

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 307 OF 2001

Md.Abdul Khaleq s/o Md. Mirad,
Age : 58 years, Occu.: Nil,
R/o.: Aurangabad

APPELLANT

VERSUS

The State of Maharashtra

RESPONDENT

Mr. Abhaysing K. Bhosale, Advocate for the Appellant
Mr. P.N. Kutti, A.G.P. for respondent/State

CORAM : SANGITRAO S. PATIL, J.

Reserved on : 13th JULY, 2017

Pronounced on: 27th JULY, 2017

JUDGMENT :

Heard learned counsel for the appellant and the learned A.P.P.

2. The appellant has challenged his conviction and sentence for the offences punishable under Sections 7 and 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 ("the Act", for short). He has been sentenced to suffer rigorous imprisonment for 1 ½ year and fine of Rs.500/- for the offence under Section 13(2) and rigorous imprisonment for nine months and fine of Rs.500/- for the offence

under Section 7 of the Act. He has deposited the fine amount.

3. The complainant namely Mehmood Ainul Haq, resident of Prabudhnagar, Panchakki Road, Aurangabad was running a flour mill near his residential premises. He was having two electric meters, one for domestic use and another for industrial purpose. The appellant (original accused No. 1) and one Shrirang Ashruba Pawar (original accused No. 2) were working as line-foreman and lineman, respectively with Maharashtra State Electricity Board (MSEB), City Club Sub-Division-1, Aurangabad. There were arrears of bill standing against the complainant in respect of the meter of domestic use. Therefore, accused No.2 removed that meter on 20th June, 1994. The complainant deposited the arrears and prayed for restoration of the electric meter for his domestic use. However, despite his taking repeated rounds to the office of the MSEB, he could not get installed his domestic meter. Eight days prior to 12th December, 1994, the appellant met the complainant and assured him to instal meter immediately in case an amount of Rs. 235/- was paid. The complainant showed him the receipts in respect of clearing the arrears of bill and showed his

disinclination to pay the amount demanded by the appellant. The complainant further met accused No. 2 to enquire about the progress in the matter of installation of the domestic meter. Accused No. 2 also suggested him to give him money for getting his work done immediately. After meeting accused No.2, the complainant started going back. At that time, the appellant met him and voluntarily offered him concession of Rs. 35/- and asked him to pay Rs. 200/- for restoration of his domestic electric meter. He told the complainant that without paying that amount, his work will not be done. Therefore, the complainant approached the office of Anti Corruption Bureau (ACB) and lodged complaint against the appellant and accused No.2.

4. The pre-trap panchanama was prepared. Necessary instructions were given to the panchas and the complainant. The currency notes of Rs. 200/-, tainted with anthracene powder, were given to the complainant. The trap could not be laid on 12th December, 1994 and therefore, again pre-trap panchanama was prepared on 13th December, 1994 and all instructions were again given to the panchas and the complainant. On that day, the raiding party went to the office of MSEB.

The appellant was not found in the Fuse Call Centre. When the complainant was coming back to wireless tower, the appellant met him. The complainant told the appellant that he had become fed-up of making rounds after rounds for getting the meter, whereon the appellant reminded him of telling twice to pay money for getting the work done. The complainant then told the appellant that he had brought Rs. 200/- as demanded by the appellant on the previous day. Thereon, the appellant asked the complainant to pay the amount of Rs. 200/-. The complainant then took out the currency notes of Rs. 200/- tainted with anthracene powder from his right-side pocket of the shirt and held them before the appellant. The appellant took those currency notes by his right hand and kept them in the right side pocket of his pant. The complainant then gave the predetermined signal and the appellant was caught hold of with the currency notes of Rs. 200/- tainted with anthracene powder. After registering the crime and completing further investigation, the appellant came to be chargesheeted for the above mentioned offences.

5. Since there was reference of accused No. 2 in the complaint about having demanded money, on the

application of the appellant, accused No. 2 also was added as a co-accused. However, the learned Trial Judge acquitted accused No. 2 on the ground that there was no previous sanction for his prosecution and further the bribe money was not accepted by accused No. 2.

