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

CRIMINAL APPEAL NO.754 OF 2002

The State of Maharashtra

...Appellant
(Orig. Complainant)

Versus

Shivaji Khashaba Kamble
Electric Inspector,
Piramal Nagar, Building No.II,
Block No.D/14, S.V.Road,
Goregaon (West),
Mumbai – 400 062.

...Respondent
(Orig. Accused)

Mr.Y.M.Nakhwa, A.P.P. for the Appellant – State.

None for the Respondent.

CORAM : REVATI MOHITE DERE, J.

DATE : 9th MAY, 2017

ORAL JUDGMENT :

1. This appeal, preferred by the appellant – State of Maharashtra is directed against the Judgment and Order dated 18th March, 2002, passed by the learned Special Judge, Greater Mumbai, in Special Case No.6 of 1990, acquitting the respondent-accused of the offences punishable under

Section 161 of the Indian Penal Code and under Section 5(2) r/w Section 5(1)(d) of the Prevention of Corruption Act, 1947.

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

The complainant – Hemant Bhikhubhai Dalal, was working as an Electrical Contractor and was carrying on the business by the name and style 'M/s.Hemant Electrical Enterprise'. Mr.Hukumsingh Verma had given contract of electrical fittings of 3 buildings of Maharaja Surajmal Co-operative Housing Society, Andheri, Mumbai and another contract for building Rajiv Co-operative Housing Society, Bandra (East), Mumbai, to the complainant. There was some dispute regarding payment between the complainant – Hemant and Mr.Hukumsingh Verma. In view of the dispute, the electrical contractor was changed for Rajiv Co-operative Housing Society, however later on, the contract was again entrusted to the complainant. After completion of the electrical work, test-report was to be submitted for installation of electric meters at the building of Rajiv Co-operative Housing Society, to BSES. The complainant did not give the said report and hence Mr.Hukumsingh Verma appointed another contractor i.e.

‘M/s.Kirlokar Engineering’. When the complainant learnt about the said development, he preferred an application (Exhibit – 14) to the respondent-accused, who was then the Electrical Inspector, PWD, and prayed for stay. The complainant sent another letter on 17th February, 1988 to the respondent-accused (Exhibit-15) in respect of the aforesaid dispute and requested that no other contractor be allowed to complete the work, till the dispute regarding the payment was settled. On 18th February, 1988, the respondent-accused alongwith his Assistant visited the site for inspection. The respondent-accused is alleged to have demanded payment of Rs.100/- for taxi fare. The respondent-accused is stated to have asked the complainant to come to his office on 23rd February, 1988. Accordingly, the complainant met the respondent-accused on 23rd February, 1988 at about 5.00 p.m. at his office. It is alleged that the respondent-accused suggested that if the complainant wanted a favorable order to be passed, the complainant should pay some amount. According to the complainant, he offered to pay Rs.500/-, however, the respondent-accused declined to accept the same. It is alleged by the complainant that he therefore kept Rs.1100/- in Chitralkha Magazine and gave it to the respondent-accused. It is stated that the respondent-accused addressed a letter dated 24th February, 1988

(Exhibit – 16) to the Chief Engineer (Commercial), Bombay Suburban Electrical Company, Santacruz, Mumbai and intimated him, that the test-report submitted by M/s.Hemant Electrical Enterprise should be accepted and that the report regarding documents submitted in this behalf, should be forwarded to him. It was also mentioned that the papers submitted by any other Contractor should not be accepted till enquiry was complete. As a result of the same, M/s.Kirlokar Engineering” withdrew the test-report submitted by them vide letter dated 22nd March, 1988 (Exhibit – 17). According to the complainant, he learnt subsequently that M/s.Kirlokar Engineering had submitted another test-report to BSES and hence from 19th April, 1988, the complainant started contacting the respondent-accused at his office. It is alleged by the complainant, that on 20th April, 1988, the respondent-accused informed him, that Mr.Verma had lodged a complaint against him and that unless a substantive amount was paid, the matter would not be decided in his favour. On 10th May, 1988, the complainant contacted the respondent-accused at his residence on telephone. It is alleged that during the said conversation it is was decided that the complainant should pay Rs.1100/- to the respondent-accused, on 11th May, 1988, after 3.00 p.m. at his office. Pursuant thereto, the complainant lodged a report

