

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO.211 OF 2011

Sanjay Nana Jagtap ... **Appellant**

Age: 48 years,
R/o.201, Shreejee Darshan,
Sector 28, Vashi,
Navi Mumbai 400 017
V/s.

The State of Maharashtra ... **Respondent**

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Mr. Satyavrat Joshi with Mr. Balwant Salunkhe, Advocates for the Appellant.

Ms. V.S.Mhaispurkar, APP for the Respondent/State.

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CORAM : P. N. DESHMUKH J.

DATED : 24TH OCTOBER 2016.

ORAL JUDGMENT:

1 This appeal takes exception to the judgment passed by the learned Special Judge in Special Case No.48 of 2009, vide which appellant came to be convicted for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and is sentenced to suffer RI for two years and to pay fine of Rs.1,000/- failing which to suffer SI for six months. Appellant/accused is further convicted for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and is sentenced to suffer RI for two years and to pay fine of Rs.1,000/- failing which to suffer SI for six

months. Both the sentences are directed to run concurrently.

2 It appears to be case of prosecution that on 20.12.2006, Devnar Police Station officials had arrested complainant's cousin brother, namely Yusuf Pathan in an incident of quarrel with neighbours namely, Jagtap, Adhav and Hazrat Ali Pathan, etc. Complainant learnt about said incident and went to Devnar police station where appellant was posted as Assistant Police Inspector and he directed complainant to stay with his brother assuring that both of them will be released shortly, however, on 21.12.2016 appellant registered offence against complainant and his cousin brothers namely Ramzan Pathan, Akbar Pathan, Hajrat Pathan, Yusuf Pathan and their friend Anwar Shaikh, etc and they were kept in the lock-up for a period of two days and were released on bail by Court.

 In the background of above facts on 26.2.2007, two constables came to the house of complainant informing that complainant is called in Mankhurd Beat Police chowky. Complainant, accordingly, met appellant. At that time, complainant was informed that arrest warrant is issued against him in some cheque bounce case and an amount of Rs.5,000/- was demanded by appellant to settle earlier case and to cancel arrest warrant.

 It is further case of prosecution that on 1.3.2007, appellant again called complainant by sending two police constables to his house, due to which complainant approached Anti Corruption Bureau's office on the same day at 5 p.m. and narrated complaint. To verify complaint, authorities of Anti Corruption Bureau arranged for one independent

panch witness and instructed complainant to meet appellant and to record conversation on micro cassette tape recorder which was concealed on his person. Accordingly, conversation was recorded vide which it revealed that appellant had demanded Rs.1,000/-, which was to be paid on the following day i.e. on 2.3.2007 between 10 to 11 a.m.

3 On 2.3.2007 trap came to be laid at Mankhurd Police Chowky where appellant came to be apprehended as was found to have demanded and accepted bribe of Rs.1,000/- from complainant which came to be recovered from his person. According to the case of prosecution, before laying of trap, pre-trap and post-trap panchanamas were prepared in presence of panchas. Statements of witnesses were recorded. On obtaining sanction from the Competent Authority to prosecute appellant and on completion of investigation, charge-sheet came to be filed before Special Court.

4 Charge is framed against appellant vide Ex.5 to which he pleaded not guilty and claimed to be tried. To establish charge levelled against appellant, prosecution in all examined four witnesses, namely, P.W.1 Shah Faizal Ainulahak Siddiqui, Complainant; P.W.2 Dawood Jaan Mohammed, Panch Witness; P.W.3 Hasan Gafoor, Sanctioning Authority and P.W.4-Sanjay Maruti More, Investigating Officer. However, neither complainant (P.W.1) nor Panch Witness (P.W.2) has fully supported the case of prosecution and had resiled from statements recorded by police.

5 Learned Special Judge considering the evidence of above witnesses and documents, convicted appellant as aforesaid. Hence, this

appeal.

6 Heard learned counsel for appellant as well as learned APP . It is submitted for appellant that there is no convincing evidence establishing involvement of accused/appellant as prosecution has miserably failed to establish demand as well as acceptance of bribe as set out in charge. In fact, it is submitted that case of the prosecution is full of doubts even on the count of alleged purpose of appellant to demand bribe as it is submitted that there is no specific evidence of complainant which can establish that for particular purpose, appellant had demanded bribe. Learned counsel for appellant has thus, submitted that as prosecution has miserably failed to establish its case, no presumption available under Section 20 of the Prevention of Corruption Act, 1988 can be attracted and appellant be acquitted.