6. There is no dispute that the currency notes of Rs. 200/- tainted with anthracene powder were recovered from the appellant. Therefore, it is not necessary to dilute the evidence in respect of pre-trap panchanama and trap panchanama upto the stage of recovery of the tainted currency notes from the appellant.

7. The learned counsel for the appellant submits that, in fact the amount was demanded by accused No. 2. The appellant received the amount of Rs. 200/- from the complainant for being paid to accused No. 2. This fact has been admitted by the complainant in his cross-examination. There was no demand made by the appellant on the day when the trap was laid. Therefore, mere recovery of the tainted currency notes from the appellant would not constitute the above mentioned offences. In support of this contention, he relied on the judgments in the cases of **C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala (2009) 3 SCC 779, State of**

Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede (2009) 15 SCC 200, P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and another (2015) 10 SCC 152 and M.R. Purushotham Vs. State of Karnataka (2015) 3 SCC 247. The learned counsel further submits that the complainant as well as the trap witnesses were tutored by the officials of the ACB. They were asked to depose as per the statements recorded by the officers of the ACB. Therefore, their evidence cannot be relied on. He then submits that the sanction for prosecution of the appellant also is not valid. He, therefore, prays that the appellant may be acquitted of both the offences.

8. As against this, the learned A.P.P. submits that once it is proved that the appellant accepted the currency notes tainted with anthracene powder, there would be presumption under Section 20 of the Act that he accepted that amount towards illegal gratification other than the legal remuneration. The appellant failed to rebut this presumption. He submits that there is sufficient evidence on record to show that the appellant also demanded the bribe amount of Rs. 200/- from the complainant for restoration of his domestic electric

meter. The appellant consciously accepted the bribe amount of Rs. 200/- from the complainant in pursuance of his earlier demand for money. He submits that the Trial Court has rightly appreciated the evidence and rightly convicted the appellant for the above mentioned offences.

9. The complainant in his deposition (Exh-7) specifically states that when he went to the office of MSEB on 12th December, 1994 to enquire about restoration of his domestic meter, accused No. 2 asked him to pay Rs. 200/- for restoration of the meter. He told accused No. 2 that he had no money and left the office. He further states that on the same day, the appellant met him and told him that no work would be done unless money was paid. He then states that the appellant had demanded Rs. 235/- for restoration of the meter prior to 2 to 3 days of 12th December, 1994. However, on 12th December, 1994, the appellant demanded Rs. 200/- and gave concession of Rs. 35/- in the presence of accused No. 2. The complainant told the appellant that he had no money and went away. At that time also, the appellant told the complainant that unless the money was paid, no work would be done. The complainant then lodged the complaint

(Exh-8) against the appellant and accused No. 2 as well. The contents of the complaint (Exh-8) corroborated the version of the complainant in this regard. From this evidence, it is clear that the amount of Rs. 200/- was demanded by the appellant from the complainant for restoration of his domestic meter. Since the appellant was working as a line-foreman, he was very much connected with the work of restoration of the meter. Moreover, on the face of accused No.2, the appellant was making demand of Rs. 200/- by giving concession of Rs. 35/- to the complainant. From the evidence of the complainant, it cannot be inferred that the appellant was asking for Rs. 200/- from the complainant for being paid to accused No. 2.

10. The trap was laid on 13th December, 1994. The complainant states that on that day, as instructed by the officers of ACB, he went to the office of MSEB alongwith the panch Bhikan (PW2) (Exh-11). The appellant and accused No. 2 were not present in that office. Therefore, they went towards wireless tower. The complainant saw the appellant near that tower. After exchanging salutations, the complainant told the appellant that he was tired of visiting the office of

MSEB. Thereafter, he gave the amount of Rs. 200/- to the appellant and requested him to do his work. The appellant accepted that amount and kept it in the pocket of his pant. Thereafter, the complainant gave signal by removing his cap and the raiding party caught hold of the appellant. The tainted currency notes of Rs. 200/- were recovered from the appellant.

