

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1077 OF 2017

- 1 Mr. Rajendra Shinde
 Age : 58 Yrs., Occ.: Public Servant/
 Service,
 A 1304, Madhupuri Apartments,
 Dohunkar Wadi, Mahaveer Nagar,
 Kandiwali (W), Mumbai
- 2 Mr. Sanjay S. Bramhankar
 Age : 54 Yrs., Occ.: Public Servant/
 Service
 Room No.13, MAIDC Residential
 Quarters, Arey Colony,
 Goregaon (East), Mumbai. Applicants

Vs.

The State of Maharashtra
(Through Anti Corruption
Bureau, Worli, Mumbai) Respondent

Mr. Karansingh Rajput for the Applicants.
Mrs. A.S. Pai, Additional P.P. for the Respondent- State.

Coram : R.M. Savant AND
Sarang V. Kotwal, JJ
Date : 13th March, 2018

JUDGMENT (PER : SARANG V. KOTWAL, J.) :

1 The applicants have raised a question of law in the present application as to whether demand without acceptance can be an offence under the Prevention of Corruption Act, 1988. The applicants have filed the present application for quashing of the F.I.R. registered with Anti Corruption Bureau, Worli, Mumbai vide C.R. No. 25 of 2017 on 29th July, 2017 under Sections 7, 8 read with 13(2) of the Prevention of Corruption Act, 1988 (“PC Act, 1988”). Admittedly, there was no acceptance of bribe amount by the applicants and therefore the question is posed before us as to whether any offence under the PC Act, 1988 is made out at all.

2 The F.I.R. was lodged on 29th July, 2017 by one Ravish Dwarkadas Maru. There is no dispute that applicants were public servants as the applicants nos.1 and 2 Rajendra Shinde and Sanjay B. Bramhankar were working as Chief Manager (Engineering) and Manager (Engineering) respectively in the Maharashtra State Agro Industries Development

Corporation (“MAIDC”), which is a State Government Undertaking.

3 It is the case of the first informant that he was in the business of manufacturing HDPE pipes and used to supply the same to various Zilla Parishads through MAIDC. The payments for the said supplies were made to the first informant by the concerned ZPs through MAIDC. According to the first informant, an amount of Rs.2,20,00,000/- was due from MAIDC payable to the first informant. Out of the said amount, the MAIDC released a payment of Rs.1,30,00,000/- and for the same the applicants alongwith one private person Shinde (Paraswale) had accepted Rs.50,000/- as the bribe amount from the first informant. An amount of Rs.90,00,000/- was remained to be paid to the first informant and to clear the said dues and for releasing the amount, according to the first informant, the applicants demanded 2% of the bill amount. On 12th July, 2017, the first informant had given written complaint to the Anti Corruption Bureau, Worli, Mumbai. The officers of the Anti Corruption

Bureau (“ACB”) then verified the complaint of the first informant. For that purpose, panch Shri. Dhavale and the first informant went to the office of MAIDC at Aarey Colony, Mumbai and met the present applicants. It is further stated in the first information report that they thereafter demanded bribe from the first informant and told him to pay the amount to aforementioned private person, Mr. Shinde (Paraswale). Thereafter the first informant met the said Mr. Shinde (Paraswale) and at that time even Mr. Shinde (Paraswale) repeated the demand for bribe. The entire conversation was recorded in a voice recorder. The voice recorder was sealed and seized.

4 Thereafter on 19th June 2017, the first informant called the applicant no.1 Rajendra Shinde from the office of ACB, when the applicant no.1 Rajendra Shinde told him that he would look into the matter on the next day. On 20th July, 2017, the officers of the ACB arranged for laying a trap. All the pre-trap formalities were completed. Thereafter the first informant

went to the office of MAIDC and met the applicant no.1 Rajendra Shinde in the presence of panch, Shri. Dhavale. At that time, the applicant no.1 Rajendra Shinde told the first informant that the aforementioned Mr. Shinde (Paraswale) had nothing to do with their transaction and further told him to pay the bribe amount to the applicant no.2, Sanjay Brahmankar. Thereafter, the applicant no.2 Sanjay Brahmankar repeated the demand and without accepting the bribe amount, left the place. Thereafter the first informant came across the applicant no.1 Rajendra Shinde. However, even he did not accept the bribe and left the office and thereafter the first informant left the office of the applicants.