with ACB on 11th May, 1988, on the basis of which PW.9 – P.I Apraj recorded the complaint / FIR of the complainant (Exhibit – 18), PW9-Ghanshyam Apraj called 2 panchas i.e. Mr.Bajaj and Mr.Potnis and anthracene powder was decided to be used for the purpose of trap and was applied to the currency notes of Rs.1100/-, which were to be given to the respondent-accused. After applying anthracene powder on the said currency notes, the notes were kept by the constable in the shirt pocket of the complainant. The complainant was instructed not to make payment unless the bribe amount was demanded by the respondent-accused. It was explained to the complainant that if there was demand and acceptance of bribe, he should signal the raiding party by rolling his right shirt sleeve with his left hand. PW2-Asudomal Bajaj (Panch) was to be remain present with the complainant, during the trap and was directed to observe the developments and listen to the conversation. The Investigating Officer considered the possibility, that the panch may not be allowed to remain present with the complainant and hence decided to use cassette tape recorder. Accordingly, a micro cassette was played in the presence of both the parties to ensure that the tape was blank. The details of procedure followed for pre-trap was noted in the pre-trap panchanama (Exhibit – 24).

After completing the pre-trap arrangements, the raiding party proceeded to the office of the respondent-accused, which was situated on the 2nd floor of Mohta Market. It is alleged by the complainant, that when he reached the office of the respondent-accused, he told the respondent-accused that he had come for the stay and that he had brought money, as directed by him. He has stated that the respondent-accused enquired about Mr.Bajaj (panch). Thereafter, after a little conversation, the complainant was asked to leave and come after half an hour. Accordingly, the complainant and Mr.Bajaj went on the ground floor and communicated the said information to the Investigating Officer, PW9-Ghanshyam Apraj. Thereafter, again the complainant went to the respondent's office and informed him that he had brought money. It is alleged that the respondent-accused asked Mr.Bajaj to wait outside and that after Mr.Bajaj left, the complainant reminded the respondent-accused that he had earlier made payment by keeping the money in Chitralkha Magazine, however on this occasion he had not brought the money in the Magazine. It is alleged that he asked the respondent-accused whether money would be accepted without a Magazine and that the respondent-accused accepted the money and told the complainant that his work would be done. It is alleged that the respondent-

accused accepted the currency notes with his left hand and kept the same in his bag. Pursuant thereto, the complainant came out of the office and signaled the raiding party, pursuant to which, the raiding party entered the office and apprehended the respondent-accused. On examining the respondent-accused, it was found that there was anthracene powder on his left hand fingers, thumb of left hand, on the left side of his face, near left eyebrow and left side neck. The tape recorder was played and thereafter the cassette was kept in a sealed envelope and taken in custody. Pursuant thereto, post-trap panchanama (Exhibit – 25) was drawn. After investigation the papers were sent to the PW3-Mrs.Nisha Choubal Sanctioning Authority for obtaining sanction. After receipt of the sanctioning order dated 26th December, 1989 (Exhibit – 28), charge-sheet was filed against the respondent-accused, in the Court of the learned Special Judge, Greater Mumbai and charge was framed.

3. The respondent-accused pleaded not guilty and claimed to be tried. The prosecution in support of its case examined 9 witnesses, PW1-Hemant Bhikhubhai Dalal (Complainant); PW2-Asudomal Namomal Bajaj, panch to the pre-trap and post-trap panchanama; PW3-Mrs.Nisha Ramesh

Choubal, Sanctioning Authority; PW4-Hukumsingh Chandrasingh Verma, Building Contractor, where PW1-Hemant was doing electrical work ; PW5-Shripad Vishnu Tamse, Superintendent Engineer (Electrical) at Bombay Circle; PW6-Nandkumar Vishnu Damle, Assistant Engineer (BSES); PW7-Kamlakar Ganesh Kulkarni, Senior Clerk of Electrical Department, BSES; PW8-Deodatta Markand Bhoir, Cashier at the office of Electrical Inspector, Santacruz and PW9-P.I., Ghanshyam Ganpat Apraj (Investigating Officer). The defence of the respondent-accused was that the said amount was thrust into his hands while he was writing with his right hand. According to the respondent-accused, there is complete variance in the allegations made by the complainant with regard to the demand and acceptance with the actual transcript produced, inasmuch as, the transcript does not show any demand or acceptance as alleged. It was contended that the said transcript was not placed before the sanctioning authority, which shows that money was neither demanded nor accepted by the respondent-accused, thus making the sanctioning order vulnerable to challenge. After considering the evidence and documents on record, the learned Judge was pleased to acquit the respondent-accused of all the offences with which he was charged.