11. Bhikan (PW2), the trap witness, states that after the complainant met the appellant, there had been exchange of salam between them. The complainant told the appellant about his harassment, whereon the appellant said that he had told him twice to give him the money for getting his work done. Thereupon, the complainant replied that as per the talks of the previous day, he had brought Rs. 200/-. The appellant said that he had asked for Rs. 235/-, but he (the complainant) could give Rs. 200/-. Thereafter, the complainant handed over the amount of Rs. 200/- to the appellant, the appellant accepted that amount by his right hand and kept it in the right side pocket of his pant. This evidence of Bhikan (PW2) supports the evidence of the complainant.

12. It has come in the cross-examination of Bhikan

(PW2) that he was standing by the side of the complainant at the time of the trap. The learned counsel for the appellant pointed out to the evidence of the appellant where he states that Bhikan (PW2) was standing behind him at the distance of 10 to 15 feet. Even if this discrepancy is considered and it is accepted that the panch Bhikan (PW2) was at the distance of 10 to 15 feet from the complainant and the appellant, it would not be difficult for him to see the transaction between them as well as hear the conversation that was going on.

13. It seems that the evidence of the complainant has been recorded after about six years of the incident in question. Naturally, some variation is bound to be there in his statement before the Court and the factual position that was recorded in his earlier statement as well as the trap panchanama. Therefore, if he forgets to state about the demand that was made by the appellant at the time of the trap, which demand has been specifically stated by panch Bhikan (PW2), it cannot be said that the appellant paid the bribe amount of Rs. 200/- to the appellant without there being any demand from his side. As stated earlier, there is specific

evidence of the complainant about the demand of money made by the appellant 2 to 3 days prior to 12th December, 1994 and also on 12th December, 1994.

14. It has come in the cross-examination of the complainant that had accused No. 2 met him, he would have given that bribe money to accused No. 2. It has further come in his evidence that as accused No. 2 did not meet him, he gave the bribe amount to the appellant. Bhikan (PW2) also states that had accused No. 2 met the complainant, the tainted money would have been given to accused No. 2. These statements of the complainant and Bhikan (PW2), in my view, would not ensure to the benefit of the appellant to seek exoneration of the charges levelled against him.

15. There is sufficient evidence on record to show that it is not only accused No. 2 but the appellant also had demanded bribe of Rs. 200/- from the complainant for restoration of his domestic meter. The appellant had gone one step ahead of accused No.2, given concession of Rs. 35/- and asked the complainant to pay Rs. 200/- only. It is not clarified by the appellant as to under what authority, he gave concession of Rs. 35/- and

demanded Rs. 200/-, when according to the appellant, the bribe amount was to be paid to accused No. 2. The complainant had lodged the complaint against both, the appellant and accused No. 2, for demanding bribe. It was, therefore, natural on the part of these witnesses to state that had accused No. 2 met them, the bribe amount would have been paid to accused No.2. In the circumstances, the above mentioned admissions of the complainant and Bhikan (PW2) would be of no help to the appellant to show his innocence.

16. The learned counsel for the appellant placed emphasis on the evidence of the complainant and Bhikan (PW2) wherein they stated that they were made to read their statements to refresh their memories and therefore, their evidence cannot be considered. I am not inclined to accept this contention. There is nothing in their cross-examination to establish that they are deposing before the Court only because they were tutored. The evidence of these witnesses is quite natural. The minor discrepancies in their statements lend assurance about the genuineness of their versions. The evidence of these witnesses cannot be disbelieved only because they were asked to refresh their memory by

reading their previous statements.

17. The evidence on record is sufficient to establish that the appellant demanded Rs. 200/- from the complainant for restoration of his domestic meter. The said demand was made thrice i.e. 2 to 3 days prior to 12th December, 1994, on 12th December, 1994 and also on the day when the trap was laid i.e. 13th December, 1994. The appellant consciously accepted the bribe amount of Rs. 200/- from the complainant. The circumstances disclosed from the evidence of the complainant and Bhikan (PW2) do not indicate that the amount of Rs. 200/- was accepted by the appellant for and on behalf of accused No.2. The appellant failed to rebut the presumption laid down in Section 20 of the Act. Thus, the prosecution has established the guilt of the appellant for the offences punishable under Sections 7 and 13 (2) read with Section 13 (1) (d) of the Act.