5 On 28th July, 2017 again an attempt to lay the trap was made. The first informant met the applicant no.1 Rajendra Shinde and discussed about the payment of bribe, however, the applicant no.1 did not say anything and went for lunch. In the meantime, on 24th July, 2017, the dues of the first informant were duly deposited in his Company's account and therefore the

first informant was convinced that the applicants were not intending to accept the bribe. Armed with these allegations, the first informant's complaint was registered on 29th July, 2017 vide C.R. No.25 of 2017 with ACB. The present applicants and one private person Mr. Shinde (Paraswale) were shown as accused who had demanded bribe amount of Rs.3,22,000/-.

6 The applicants have challenged this F.I.R. and are praying for quashing of the same on the ground that there was no acceptance and mere demand can never be termed as an offence under the Prevention of Corruption Act, 1988.

7 We have heard Shri. Rajput, the learned counsel for the applicants, Mrs. A.S. Pai, the learned Additional P.P. for the respondent. The main and only contention of Shri. Rajput is that though the averments in the F.I.R. show that the bribe amount was demanded but since there was no acceptance, mere demand of bribe without any acceptance cannot be an offence under the Prevention of Corruption Act, 1988.

8 In support of his contention, Shri. Rajput relied on a few judgments of the Hon'ble Supreme Court. He first placed his reliance on the case of Mukhtiar Singh Vs. State of Punjab, reported in (2016) 11 Supreme Court Cases, page 357. He relied on the observations of the Hon'ble Supreme Court in paragraph 26 of the said judgment, which reads thus :

“26. It is a settled principle of law laid down by this Court in a number of decisions that once the demand and voluntary acceptance of illegal gratification knowing it to be the bribe are proved by evidence then conviction must follow under Section 7 of the PC Act against the accused. Indeed, these twin requirements are sine qua non for proving the offence under Section 7 of the PC Act. In the light of our own reappraisal of the evidence and keeping in view the above-said principle in mind, we have also come to a conclusion that twin requirements of demand and acceptance of illegal gratification were proved in the case on hand on the basis of evidence adduced by the prosecution against the appellant and hence the appellant was rightly convicted and sentenced for the offences punishable under Section 7 read with Section 13(1)(d) and Section 13(2) of the Act.”

Mr. Rajput particularly emphasised the observations that the demand and acceptance were the twin requirements, which were sine qua non for proving the offence under Section 7 of the PC Act, 1988.

9 Shri. Rajput further relied on the judgment of the Hon'ble Supreme Court in the case of Satvir Singh Vs. State of Delhi, reported in (2014) 13 Supreme Court Cases, page 143. He particularly relied on paragraph 35 of the said judgment, which reads thus :

“35. The learned senior counsel for the appellant has also placed reliance upon the case of Banarsi Das referred to supra wherein it was held that (SCC pp.456-57, para 24) :

“24. In M.K. Harshan v. State of Kerala, this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under (SCC pp 723-24, para 8:

“8. ... It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are

important. Firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification.”

The above-said paragraph from the above mentioned case would go to show that the divergent findings recorded by the High Court on the factum of demand and acceptance of illegal gratification by the appellant is not proved in this case. In the said case this Court in unequivocal terms has held that mere demand by itself is not sufficient to establish the offence under the Act. The other aspect, namely, acceptance is also very important. There must be clinching evidence with the tacit approval of the accused that money was put by PW-2 on the steel cot as stated by him in his evidence as illegal gratification. In the case in hand, as per the evidence of PW-2 and PW-3, the illegal gratification was in a black rexine bag with a broken zip which was put on a steel cot. As the contents of the bag were not within the knowledge of the accused, therefore, the relevant aspect of

the case that the appellant has accepted the illegal gratification as required under [Section 7](#) of the Act is not proved by the prosecution by adducing cogent evidence in this regard”.

10 Mr. Rajput thereafter placed his reliance on the judgment of the Hon'ble Supreme Court in the case of the State Represented by Inspector of Police, Pudukottai, Tamil Nadu Vs. A. Parthiban, reported in (2006) 11 Supreme Court Cases, 473. He relied on paragraph 8 of the said judgment, which reads thus:

“8. Every acceptance of illegal gratification whether preceded by a demand or not, would be covered by [Section 7](#) of the Act. But if the acceptance of an illegal gratification is in pursuance of a demand by the public servant, then it would also fall under [Section 13\(1\)\(d\)](#) of the Act. The act alleged against the respondent, of demanding and receiving illegal gratification constitutes an offence both under [Section 7](#) and under [Section 13\(1\)\(d\)](#) of the Act. The offence being a single transaction, but falling under two different Sections, the offender cannot be liable for double penalty. But the High Court committed an error in holding that a single act of receiving an illegal gratification, where there was demand and acceptance, cannot be an offence both under [Section 7](#) and under [Section 13\(1\)\(d\)](#) of the

Act. As the offence is one which falls under two different sections providing different punishments, the offender should not be punished with a more severe punishment than the court could award to the person for any one of the two offences. In this case, minimum punishment under [Section 7](#) is six months and the minimum punishment under Section 13(1)(d) is one year. If an offence falls under both [Sections 7](#) and [13\(1\)\(d\)](#) and the court wants to award only the minimum punishment, then the punishment would be one year.

