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

CRIMINAL APPEAL NO.513 OF 2002

Mohd. Jainulabuddin s/o Mohd.
Jahiruddin Khatib (Siddiqui)
Age : 46 years, Occu. Service
(under suspension),
R/o Khatib Colony, Prashant Nagar,
Ambajogai, Tq. Ambajogai,
District Beed ... APPELLANT

VERSUS

The State of Maharashtra
(Copy to be served on Public
Prosecutor, High Court of Judicature
of Bombay, Bench at Aurangabad) ... RESPONDENT

.....

Shri G.K. Naik Thigale, Advocate for appellant
Shri P.S. Patil, A.P.P. for State

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CORAM: R.G. AVACHAT, J.

Date of reserving judgment : 1st July, 2019

Date of pronouncing judgment : 5th July, 2019

J U D G M E N T:

1. This appeal is directed against the judgment and order passed by the Special Judge (appointed under Prevention of Corruption Act), Ambajogai, convicting the appellant for offence punishable under Section 7 and sentencing to suffer rigorous imprisonment for three years and to pay fine of Rs.3000/-, in

default to suffer rigorous imprisonment for three months and also convicting under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and sentencing to suffer rigorous imprisonment for three years and to pay fine of Rs.3000/-, in default to suffer rigorous imprisonment for three months. The substantive sentences have been directed to run concurrently.

2. The facts leading to this appeal are as under :

The complainant is an agriculturist, resident of village Mamdapur, Taluka Ambajogai, District Beed. The appellant had a dispute with one Hausabai over a mango tree. At the instance of the complaint lodged by Hausabai, Ambajogai Police Station initiated proceedings under Section 107 of the Code of Criminal Procedure (for short 'chapter proceedings') against the appellant, his son, Tanaji and grandson, Mahadeo on 10.5.2001. The trio were taken to the office of Taluka Executive Magistrate-cum-Tahsildar by 5.00 p.m. on 10.5.2001. The appellant was Clerk serving in the Tahsil Office, Ambajogai. He would look after chapter proceedings. The trio were taken to the appellant. The appellant asked the complainant to cough up Rs.300/- for their release on bail. The appellant threatened the complainant of sending him behind bars, if the demand was not met. The complainant, therefore, paid him Rs.200/-. The appellant thereupon asked him to pay the remaining amount on next date and till then, the complainant, his son and grandson would be released on provisional bail. The appellant asked the complainant to pay the balance amount on 15.5.2001.

3. Since the complainant did not want to pay the amount, he approached the office of Deputy Superintendent of Police, Anti Corruption Bureau (A.C.B.), Beed on 14.5.2001. Shri M.G. Bhokare (P.W.3) (investigating officer) recorded the complaint (Exh.22) lodged by the complainant and asked him to come to his office the next day morning. Shri Bhokare, meanwhile secured presence of two persons i.e. P.W.2 - Raju Garje (shadow witness) and P.N. Andurkar to act as panch witnesses. Both of them were present at the office of A.C.B., Beed on 15.5.2001 when the complainant went there as directed. It was decided to lay a trap. Pre-trap panchanama was drawn there. The complainant and the panch witnesses were given due instructions. Accordingly, raiding party headed by investigating officer proceeded to the Tahsil Office, Ambajogai. The complainant had two currency notes of Rs.50/- each with him. Anthracene powder was applied to the currency notes. The complainant was instructed to pay those notes to the appellant if demand is made. As per the instructions, the complainant and P.W.2 – Raju Garje entered the Tahsil Office and went to the appellant. It was about 2.20 p.m. The appellant enquired with the complainant whether the remaining amount was brought and

the sureties were arranged for. The complainant offered him the balance amount. The appellant asked him to place the amount on a white paper on the table in front of him. The complainant obliged. The appellant thereupon placed one file on the currency notes. The complainant came out of the office and gave a predetermined signal. In response thereto, the raiding party entered the office and effected the raid. The papers including the bribe amount were collected from the table of the appellant. The raiding party went to the Guest House, at Ambajogai and drew scene of offence and post-trap panchanama there. Thereafter, the investigating officer M.G. Bhokare lodged the First Information Report (Exh.40) at Ambajogai Police Station. He himself took up the investigation. He recorded statements of the persons acquainted with the facts and circumstances of the case.

