge, Jalgaon, by judgment dated 18th June, 2002, in Special Case No.1 of 1995, questions the correctness of his conviction and sentence.

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2. Such of the facts as are necessary for decision of this appeal may briefly be stated thus :-

P.W.3 Ramesh Choudhary, at the relevant time, was posted as Police Inspector in Anti Corruption Bureau, Jalgaon. On 29th September, 1994, at about 3.00 p.m., he received complaint (Exh.24) given by P.W.1 Karbhari. P.W.1 Karbhari had in the complaint claimed that under the scheme sponsored by the Government, namely, Jeevan Dhara, for having dug a well in his field, the complainant was sanctioned an amount of Rs.30,000/-. The appellant-accused was entrusted with the job of preparing estimate, carrying visit to the spot and to guide and draw measurement and then recommend payments. The complainant claimed that the appellant-accused had demanded him an amount of Rs.5,00/- to Rs.1,000/- at the time of each of the payments. He claimed that the last payment of Rs.9,099/- was drawn on 16th September, 1994, against which the appellant demanded Rs.1,000/-, of which he had paid an amount of Rs.500/- in advance and promised to pay remaining Rs.500/- after receipt of the amount under the scheme.

3. The Investigating Officer then recorded the said complaint in writing (Exh.24) and it was decided to lay a trap on 30th September, 1994. The complainant was called on 30th September, 1994 early morning along with decoy money. Two public servants from the office of Collector, Jalgaon, were summoned as panchas by issuing requisition and as such, Pardeshi and Wade from the Collector's office visited the office of Anti Corruption

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Bureau on 29th September, 1994 in the evening. These panch witnesses were then called next day in the morning at 6.00 a.m. before whom live demonstration of the use of anthracene powder on the bribe notes and reflection of anthracene powder on the same under ultraviolet light was given. The complainant along with two panchas and the raiding party went to the office of the appellant and thereafter appellant demanded and accepted the bribe amount. Upon giving signal by the complainant, raiding party accosted the appellant, recovered an amount of Rs.500/-(4 currency notes of Rs.100 and 2 currency notes of Rs.50 each) from right side pocket of his pant, which were found to be tainted with anthracene powder and as such trap was successful. It is thereafter, the complainant was sent outside and the accused gave his statement that the amount was accepted by him towards repayment of hand loan taken by the complainant from time to time, as the complainant was a regular visitor. The said statement is read from the record, which bears date 30th September, 1994, recorded by the Investigating Officer and signed by the accused.

4. Panch witness Pardeshi at that time accompanied the complainant and was witness to the said statement of the accused. A detailed panchnama after the successful trap was drawn at Exh.26. During the inquiry, the case papers of the complainant and diary came to be seized from the accused. Upon verification of the incident, the panchnama was drawn at Exh.27 and copy of the same was delivered to the accused. After the trap was successful, the complaint at Exh.38 came to be lodged by the

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Investigating Officer and search of the house of the accused was taken vide panchnama at Exh.30. The specimen handwriting of the accused was taken. Exhs. 28 and 29 are the panchnamas to that effect. The admitted handwriting of the accused along with disputed writing was sent to the Handwriting Expert.

5. The statements of the panch witnesses and complainant came to be recorded and after completion of the investigation, the charge-sheet in the matter came to be filed.

6. The learned Special Judge framed charge against the accused vide Exh.8 for offences punishable under sections 13 (1)(d) and 7 and 13 (2) read with section 13 (1) (d) of the Prevention of Corruption Act. The accused abjured his guilt and claimed to be tried. The accused has admitted acceptance of the amount of Rs.500/-, however, it is his defence that the said amount was accepted by him towards repayment of hand loan which had been taken by the complainant, from time to time

7. The prosecution in support of its case has examined in all four witnesses, namely, P.W.1 complainant Karbhari at Exh.23, P.W.2 Jamnaprasad Pardeshi – shadow panch at Exh.25, P.W.3 Ramesh – the Investigating Officer at Exh.37 and P.W.4 Rajesh Agrawal, Chief Executive Officer, Zilla Parishad, Jalgaon – the sanctioning authority at Exh.42.

