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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPEAL NO.709 OF 2001

The State of Maharashtra

...Appellant
(Orig. Complainant)

Versus

1. Vijay Dattatraya Jagtap
Age adult,
Sub Engineer, M.S.E.B.,
Hadapsar, Pune.
R/at. S.V.Desai Adosa Society,
Hadapsar, Pune.

2. Balasaheb Balchandra Godse
Age – adult, Occ. Service
R/at Mundhava, Pune.

...Respondents
(Orig. Accused Nos.1 to 2)

Ms.P.P.Shinde, A.P.P. for the Appellant – State.

Mr.Omkar Amberkar a/w Mr.Swapnil Mohite and Mr.S.R.Nargolkar i/b
Ms.Meenakshi Sakhare, for the Respondent No.1.

CORAM : REVATI MOHITE DERE, J.

DATE : 8th MAY, 2017

ORAL JUDGMENT :

1. This appeal, preferred by the appellant – State of Maharashtra is directed against the Judgment and Order dated 8th June 2001, passed by the learned Special Judge, Pune, in Special Case No.5 of 1990, by which, the respondent no.1-accused came to be acquitted of the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act and respondent no.2 came to be acquitted of the offence punishable under Section 12 of the Prevention of Corruption Act and under Sections 419 and 170 of the Indian Penal Code and both the respondents of the offence punishable under Section 120B of the Indian Penal Code.

2. A few facts, as are necessary, to decide the appeal are as under:-

The complainant is one Ramkishor Ramkripal Gupta, a resident of Hadapsar. According to him, he wanted to start an ice-candy factory, in a portion of his house, for which he required a 3 phase electric connection, for running 10 H.P Electric motor for the said intended ice-candy factory. He has stated that for getting the said 3 phase electric

connection, he had submitted an application on 10th March, 1989 in the office of the M.S.E.B. Pursuant thereto, the Executive Engineer, M.S.E.B, P.Z 'C' Zone, Pune, informed the complainant to contact the Assistant Engineer at Hadapsar. After receipt of the said letter on 18th March, 1989, the complainant went to the M.S.E.B. Office, Hadapsar, but could not meet the Engineer. On the next day i.e. on 19th March, 1989, the complainant again visited the M.S.E.B. office at Hadapsar at about 10.00 a.m, where he was informed that he should contact respondent no.1. Accordingly, the complainant met the respondent no.1 and enquired with him about the electric connection. The respondent no.1 traced the file of the complainant and informed him that he wanted to visit the site. Accordingly, the complainant took the respondent no.1 to the site, for inspection. According to the complainant, the respondent No.1 asked the complainant to drop him at Gadital, Hadapsar and told him that he will have to pay Rs.1,500/- as bribe if he wanted the work to be done immediately. The complainant expressed his inability and stated that the demand was excessive and that his financial condition was not good.

3. On 20th March, 1989, at about 9.30 a.m., the complainant

again visited the office of the respondent No.1 at Hadapsar. According to the complainant, the respondent No.1 refused to accept an amount less than Rs.1,500/- and informed the complainant that unless said amount was paid, work will not be done. According to the complainant, there was one person who was sitting near the table of respondent no.1 and that when the complainant left the chamber of respondent no.1, the said person followed him and asked him to pay the said amount. The said person is stated to be respondent no.2. Admittedly, the said person was not in the employment of M.S.E.B and is stated to be a wireman. According to the complainant, thereafter there was some interaction again on 23rd, 24th March, 1989 and 12th April, 1989. It is alleged that the respondent-accused had disclosed to the complainant, that unless the demand was fulfilled, his work will not be done. He has stated that finally he asked respondent no.1 to reduce the amount and it was decided that an amount of Rs.1,000/- will be paid. According to the complainant, he felt that unless the said bribe amount was paid, his work will not be done and therefore, he approached the A.C.B Office and lodged a complaint dated 13th April, 1989 (Exhibit – 53). Accordingly, panchas were called on 15th April, 1989 and a trap was laid, after giving instructions to both, the complainant and the panchas. The trap

which was laid for the said time was withdrawn and was thereafter again effected at 4.00 p.m. and thereafter, again a pre-trap panchanama was prepared. According to the complainant, the respondent-accused came to the shop of the complainant. It is alleged that the respondent no.1 informed the complainant, that the work had been done and that the respondent no.2 asked the complainant to complete his part of the work, pursuant to which, the complainant pulled out the bribe amount and allegedly held it in front of the respondent no.1. It is alleged that respondent no.1 asked the complainant to hand over the said amount to respondent no.2. Thereafter, a trap was effected and the respondent-accused were arrested. After investigation, charge-sheet was filed as against the respondent-accused.