4. On completion of the investigation, all the papers thereof were forwarded to the Collector, Beed for obtaining sanction to prosecute the appellant. The Collector accorded his sanction (Exh.49). Thereafter, the appellant came to be proceeded against by filing the charge sheet. The learned Special Judge framed the charge (Exh.6) for offences punishable under Sections 7 and 13(1)(d) of the Prevention of Corruption Act (hereinafter referred to as the P.C. Act).

5. The appellant pleaded not guilty. It was the defence

of the appellant that, in addition to the chapter proceedings, he was looking after the work of Jamabandi table. Dharmraj, close relative of the appellant had moved an application to the Tahsildar for grant of the land under rehabilitation scheme. The Tahsildar had rejected his application. Dharmraj was under impression that his application was rejected at the instance of the appellant. He, therefore, instigated the complainant to lodge a false complaint against the appellant.

6. To bring home the guilt of the appellant, the prosecution examined four witnesses namely, P.W.1 Shivaji Yadav, complainant, P.W.2 Raju Garje, (shadow witness), P.W.3 M.G. Bhokare, Deputy Superintendent of Police, Beed and P.W.4 Anand Limaye, Collector, Beed and tender in evidence some documents. Whereas the appellant examined himself and the then Naib Tahsildar, Amnajogai. After considering the evidence adduced in the case, the learned Special Judge convicted and sentenced the appellant, as aforesaid.

7. Heard Mr. G.K. Naik Thigale, learned counsel for the appellant and Mr. P.S. Patil, learned A.P.P. for the State. Perused the evidence adduced in the case.

Learned counsel for the appellant would submit that the complainant had criminal antecedents. The complainant did not explain three days delay in approaching the Anti Corruption

Bureau. The appellant has, therefore, every reason to contend that Dharmraj instigated the complainant to lodge a false complaint. Learned counsel took me through the evidence in the case to submit that the alleged bribe money was not found on the person of the appellant. The amount was surreptitiously placed below the file by the complainant. Investigating Officer ought to have drawn scene of offence panchanama then and there. The investigating officer took all the papers to the Guest House and prepared the panchanama suitable to the prosecution case. The learned counsel would further submit that the shadow witness has categorically stated that it was the complainant who told the appellant to have brought the amount. There is inconsistency between the evidence of the complainant and the shadow witness. The demand of the bribe had not been verified. The evidence of the complainant went uncorroborated. The Special Judge erred in convicting the appellant on the basis of weak and shaky evidence. The learned counsel ultimately urged for allowing the appeal.

8. Learned A.P.P. would, on the other hand, submit that verification of the demand is not necessary in each and every case. The Special Judge has rightly convicted the appellant. The complainant's evidence has been corroborated by the evidence of shadow witness. Moreover, the file that was put on the currency notes with a view to conceal them, borne anthracene powder at

the middle of the file. The act of the appellant in concealing the bribe amount after having made a demand therefor undoubtedly suggests him to have demanded and accepted the bribe. Learned A.P.P. reiterated the reasons given by the Special Court for convicting the appellant. In view of learned A.P.P., no interference with the impugned judgment and order is called for.

9. In case of **Mukut Bihari & anr. Vs. State of Rajasthan** reported in **AIR 2012 SC 2270**, the Apex Court observed :-

> "8. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused, when the 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 bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act 1988, 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 Act, 1988. 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 as to 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 and in a proper case the court may look for independent corroboration before convicting the accused person.