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8. The accused examined two defence witnesses, namely, D.W.1 accused himself and D.W.2 Bhaskar at Exh.48, so as to prove his defence, that the amount was accepted towards repayment of hand loan which had been taken from him by the complainant.

9. In the above referred background, learned Special Judge, considering that the trap was successful, the complainant and shadow panch deposed in tune with the case narrated in the complaint and the charge-sheet, the sanctioning authority (P.W.4) has accorded sanction for prosecution after application of its mind and the Investigating Officer in right manner has conducted the investigation, proceeded to convict and sentence the appellant as stated above. Thus, the present appeal.

10. Mr Deshmukh, learned Counsel appearing on behalf of the appellant has extensively taken me through the entire record of the Court below, including the depositions of witnesses and various documents. While inviting attention of this Court to the statement of the accused recorded by the Investigating Officer on 30th September, 1994, he would submit that acceptance of amount by the appellant-accused is not disputed. He would submit that perusal of the defence set-up in the statement of the accused under section 313 of the Code of Criminal Procedure and the statement recorded on 30th September, 1994 depicts that he has come out with a specific case of return of hand loan amount by the complainant. According to the learned Counsel, the accused has authority of only measurement and is not a drawing, disbursing or sanctioning authority for release of the

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amount in question in favour of the complainant. He would invite my attention to the fact that the complainant himself is not the owner of the property where the well under the scheme was sanctioned, but it was his father and it is brought on record that the father, out of four installments in which the amount was paid, had collected three without paying any amount of bribe. He would submit that it is not the case of the father of the complainant that the appellant had demanded the bribe. He would then submit that the complainant, at no point of time, had disclosed to his father the alleged demand of bribe by the appellant-accused. According to him, as such the prosecution has set-up only suspicious case. By inviting attention of this Court to the testimonies of P.W.3 Investigating Officer Ramesh and P.W.4 sanctioning authority Rajesh, who are examined at Exhs.37 and 42 would submit that the draft sanction order was forwarded by P.W.3 to P.W.4 along with the original record. From the testimonies of both these witnesses, he has tried to prevail upon this Court that the statement of the appellant-accused recorded on 30th September, 1994 and the diary allegedly seized from his custody were never forwarded to the sanctioning authority. For the said purpose, he has drawn attention of this Court to the evidence of P.Ws.3 and 4. Based on above, he would urge that the defence set-up by the accused was that acceptance of the amount was towards repayment of hand loan and the sanctioning authority had no occasion to examine the said defence of the accused while considering the case on its own merits for accord of sanction. In his submission, the sanction as such is vitiated.

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11. The next limb of argument of the learned Counsel appearing on behalf of the appellant is that there was no demand and acceptance of the bribe, as the father of the complainant in clear terms has admitted that he had collected three installments of grants without paying any bribe amount and there was no demand by the appellant from the father of the complainant, in whose favour the grants were sanctioned. He would try to impress upon the Court so as to conclude that P.W.2 panch witness, has not stated in clear terms about the alleged demand. According to him, on the date of payment of the bribe amount, no proceedings what-so-ever including that of any payment had remained to be paid or certified by the appellant-accused.

12. Learned Addl. Public Prosecutor, while opposing the claim would submit that since acceptance of the amount is not disputed, the only ground that remains to be looked into is whether the same was towards payment of bribe or not. Relying upon evidence of P.Ws. 1 and 2 he would submit that the only conclusion that could be drawn is that the appellant had demanded and accepted the bribe towards preparation of estimate, measurement and then certification for release of the amount of grants. Learned Addl. Public Prosecutor then would invite my attention to the testimonies of P.Ws. 3 and 4 so as to submit that the sanction accorded by P.W.4 was after considering and appreciating the entire material, which was forwarded by the Investigating Officer and as such, there is application of mind. He, therefore, prayed for dismissal of the appeal.