4. Perused the documents as well as the impugned Judgment with the assistance of the learned APP. It appears that the learned Judge has acquitted the respondent-accused, as the prosecution had failed to adduce credible evidence to show, that the respondent-accused had demanded and accepted the illegal gratification for showing favour to the complainant – Hemant Dalal, either on 23rd February, 1988 or on 11th May, 1988 at his office. The learned Judge has minutely considered the evidence of the complainant and other witnesses and has disbelieved the testimony of the complainant, on the basis of the material and has on the contrary, accepted the evidence on record which shows that the explanation offered by the respondent-accused that the currency notes were thrust under the fingers of his left hand, when he was writing, as probable. Admittedly, PW2-Asudomal Bajaj (Panch) was not present in the office at the relevant time, as according to the complainant, he was asked to leave on the day when the trap was laid i.e. on 11th May, 1988. The learned Judge has rightly observed that there are material contradictions in the allegations made by the complainant in his complaint and oral testimony with regard to demand and acceptance of money with the tape recorded conversation (transcript) produced by the prosecution. The learned Judge after

perusing the transcript has rightly observed that there is nothing in the transcript, to show that there was any demand made by the respondent-accused and acceptance. The learned Judge has observed that the defence taken by the respondent-accused is probable, that the respondent-accused was writing with his right hand and had kept his left hand on the left side of the face while writing, when the complainant thrust the money between his hair and fingers of left hand. The learned Judge, on the basis of the material on record accepted the defence of the respondent-accused, that he felt, the said amount was with respect to the fee to be paid and hence kept it in his bag. The learned Judge has disbelieved the complainant. He has observed that the respondent-accused, an Electrical Inspector had no power to grant stay to the installation of electricity meters and that the power regarding installation of electricity meters vested in the concerned authority of the BSES. The learned Judge has rightly observed, that the duty of the respondent-accused as an Electrical Inspector was only to find out, whether the wiring was properly done or not and whether the test-report could be accepted. According to the respondent-accused, he was falsely implicated so that the installation of the meters at the building would be delayed and that the complainant would get time to recover the dues to the extent of

Rs.2,25,000/- from the builder. The learned Judge has rightly observed that the conversation recorded in the cassette is in complete variance with the conversation testified to by the complainant and that there is no reference to acceptance and demand of money in the recorded conversation. In view of the material contradictions in the evidence of the complainant and tape recorded conversation, the learned Judge has rightly rejected the evidence of the complainant with regard to demand and acceptance of illegal gratification. The learned Judge has observed that the jurisdiction of the respondent-accused was limited only to the verification of the fact that the wiring is done properly and that the respondent-accused had no power to interfere in a dispute between the electrical contractor and the builder regarding payment of money. It was further observed, that the facts and documents reveal, that the complainant was aware that the respondent-accused could no longer delay the installation of meters, unless some objection in respect of the defect in the wiring was raised. Infact, the learned Judge has observed that the transcript of the conversation clearly showed that the respondent-accused was persistently denying that he had earlier extended any support to the complainant. Infact, the respondent-accused had emphasized that he had no concern with the dispute between

the complainant and the builder in categorical terms and had made it clear that it was the problem of the complainant and had also refused to call the builder. The learned Judge has rightly observed that apart from the oral testimony of the complainant there was no corroboration to the said evidence, regarding demand and acceptance and that there is no reference to the Chitralkha Magazine in the transcript as alleged by the complainant in his oral testimony. Admittedly, the panch was not present on the spot at the relevant time. It is not the prosecution case that the respondent-accused was a lefty and hence had accepted the money in his left hand. Infact, the defence of the respondent-accused appears to be probable that the respondent-accused was sitting and writing with his right hand and had kept his left hand on his face and that the complainant had thrust the money in his left hand fingers. The finding of the anthracene powder on his left side of the neck and on hair lends credence to the defence theory, that money was thrust in the respondent-accused's hands. The evidence of the witnesses also shows that the said transcript does not disclose any demand or acceptance. Thus, except the oral testimony of the complainant, there is no corroboration to the same. The tape recorded conversation does not support the complainant's case. There is no credible evidence to show that

earlier demand of Rs.1100/- was made by the respondent-accused to the complainant on 23rd February, 1988. Admittedly, the tape recorded conversation was also not placed before the Sanctioning Authority, however, the learned Judge has not gone into the said aspect and has acquitted the respondent-accused, considering the absence of credible evidence adduced by the prosecution with regard to demand and acceptance of illegal gratification of the respondent-accused.

5. The impugned Judgment can neither be said to be perverse nor unsustainable. Hence, no interference is warranted in the same.

6. Accordingly, the appeal is dismissed.

(REVATI MOHITE DERE, J.)