IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.864 OF 2005

The State of Maharashtra,
Through Police Inspector,
Anti Corruption Bureau,
Dhule.

...APPELLANT
(Ori. Complainant)

VERSUS

1) Vishwas Bhaurao Bhoi,
Age-37 years, Occu:Sub Engineer,
MSEB Varul Branch,
at Present R/o-Amalgaon,
Tq-Shirpur, Dist-Dhule,

2) Devaba Pauladsing Girase,
Age-48 years, Line Helper,
MSEB Shirpur,
At Present-R/o-Chaugaon,
Tq-Shindkheda, Dist-Dhule.

...RESPONDENTS
(Orig. Accused)

...

Mr.A.M. Phule, A.P.P. for Appellant.
Mr.S.P. Brahme Advocate for Respondent No.1.
Mr. Joydeep Chatterji Advocate for Respondent No.2.

...

CORAM: A.I.S. CHEEMA, J.

DATE : 5TH APRIL, 2016

JUDGMENT :

1. This Appeal by State is against acquittal of the Respondents - original accused Nos.1 and 2 (hereafter referred as "accused Nos.1 and 2" respectively), under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 ("Act" in brief). Accused No.1 Vishwas Bhoi was working as Sub Engineer at M.S.E.B. Warul, Tq-Shirpur, Dist-Dhule, at the concerned time. Accused No.2 Devaba Girase was his line helper at the said posting.

2. Facts in brief are as under:-

(A). Complainant Nimbaji Bapu Sapkale - PW-1 (here after referred as "complainant"), had a field at village Abhanpur. He had, in 1998, taken electric connection for the field after depositing necessary money in the office with accused No.1 Bhoi. Thereafter complainant had not received any bills of the electric connection. He sold the said field to one Sada Rama Thelari for Rs.81,000/-. As per the terms of the sale deed, he was required to clear the electricity dues and the revenue dues. As such he approached accused No.1 Bhoi and requested for transfer of the demand note in favour of the purchaser. He was asked to pay Rs.28,000/- as electricity charges. Bill however was not given for the amount. The complainant expressed that he was in financial difficulties and he was then told that he should pay Rs.10,000/- and the demand note would be transferred to the purchaser and he would not be required to pay electricity charges. Complainant expressed that he could pay only Rs.8,000/-. He was asked to bring the money by accused No.1. The complainant did not want to pay the money as bribe and filed complaint (Exhibit 9) with Anti Corruption Bureau at Dhule, which was received by

P.I. Ashok Borse (PW-6).

(B). P.I. Borse secured presence of two Panchas from the department of irrigation. The complainant was asked to some how arrange for Rs.8,000/- and he was also called on 19th January 2001. The Panchas included one Panch Yashwant Bhalerao (PW-3) who was to act, later on, as the shadow Panch. On 19th January 2001 the Panchas, the complainant and raiding party headed by P.I. Borse, assembled at the Anti Corruption Bureau, Dhule. The Panchas were made aware of the complaint of the complainant and they also talked with the complainant regarding the demand which had been made. The procedure regarding how anthracene powder is used, was explained to the Panchas and the complainant. Procedure as to how trap would be executed, was also explained. Pre-trap Panchnama Exhibit 28 was accordingly prepared. The marked currency smeared with anthracene powder was kept in the pocket of the complainant and he was explained as to what signal he should give after the money is accepted by the accused. The raiding party then proceeded from Dhule to Shirpur and went near the M.S.E.B. Office. the complainant and the shadow Panch PW-3 went to the compound of the said office. Time was about 8.30 a.m. The rest of the raiding party remained away keeping watch. The office was yet to open. After some time, it was learnt that the accused No.1 Bhoi would come after some time. The complainant and shadow Panch waited in the hotel which was abutting the M.S.E.B. Office. Later on accused No.1 came to the office on motorcycle. The complainant called out to accused No.1 and after parking the motorcycle, accused No.1 went to the hotel. Complainant invited him for tea. Accused No.1 inquired if he had brought the money. When complainant tendered the money taking it out from his pocket, accused No.1 asked accused No.2 Girase, who was there, to receive the amount. At that time one Vishwasrao Patil, nephew of the complainant, happened to be at the said hotel (the name of accused No.1 is Vishwas Bhoi and the said nephew was one Vishwas Patil. In evidence, witnesses have referred to accused No.1 as Bhoi and to the said nephew as Vishwas who was examined as PW-2). He wished the complainant and coming to know of the amount handed over to accused No.2 Girase which was in denomination of Rs.500/- each, he requested for exchange of the notes as he was going for shopping regarding marriage, to Dhule and had one bundle of Rs.50/- denomination and three bundles of Rs.10/- denomination, which were difficult to carry. On his request, accused No.2 Girase exchanged the currency. The complainant then gave signal and the rest of the raiding party rushed in the hotel and on coming to know from the shadow Panch PW-3 Yashwant Bhalerao, both the accused were nabbed and even PW-2 Vishwas was caught. Marked currency which was in denomination of Rs.500/- was seized from PW-2 Vishwas. In the bundles which PW-2 Vishwas had exchanged with accused No.2 Girase, marks of anthracene powder were found on one note of Rs.50/- and three notes of Rs.10/-. As such those notes were also seized and rest of the said currency was given back to PW-2 Vishwas. PW-6 P.I. Ashok Borse then completed further procedure regarding raid. The test regarding anthracene powder reflecting on the hand and clothes of accused No.2 was completed. There was no anthracene powder on the hands of accused No.1 Bhoi. Completing the procedures, Panchnama Exhibit 33 was prepared. The accused Nos.1 and 2 were arrested in the same evening of 19th January 2001. P.I. Borse, later on, filed F.I.R. Exhibit 45 with P.S.O. Shirpur which was registered at Crime No.6 of 2001.

(C). The necessary sanction (Exhibit 35) to prosecute was obtained as regards accused No.1 from PW-4 Anil Deskar, who was working as Joint Secretary at the concerned time. Sanction (Exhibit 37) was obtained as regards to accused No.2 from

Executive Engineer PW-5 Jagannath Lokhande.

(D). After completion of the investigation, charge-sheet came to be filed.

3. The Special Judge framed charge against the accused Nos.1 and 2 for offence mentioned above. The accused pleaded not guilty.

4. The defence of the accused persons, as appearing from the cross-examination of the witnesses and statement under Section 313 of the Code of Criminal Procedure, is that of denial. According to accused No.1, he never demanded any amount as bribe. He had merely told the complainant that he has to deposit Rs.6,000/- towards arrears of electricity charges and Rs.2000/- towards transfer of electricity connection. The defence of accused No.2 was that he was asked by his superior, accused No.1 to receive the money and get it deposited and he had

nothing else to do with the matter.

5. The trial Court recorded the evidence of witnesses and prosecution brought on record the concerned documents. After the trial, trial Court has acquitted both the accused and directed confiscation of the money of Rs.8,000/- (Article No. 1) and also one currency note of Rs.50/- and three currency notes of Rs.10/- (Article No.2) which were from the bundles which were being carried by PW-2 Vishwas. Rest of the property was directed to be destroyed.

6. Aggrieved by the Judgment, State filed this Appeal raising grounds that the Judgment and order of the trial Court cannot be maintained. There was no reason for the accused persons to receive the money in the hotel. The evidence has not been properly appreciated. It could not have been held that the money was received for official purposes.

7. On behalf of the State, it is argued that the trial Court wrongly held that the sanction with regard to accused No.2 was erroneous. The sanction was given by PW-5, after properly considering the material available. The A.P.P. submitted that only because outward number was not there on the sanction Exhibit 37, the trial Court could not have branded the document as not official. According to the learned A.P.P. if the amount was to be paid and was to be deposited for official purpose, the accused could not have gone and received the same in the hotel. The learned A.P.P. submitted that there is sufficient evidence and the Judgment of the acquittal cannot be maintained.

8. Against this, the learned counsel for Respondent No.1 - accused No.1 and learned counsel for Respondent No.2 - accused No.2 have supported the Judgment of the trial Court. According to

them, the presumption under Section 20 of the Act was sufficiently rebutted by the accused persons. The sanction was without application of mind. The office was yet to open and the concerned hotel was abutting the office of the M.S.E.B. and complainant, who had reached earlier, called out accused to come over there. Simply because of this, it cannot be said that amount of bribe was being received at the hotel. According to the counsel, it was not that meeting as such was fixed in the hotel. The learned counsel for both the accused referred to the evidence to say that if the evidence is properly read, the only conclusion that can be drawn, is that for the official purposes the money was received.

9. I have gone through the evidence which was brought on record by the prosecution. The evidence of the complainant read with PW-3 Yashwant Bhalerao, shadow Panch, as well as PW-6 P.I. Ashok Borse brings on record the facts that

the complainant had filed complaint Exhibit 9 claiming that accused No.1 Bhoi had disconnected the electricity of the purchaser looking to the arrears of electricity and to re-connect the electricity, had asked for Rs.8,000/-. The evidence of these witnesses is that the Panchas were called and procedure regarding pre-trap was completed and on the day of incident i.e. 19th January 2001, the trap was executed.

10. From the evidence, I will refer to the relevant details. Evidence of complainant shows that in 1998 he had taken the electricity connection, for which he had met accused No.1. Complainant admitted (Para 14 of his evidence) that in 1998 he deposited the official charges of Rs.2820/- and was not required to pay anything more. This is one aspect.

11. Then there is evidence that since from 1998 till 2001 when complainant went to get the

connection transferred, complainant had not paid any amount towards electricity bills. Naturally the bills were outstanding. The complainant appears to have got in a fix because purchaser had put terms that the complainant would have to clear the electricity bills and the record shows that the purchaser had with-held part of the consideration amount which was to be paid. Evidence shows that when complainant went to accused No.1, accused No.1 asked him to deposit the electricity dues which were not paid. The concerned electric connection was thus disconnected. The purchaser made grievance with the complainant in this regard and the complainant was naturally under pressure that the electricity should be resumed. The evidence of the complainant is that on 8th January 2001 he went along with purchaser to accused No.1 and he was told that Rs.28,000/- are the electricity charges. He appears to have claimed financial difficulties. He was ultimately told that he will have to pay

Rs.10,000/- and thereafter the transfer note could be made. The evidence is that complainant claimed that he did not have necessary money and could pay only Rs.8,000/-. Complainant deposed that accused No.1 asked him to bring the money. It appears, thereafter, on 18th January 2001 complainant filed complaint and the trap was executed.

12. The cross-examination of the complainant (Para 16) shows that when he went to the said office of M.S.E.B., accused No.1 was not there and came at about 9.45 - 10.00 a.m. He stated that by the side of the gate of office, there is hotel namely, "Gnyanmai Corner". He deposed that when accused No.1 was coming to the office on motor bike, complainant called out to accused No.1 from the said hotel and asked him to come there. There after accused No.1 parked his motor bike and went there. Complainant deposed that they took tea together. Accused No.1 inquired from him if he had

brought the money and if he has brought, accused No.1 asked the complainant "to deposit it". Complainant after giving such admission stated that he told accused No.1 (himself) to deposit the same. However, it appears that accused No.1 told complainant to hand over the money to accused No.2 Girase and asked the complainant to accompany accused No.2 "for depositing the same in the office". Complainant admitted that accordingly he gave the money to accused No.2.

13. The shadow Panch PW-3 Yashwant Bhalerao went in the witness box after appraising himself regarding the evidence which was recorded of the complainant on the earlier day. This can be seen from cross-examination Para 10 of the witness. Guarded, as he was, still the cross-examination of even this shadow Panch shows that the office was not open when these people reached there and the employees were yet to arrive. After some time accused No.2 Girase was seen. Even this Panch

accepted that it was the complainant himself who invited attention of accused No.1 by saluting him when accused No.1 was reaching the office. This Panch deposed (Para 11) that when accused reached, he inquired with the complainant if he had brought the money. This Panch admitted that accused No.1 did not tell the accused No.2 to accept the money and rather asked the complainant to go with accused No.2 Girase.

14. The above discussion shows that there is substance in the argument of the learned counsel for accused that it is not a case of fixing a meeting in some hotel for receiving the amount of bribe. The hotel appears to have been abutting the gate of the M.S.E.B. office which was yet to open and the complainant and shadow Panch went and sat there to wait and when accused No.1 reached, rather he was invited there for tea. One cannot forget that the accused were working in rural area with responsibility to also get the electricity

dues recovered. As such, much need not be made only because the complainant invited accused No.1 for a cup of tea and accused No.1 agreed.

15. The evidence of complainant as well as shadow Panch and PW-2 Vishwas shows that PW-2 Vishwas happened to be in the hotel and he saw complainant, his uncle and called out to him when the incident relating to trap was unfolding. This witness PW-2 was going for purchasing articles to Dhule due to a marriage. He saw the currency notes of Rs.500/- denomination to the extent of Rs.8,000/- being given to accused No.2 and requested for exchange. This appears to have been done. Even PW-2 has deposed that the matter was relating to electricity bill. Unnecessarily this witness appears to have got entangled in the execution of trap. Amount ultimately was recovered from his pocket and even his hands reflected the powder in ultra violet lamp. In cross-examination PW-2 Vishwas accepted that when he met the

complainant in hotel, talk regarding payment of bill was going on. At the time when PW-2 Vishwas asked to exchange the money, he told accused No.2 Girase that, they had to (any how) deposit the money against the payment of bill, (so) deposit the money which he had. Thus, this also shows that even this person who was there, did take the impression that the money which was handed over to accused No.2 was for deposit towards payment of bill. As such, he appears to have reasoned out that they any how have to deposit Rs.8,000/- and the money is in which denomination would not matter.

16. There is one more aspect of the matter. The cross-examination of complainant (Para 15) shows that when he was asked to deposit Rs.6,000/- towards electricity charges and Rs.2,000/- for transfer charges to re-connect the electricity supply, he had told accused that he would come on next day. However, on 18th January 2001 he went

directly to file the complaint to the A.C.B. Office. Complainant accepted that he had a friend Bhagwan Daga Patil, who advised the complainant to file complaint against accused No.1. Complainant admitted (in Para 16) that he filed the report because without depositing the money, the electric supply was not to be reconnected and he had no money for depositing it. Complainant admitted that his friend Bhagwan advised him that following this track (i.e. reporting to A.C.B. Office) his electric connection would be reconnected without depositing the money and he so filed report in the office of the A.C.B. It is shocking that complainant resorted to such device and PW-6 P.I. Ashok Borse failed to see through his intentions.

17. The trial Court has rightly concluded, after discussing the evidence, that money was not in respect of illegal gratification but it was in respect of electricity charges and transfer charges.

18. The observation of the trial Court with regard to defective sanction as regards accused No.2 has substance, as the sanction purports to say that accused No.2 had demanded the bribe money, whereas the complaint and even the evidence is not like that. Accused No.2 was simply asked by accused No.1 at the last moment to receive the money for depositing. However the observation of the trial Court that only because outward number was not put to Exhibit 37, the sanction order, was not an official document, is not sound. However, that does not make much difference to the outcome of the matter.

19. Before parting, reference may be made to the observations of the Hon'ble Supreme Court in the matter of **State of Punjab vs. Madan Mohan Lal Verma, reported in A.I.R. 2013 S.C. 3368.** In that matter, the Hon'ble Supreme Court observed in Para 6 and 7 as under:

"6. It is a settled legal proposition that in exceptional circumstances, the appellate court for compelling reasons should not hesitate to reverse a judgment of acquittal passed by the court below, if the findings so recorded by the court below are found to be perverse, i.e. if the conclusions arrived at by the court below are contrary to the evidence on record; or if the courts entire approach with respect to dealing with the evidence is found to be patently illegal, leading to the miscarriage of justice; or if its judgment is unreasonable and is based on an erroneous understanding of the law and of the facts of the case............

"7. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act of 1988. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act 1988. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence

> must be tested in the same way as that of any other interested witness. In a proper case, the Court may look for independent corroboration before convicting the accused person."

20. Considering the above observations of the Hon'ble Supreme Court also, I find that it would be possible to interfere if the acquittal could be termed as perverse. In fact, in the present matter, the Judgment of acquittal is rather correct and after proper appreciation of evidence. The view taken is possible view of the evidence. No reasons as referred to by Hon'ble Supreme Court in above Para 6 of its Judgment exist. The accused have also, from the cross-examination of witnesses, rebutted the presumption which is raised under Section 20 of the Act. The accused are entitled to benefit of doubt and the Judgment of acquittal needs to be maintained.

. However, slight change in the order regarding disposal of the property is necessary. Article 1 contains Rs.8,000/- which complainant had brought for depositing with M.S.E.B. and which were due. The Maharashtra State Electricity Board (M.S.E.B.) now appears to have been taken over by Maharashtra State Electricity Distribution Company Limited. It would be appropriate that the amount should be deposited to State and the M.S.E.B. or successor of M.S.E.B. may claim the same from the State depending on the terms of the successor. As regard Article No.2 which contains Rs.80/- which was belonging to PW-2 Vishwasrao Patil, the same may be refunded to him.

21. For the above reasons, I pass the following order:

O R D E R

(I) The Appeal is rejected.

(II) The Judgment and order of acquittal of Respondent Nos.1 and 2 passed by Special Judge, Dhule in Special Case No.2 of 2002 dated 13th September, 2005, is maintained.

(III) Bails Bonds of Respondent Nos.1 and 2 are cancelled.

(IV) Article No.1, amount of Rs.8,000/- (Rupees Eight Thousand) be deposited to State for payment to M.S.E.B. or its successor, as the case may be. The amount of Rs.80/- (Rupees Eighty), which is Article No.2, be refunded to PW-2 Vishwasrao Patil.

(V) The Appeal is accordingly disposed of.

[A.I.S. CHEEMA, J.]

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