IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

CRIMINAL APPEAL NO.503 OF 2012

1. Feroj s/o. Fatrumiya Shaikh
   Age: 25 years, Occu.:Service,
   R/o. Ahmadpur, Tq. Ahmadpur
   Dist. Latur

2. Ayub S/o.Dastgir Sayyed
   Age:25 years, Occu.:Labour,
   R/o. Hagdal, Tq. Ahmadpur,
   Dist. Latur

...APPELLANTS
(Original Accused Nos. 1 and 2)

VERSUS

The State of Maharashtra.

...RESPONDENT

...

Shri R.S. Deshmukh and Shri. Suhas P. Urgunde,
Advocates for Appellants;
Shri. S.P.Tiwari; Advocate for Respondent.

...

CORAM: P.R. BORA, J.

DATE : 23/11/2017

ORAL JUDGMENT:

1. The appellants have filed the present appeal against the judgment and order passed by the Special Judge at Ahmedpur in Special Case (ACB) No.04/2011 (New) Special Case (ACB) No. 01 of 2010 (Old) decided on 20th of July, 2012. In the aforesaid Special Case, appellant no.1 was prosecuted for the offenses punishable under Section 7 and 13 (1) (d) read

with Section 13 (2) of the Prevention of Corruption Act, 1988; whereas, the charge against appellant no.2 was under Section 12 of the Prevention of Corruption Act, 1988 (hereinafter referred to as `the P.C.Act'). The appellants are hereinafter referred to as accused no.1 and accused no.2.

2. Learned Special Judge vide impugned judgment, has convicted accused no.1 for the offense punishable under Section 7 of the P.C.Act and has sentenced him to suffer rigorous imprisonment for six months and to pay fine of Rs.1,000/-; in default, to undergo further rigorous imprisonment for one month. For the offense punishable under Section 13(1)(d), read with Section 13(2) of the P.C.Act, accused no.1 has been convicted to undergo rigorous imprisonment for one year and to pay fine of Rs.2,000/-; in default, to undergo rigorous imprisonment for two months. Accused no.2 has been convicted for the offense punishable under Section 12 of the P.C.Act and has been sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500/-; in default, to undergo rigorous imprisonment for one month.

3. One Pralhad Kishanrao Wader, resident of village

Sunegaon (Sangvi), Tq. Ahmedpur, district Latur, had filed a complaint against accused no.1 alleging therein that accused no.1 had demanded illegal gratification of Rs.2100/- for entering the name of his wife in the Gram Panchayat record in pursuance of the orders passed by the Court. It is not in dispute that, at the relevant time accused no.1 was serving as Gram Sevak at village Sunegaon (Sangvi). On the complaint as above lodged by Pralhad to the Anti Corruption Bureau (for short, `ACB') Office, the further process was carried out by the said office. The material on record reveals that a trap was led and accused No.2 was trapped by the ACB Officers in the said trap while accepting amount of Rs.2100/- from the complainant. According to the prosecution, accused no.1 had demanded the said amount and, accordingly, it was received by him through accused no.2. After laying of the trap, further necessary formalities were complied with by the ACB Officers and chargesheet was filed against the accused after obtaining sanction from the competent authority.

4. In order to prove the charges levelled against the accused, five witnesses were examined by the prosecution. The prosecution evidence commenced with the testimony of Pralhad Kishanrao Wader, the complainant. Thereafter, the

Panch witness, namely, Sunil Jayram Kamble was examined. The third witness who was examined by the prosecution was Sachindra w/o Pratap Singh, the then Chief Executive Officer of Zilla Parishad, Latur, who had accorded sanction to prosecute the accused. Police Inspector Mukund Namdeorao Hatote was the fourth witness examined by the prosecution. The prosecution evidence was concluded after the evidence of Shri Kalyan Narhari Supekar, investigating officer, was recorded.

5. Learned Special Judge, on his assessment of the oral and documentary evidence on record, held both the accused guilty for the offenses charged against them and convicted and sentenced them to suffer imprisonment as well as fine as noted hereinabove.

6. It was the case of prosecution that accused no.1 had demanded from one Pralhad Wader illegal gratification of Rs.2100/- for entering the name of his wife to one property in the Gram Panchayat record so that she can get benefit of `Gharkul Scheme'. Pralhad had preferred a written application in that regard. It was the complaint of said Pralhad that he was not legally liable to pay that much amount of Rs.2100/- for entering the name of his wife in the Gram Panchayat record to

the subject property. In other words, it was alleged by him that the accused had demanded from him the said amount of Rs.2100/- as illegal gratification or in the nature of bribe.

7. After such written complaint was lodged by said Pralhad in the ACB Office, the further process was carried out by the said office. According to the further case of the prosecution, complainant Pralhad (PW 1), accompanied by two Panch witnesses and the raiding party, reached to the office of the Panchayat Samiti at Ahmedpur, at about 5 p.m. Complainant Pralhad met accused no.1 and told him that he has brought money as per his instructions. At that time, accused no.1 told him that he was not having the receipt book. Complainant Pralhad thereupon asked accused no.1 to accept the amount stating that it was not possible for him to come daily to the office of the Panchayat Samiti for the said work. The material on record further reveals that accused no.1, thereafter, asked complainant to sit on his motor cycle and took him at one Gurukrupa General Stores on his motor cycle. Accused no.1 purchased one Receipt Book from said General Stores. Complainant Pralhad and the accused then went to the room of accused no.1. As per the contention of complainant Pralhad, accused no.1 then demanded money from

complainant. Complainant told him that he would pay the amount in the office of the Panchayat Samiti. By that time accused no.1 had prepared receipt from the Receipt Book purchased by him towards receipt of the amount of Rs.2100/- from Sou. Chhaya Pralhad Wader and handed over the said receipt to complainant Pralhad. Then complainant Pralhad and accused no.1 proceeded towards the office of the Panchayat Samiti. When they were on the gate of the Panchayat Samiti, accused no.1 received a phone call. While talking on the telephone, accused no.1 reached inside the office of the Panchayat Samiti. As the material on record further reveals, PI Hatote then asked complainant Pralhad to pay the amount of Rs.2100/- to accused no.2. Accused no.2 was running a tea stall outside the office of the Panchayat Samiti. Complainant Pralhad accordingly gave the amount to accused no.2 and after the same was accepted by accused no.2, the ACB Officers entered on the scene and caught hold of accused no.2. Amount of Rs.2100/- was then recovered from the custody of accused no.2 and the further process was carried out by the ACB Officers. The material on record further reveals that, complainant Pralhad was, then, asked to state the facts in chronology after he had gone with accused no.1 on his motor cycle till he paid the alleged amount of bribe to accused no.2.

Accordingly, the facts were narrated by complainant Pralhad. Complainant Pralhad disclosed that he had gone on the motor cycle of accused no.1 to one Gurukrupa General Stores from where accused no.1 purchased a receipt book for price of Rs.20/- and then issued him the receipt from the said receipt book by putting a carbon paper below the said receipt in the name of his wife Chaya Pralhad Wader for amount of Rs.2100/-. The receipt so issued by accused no.1 to him was then handed over by complainant Pralhad to the ACB Officers and the same was seized in the presence of Panch witnesses. The Panch witnesses put their signatures on the said receipt.

8. It was the defense of accused no.1 that there was no demand from him of any illegal gratification but the amount of Rs.2100/- as was asked by him from complainant Pralhad was towards the legal fees for entering the names of three persons as per order passed by the Civil Court in Gram Panchayat record pertaining to the concerned property. It was also contended by accused no.1 in his statement under Section 313 of Code of Criminal Procedure that he had officially issued the receipt of Rs.2100/- to complainant Pralhad. Accused no.2 in his statement under Section 313 of Code of Criminal Procedure has stated that informant had been to his tea stall

and paid him Rs.2100/- stating that he shall hand over the said amount to accused no.1.

9. In the wake of the above fact situation, the crucial question is whether there was any demand of illegal gratification and whether the amount of Rs.2100/- paid by informant to accused no.2, assuming that the same was accepted by accused no.2 for accused no.1, can be held to be illegal gratification?

10. The primary condition for acting on the legal presumption under Section 20(1) of the P.C.Act is that the prosecution must have proved that what the accused received was `gratification'. Since, the word `gratification' is not defined in the Act, it is to be understood in its literal meaning. As held by the Hon'ble Apex Court in the case of Mahmoodkhan Mahboobkhan Pathan Vs. State of Maharashtra (AIR 1998 SC 2630), the word `gratification' is used in Section 20(1) of the P.C. Act to denote acceptance of something to the pleasure or satisfaction of the recipient. If the money paid is not for personal satisfaction or pleasure of the recipient, it is not gratification in the sense it is used in the Section. As further observed by the Hon'ble Apex Court, unless the prosecution

proves that money paid was not towards any lawful consideration or legal remuneration, the Court cannot take recourse to the presumption of law contemplated in Section 20(1) of the P.C. Act though the Court is not precluded from drawing appropriate presumption of fact as envisaged in Section 114 of the Evidence Act at any stage.

11. In the instant matter, the moot question, in light of the defense raised by the accused is, whether the amount of Rs.2100/- paid by complainant Pralhad (PW 1) was for personal satisfaction or pleasure of accused no.1 or otherwise. The conviction of the accused can be maintained only if it is found that sufficient evidence has been brought on record by the prosecution to prove that the amount of Rs.2100/- was not the legal or lawful charges recovered by the accused no.1. Vice versa, if there is reason to doubt whether the money was received as lawful collection, the benefit of it cannot be denied to the appellants accused. The evidence which has come on record has to be, therefore, analyzed keeping in view the aforesaid aspects.

12. It is not in dispute that in the complaint lodged by Pralhad (PW 1), it was his contention that accused no.1 had

demanded from him the amount of Rs.2100/-. It is further not in dispute that the said amount was demanded for the purpose of entering the name of wife of PW 1 Pralhad in record of Gram Panchayat to one property in pursuance of the orders passed by the Civil Court. Though it was the contention of the complainant in his complaint that he was not liable to pay that much of the amount; in other words, it was his contention that the amount so demanded of Rs.2100/- by the accused no.1 was not the legal fees for the said purpose, the prosecution has not brought on record any evidence to show as to what were the legal charges for the said purpose, if not Rs.2100/-. As has been held by the Honourable Apex Court, in the case of Mahmoodkhan Mahboobkhan Pathan (cited supra), the burden was on the prosecution to prove that the money demanded and paid of Rs.2100/- was not towards any lawful collection or legal remuneration. The prosecution has utterly failed in proving the said fact.

13. Learned Special Judge has, however, failed in appreciating the law laid down in the aforesaid judgment and has, therefore, manifestly erred in observing that the defense has not brought on record that the charges of Rs.2100/-, required to be deposited by the complainant were the legal

charges for recording the plot in the name of wife of the complainant. Learned Special Judge has further made an absolute wrong observation that when the accused had demanded Rs.2100/- then the burden was certainly on the accused to prove that his demand was legal one and the charges of Rs.2100/- as were demanded by him were in accordance with the Rules. I reiterate that as held by the Hon'ble Apex Court in the case of Mahmoodkhan Mahboobkhan Pathan (cited supra), unless the prosecution proves that the money demanded and accepted by the government servant was not towards any lawful conclusion, the Court cannot take recourse to the presumption of law contemplated in Section 20(1) of the P.C. Act.

14. The question further arises whether a person accepting illegal gratification or bribe would issue an official receipt in that regard? When a government servant issues a receipt, acknowledging payment received by him, it has to be presumed, if no contrary evidence is brought on record, that the amount so received by him was the lawful collection. As noted hereinabove, nothing has been brought on record to show that the amount so demanded and accepted of Rs.2100/- were not the lawful charges. There is no dispute that the

receipt issued by accused no.1 to PW 1 Pralhad for the amount of Rs.2100/- was seized in the process of trap itself from the custody of PW 1. The seizure of the said receipt is duly reflected in the post trap panchnama prepared immediately after the trap. It is further not in dispute that during the course of trial, the said receipt was duly proved and was marked as Exh.33. It is further not in dispute that the receipt book from which one receipt for Rs.2100/- was issued by accused no.1 in favour of the wife of PW 1, was also seized during the course of the investigation. The said receipt book is at Exh.52. As has been observed by the learned Special Judge, perusal of the said receipt book clearly shows that the accused had issued the receipt at Exh.33 from the said receipt book. Carbon copy of the said receipt at Exh.33 was found in the receipt book at Exh.52.

15. Learned Special Judge has failed in appreciating the aforesaid evidence and has recorded wholly erroneous conclusions. Learned Special Judge has observed that the said receipt book at Exh.52 was not certified by the office of accused no.1 and, therefore, it cannot be said that the said receipt was an authenticated document. While making such observations, the learned Special Judge has ignored the fact admitted by P.W.

3 Sachindra Pratap Singh, the Chief Executive Officer, Zilla Parishad, Latur, in his cross examination that it was a general practice that the receipt books used to be purchased from the market. The learned Special Judge has also not taken into account the another fact admitted by the said witness that receipt (Exh.33) was bearing the seal of office and the signature of accused no.1. Moreover, the document at Exh.59 is significant in this regard. The document at Exh.59 is the letter dated 28.2.2009 written by Deputy Superintendent of Police, Anti Corruption Bureau, Latur, to the Block Development Officer, Panchayat Samiti, Ahmedpur, seeking some information from him. Along with some other information, following information was also sought in the said letter:

> 1) Whether the receipt book which was seized from the custody of accused no.1 was the certified receipt book and whether it was issued from the office of the Panchayat Samiti.
>
> 2) Whether the receipt which was issued by accused no.1 from the said receipt book bearing receipt no.1 for amount of Rs.2100/- was legal.

The prosecution has not brought on record the further evidence to show whether any reply was received to the said letter and, if yes, what was the clarification received to the queries raised in the said letter.

16. The prosecution has admittedly not examined the concerned Block Development Officer or any other officer higher to accused no.1 so as to bring on record that the receipt which was issued by accused no.1 for amount of Rs.2100/- was not legal. Since the prosecution has not discharged the primary burden on it to prove that the amount of Rs.2100/- allegedly demanded and accepted by accused no.1 was not towards any lawful collection, no presumption was liable to be drawn that the amount allegedly demanded and accepted by accused no.1 was an illegal gratification. In the circumstances, none of the accused could have been convicted by the Special Court.

17. The material on record reveals that the receipt at Exh.33 as well as receipt book at Exh.52 were sent for perusal of PW 3, namely, Sachindra s/o Pratap Singh for his consideration before according sanction to prosecute the accused no.1. It is evident that the sanctioning authority has also failed in appreciating that there was nothing on record to show that the amount as was allegedly demanded and accepted by the accused was illegal or unlawful. On the contrary, as has been deposed by the said officer, a practice was prevailing to purchase a receipt book from the open market. The sanction was also, thus, granted by PW 3 in mechanical manner and

shows utter non application of mind by him in according the sanction to prosecute accused no.1.

18. As has come on record through the evidence of PW 1 Pralhad, it was Police Inspector Hatote (PW 4) who directed him to pay the amount of Rs.2100/- to accused no.2. In view of the fact so deposed by PW 1, the conclusion recorded by the learned Special Judge that, it was accused no.1 who had directed the complainant to pay the amount to accused no.2, cannot be sustained. Accused no.2 in his defense has raised a specific plea that the complainant approached him and handed over him the amount of Rs.2100/- stating that he shall pay the said amount to accused no.1 and before he could make certain query in that regard, the raiding Anti Corruption Bureau Officers entered on the spot and caught hold of him. In absence of any cogent and sufficient evidence showing that the amount was accepted by accused no.2 consciously and on instructions of accused no.1, he was not liable to be held guilty under Section 12 of the P.C.Act.

19. It was sought to be canvassed by learned A.P.P. that the issuance of the receipt by accused no.1 without actually receiving the amount and subsequent acceptance of

the said amount by accused no.2 sufficiently proves the allegation of the prosecution that the said amount was demanded and accepted by the accused persons by way of illegal gratification. I am, however, not impressed with the argument so made. I reiterate that in absence of any primary evidence showing that the amount of Rs.2100/- as was allegedly demanded and accepted by accused no.1 was not towards any legal charges or legal remuneration no such conclusion can be recorded that the amount accepted by accused no.1 was an illegal gratification. Further, as I have noted earlier, it is unconscionable that a Government servant will issue a receipt of the amount which is alleged to have been received by him by way of bribe.

20. After having considered the entire material on record, it is difficult to agree with the conclusions recorded by the learned Special Judge holding the appellants – accused guilty for the offenses charged against them under the provisions of P.C.Act. As I have elaborately discussed hereinabove, the prosecution has utterly failed in proving the charges levelled against the accused. It is too well settled that in a case where the accused offers an explanation for receipt of the alleged amount, the question that arises for consideration is

whether that explanation can be said to have been established. It is further clear that the accused is not required to establish his defense by proving the same beyond reasonable doubt alike the prosecution; but, can establish the same by preponderance of the probability. In the instant case, as I have elaborately discussed in detail, since beginning it was the defense of accused no.1 that the amount as was demanded by him of Rs.2100/- were the legal charges for entering the names of three persons in the Gram Panchayat record on the property concerned in pursuance of order passed by the Civil Court. In absence of any contrary evidence on record, showing that the charges so demanded by accused no.1 were not the legal charges, no guilt can be attributed to accused persons. For the reasons stated above, the impugned judgment and order deserves to be set aside and quashed. In the result, following order is passed.

ORDER

1. The judgment and order dated 20.7.2012, passed by the Special Judge at Ahmedpur in Special (ACB) Case No.04 of 2011 (New), Special Case (ACB) No.01/2010 (Old), is quashed and set aside.

2) Consequently, appellant No.1 Feroj s/o Fatrumiya Shaikh and appellant No.2 Ayub s/o Dastgir Sayyed stand acquitted of all the charges levelled against them.

3) Their bail bonds stand cancelled.

4) Fine amount paid, if any, by them be refunded to them.

. Criminal Appeal, thus, stands allowed.

(P.R.BORA)
JUDGE

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AGP/