According to Shri. Rajput, the interpretation of this paragraph would mean that only the acceptance was covered by Section 7 of the PC Act, 1988 and thus Section 7 does not contemplate that mere demand would be an offence under the Prevention of Corruption Act, 1988.

11 After considering the submissions made by Shri. Rajput and after going through the judgments cited by him, we are of the opinion that his submissions do not have any force and the judgments relied on by him do not support his contentions. The judgment in the case of 'State Represented by Inspector of Police, Pudukottai, Tamil Nadu (Supra), the Hon'ble

Supreme Court was considering the question as to whether an accused could be simultaneously convicted for the offences related to Sections 7 and 13(2) read with 13 (1)(d) of the PC Act, 1988 and it was held that the conviction under these Sections simultaneously was permissible.

12 In the other two cases i.e. Satvir Singh and Mukhtiar Singh (supra), the Hon'ble Supreme Court was considering the entire evidence led during the trial, the judgments of the Special Court as well as the High Court. In both these cases, the accused were tried for the offences punishable under Sections 7 and under Sections 13 (1)(d) read with 13(2) of PC Act, 1988. In that context, after scanning the entire evidence, the Hon'ble Supreme Court had observed that when the accused was facing the charges under Section 7 as well as under Section 13(1)(d), it was imperative that both the demand and acceptance should be independently proved as twin conditions.

13 In the case of Mukhtiar Singh (supra), the Hon'ble Supreme Court has referred to other decisions of the Hon'ble Supreme Court. Paragraphs 24 and 25 of the said case of Muthtiar Singh (supra) read thus :

“24 In a decision of this Court in State of Punjab v. Madan Mohan Lal Verma, it was held as under:

“11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised Under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of

preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person. (Vide *Ram Prakash Arora v. State of Punjab*, *T. Subramanian v. State of T.N.*, *State of Kerala v. C.P. Rao* and *Mukut Bihari v. State of Rajasthan*.)

25 On the same lines, in *C.M. Sharma v. State of A.P.* this Court has held as under: (SCC p.10, para 23)

23. We do not have the slightest hesitation in accepting the broad submission of Mr. Rai that demand of illegal gratification is a sine qua non to constitute the offence under the Act. Further mere recovery of currency notes itself does not constitute the offence under the Act, unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be bribe. In the facts of the present case, we are of the opinion that both the ingredients to bring the Act within the mischief of Sections 7 and 13(1) (d)(ii) of the Act are satisfied.

Thus the reference to the earlier judgments made in paragraphs 24 and 25 would show that it was a settled law that the demand of illegal gratification is sine-quo-non for constituting an offence under 1998 Act. Paragraph 26 of the Mukhtiar's judgment has to be read in that context with paragraphs 24 and 25. Therefore, in our opinion, the judgment of Mukhtiar Singh (supra) does not support the contentions canvassed by Shri. Rajput. Even in the case of Satvir Singh (supra), the Hon'ble Supreme Court was considering the case where the bribe amount was given to the accused in a handbag and where the accused had touched it and had placed the handbag on the cot. Hence, it was a case of demand and acceptance of gratification and not a case where a question of mere demand without acceptance was being considered by the Hon'ble Supreme Court.

14 The Hon'ble Supreme Court in both these cases was not considering the question as to whether the demand by itself is an offence. Hence, in our opinion, the reliance placed on

these demands by Shri. Rajput is not correct and these judgments do not support his contention that mere demand can never be an offence within the meaning of Section 7 or Section 13 of the Prevention of Corruption Act, 1988.

15 To consider as to whether mere demand without acceptance is an offence by itself, it is necessary to refer to Section 7 and Section 13 of the PC Act, 1988, which read thus:

“7. Public servant taking gratification other than legal remuneration in respect of an official act.—Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than [three years] but which may

extend to [seven years] and shall also be liable to fine.

(Explanations) —(a) “Expecting to be a public servant”. If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) “Gratification”. The word “gratification” is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) “Legal remuneration”. The words “legal remuneration” are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) “A motive or reward for doing”. A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

“13. Criminal misconduct by a public servant.

(1) A public servant is said to commit the offence of criminal misconduct,—

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,—

(i) by corrupt or illegal means, obtains for

himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than [four years] but which may extend to [ten years] and shall also be liable to fine”.