7 Learned APP, on the other hand, submitted that though complainant as well as panchas have not fully supported case of prosecution, learned Special Judge has rightly relied upon their evidence as same is found corroborated to each other on material particulars. It is further contended that charge, explained to appellant is fully established as evidence of complainant and panch witnesses established fact of appellant's demanding and accepting bribe of Rs.1,000/- which amount, came to be recovered from possession of appellant and one Mr. Nadar tea stall vendor who was present at the time of incident. It is further contended that evidence of both these witnesses is fully found corroborated from the evidence of Investigating Officer. It is further submitted that presumption can be drawn as

contemplated under Section 20 of the Prevention of Corruption Act, 1988. Prosecution has thus, contended that for the reasons aforesaid, appeal be dismissed.

8 Considering the submissions advanced by the learned counsel for both sides as aforesaid, evidence of P.W.1-Complainant is that on 20.12.2006 his cousin brother Yusuf Pathan had indulged in quarrel and, therefore, he had visited Mankhurd police chowky and met appellant. He also found his cousins namely, Hazrat, Akbar, Ramzan and two other persons were there with whom complainant was also made to sit upto 4 p.m. and were then transported to Devnar Police Station where appellant registered crime against them and put them into lock-up, who were thereafter released on bail after two days.

Complainant further stated that on 26.2.2007 when he returned home for lunch, he was informed by his mother about visit of two police constables to house to call him to Mankhurd police chowky. Accordingly, complainant visited chowky on the same day i.e. on 26.2.2007 at 6 p.m. when appellant informed complainant that he would arrest him under warrant issued against him in cheque bounce case and asked complainant to pay Rs.5,000/-. From evidence of complainant, therefore, it appears to be case of complainant that for the first time on 26.2.2007, appellant has demanded amount of Rs.5,000/- to not to arrest him or to execute warrant issued against him in cheque bounce case. Evidence of complainant as aforesaid thus considered do not establish demand on the part of appellant as this evidence reveals that when he met appellant, appellant informed that such and such warrant is issued upon which complainant asked as to what he should

do upon which appellant asked him to pay Rs.5,000/-. Evidence of complainant do not establish that said amount of Rs.5,000/- was demanded by appellant as bribe to not to arrest in a warrant case.

9 Further evidence of complainant is that at the same time appellant has informed him that he will cancel the warrant and chapter case. Thus, according to his evidence on 26.2.2007, i.e. the day on which appellant is alleged to have demanded bribe, for the first time, complainant has stated two other purposes apart from first one as aforesaid, i.e., to cancel the warrant and further to cancel the chapter case. He has then deposed that amount of Rs.5,000/- as asked by appellant to pay was then negotiated to Rs.2,000/- and then he left police chowky and did not visit for 2-3 days thereafter. Evidence of complainant on this material point thus, is that appellant has asked him to bring Rs.5,000/- which was negotiated to Rs.2,000/- firstly, for not to effect his arrest in cheque bounce case, secondly, to cancel warrant, thirdly, to cancel chapter case. Evidence of complainant even otherwise do not establish if on negotiating amount to Rs.2,000/-, appellant has directed him to pay said amount on a particular day as according to the evidence of complainant on negotiating amount as above, he left and did not go to the police chowky for 2-3 days.

10 Complainant has further deposed that on 1.3.2007, he was informed by his mother about visit of two constables to their house who had called complainant to meet appellant. Accordingly, on his meeting, appellant abused him saying as to why he did not bring money. Above evidence of complainant does not stand for any reason as he has

deposed that on his meeting with appellant on 26.2.2007 and negotiating amount to Rs.2,000/- he had left and had not met appellant. His evidence is silent regarding particular day on which appellant directed complainant to pay amount of Rs.2,000/- on 26.2.2007. In the absence of evidence as aforesaid, prosecution cannot said to have established any case or reason for appellant abusing complainant on 1.3.2007 asking as to why he did not bring money. Even otherwise his evidence also do not establish that on 1.3.2007 it is appellant who directed complainant to pay said money on a particular day as what has come in the evidence of complainant is that on that day it is he who informed appellant that he cannot pay on that day and would make payment on the following day and went to the office of Anti Corruption Bureau and narrated incident to P.W.4-Sanjay Maruti More, officer attached to Anti Corruption Bureau.

11 Evidence of complainant further reveals that after his narrating complaint, Investigating Officer got his complaint verified by sending complainant to appellant having fixed on his person small tape recorder to record conversation which may take place amongst them. It appears to be case of the prosecution that such verification was necessary to confirm demand made by appellant.