10. So far as regards the case in hand is concerned, admittedly the appellant was working as a Clerk with the Tahsil Office, at Ambajogai. He was looking after chapter proceedings. One Hausabai had lodged a police report against the appellant. Ambajogai Police Station had, therefore, initiated chapter proceedings against the complainant, his son and grandson. The trio were taken to the Tahsil Office by the police on 10.5.2001 by 5.00 p.m. According to the complainant, they were produced before the appellant and were not taken before the Naib Tahsildar-cum Taluka Executive Magistrate (D.W.2). It was the

case of the appellant that the trio were produced before D.W.2, who in turn passed necessary orders regarding their release on bail. The appellant simply did further paper work as per the directions of the Naib Tahsildar. It is true, that respondents in chapter proceedings are required to be produced before the Executive Magistrate. The bond papers (Exhibits 26, 27 and 28), roznama and other documents of the chapter proceedings lend credence to the contention of the complainant that they were produced before the appellant and not before the Magistrate. The Special Court, in paragraph Nos.24 to 26 of his judgment, rightly appreciated the evidence and has come to a reasonable conclusion in this regard.

11. It is in the evidence of P.W.1 Shivaji (complainant) that the appellant demanded him Rs.300/- for release on bail.. The appellant threatened him to send him behind the bars, if the demand was not met. He had Rs.200/- with him. He paid the same to the appellant. The appellant thereupon asked him to come on 15th May with balance amount and surety and till then they would be released on provisional bail. It is further in his evidence that he was annoyed with the demand of money. He, therefore, approached the Anti Corruption Bureau on 14th May and lodged the complaint (Exh.22) there. It is further in his evidence that, on instructions of P.W.3 M.G. Bhokare he went to the Anti Corruption Bureau the next day. Two persons had

already been present there to act as panch witnesses. He had two currency notes with him. At the Anti Corruption Bureau, anthracene powder was applied to the currency notes with instructions to pay it to the appellant on his demand. Pre-trap panchanama was drawn there. They were given some instructions. Thereafter he along with the investigating officer and others went to the Tahsil Office, Ambajogai. As instructed, he and the shadow-witness entered the Tahsil Office and went to the appellant. P.W.1 further testified that, at Tahsil Office, the appellant enquired with him whether he brought the remaining amount. Thereupon, he took out the bribe money from his pocket and held the notes to pay to the appellant. He, however, placed those notes on the table in front of the appellant, at his (appellant's) instance. The appellant kept one file on those notes. Thereafter, he came out of the office and gave a predetermined signal. Thereupon, the raiding party entered the office and trapped the appellant.

12. In response to the questions put during the cross-examination, P.W.1 Shivaji (complainant) testified that it was second or fourth time of him to have been arrested by the police and taken to the Tahsil Office in connection with different chapter proceedings. His grand-daughter has been given to one Dharmraj in marriage. He had, on 14th May, requested Dharmraj to arrange for surety to be furnished on the next day. In response

to P.W.3 M.G. Bhokare's pointed query, he told him the bribe money to have been on white paper below the file. He, however, categorically denied to have kept the bribe money surreptitiously below the file.

13. Then comes the evidence of shadow witness, P.W.2-Raju Garje. This witness tried to run with the hare and hunt with the hound. In the examination-in-chief itself, P.W.2 Raju Garje testified that it was P.W.1 Shivaji who informed the appellant to have brought surety and also the remaining amount. It is further in his evidence that, P.W.1 Shivaji himself kept the bribe money on the white paper on the table of the appellant. The appellant then kept a file on those currency notes. He went on to state that it was he who pointed out the bribe money to P.W.3 Bhokare. A leading question was put to P.W.2 Raju Garje. In answer thereto, he stated that the appellant enquired with the complainant whether the balance amount was brought. To answer this question, the witness took much time.

14. The factum of demand and acceptance of money was proposed to be established by the evidence of complainant P.W.1 Shivaji and the shadow witness P.W.2 Raju Garje. The complainant had criminal antecedents (chapter proceedings against him). He took about three days to lodge the complaint about the alleged demand of the bribe. P.W.3 Bhokare did not

make any preliminary enquiry as regards the verification of the demand. Even the testimony of P.W.2 Raju Garje, the shadow witness, is accepted, what has come in his evidence is that the appellant made enquiry with the complainant as to whether the remaining amount was brought. By no stretch of imagination, the evidence of this witness could be said to be related to the demand of illegal gratification. The evidence of the shadow witness neither corroborates the prosecution case nor run counter thereto, in view of his evidence to the effect that it was the complainant who himself told the appellant to have brought the remaining amount and placed the same on a white paper on appellant's table. In this factual backdrop, the sole testimony of the complainant that the appellant had made a demand of illegal gratification for release on bail remained uncorroborated in material particulars. The evidence of the complainant is not such which would lend credence to accept his testimony as a gospel truth, he being an interested witness. Since the money has not been found on the person of the appellant and there being weak evidence regarding the demand, no presumption under Section 20 of the P.C. Act could be raised. The circumstantial evidence does not take the prosecution case further.

15. It was contended by the learned A.P.P. that the file which was put on the currency notes by the appellant, bore an anthracene powder in the middle. The learned A.P.P. wanted to

suggest that the appellant, with a view to conceal the bribe money, put the file on the currency notes. Admittedly, P.W.3 Bhokare had collected all the papers from the table of the appellant and carried them to the Guest House, at Ambajogai. The spot panchanama was drawn thereat. The prosecution did not give any explanation as to why the spot panchanama was drawn then and there. It is very difficult to accept the piece of evidence that the file still borne anthracene powder at its particular portion (middle), when articles and papers on the table were collected abruptly and carried to the Guest House. In this view of the matter, it can be said that the prosecution evidence fell short to establish the guilt of the appellant beyond all reasonable doubt.

16. So far as regards sanction (Exh.49) granted by P.W.4 Anand Limaye, Collector, Beed to prosecute the appellant is concerned, I found no reason to differ with the finding of the Special Judge holding the sanction to have been duly proved. Learned Advocate for the appellant had submitted that the roznama of the chapter proceedings has not been placed before the P.W.4 Anand Limaye. The sanction, therefore, could not be said to have been granted with application of mind. Suffice it to say that the roznama of the chapter proceedings in no way could be said to have been a vital document, the non-placement of it before the sanctioning authority render the sanction invalid.

17. The reasons given by the Special Judge for holding the appellant guilty of the offences charged with are found to be unacceptable. The Special Judge even took recourse to a wrong defence raised by the appellant. In view of the Special Judge, the application moved by Dharmraj for grant of land under resettlement scheme had been rejected by the Tahsildar before the appellant was given the charge of Jamabandi Daftar/ work. There is, however, record to indicate that, Dharmraj, who is alleged to have instigated the complainant to lodge the false report, had moved application for grant of land. Dharmraj is the close relation of the complainant. The complainant had approached him two days before the trap for arrangement of surety. Record further indicates that, after rejection of his application, Dharmraj had moved another application for grant of land. The appellant had, therefore, every reason to contend that Dharmraj might have instigated the appellant. True, there is no concrete evidence in this regard. Inference is to be drawn of preponderance of probabilities. Even if the defence version is not accepted, the fact remains that the prosecution evidence fell short to establish the charge beyond reasonable doubt. When the complainant testified that the bribe money is on white paper below the file, the Special Judge found it to be an ingenious admission obtained by the defence. The reasons given by the trial Court would further indicate that he relied on the principle of

falsus in uno falsus in omnibus, which suggests that the Special Judge himself was of the view that the evidence of the prosecution contained grain and the chaff. The Special Judge was about to reach a conclusion that P.W.2 Raju Garje (shadow witness) was won over by the defence. The last question in his examination-in-chief was put by the learned A.P.P., incharge of the case, so as to make a ground to put such questions which are admissible to put in cross-examination to one's own witness.

18. For the reasons aforesaid, interference with the impugned judgment and order is called for. In the result, the appeal succeeds. I pass the following order :

O R D E R

The Criminal Appeal is allowed.

The judgment and order of conviction dated 21.8.2002, passed by learned Additional Sessions Judge/ Special Judge, Ambajogai in Special Case No.7/2001, convicting and sentencing the appellant for the offence punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 is quashed and set aside.

The appellant is acquitted of the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

Fine, if paid, be refunded to the appellant.

Bail bonds of the appellant are cancelled.

(R.G. AVACHAT)
JUDGE

fmp/-