

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.149 OF 2003

Bharat Janrao Deokar
Age: 36 years, Occu: Service,
R/o: Hudco, Aurangabad.

...Appellant

VERSUS

The State of Maharashtra

...Respondent

.....
Shri. V.D. Sapkal, Advocate for Appellant.
Shri. A.A. Jagatkar, APP for Respondent/State.
.....

**CORAM : P.R. BORA, J.
DATED : 8th MARCH, 2018**

JUDGMENT

1. The appellant has filed the present appeal against the judgment and order passed by the Special Judge, at Aurangabad in Special Case No.16/1997 decided on 31.01.2003. Vide the impugned judgment, the appellant has been convicted for the offences punishable under Section 7 and Section 13(1)(d) read with Section 13 (2) of the Prevention of Corruption Act and is sentenced to suffer simple imprisonment for six months with fine of Rs.200/- for the offence punishable under Section 7 of the Act, whereas, simple imprisonment for the period of one year with fine of Rs.300/- for the offences punishable under Section 13 (1)(d) read with Section 13(2) of

the Act.

2. At the relevant time, the accused was serving as a Building Inspector in the Municipal Corporation at Aurangabad. It was alleged that, the accused demanded illegal gratification from one Meerabai Pandurang Shirsat for not demolishing the illegal construction carried out of the basement in the plot owned by her elder brother-in-law, namely Ganpatrao M.Shirsat in Gadia Park, Sanjay Nagar, Aurangabad.

3. The accused was alleged to have demanded Rs.500/- by way of bribe. According to the case of prosecution, on such complaint made by one Meerabai with the Anti Corruption Bureau, the further process was carried out by the said office. The complaint was lodged by Meerabai on 23.06.1997. Whereupon, the trap was laid on the same day and it is alleged that, the accused was trapped by the raiding party while accepting the bribe of Rs.500/-. After completing investigation in the matter, the charge-sheet was filed against the accused for the offences punishable under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and he was tried by the Special Court for the said offences.

4. In order to bring home the guilt of the accused, four witnesses were examined by the prosecution. The accused had taken the defence of total denial and false implication at the instance of one Noor Jahan Begam, the Municipal Corporator of the concerned area. The Special Judge, after having assessed the oral and documentary evidence brought on record, held the accused guilty for the offences charged against him and sentenced him to suffer the punishment as noted here-in-above. Aggrieved by, the accused has preferred the present appeal.

5. Shri V.D. Sapkal, learned counsel appearing for the appellant-accused assailed the impugned judgment on various grounds. The learned counsel submitted that the trial Court has utterly failed in properly appreciating the evidence on record, which has resulted in recording of erroneous findings by him. The learned counsel further submitted that, though complainant Meerabai in her examination-in-chief itself has deposed that the accused had never come to her and demanded Rs.500/- as bribe and that on instructions of the lady Municipal Corporator, she had thrust the amount of Rs.500/- in the pocket of the accused, the learned Special Judge has discarded the said evidence for wrong reasons.

Learned counsel further submitted that, though the prosecution has failed in bringing on record any cogent and sufficient evidence to prove the demand as well as the acceptance of the alleged bribe amount by the accused, the Special Judge has held the accused guilty for the offences under the Prevention of Corruption Act. The learned counsel further submitted that, the trial Court has failed in appreciating that the case attempted to be made out by the prosecution was unbelievable and improbable too. The learned counsel further submitted that, the sanction accorded by Municipal Commissioner, Aurangabad to prosecute the accused for the offences under the Prevention of Corruption Act was invalid and though such plea was raised by the accused since beginning of the trial, the same was not considered by the Special Court. The learned counsel submitted that, the Municipal Commissioner does not have any power to remove the accused from the service of the Corporation and such authority and the power lies with the Standing Committee of the Municipal Corporation. According to the learned counsel, in absence of valid sanction, the Special Court could not have even taken cognizance of the charges leveled against the appellant-accused. According to the learned counsel, the entire criminal prosecution was thus liable to be vitiated. Learned counsel submitted that, the impugned

judgment, therefore, cannot be sustained and deserves to be quashed.

6. Learned APP Shri A.A. Jagatkar, supported the impugned judgment and order. The learned APP submitted that, the prosecution has sufficiently proved the demand as well as the acceptance of the bribe amount by the accused from Meerabai (PW 1) by way of illegal gratification to save her illegal construction by bringing on record the necessary evidence. The learned APP further submitted that, the Municipal Commissioner was the competent authority to accord sanction to prosecute the accused for the offences under the Prevention of Corruption Act. The learned APP, therefore, prayed for dismissal of the appeal.

7. I have carefully considered the submissions advanced by the learned counsel appearing for the appellant and the learned APP appearing for the respondent-State. I have also perused the impugned judgment and the entire evidence on record. Perusal of the impugned judgment reveals that, though the complainant did not support the case of the prosecution, the learned Special Judge, relying upon the evidence of the panch witness and the Investigating Officer has

held the accused guilty for the offences under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act. It appears that, the learned Special Judge at the very initial stage had formed an opinion that, complainant Meerabai (PW 1) was won over by the accused in the meanwhile period and that was the reason that she did not support the case of the prosecution and disowned that she had filed any such complaint against the accused that he had demanded illegal gratification of Rs.500/- from her to save her illegal construction. The learned Special Judge, has observed that, the tendency of the complainants and the witnesses turning hostile is day by day increasing. Had these observations been recorded by the Special Judge after scrutinizing the entire evidence on record, it could have been understood that, the conclusions so drawn by the learned Special Judge have some foundation. However, without even examining the veracity of the evidence of panch witness as well as the Investigating Officer, such opinion appears to have been formed by the learned Special Judge.

8. It is not in dispute that, complainant Meerabai (PW

1) did not support the case of the prosecution in her substantive evidence before the Court. Though she was exhaustively cross-examined by the learned APP, no such material could be elicited on the basis of which, an inference could have been drawn that the accused had in fact demanded or accepted any illegal gratification by the complainant. However, in her cross-examination by the learned counsel for the accused it has come on record that, Municipal Corporator Noor Jahan Begam had told the complainant to put the notes in the pocket of the accused. It has also come on record in her cross-examination by the accused that, though she thrust the tainted notes in the pocket of the accused, he took out the said notes by his left hand from his pocket and put them on the cot. It has also come on record that, PW 1 Meerabai again put those notes in the pocket of the accused.

9. In order to prove the guilt of the accused, four witnesses were examined by the prosecution. As noted above, the very first witness i.e. complainant did not support the case of the prosecution. Shri. Datatraya Narayan Vaidya was the second witness examined by the prosecution. Shri Dattatraya Narayan Vaidya was at the relevant time, Commissioner of the Municipal Corporation, at Aurangabad and had accorded the

sanction to prosecute the accused for the offence under the Prevention of Corruption Act. According to the learned counsel appearing for the accused, said Shri Vaidya (PW 2) was not having any authority to grant sanction to prosecute the appellant for the offences under the Prevention of Corruption Act. The learned Special Judge has rejected the said objection. However, I would deal with this issue later on.

10. Shri.Deojinath Ashruji Kurade (PW 3) was the third witness examined by the prosecution. He had acted as a panch witness in the trap laid against the accused by the Anti Corruption Bureau. He was throughout accompanying complainant Meerabai. Testimony of this witness has been believed by the learned Special Judge. The learned Special Judge has also fully relied upon the evidence of Investigating Officer. Shri. Hanumant Panditrao Kulkarni, Dy.S.P., Anti Corruption Bureau. As has been observed by the learned Special Judge, panch witness Deojinath (PW 3) has supported the prosecution case on all the counts.

11. Per contra, it has been vehemently argued on behalf of the accused that, no reliance could have been placed on the evidence of PW 3 Deojinath for many reasons. It was the

contention of Shri.V.D. Sapkal, the learned counsel appearing for the appellant, that, Deojinath (PW 3) was provided with the copy of the panchnama on the day summons was served upon him i.e. on 20.12.2002 and he returned the said copy to the police persons on the day his evidence was recorded in the Court i.e. 02.01.2003. It was the contention of the learned counsel that, the testimony of Deojinath (PW 3) was thus a puppet version of the panchnama prepared in the present matter. According to the learned counsel, no reliance thus could have been placed on the evidence of Deojinath (PW 3).

12. In order to support his contention, the learned counsel relied upon the judgment of the Division Bench of this Court in the case of **Sharad Namdeo Shirbhate Vs. State of Maharashtra, 2007 All.M.R. (Cri) 352**, wherein, in the similar circumstances, the evidence of the witness who refreshed his memory in the same manner as was refreshed by Deojinath (PW 3), was disbelieved. It was the contention of the learned APP in the said matter that, since the incident happened prior to nine years, there was nothing wrong in the witness refreshing his memory by reading his statement before deposing about the incident giving minute details. This Court rejected the said contention with the following observations in

Paragraph No.10 of the said judgment:-

“ There would indeed be nothing wrong in the witness refreshing his memory, but that ought to be done before the Court and not outside the Court. In order to test the veracity of a witness, he would be required to recollect the incident out of his own memory and should he falter on some material aspect, he could be allowed to refresh his memory with reference to the contemporaneous records of the incident created by the police. It would not be permissible for such a witness to stealthily refresh his memory before entering the Court and deposing about the entire evidence giving minute details as if he was reeling them out from his memory. Therefore, the objection to the reliability of evidence of P.W.2 Prabhakar taken by the learned counsel for the appellant is valid.”

13. The above reasoning has been subsequently affirmed by the another Division Bench of this Court in the case of ***Suresh s/o Purushottam Ashtankar Vs. State of Maharashtra and another, 2015 ALL MR (CRI) 4243.***

14. In the instant matter, the trap was laid on 23.06.1997 and the evidence of Deojinath (PW 3) was recorded before the Court on 02.01.2003 i.e. after the period of about 5 and ½ years. As has been admitted by the said witness in his cross-examination he lastly read the panchnama, when the copy of summons was received to him. As further deposed by him, the copy of summons was received to him on 28.12.2002. The said witness has further deposed that, he returned the copy

of the said panchnama on 02.01.2003 i.e. on the day his evidence was recorded before the Special Court. PW 3 was thus possessing the copy of panchnama with him for the period of more than 12 days. There is every reason to believe that during the said period Deojinath (PW 3) must have many times read the said panchnama. In the circumstances, there is substance in the objection raised by the learned counsel appearing for the appellant that whatever was deposed by Deojinath (PW 3) in his testimony before the Court was not a natural version but was a puppet version of the panchnama, the copy of which was before hand provided to him and was in his possession for more than 12 days. It was, therefore, unsafe to rely on the testimony of the said witness. The fact that Deojinath (PW 3) did not depose about the alleged incident out of his own memory is crystallized by some answers given by him in the cross-examination. Deojinath (PW 3) has deposed in his cross-examination that, it did not happen that, the accused was called upon to give his explanation about the raid at the house of Meerabai. He further denied that, at the relevant time it was said by the accused that, Meerabai had forcibly put the currency notes in his pocket. The explanation so given by the accused at that time is at Exhibit-23. In his cross-examination, Shri. H.P. Kulkarni (PW 4) the Dy.S.P., Anti Corruption Bureau

has stated that, the statement of the accused was recorded immediately after the trap. The said hand written statement was shown to Shri.Hanumant P. Kulkarni (PW 4) during the course of his cross-examination and he admitted that, it was the same statement which was given by the accused immediately after the trap. Thereafter, the said statement was accepted and marked at 'Exhibit-23'. From the facts as aforesaid it is evident that Deojinath (PW 3) was not recollecting the incident out of his own memory and whatever he deposed before Court was a mere reproduction of the contents of Panchnama, copy of which was before hand provided to him and was in his possession for more than 12 days. In the circumstances, according to me conviction of the accused could not have been based on the evidence of said Deojinath (PW 3).

15. There are certain more circumstances, which have also raised serious doubts about the truthfulness in the case of the prosecution. Meerabai (PW 1) in her testimony before the Court deposed that, without there being any demand from the accused, she, on instructions of Municipal Corporator Noorjahan Begam, thrust the notes in the pocket of the accused. She has further deposed that, the accused drew out the said notes from his pocket with his left hand and put it on the cot. She has

also deposed that, she again put the said notes in the pocket of the accused. As against it, Deojinath (PW 3) has deposed that, the accused called upon Meerabai to give him Rs.500/- and Meerabai then took out the tainted notes from her clothbag and held the same before the accused. He has further deposed that, the accused then collected those notes with his left hand and confirmed that, it were Rs.500/- and put them in the left pocket of his shirt. While the version of complainant Meerabai has been disbelieved by the trial Court, the facts stated by Deojinath (PW 3) have been fully relied upon by the learned Special Judge. However, the facts which have subsequently come on record have raised serious doubts about the truthfulness in the facts deposed by Deojinath (PW 3).