12 Thus, on the same day, he along with panch witnesses contacted appellant. When appellant enquired about money , complainant informed that he will bring tomorrow, upon which appellant abused him and extended threat to cancel his bond. Though complainant has stated that said conversation was recorded and its

script was prepared, admittedly, no such conversation was heard before the learned trial judge. In fact, as per the alleged conversation between complainant and appellant, complainant has introduced one more purpose for appellant to demand bribe, i.e., by way cancellation of bond. With reference to conversation which admittedly is not on record, learned counsel for appellant has referred to case of **Anvar P.V. v. P.K.Basheer and others** reported in **(2014) 10 Supreme Court Cases 473** where in paragraph 15 of this judgment, the Hon'ble Apex Court has observed thus,

“15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

- (a) There must be a certificate which identifies the electronic record containing the statement;*
- (b) The certificate must describe the manner in which the electronic record was produced;*
- (c) The certificate must furnish the particulars of the device involved in the production of that record;*
- (d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and*
- (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.”*

Admittedly, no such certificate which is required under the amended provisions of Section 65-B(4) of the amended Evidence Act is not on record. In that view of the matter, case of the prosecution with regard to its verifying demand on the strength of tape recorded conversation does not appear to be convincing, which evidence even otherwise is not on record as no script of conversation is placed on record nor it is proved.

13 Even otherwise, said case of prosecution is doubtful as according to complainant as per tape recorded conversation, appellant has demanded Rs.5,000/- while he has stated that he will pay Rs.2,000/- and as per his earlier version, which is discussed as aforesaid, bribe amount claimed is Rs.1,000/-. In that view of the matter, case of prosecution is doubtful on this aspect which doubt is further found substantiated as from the evidence of complainant, it has come on record that on 2.3.2007 when trap came to be laid, he carried with him amount of Rs.1,000/-. In fact, when he met appellant at the time of verification of demand as is the case of prosecution, complainant did not state anything to appellant but it is appellant who directly asked him to come with Rs.1,000/-. Said story of Rs.1,000/- is thus, appearing only at the time of verification of panchanamas as according to the earlier evidence of complainant till he reached the office of ACB, alleged demand was for Rs.5,000/- which was negotiated to Rs.2,000/-. Rest of the evidence of complainant is about his visiting the office of ACB before trap was laid where pre-trap panchanama came to be prepared and has specifically deposed that he was instructed to give missed call from his mobile as proposed signal after bribe money

was demanded and accepted by appellant. However, complainant has further deposed that after he came out of police chowky, he gave pre-determined signal by moving his left hand over his head. Evidence of complainant on his giving signal is thus, also not consistent if he was instructed to give proposed signal by giving missed call from his mobile or by moving his left hand over his head. Contrary to the evidence of complainant, instructions given in pre-trap panchanama (Ex.22) reveal that he was given instructions to give signal by moving his left hand over his head. No satisfactory explanation is coming on this count also.

14 Evidence of complainant with regard to the date of incident when perused reveals that at the time of incident, he entered police chowky with the panchas and was accompanied by his cousin brother Akbar Ali. However, his cousin brother Akbar Ali is not examined. He has stated that on his visiting chowky, appellant asked whether he has brought money to which he replied in affirmative upon which appellant demanded amount which he paid and was accepted by appellant out of which appellant paid Rs.500/- to tea stall vendor and then he gave missed call upon which members of the raiding team arrived at spot and apprehended appellant. The above piece of evidence on the point of subsequent demand and acceptance, does not appear to be convincing at all. Primarily for reason of non-examination of tea stall vendor, who according to complainant was present when he made payment of bribe money to appellant and in fact, out of said amount, appellant has paid Rs.500/- to tea stall vendor.

Similarly, according to complainant, his cousin brother Akbar Ali was also with him. He has specifically deposed about his accompanying

complainant to witness the transaction, in spite of that, he is also not examined.

15 Complainant even otherwise appears to have materially improved his version when he claims to have stated in his statement recorded by investigating agency that on his visit to police chowky for the first time, appellant has abused him and demanded money when he informed that he will bring it on the following day. He also claims to have mentioned in his report, Ex.12-A name of appellant, however, is unable to give any satisfactory reason for not having both these facts mentioned in his statement and report respectively. Both these omissions are got duly proved by defence from the evidence of PW.4- Investigating Officer.

Complainant further claims to have stated to ACB officer that when he went to Mankhurd Police Chowky, appellant enquired whether he has brought money upon which he informed that he will bring it tomorrow due to which appellant abused him, however, is unable to state as to why these facts are not mentioned in his report or in supplementary statement recorded on 5.3.2007. Above stated evidence of complainant when is considered with his further evidence, he has admitted that due to his arrest by appellant, he had suffered lots of harassment and was arrested in spite of appellant's repeatedly informing that he was not at all involved in any case. He further admits that he was, therefore, annoyed upon appellant. Evidence of complainant as aforesaid coupled with his admissions as aforesaid thus even otherwise establish case of appellant of his false implication by complainant for above reasons. Evidence of complainant, thus, do not

appear to be convincing to be acted upon at all. In fact, from the above evidence, even case of the prosecution does not appear to be convincing as according to its case, alleged demand was made by appellant to not to arrest complainant on the strength of warrant issued in cheque bounce case, secondly, to cancel warrant, thirdly, to cancel chapter case. While perusing charge, Ex.5 (Page 32), what is explained to appellant is that he has demanded and accepted bribe of Rs.1,000/- from complainant to release him on bail on execution ofailable warrant and to render him help in Crime No.394 of 2006. When contents of charge as aforesaid are considered with evidence of complainant, it appears that case of prosecution is full of doubts since stage of charge itself.