13. In the present case, what is important to be noted is, the trap was successful. The trap panchnama and the evidence of P.Ws.1 and 2 in clear terms have spelt out about acceptance of amount by the appellant. One more aspect is, it is the defence of the accused that he had accepted the amount, however, the same was towards return of the hand loan, which had been taken by the complainant from him.

14. In view of above, the fact remains that the issue as regards acceptance of the amount is not required to be taken up to only inference that the amount was accepted by the accused.

15. This takes me to the next limb of submission of Mr Deshmukh, that the sanction order suffers from non application of mind. In support of his contention, Mr Deshmukh has taken me through the spot panchnama drawn on 30th September, 1994, which is at Exh.27. In the said panchnamna, item no.9 that was seized was a private diary of the appellant of the year 1994 containing some entries and notes. It is also required to be noted that the statement of the accused was recorded on 30th September, 1994, which is part and parcel of the record and proceedings. The same is also reflected in the spot panchnama Exh.27.

16. P.W.3 P.I. Ramesh has stated in his cross-examination that the above referred statement of the appellant recorded on 30th September, 1994 was not sent to the sanctioning authority along with the papers for

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obtaining the sanction. However, in his examination-in-chief, on the aspect of sanction order he states that he had forwarded all the papers of investigation to the competent authority, i.e. P.W.4 to accord sanction to prosecute the appellant and had accordingly received necessary sanction. He has then admitted in cross-examination that the defence as was set up by the accused that there was earlier transaction between the complainant and the accused was not investigated by him, though he had recorded the statement of the accused on 30th September, 1994.

17. P.W.4 sanctioning authority in examination-in-chief has stated that he had received the papers of investigation from the concerned Department for according sanction. He then states that he had examined and studied all the papers, applied his mind and was convinced about the case being fit to accord sanction and accordingly issued sanction order dated 13th January, 1995 at Exh.43. In cross-examination, he was unable to answer as to whether the papers which were received by him for according sanction were containing the statement of the accused. He was also unable to tell whether he had read the statement of the accused. He then states that he was unable to tell whether he could have accorded sanction or not, had it been a case that he would have read the said statement of the accused. He then claimed that there is mention of recording of statement of the accused in the panchnama. He then admits that the diary which finds reference in the spot panchnama was not sent to him along with the papers.

18. If the cumulative effect of the above referred evidence of P.Ws. 3 and 4 is assessed, it is required to be noted that it was the defence of the accused that was set up on the very first day and the very inception that the transaction in question was of return of hand loan and had in fact, not denied the receipt of the amount. In view of above defence, it was expected of the Investigating Officer to place on record of the sanctioning authority the statement of the accused recorded on 30th September, 1994 and the diary of the accused of the year 1994, which contains certain notes in relation to the transaction in question for consideration. In absence of such vital material being placed before the sanctioning authority, in my opinion, the sanctioning authority had no occasion to consider those documents particularly the statement and the diary of the accused, while dealing with the issue of sanction to prosecute the accused. The defence of the accused as was available in the said statement was not perused or considered by the sanctioning authority before according the sanction. In my opinion, the sanction suffers from non consideration of the relevant material and thus without application of mind and hence, stands vitiated.

19. In the above background, once having reached to the conclusion that the sanction to prosecute was without application of mind and as such is vitiated, in my opinion, it is difficult to sustain the conviction of the accused, in the light of what has been observed herein above.

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20. Thus, the Criminal Appeal succeeds. I, therefore, pass following order :-

The judgment and order of conviction dated 18th June, 2002, passed by the Special Judge & Additional Sessions Judge, Jalgaon, in Special Case No.1 of 1995, is hereby set aside.

The appellant-accused is acquitted of the offences punishable under sections 7, 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act.

Bail bonds of the appellant-accused stand cancelled.

Fine paid by the appellant-accused be refunded to him.

Criminal Appeal stands allowed in above terms.

(N.W. SAMBRE, J.)

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