16. As has come on record the hands of the accused were examined in light of the ultra-violet lamp and the glittering was noticed only on the left hand fingers and the palm of the accused. In the panchnama at exhibit-15 it is noted that, the accused accepted the wad of currency notes with his left hand, counted the said notes with his left hand and then put the said notes on the left side pocket of his shirt. It appears quite improbable that, the currency notes, may be only five in number, could have been counted by the accused only with his

left hand. As was argued by the learned Counsel for the accused, since the traces of anthracene powder were noticed only on the left hand finger and palm of the accused, the prosecution seems to have put forth the story that the accused accepted as well as counted the tainted notes with his left hand. Such story cannot be believed and has to be rejected.

17 As against the case of the prosecution as aforesaid, the accused has since beginning taken a defense that the complainant Meerabai thrustured the tainted currency notes in his pocket though no such amount was ever demanded by him. It was the further contention of the accused that he immediately took out the said tainted currency notes from his pocket with his left hand and put the said notes on the cot, however, Meerabai again forcibly tried to put the said notes in his shirt pocket and while she was doing so, the raiding party members entered into the said hall and caught hold of him and showed recovery of the tainted amount from his shirt pocket. In her testimony before the Court, complainant Meerabai has narrated the same story. It is significant to note that in his statement which was immediately recorded by the Anti Corruption Bureau Officer after the incident of trap, the accused has stated that the tainted currency notes were thrustured by Meerabai in his

shirt pocket and though he put out the said amount and kept it on the cot, Meerabai again forcibly put the said notes in his shirt pocket and immediately thereafter the raiding party members caught hold of him. The defense so taken by the accused, if considered in the light of the facts stated by the complainant Meerabai in her testimony before the Court and the statement given by the accused immediately after the trap, appears believable and probable too. From the facts as aforesaid, there is every reason to believe that the traces of anthracene powder were seen on the left hand fingers and palm of the accused for the reason that he had taken out the tainted currency notes from his pocket by his left hand. I reiterate that had there been a ring of truth in the prosecution story that the accused voluntarily accepted the bribe amount of Rs.500/- from the complainant and after counting the same put it in the left pocket of his shirt, the traces of anthracene power must have been noticed on the fingers of both the hands and not alone of the left hand. Thus, the evidence brought on record by the prosecution to prove that the accused voluntarily accepted the bribe amount of Rs.500/- and in the raid conducted by the Anti Corruption Bureau officers the said amount was recovered from the person of the accused is not free from doubt, the benefit of which would certainly go to the

accused.

18. In view of the facts as above, the submission made by the learned A.P.P. that presumption under Section 20 of the Prevention of Corruption Act was raised against the accused since the tainted currency notes of Rs.500/- were recovered from the person of the accused, but the accused did not rebut the said presumption, has to be rejected.

19. Not only that the prosecution has failed in bringing on record any cogent and dependable evidence to prove that the bribe amount was accepted by the accused, the prosecution has also failed in bringing on record any unimpeachable evidence to prove that the illegal gratification of Rs.500/- was demanded by the accused from the complainant for not taking any action against the brother-in-law of the complainant for carrying out the construction of basement without any proper permission therefor. In fact, it is well settled that mere recovery of an amount is not sufficient to prove that the amount so recovered was accepted by the accused by way of illegal gratification unless it is proved that such amount was demanded by the accused by way of illegal gratification. It is a matter of record that the complainant did not depose any such

fact before the Court that the amount of Rs.500/- was demanded by the accused by way of bribe for not taking any action for the illegal construction of the basement carried out by her brother-in-law. Though complainant was cross examined by the learned A.P.P., even in the cross examination he could not elicit any such admission from the complainant to the effect that the accused has demanded Rs.500/- from her by way of illegal gratification.

20. It was sought to be contended by the learned A.P.P. that PW 3 Deojinath in his testimony before the Court has specifically deposed that in his presence the accused had asked complainant Meerabai to give Rs.500/- and, accordingly, the said amount was paid by Meerabai to him. It is not in dispute that before laying the trap, there was no demand verification. According to prosecution, in the written complaint filed by complainant Meerabai, she had complained that the accused has demanded the amount of Rs.500/- from her by way of bribe and relying on the complaint so given by said Meerabai, without carrying out the demand verification, the further process was undertaken of laying the trap. The prosecution has heavily relied upon the evidence of PW 3 Shri Deojinath for proving that the bribe amount was demanded by the accused. However, as

noted by me earlier, no reliance can be placed on the evidence of PW 3 Shri Deojinath. As observed by me, PW 3 did not depose the facts in regard to the alleged incident out of his own memory. It is difficult to rule out the possibility of PW 3 Shri Deojinath reproducing the contents of the Panchnama, as because the copy of the said Panchnama was beforehand made available to him and was with him for a period of about 12 days and that was the reason that every minute detail incorporated in the Panchnama was reproduced by him in his evidence before the Court. If the evidence of PW 3 is kept aside, there remains no evidence as about the demand of illegal gratification by the accused.

21. From the material on record, it is revealed that another employee of the Corporation, namely, Gangavane was accompanying the accused when he first had been to the house of the complainant Mirabai. Investigating Officer Shri Kulkarni (PW 4) has admitted in his cross examination that during investigation it was revealed to him that labour Gangavane was accompanying the accused when he had first gone to the place of complainant Meerabai for the purpose of demolition. The Investigating Officer has further admitted that there was no demand of money by the accused in presence of Shri

Gangavane.

22. In the alleged written complaint filed by complainant Meerabai on 23rd of June, 1997, in the Office of Anti Corruption Bureau, it is mentioned that on Saturday i.e. 21st of June, 1997, the accused and some other persons had been to the place of alleged illegal construction for its demolition and at that time, the accused had demanded Rs.500/- for not taking any adverse action in regard to the construction of basement being carried out by the complainant. It is further mentioned that on Monday i.e. 23rd of June, 1997 also, the accused and one person had been to his house in the morning at 9.30 a.m. As admitted by Shri Kulkarni in his cross examination, during the course of investigation, it was revealed that the person who, at the relevant time, was accompanying the accused, was labourer Gangavane. Said Gangavane could have been examined by the prosecution to prove the fact that the amount of Rs.500/- was demanded by the accused from the complainant Meerabai in his presence. The prosecution has admittedly not examined the said witness. In fact, the A.C.B. Officers must have conducted the verification of the demand of illegal gratification by the accused as complained by Mirabai. It was possible to send someone as a

witness along with the complainant to verify the demand of illegal gratification by the accused. The telephonic conversation was also possible to be recorded by asking the complainant to call the accused on telephone and discuss the issue as about the demand made by the accused. The conversation of the accused with the complainant was also possible to be taperecorded to verify the demand. None of such mode was adopted by the Anti Corruption Bureau Officers before laying the trap against the accused. Thus, the prosecution has failed in bringing on record any cogent evidence to prove the demand of illegal gratification by the accused. Thus, the very basic ingredient for holding the accused guilty for the offense punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C.Act has not been satisfied in the present matter. In the circumstances, the learned trial Judge could not have held the accused guilty for the aforesaid offenses.

23. In paragraph No.21 of its judgment in the case of P.Satyanarayana Murthy v. Dist. Inspector of Police and Anr. (2015 CRI.L.J. 4670), the Honourable Apex Court has held thus:

"21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)

(d) (i) & (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act."

In paragraph No.22 thereof, the Honourable Apex Court has further observed thus:

"22. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder."

In the case of N.Sunkanna v. State of Andhra Pradesh (2015 Cri.L.J. 4927), also the Honourable Apex Court has held that mere possession and recovery of currency notes from the accused without proof of demand would not constitute offense under Section 7. It is further observed that unless there is proof of demand of illegal gratification, proof of acceptance will not follow legal presumption under Section 20. In the instant matter also, as I have noted above, the prosecution has utterly failed in proving the demand. As such, in view of the law laid down as above by the Honourable Apex Court, failure of prosecution to prove the demand would not entail in conviction of the appellant - accused for the offenses under Sections 7 or 13 of the Prevention of Corruption Act.

24. It was sought to be canvassed by learned A.P.P. that though the complainant might not have supported the case of the prosecution, the evidence of the other prosecution witnesses and the circumstances which have come on record are sufficient to prove the guilt of the accused. Learned A.P.P. submitted that the complainant has not denied or disputed that her brother-in-law was carrying out the construction of basement in a plot situated in Gadia Park and she and her husband were looking after the said construction. Learned A.P.P. further submitted that the complainant has also not denied or disputed that the Corporation employees had been to the spot of the said construction for demolishing the same as the same was being carried out unauthorizedly without obtaining any permission therefor from the Corporation. Learned A.P.P. further submitted that the complainant has also admitted that the said employees had called her upon to show the permission for construction. Learned A.P.P. submitted that it is nowhere the case of the complainant Meerabai that she was possessing the permission for construction and that the same was shown to the Municipal employees. According to the learned Counsel, it has been sufficiently proved by the prosecution that the construction being carried out was unauthorized construction. Learned A.P.P. submitted that,

thus, there was every reason for the accused to visit the said spot and as admitted by him, he has actually visited the said spot. Learned A.P.P. further submitted that from the conduct of the accused it has been sufficiently proved that he had demanded illegal gratification from the complainant and for that purpose had visited the house of the complainant not only once but thrice. Learned A.P.P. submitted that if the construction being carried out was found to be unauthorized, the legal course would have been to issue notice to the person who is carrying out the said construction and not to repeatedly visit the house of the said person. Instead of taking legal recourse, when the accused had preferred another course, his conduct is capable of drawing an inference that he was inclined to favour the complainant Meerabai by accepting illegal gratification from her. Learned A.P.P. had also submitted that there is no reason for disbelieving the evidence of Deojinath (PW 3) who is an independent witness. Learned A.P.P. also submitted that reference to lady Corporator Smt. Noor Jahan had come only in the cross examination of complainant Meerabai conducted on behalf of the accused. For all these circumstances, according to learned A.P.P., no interference was warranted in the judgment and order passed by the trial Court.

25. I am, however, not convinced with the submissions so made by the learned A.P.P. From the fact which has come on record that the squad of the Municipal employees had reached on the spot to demolish the construction of basement, possibility of the construction being carried out without permission has certainly been brought on record. However, since a plea was raised by complainant Meerabai that she was possessing the permission for construction of the basement, an opportunity was afforded to her to show the said permission. It was further contended by complainant Meerabai that said permission was in possession of her husband. Perhaps that was the reason that the accused visited the house of complainant Meerabai on or about three occasions. Merely because accused repeatedly visited the house of complainant, it would be unjust and improper to jump to the conclusion that the accused was visiting the house of the complainant for assuring protection to the said construction by obtaining illegal gratification from her. I have elaborately discussed hereinabove that the evidence which has been brought on record by the prosecution falls short in proving that any illegal gratification was demanded by the accused and that the same was accepted by him.

26. After having considered the entire evidence on record, it does not appear to me that on the basis of the evidence which has been brought on record by the prosecution, the guilt of the accused can be said to have been proved beyond reasonable doubt. The evidence brought on record by the prosecution is not free from doubt the benefit of which would certainly go to the accused. Learned trial Court has implicitly relied on the evidence of PW 3 Deojinath which has resulted in miscarriage of justice. In absence of any unimpeachable evidence against the accused proving that any illegal gratification was demanded and accepted by him, it would be unsafe to convict the accused. For the aforesaid reasons the impugned judgment and order cannot be sustained and deserves to be quashed and set aside.

27. Since beginning it was the case of the accused that he was falsely implicated in the alleged offense. In his statement under Section 313 of Cr.P.C., the accused has specifically implicated the name of one Noor Jahan Begum to be behind filing of a false case against him through complainant Meerabai. . During the course of the trial also, suggestions in that regard were given by the accused to the prosecution witnesses in their cross examination. The material on record

reveals that complainant Meerabai has clearly admitted that she had thrusting tainted currency notes in the pocket of the accused on instructions of Municipal Corporator Smt. Noor Jahan Begum. The accused has also brought on record necessary documents showing that said Smt. Noor Jahan Begum was carrying out illegal construction in the plot situated at Sanjay Nagar for which the notices were issued to her. The documents filed on record by the accused also evince that the Encroachment Removal Squad of the Corporation had removed the encroachment made by said Smt. Noor Jahan Begum and in that process has seized 18 cement sheets. The documents brought on record also indicate that at the relevant time the accused was working in the concerned Department. It was the contention of the accused that said Smt. Noor Jahan Begum was, therefore, having grudge against the accused. It was the further contention of the accused that in regard to demolition of construction of her basement, when complainant Meerabai approached Smt. Noor Jahan Begum being Corporator of the said area, she availed the said opportunity to get filed a false complaint against him through said Meerabai. From the circumstances which are brought on record by the accused, possibility of his false implication in the alleged crime at the instance and instigation of Smt. Noor Jahan Begum, the then

lady Municipal Corporator, is difficult to be ruled out.

28. Now, about the issue of sanction. The sanction granted by PW 2, the then Municipal Commissioner of the Municipal Corporation, Aurangabad, to prosecute the accused for the offenses punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act also cannot be held valid. Accused was admittedly working as a Class III employee at the relevant time. In the circumstances, before according sanction to prosecute him for the offenses punishable under Prevention of Corruption Act, the Municipal Commissioner was under an obligation to seek approval of the Standing Committee of the Aurangabad Municipal Corporation. Admittedly, no such approval has been obtained by PW 2, the then Municipal Commissioner before according the sanction to prosecute the accused. Learned Counsel for the accused had relied upon the judgment of the Division Bench of this Court in the case of Bharatkumar s/o Kishanlal Jaiwal Vs. Municipal Corporation, Aurangabad (Writ Petition No.341 of 1990). In the said matter, the approval of the Standing Committee was not obtained before dismissing the petitioner therein and, therefore, the impugned order passed by the Municipal Commissioner dismissing the said petitioner from service was

set aside. As provided under Section 19(3) of the P.C.Act, the sanction to prosecute the Government servant can be granted by the authority competent to remove the said Government servant from his office. The provisions contained in the Bombay Provincial Municipal Corporations Act, 1949, and more particularly, the proviso to Section 56(1) shows that the previous approval of the Standing Committee for dismissing the Municipal Officer or servant whose monthly salary, exclusive of allowances, exceeds Rs.200/- is mandatory. In the instant matter, the accused was admittedly drawing the salary more than Rs.200/-. In the circumstances, without the approval of the Standing Committee, the Municipal Commissioner could not have granted sanction to prosecute him for the offenses punishable under the provisions of P.C.Act. Without valid sanction for prosecution of the accused the learned Special Court, in fact, should not have taken cognizance of the offenses alleged against the appellant - accused. This is an additional ground which makes the order of conviction passed by the trial Court unsustainable.

29. After having considered the evidence on record, I have no hesitation in holding that, on the basis of such evidence conviction of the accused could not have been

recorded by the trial Court. The learned trial Judge failed in appreciating the defense raised by the accused since beginning that without there being any demand from his side of any illegal gratification, the complainant thrust the currency notes into the pocket of his shirt and when he took out those currency notes by his left hand, obviously, the left hand fingers and left hand palm got smeared with anthracene powder on the said currency notes. The defense of the appellant was quite probable, however, was erroneously discarded by the learned trial Judge. The learned trial Judge also did not consider the evidence brought on record by the accused showing that the lady Corporator Smt. Noor Jahan Begum had got the report lodged against the accused and also had instigated complainant Meerabai to thrust the tainted currency notes in his pocket. Though the evidence of PW 3 Deojinath was heavily relied upon by the prosecution as well as by the learned trial Judge, I have elaborately discussed as to how the evidence of the said witness could not have been implicitly relied upon to base the conviction of the accused. For the aforesaid reasons, the order of conviction cannot be sustained.

30. In the result, following order is passed:

ORDER

1. The order passed in Special Case No.16/1997 dated 31st of January, 2003, is quashed and set aside. The appellant - accused Bharat Janrao Deokar is acquitted of all the charges levelled against him. His Bail bonds shall stand cancelled. The fine amount, if any, paid by the appellant -accused shall be refunded to him. Criminal Appeal (No.149 of 2003), thus, stands allowed.

(P.R.BORA)
JUDGE

...

Sameer/agp/