16 Evidence of P.W.2-Dawood Jaan Mohammed independent panch though relied upon by the prosecution do not also establish case of prosecution any further as on the point of verification of demand though he claims to have accompanied complainant to Devnar Police Chowky, he has stated that on reaching to said chowky by walk, appellant enquired from complainant about panch witness, who was introduced as his friend and was directed by appellant to remain outside and accordingly, he remained outside chowky. In fact, he has further deposed that he was asked by Investigating Officer as to why he remained outside chowky. Evidence of pancha as aforesaid demolishes case of prosecution of verification of demand by appellant in presence of independent witness. As stated earlier, P.W.2- has resiled from his statement and as such, is cross-examined by learned APP wherein he has denied all the suggestions put to him by prosecution and has infact denied that on 1.3.2007, he visited Devnar police chowky for

verification of complaint. He has denied that complainant had met appellant in his presence. He has denied that complainant switched on the recorder and recorded the conversation. He has denied that in the tape recorded conversation, appellant had demanded Rs.1,000/- as bribe and directed complainant to bring the same on the following day, i.e. on 2.3.2007. He has denied that cassettes were sealed in his presence and signatures were obtained only on the wrapper. According to his evidence, no seal was put to tape recorded cassette in his presence. On the point of incident of demand and acceptance by appellant, it has come in the evidence of panch witness that he is not aware of any incident as he was asked by appellant to go out and states that thereafter, appellant had demanded bribe amount, which was accordingly paid to him. In view of his evidence of appellant directing him to go out of police chowky and his further evidence about appellant demanding bribe and accepting the same is not convincing. Case of prosecution is not unfolded as to under what circumstances, appellant had paid Rs.500/- to tea stall vendor namely, Anna Chaiwala who admittedly at the time of incident was present in the police chowky. It has come in the evidence of panch that traces of anthracene powder was found on the hands of tea vendor and amount of Rs.500/- was seized from his possession. Admittedly, no investigation is carried out with reference to role of this witness. Panch has denied to have signed panchanamas on reading its contents. In fact, according to him, he is not aware of contents of panchanama. He has denied that all the panchanamas were read over to him and upon admitting its contents signed the same. Considering the evidence as aforesaid, it is found that this independent witness has not supported the case of prosecution and

has denied all the material suggestions as aforesaid.

17 By now it is well established that till the evidence on the point of demand and acceptance is established by prosecution, no conviction can be based. It is also established that mere recovery of tainted notes from possession of appellant by itself is not sufficient to establish any offence under the provisions of Prevention of Corruption Act, particularly in absence of any other evidence to prove payment of bribe or to show that appellant voluntarily demanded and accepted the same. While considering the evidence of P.W.2-Dawood Jaan Mohammed independent panch witness, he has not supported the case of prosecution. It is also material to note that in the absence of such evidence, there is no corroboration to evidence of complainant, whose evidence is even otherwise full of doubts regarding demand of money by appellant. Evidence of complainant on that aspect, therefore, could not be accepted.

18 By referring to evidence of P.W.3- Hasan Gafoor Sanctioning Authority, it is contended on behalf of appellant that sanction for prosecution itself is invalid having been accorded by the authority, which is not competent to grant the same. With due considerations to submissions advanced as aforesaid, it is noted that as case of prosecution on the point of demand and acceptance itself is doubtful and therefore, not reliable, there is no reason to go into such details of sanction if the same is valid or not, as not granted by the Competent Authority. In that view of the matter, even submissions advanced by learned APP to raise presumption as contemplated under Section 20 of

the Prevention of Corruption Act, 1988 also cannot be accepted as such presumption can be raised only if prosecution had established its case beyond reasonable doubt. From the above discussed evidence, it is noted that prosecution has miserably failed to establish charge levelled against appellant. In the result, appeal is liable to be allowed. Hence, the following order:

- (1) Appeal is allowed.
- (2) Judgment and order passed by the Special Judge, Greater Bombay in Special Case No.48 of 2009 dated 23.2.2011 convicting appellant for the offence punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 is quashed and set aside.
- (3) Appellant is acquitted of the offence for which he was charged and convicted.
- (4) His bail bonds stand cancelled. Fine amount if any, paid be refunded to appellant.

19 As the appeal is allowed, Criminal Application No.1085 of 2016 stands disposed of as dismissed being infructuous.

(P. N. DESHMUKH J.)