4. The prosecution in support of its case examined 3 witnesses, PW1-Ramkishor Ramkripal Gupta, (complainant); PW2– Dattatray Laxman Shinde (panch) and PW3–P.I. Pramod Ekanath Honrao (Investigating Officer). The defence of the respondent-accused was that of total denial and false implication. According to the respondent-accused, the complainant had falsely implicated them in the said case. It was submitted that respondent no.1 had visited the site and submitted the map of the site

on 19th March, 1989 itself, and as such nothing was left to be done. It is submitted that the respondent no.1 had submitted his report on 20th March, 1989 and as such no work was required to be done. According to the respondent – accused, no demand was made by them. The learned Special Judge, after considering the evidence on record, was pleased to acquit both the respondent-accused of all the offences vide Judgment and Order dated 8th June, 2001. Hence this appeal.

5. Perused the papers as well as the impugned Judgment with the assistance of learned counsel for the parties. It appears from the impugned Judgment and Order that the learned Judge has completely disbelieved the evidence of the complainant, considering the material discrepancies and improvements in his evidence. The learned Judge has observed that the evidence of the complainant was untrustworthy and that he has changed his version from time to time. He has observed, that the complainant has falsely deposed the very genesis of the incident i.e. alleged demand and negotiations. The learned Judge, considering the material discrepancies, improvements and contradictions, carefully evaluated the evidence of the complainant and came to the conclusion that his evidence does not appear

to be credible and that his evidence reveals falsity, at every stage of the prosecution story. The learned Judge has in detail considered the complaint (Exhibit – 53), complainant's deposition, etc. He has further observed that there is also material discrepancy between the evidence of the complainant and PW.2 – Shinde (panch witness) with respect to the acceptance of the bribe amount by respondent no.2, on behalf of the respondent no.1. The learned Judge observed that if the evidence of complainant and PW.2- Shinde (panch) is read together, both of them have made inconsistent statements with respect to demand, at the time of the trap. It appears from the evidence of PW.2 – Shinde (panch), that without the respondent no.1 making any demand, the complainant took out the amount from the pocket and held the same in front of the respondent no.1 and thereafter handed it over to the respondent no.2. The learned Judge in view of the material on record has held that the evidence of the complainant with regard to demand and acceptance, at the time of the trap, is not supported by the PW2 - Shinde (panch) and that on the contrary, has falsified the evidence of the complainant, with regard to the same. The learned Judge also observed that there are material contradictions, with regard to whether the acceptance took place inside the counter or outside. The learned Judge has observed

that with respect to demand and acceptance at the time of the trap, PW3 – P.I. Pramod Honrao, who has claimed that he was present behind the cupboard in the shop, has altogether given a different version. Considering the inconsistencies in the statements of the 3 witnesses and 3 different versions regarding the incident of bribe, the learned Judge has stated that the prosecution has failed to prove the offences as against the respondent-accused and as such has acquitted them. It is pertinent to note, that there are material discrepancies, contradictions and improvements in the evidence of complainant *inter se* and between the complainant, panch and the Investigating Officer, with regard to demand and acceptance of the money. Infact, a perusal of the evidence shows that respondent no.1 had already recommended the case of the complainant for sanction of the balance load sought by the complainant and as such nothing was required to be done by the respondent no.1. Infact , PW3 – P.I. Honrao, has admitted that a report was submitted by the respondent no.1 – accused on 20th March, 1989 itself, and that after 20th March, 1989 i.e. after submission of the report, nothing was remained to be done by the respondent no.1. It is not in dispute, that the trap was effected after more than 3 weeks, of submission of the load survey report by respondent no.1 to his superiors. It also appears that the

complaint (Exhibit – 53) is silent with regard to the same.

6. Under these circumstances, it is difficult to accept that respondent no.1 had made any demand. Admittedly, it also appears that respondent no.1 had not accepted the money in his hand. As far as the evidence with regard to demand and acceptance of money, on the date of the trap i.e. 15th April, 1989 is concerned, there are several material discrepancies in the evidence of all the 3 witnesses. The findings are based on the evidence on record. No infirmity can be found in the impugned Judgment and Order dated 8th June, 2001, acquitting the respondent-accused. The impugned Judgment and Order cannot be said to be either perverse or unsustainable.

7. Considering the aforesaid, there is no merit in the appeal and the appeal is accordingly dismissed.

(REVATI MOHITE DERE, J.)