18. Since the prosecution has established the demand of bribe on the part of the appellant, the judgments in the cases of **C.M. Girish Babu** (supra) and **State of Maharashtra Vs. Dnyaneshwar Laxmanrao Wankhede** (supra), cited by the learned counsel for the appellant,

would not be applicable to the facts of the present case. In the case of **M.R. Purushotham** (supra), the complainant himself had turned hostile and as such, the demand was not proved, while in the case of **P. Satyanarayana Murthy** (supra), the demand could not be proved as the complainant himself had died before the trial. In the present case, there is positive and dependable evidence of the complainant about the demand of bribe made by the appellant. Hence, this case would not be helpful to the appellant.

19. The learned counsel for the appellant tried to assail validity of the sanction order passed by Manik Zarkar (PW3) (Exh-20), the Superintending Engineer of MSEB. He states that he had gone through the case papers received from the office of ACB, studied the case papers, applied his mind thereto and after getting satisfied that there was a prima facie case against the appellant, passed sanction order (Exh-21) for prosecution of the appellant. Here, reference may be made to clause (a), sub-section (3) of Section 19 of the Act wherein it is stated that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no finding, sentence or order passed by a special Judge

shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby. I have discussed the evidence in respect of the present case and found that the appellant demanded the bribe amount of Rs. 200/- from the complainant and consciously accepted it as bribe. No failure of justice can be said to have been caused by the sanction order (Exh-21). In the circumstances, the sanction order cannot be assailed by the appellant at this stage.

20. The prosecution has established guilt of the appellant for the above mentioned offences. The learned Trial Judge has rightly considered the facts of the case and rightly appreciated the evidence on record. The learned Trial Judge rightly held the appellant guilty for the above mentioned offences.

21. The learned counsel for the appellant relying on the judgment in the case of **V.K. Verma Vs. Central Bureau of Investigation (2014) 3 SCC 485**, submits that the appellant is now aged about 80 years. Therefore, in

view of this judgment, instead of sending him behind the bars, he may be sentenced to pay enhanced fine amount. In the above cited case, the accused was convicted for the offences punishable under Section 161 of the Indian Penal Code and Section 5 (1) (d) of the Prevention of Corruption Act, 1988. As per sub-section (2) of Section 5 of the Act, any public servant, who committed criminal misconduct, was liable to be punished with imprisonment for a term which should not be less than one year but which might extend to seven years and should also be liable to pay fine, provided that the court might, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year. Thus, the discretion was vested in the court to reduce the sentence of imprisonment less than the minimum prescribed for that offence. No such discretion has been given to the court under sections 7 and 13 (2) of the Act of 1988. As such, the minimum sentence of imprisonment for committing the offence under Section 13(2) is one year and for the offence under section 7, six months. No discretion is vested in the court to reduce it from one year and six months respectively. Consequently, the above cited judgment would not be helpful to the appellant to claim reduction in the

sentence of imprisonment less than minimum. However, considering the old age of the appellant, I think fit to show some leniency and reduce the sentence of imprisonment of one and half years to the period of one year for committing offence under section 13 (2) read with section 13 (1) (d) of the Act. The conviction and sentence of the appellant for the offence under section 7 of the Act needs no interference. However, both the substantive sentences would run concurrently. In the result, I pass the following order:-

O R D E R

- (i) The appeal is partly allowed.
- (ii) The conviction of the appellant for the offences punishable under Sections 7 and 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988, is confirmed.
- (iii) The impugned order of sentence of imprisonment passed against the appellant for the offence under Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 is modified and is reduced to rigorous imprisonment for one year, but the sentence of

fine is maintained as it is.

- (iv) The impugned order of sentence passed against the appellant for the offence under Section 7 of the Prevention of Corruption Act, 1988, is maintained as it is.
- (v) The substantive sentences of imprisonment shall run concurrently.
- (vi) The appellant shall surrender to his bail bonds and appear before the Trial Court on or before 3rd August, 2017 for suffering the sentence of imprisonment.
- (vii) In case the appellant fails to surrender as stated above, the Trial Court shall issue coercive process to secure his presence.
- (viii) The Criminal Appeal is disposed of accordingly.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE