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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 522 OF 2012
WITH
CRIMINAL APPLICATION NO.1479 OF 2016

Mr. Khushalchand Yashwant Gaikwad ..APPELLANT

Vs

The State of Maharashtra ..RESPONDENT

Mr. Satyavrat Joshi, for Appellant.
Ms. V.S. Mhaispurkar, APP for State.

CORAM : A.S.GADKARI, J.
DATE : 18th APRIL 2018.

JUDGMENT:

1] The present appeal is directed against the Judgment and Order dated 31st March 2012 passed by the learned Special Judge, Karad, District-Satara in Special Case No. 13 of 2009, thereby convicting the appellant for the offence punishable under Section 7 and under Section 13(1) (d) read with 13(2) of Prevention of Corruption Act, 1988 and is sentenced to suffer rigorous imprisonment for one year on each count and to pay fine of Rs.1000/- (One Thousand) on each count, default of payment of find to suffer simple imprisonment for three months. The learned Special Judge has directed that the substantive sentences to run concurrently.

The said Judgment and Order dated 31st March 2012 is impugned herein.

2] Heard Mr. Joshi, the learned Advocate for the appellant and Ms. Mhaispurkar, the learned APP for the State.

3] The prosecution in brief is as under:

(i) The appellant was working as a Police Hawaldar and was posted at Tarle Outpost within the jurisdiction of Umbraj Police Station, District- Satara. The first informant Shri Jaywant D. Sangar (PW No.1) was the resident of village Tarle and was working with the State Transport Corporation at Parel Depot, Mumbai. His wife and children were residing at village Tarle. That on 3.3.2009 there was quarrel between Mrs. Deepa and her children Suhas and Jaydeep on one hand and Smt. Smita Gonjari also a resident of village Tarale on the other hand. Smt. Gonjari lodged a complaint with Tarle Police Outpost on 4.3.2009 against Mrs. Deepa and her sons Suhas and Jaydeep which was entered into occurrence register at Sr. No.33 of 2009 by the appellant and a Non-Cognazable Offence bearing No.232 of 2009 under Sections 323, 504, 506 read with 34 of the Indian

Penal Code was lodged.

(ii) In furtherance of the said complaint lodged by Smt. Gonjari, the appellant without arresting the wife and children of the first informant and sending their chapter case to Tahasildar, Patan, demanded an amount of Rs.1000/- (One Thousand) which was other than legal charges from the first informant and directed the first informant to bring the said amount after 12.00 noon on 14.3.2009 at Tarle Police Outpost. As the first informant was not willing to pay the said gratification to the appellant, he lodged the complaint with the Office of the Anti-Corruption Bureau, Satara. The Investigating Agency thereafter reduced the said complaint (Exhibit-19) of the complainant in writing. After complying with the necessary legal formalities, a trap was led on 14.3.2009. That after the appellant accepted the bribe amount from the informant (PW No.1), he kept it in the drawer of his table. After receipt of per-decided signal, the Investigating Agency conducted raid and apprehended the appellant on the spot and the said amount was found in the drawer of the table of the appellant. After completing necessary legal formalities, the Investigating Agency submitted the chargesheet against the appellant before the learned Special Court.

(iii) The Trial Court framed charge below Exhibit-12 against the appellant under Section 13(1) (d) read with 13(2) of Prevention of Corruption Act, 1988. The said charge was read over and explained to the appellant to which he denied and claimed to be tried. The defence of the appellant was of total denial and false implication. It is the defence of the appellant that, the first informant had a grudge in his mind against him, as he had submitted a report of Chapter case with the Tahasildar, Patan against the wife and sons of the first informant, he has falsely implicated him in the present crime.

(iv) The prosecution in support of its case, examined in all four witnesses. The learned Trial Court after recording the evidence and after hearing the parties to the said case, was pleased to convict the appellant by the impugned Judgment and Order dated 31st March 2012 as stated hereinabove.

4] Mr. Joshi, the learned Counsel appearing for the appellant submitted that, as per the prosecution case the appellant had made his first demand with the son of the first informant namely Jaydeep and on 14.3.2009 i.e. on the date of trap there was no demand at all from the first informant. He submitted that, the prosecution has not examined the son of the first informant and therefore the prosecution has failed to prove the first demand itself. He submitted that even demand by the appellant from the first informant Shri Jayawant Sangar (PW No.1) has also not been proved by the prosecution. He submitted that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7 and/or 13 of the Act, since the demand of illegal gratification in a bribery case is pre-requisite to constitute the said offence. In support of his contention, he relied on following decisions of the Apex Court:

(i) N. Sunkanna Vs. State of Andhra Pradesh
[(2016) I SCC 713].

(ii) T.K. Ramesh Kumar Vs. State through Police Inspector Banglore
[(2015) 15 SCC 629].

(iii) Khaleel Ahmed Vs. State of Karnataka
[(2015) 16 SCC 350].

(iv) Suraj Mal Vs. The State (Delhi Administration)
[1979 CRI L.J. 1087 : AIR 1979 SC 1408].

(v) Sita Ram Vs. The State of Rajasthan
[1975 CRI L.J. 1224 : AIR 1975 SC 1432].

He further submitted that, the prosecution has failed to examine Shri Jaydeep Sangar, the son of first informant with whom the first demand was made and other two important witnesses namely Gulab Daphale and

Shri Dinkar Kale, a Police Constable who were present at the Police Station on the date and time of incident and whose names have been incorporated in the list of witnesses by the prosecution and therefore great prejudice has been caused to the appellant and it amounts to serious irregularity thereby vitiating the trial and therefore the benefit of the same may be given to the appellant. In support of his contention, he relied on a decision of the Supreme Court in the case of S. Harnam Singh Vs. The State (Delhi Admn.) [1976 2 SCC 819]. He therefore prayed that the present appeal may be allowed and the appellant may be acquitted from the charges framed against him.

5] Per contra, the Ms. Mhaispurkar, the learned APP vehemently opposed the appeal and submitted that the prosecution has proved the demand made by the appellant beyond reasonable doubt. She submitted that, the testimony of the independent panch-witness is reliable and trustworthy which proves the demand and acceptance of bribe by the appellant. She submitted that, there are no merits in the present appeal and prayed that the same may be dismissed by maintaining the conviction and sentence of the appellant.

6] The evidence on record discloses that, the PW No.1 in his testimony has admitted that, the incident of quarrel took place on 1.3.2009. That he returned to his native place from Mumbai on 11.3.2009 and thereafter he had been to the Police Station and requested the appellant to settle the matter without sending a report to the Tahasildar, Patan, however, the appellant told him that, his family members will have to be taken to Patan. The appellant told Mr. Jaydeep, son of the first informant to pay Rs.3,000/- for settlement of the matter. That on 13.3.2009. The first informant himself told the appellant that he will pay an amount of Rs.1000/- on the next day. On 14.3.2009, the first informant lodged the complaint (Exhibit-19). He has further admitted that, when he went to the police station on 14.3.2009 at about 12.30 p.m the appellant was not there. He stayed at the police station for some time and after the appellant came to the police station, he told to the appellant that he has brought the amount and thereafter immediately the present trap was led by the Investigating Agency.

In his cross-examination, the first informant has admitted that on 11.3.2009, there was no demand from the appellant. That on 12.3.2009 also the appellant did not demand personally any amount from him. He has further admitted that, the complaint (Exhibit-19) is not the same complaint submitted by him to the Anti-Corruption Bureau on 13.3.2009. The first informant has categorically admitted that on 14.3.2009 when there was nobody present in the police station at about 12.30 p.m, he stayed there for about five minutes and thereafter again returned to the police station and waited there for two minutes when there was nobody in the police station. He has further admitted that, the appellant did not accept his request of not sending the report of chapter caase to the Tahasildar, Patan. Though he was requesting to get the matter compromised, the appellant took action against his son and wife. The first informant has categorically admitted that, as the appellant did not acceded to his request, he got angry.

7] PW No.4 Shri Laxman Borate, the Investigating Officer in his testimony has admitted that, he had given a digital tape-recorder to the first informant (PW No.1) for recording the conversation. That as no proper conversation was recorded in the said tape-recorder, the same was not produced before the Court. He has admitted that, he recorded the statements of Shri Gulab Daphale and Shri Dinkar Kale, Police Constable who were present in the police station at the time of raid, however, the said witnesses have not been examined. He has further admitted that, he did not verify separately the demand made by the appellant and without verification of the demand, a trap was led. He has categorically admitted that, the amount of bribe has been recovered from the drawer of the table occupied by the appellant.

8] It is to be noted here that, the evidence of panch-witness namely Shri Maruti Nevse (PW No.2) is full of contradictions and omissions qua the first informant (PW No.1). It is further to be noted here that, the first informant is silent about tape-recorder and the conversation recorded on it which took placed between him and the appellant. After scrutinizing the entire record available on record, it is clear that the prosecution did not examine Mr. Jaydeep i.e. son of the first informant with whom the alleged first and actual demand was made by the appellant. It appears from the record that, the prosecution by not examining the said crucial witness on the point of actual demand has caused prejudice to the appellant. It is to be noted here that, the first informant in unequivocal terms has admitted that there was no demand made by the appellant with him on 11.3.2009, 12.3.2009 and 13.3.2009.

9] It is well settled law that, mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since the demand of illegal gratification is sine-qua-non to constitute the said offence. The same also will be conclusive insofar as the offence under Section 13(1)(d) is concerned as in the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Prevention of Corruption Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reliance is placed on (i) N. Sunkanna Vs. State of Andhra Pradesh (supra), (ii) T.K. Ramesh Kumar Vs. State through Police Inspector Banglore (supra), (iii) Khaleel Ahmed Vs. State of Karnataka (supra), (iv) Suraj Mal Vs. The State (Delhi Administration) (supra) and (v) Sita Ram Vs. The State of Rajasthan (supra).

10] As noted earlier, in the present case the prosecution has failed to prove the demand of bribe by the appellant from the first informant (PW No.1).That the prosecution has also failed to examine Mr. Jaydeep, son of first informant (PW No.1) with whom the alleged actual demand was made by the appellant and therefore the benefit of the same has to be given to the appellant.

11] There is another facet to the present case. As noted earlier, the first informant (PW No.1) has categorically admitted in his cross-examination that, as the appellant did not accede to his request of not sending the proposal to Tahasildar, Patan, he had grudge in his mind against the appellant. That on 14.3.2009, the first informant had been to the police station on two occasions and on first occasion at about 12.30 p.m he was in the police station for about five minutes when nobody was present there. That even on subsequent occasion on 14.3.2009 the first informant was again present in the Police Station for about two minutes when there was nobody. The alleged amount of illegal gratification was recovered by the Investigating Agency from the drawer of the table which was being used by the appellant. There is no evidence on record to show that the said drawer was locked when the appellant was out of Police Outpost/Station and it was not possible for anybody to open it in his absence. It is the categorical defence of the appellant that when he was not present in the police station on 14.3.2009 the first informant (PW No.1) had planted the said amount in the drawer of the table in his absence. I find substance in the defence of the appellant which is duly corroborated by the admissions of the first informant (PW No.1) which have been brought on record in his cross-examination by the defence.

12] Thus there is every reason to believe and draw inference that, as the first informant was having grudge against the appellant for sending the proposal of his son and wife to the Tahasildar, Patan, with a view to implicate the appellant in a false case, the informant might have kept the alleged bribe amount in the drawer of the appellant when he was not present in the police station on two consecutive occasions before conducting the raid in question and therefore he is entitled for the benefit of doubt in that behalf. It is further to be noted here that, the prosecution has failed to produce on record the tape-recorder which was kept in the pocket of the first informant (PW No.1) as has been admitted by the Investigating Officer (PW No.4) which also creates doubt about the demand made by the appellant.

13] A cumulative effective of the aforestated discussion is that, the appellant is entitled for benefit of doubt and in view thereof, the appellant succeeds.

Hence the following Order:

(i) The impugned Judgment and Order dated 31st March 2012 passed in Special Case No. 13 of 2009 by the learned Special Judge, Karad, District-Satara is hereby quashed and set aside and the apellant is acquitted from all charges framed against him.

(ii) Fine amount, if any, paid be refunded to the appellant.

(iii) The Bail Bond of the appellant is cancelled.

(iv) Appeal is accordingly allowed.

(v) In view of disposal of the Appeal, Criminal Application No.1479 of 2016 does not survive and the same is accordingly disposed off.

(A.S.GADKARI, J.)