16 As can be seen, both these Sections are defining as well as penal sections by themselves. The sentence provided under Section 7 is lesser than the one provided under Section 13. In this context, it may be noticed that Section 13(1)(a)

refers to Section 7 specifically and Section 13(1)(a) and (b) are aggravated forms in the sense the repeated commission of offences by a public servant is envisaged. Under these two clauses, there is reference to the word “habitually”. Section 13(d) uses the word “obtains”, which would mean that “acceptance of bribe money” is included in Section 13 (1)(d). Here the words “agrees to accept” and “attempts to obtain” are conspicuously absent. Therefore, under Section 13 (1)(d), the emphasis is on the acceptance. The penal provision under Section 13 is Sub-section 2 of Section 13.

17 Section 7 on the other hand, is wider and uses the words “accepts” or “obtains” or “agrees to accept” or “attempts to obtain”. All these four words or phrases are used for specific purposes, thus Section 7 envisages that acceptance of bribe money is covered under the words “accepts” or “obtains”. However, the use of the phrases “agrees to accept” or “attempts to obtain” would clearly cover the case of demand. In these eventualities, there may or may not be acceptance and yet the

offence is complete as per Section 7. Thus there is no manner of doubt to hold that the demand is covered under Section 7. Similar phrases are used in Section 13 (1)(a) and 13 (1)(b), thus under both these clauses, mere demand without acceptance is envisaged for which punishment is provided. Therefore, it cannot be said that mere demand is not an offence.

18 A Division Bench of this Court in the case of Ashok s/o Ganapati Kolte & Anr. Vs. The State of Maharashtra & Ors., reported (2016) ALL MR (Cri.) page 4317 has already dealt with this issue and has squarely held that for constituting offence under Section 7, there was no need to show the acceptance of bribe and mere agreeing to accept or attempting to accept the bribe from any person is sufficient. In the said case, the applicant therein had prayed for quashing of the F.I.R. on the similar set of facts. In that case, demand was made but suspecting the proposed trap, the accused decided not to accept the bribe amount. This case is very similar to the case before us and we are in agreement with the ratio laid down in the said

judgment.

19 Even the Hon'ble Supreme Court has held that each demand constituted a separate offence by itself. This ratio was laid down in the case of Vishnu Kondaji Jadhav Vs. State of Maharashtra, reported in A.I.R. 1994 Supreme Court, page 1670. In the said case, the Hon'ble Supreme Court was considering the question of necessity to obtain permission for investigation under Section 5-A of the Prevention of Corruption Act, 1947 for investigation under Section 5 (1)(d) and 5(2) of the said Act. Section 5 of the Prevention of Corruption Act, 1947 reads thus :

“5. Criminal misconduct in discharge of official duty

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(1) A public servant is said to commit the offence of criminal misconduct :

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(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in Section 161 of the Indian Penal Code; or

(d) if he, by corrupt or illegal means and by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage,

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine:

[Provided that the Court may, for any special reasons recorded in writing impose a sentence of imprisonment of less than one year.]

It can be seen that the Section 5 (1)(a) of the old Act includes the words “agrees to accept” or “attempts to obtain”, which are found in the Section 7 as well as Section 13 (1)(a) and 13(1)(b) of the PC Act, 1988. The Supreme Court in that case has held in paragraph 6 as follows:

“6. In the present case, admittedly, on three different occasions, the demand for money was made. The first was on 13-5-1975, the second on 20-6-1975 and the third on 5-7-1975. Each demand constituted an offence by itself to investigate which permission for investigation was necessary under S. 5A of the Act. Each investigation in the circumstances constituted an independent investigation into an independent offence.

Hence, for investigating the offence for the demand of bribe made on the third occasion, i.e. on 5-7-1975, it was necessary to take a separate and independent permission from the Magistrate which was admittedly not done. Since the provisions of S. 5A relating to the obtaining of the permission from the Magistrate are mandatory before investigation is launched into the offence, the appellant is entitled to succeed.”

20 In so far as the allegations in the F.I.R. are concerned, as mentioned earlier, there is no dispute that the applicants are public servants and the F.I.R. includes the averments in respect of demand of bribe and the verification of the said demand. At the same time the F.I.R. also mentions that before lodging of the F.I.R., Rs.50,000/- was already accepted by the accused. Thus, taking into consideration all the above aspects of the matter, we do not find it to be a fit case where the F.I.R. lodged against the applicants can be quashed and set aside.

21 With the result, the application fails and is accordingly dismissed.

(Sarang V. Kotwal, J.)

(R.M. Savant, J.)