IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 552 OF 2000

The State of Maharashtra ....Appellant
(Orig. Complainant)

: V/s. :

1. Raosaheb Pitambar Shrikande,
Adult, Occ : Service, R/o.
Talegaon, Dhamdhere, Taluka-
Shirur, Dist. Pune.

2. Chhagan Ganpat Karle,
Adult, Occ : Govt. Service
R/o. Talegaon, Dhamdhere,
Taluka-Shirur, Dist. Pune ...Respondents

* * * *

Mr. J.P. Yagnik, APP for the appellant-State.

Mr. Satyam N. Nimbalkar, Advocate for respondent no.1.

Mr. Vijay Killedar, Advocate for respondent no.2.

CORAM : SANDEEP K. SHINDE, J.

Wednesday, 25th September, 2019.

P.C. :

1. The State of Maharashtra has preferred

this Appeal under Section 378(1) of the Criminal Procedure Code against the order of acquittal passed b the learned Additional Sessions Judge, Pune in Special Case No.11 of 1990.

3. Heard Mr. Yagnik learned APP for the State and Mr. Nimbalkar, for the respondent-accused.

4. The accused were prosecuted for committing the offence punishable under Sections 7, 12, 13(2), read with Section 13(1)(d) of the Prevention of Corruption Act, which ended in order of acquittal passed by the Court of Additional Sessions Judge, Pune.

5. The prosecution's case in brief is as under :

. Machindra Kisan Nalge, original complainant P.W.1 is a agriculturist from Village-Nagargaon, Taluka- Shirur, District-Pune. The joint family of the complainant consists of four brothers and father. They have agricultural land bearing Gat No. 372 at Nagargaon Village. About one and half years before filing of complaint dated 23rd August, 1991 with the Anti-Corruption Bureau, complainant submitted an application to the Irrigation Department seeking permission to lift water from the River Bhima. As no action was taken on his request, complainant with his brother, Kantilal went to the office of the Irrigation Department, Vadgaon and met accused no.1 and enquired about his pending application. He was advised to file another application with necessary documents and the No-Objection from the adjoining land owners with the map of the proposed scheme. Accordingly, on 28th January, 1991 the complainant submitted a fresh application signed by all his brothers. It is prosecution's case that, eight days after the submission of the application, accused no.1 sent accused no.2, who was working under him, and called on the complainant in connection with his work. The complainant met accused no.1 in his office. It is prosecution's case that accused no.1 told the complainant that if his application is to be forwarded to the Sub-Divisional Office, complainant should pay him Rs.2,000/- for doing the favour. Complainant sought some time to consult his brothers. Accordingly, complainant after consulting his brothers requested the accused no.1 to scale down the demand of Rs.2,000/- to Rs.1,500/-. It is the prosecution's case that 15 days prior to filing of complaint dated 23rd August, 1991, a person name Tengle from the office of accused no.1 came to the complainant and told him that, he was called by accused no.1 in connection with his application. Few days thereafter, he went to the office of accused no.1 but found it closed and therefore he went to the house of accused no.1. Thereupon, accused no.1 asked him whether he had arranged for the money as he was told. The complainant told him that, he had less amount then demanded and agreed to pay Rs.1,500/- total, out of which it was agreed that Rs.1,000/- to be paid or given on 26th August, 1981 and balance would be paid after entire work is over. It is complainant's case that, accused no.1 instructed him to come to his office on 26th August, 1991 between 11:00 a.m. to 12.00 noon with Rs.1,000/- and further instructed that in his absence to give the amount to accused no.2 and that he would instruct the accused no.2 accordingly.

6. Accused no.1 thereafter approached the Anti-Corruption Bureau at Pune and narrated the facts to P.W.6 which he reduced the same in writing vide Exhibit-45 and asked the complainant to come on 26th August, 1991 at 7.30 a.m. with Rs.1,000/-. On the said date, complainant went to the office of P.W.6. A pre-trap panchanama was prepared and eight currency notes of Rs.100/- denomination and five currency notes of Rs.50/- denomination were applied anthracine powder which denomination was handed over to accused no.1 as per pre-trap panchanama. Thus, the raiding party proceeded to the office of accused no.1.

7. At about 12.30 p.m. on 26th August, 1991 the raiding party went to the office of the Irrigation

Department. However, they found accused no.1 was not present there. On enquiry, raiding party was told that accused no.1 had gone to the Sub-Divisional Office. The complainant waited there. It is his complaint that within a short time, accused no.2 came to the office and told him that accused no.1 has gone to the Sub-Divisional Office and would return late in the evening and further asked him to handover said Rs.1,000/- to him. As accused no.1 had specifically instructed him to handover Rs.1,000/- to accused in his absence, he took out the tainted amount of Rs.1,000/- from his pocket and handover the same to accused no.2. Upon signal, the raiding party caught accused no.2 redhanded. After investigation, chargesheet was filed. The accused was charged for the offences under Sections 7, 12, 13(1)(d) read with Section 2 of the Prevention of Corruption Act.

8. The prosecution in support of its case examined the complainant, Machindra as P.W.1 and other technical witnesses.

8. The learned trial Court acquitted the accused on the ground that prosecution could not prove the demand and receipt of tainted money as consideration for showing a favour by the accused no.1 to the complainant.

9. It is not in dispute that on 22nd August, 1991 when accused no.1 allegedly demanded the money from the complainant, the accused no.2 was not present. It is prosecution's case that the alleged demand was made by accused no.1 in his house on 22nd August, 1991 which was a Saturday. Evidence of P.W.1 shows that, accused no.1 instructed him to come to his office on 26th August, 1991 (Monday) with Rs.1,000/-. Admittedly, on 26th August, 1991 accused no.1 was not in the office as he had gone to the Sub-Divisional Office at Tardeo. The evidence on record discloses that, at the relevant point of time, accused no.2 was also not in the office as he had proceeded on leave as he was likely to be transferred from the present office to another

office. The prosecution case has not disputed these facts.

10. The complainant in evidence would further say that accused no.2 came back to the office and thereafter accepted money on behalf of accused no.1 and he was caught redhanded. The evidence of demand and acceptance has not been believed and accepted by the trial Court.

11. Mr. Yagnik, the learned APP for the State that taken me through the evidence of P.W.1 to contend that, acceptance of money by accused no.2 on behalf of accused no.1 has been proved and that itself was sufficient to bring home guilt. Admittedly, as per the prosecution story, the alleged demand was made by the accused no.1 on 22nd August, 1991 at his house and at the relevant point of time accused no.2 was not present there. There is no evidence on record at all even to suggest that, accused no.2 knew about the alleged bribe demanded by the accused no.1 and he had instructed the

complainant to handover Rs.1,000/- to the accused no.2 and that he accepted bribe voluntarily.

12. Question is, whether mere production of the tainted money recovered from accused no.2 alongwith positive result of phelophthalein test is enough to establish the guilt of charge made against the accused. Answer is in negative. In the case of **State of Kerala v. C.P. Rao, reported in (2011) 6 SCC 450**, Apex Court, has held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

13. In the case of **B. Jayaraj v. State of A.P. reported in (2014) 13 SCC 55**, the Apex Court in unequivocal terms held that, mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and

(ii) of the Act. It has been propounded that in the absence of any proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. In the case of **Krishan Chander Versus. State of Delhi, reported in (2016) 3 Supreme Court Cases page 108**, it has been held that the demand of bribe money made by the accused in a corruption case is a sine qua non to punish him for the abovesaid offences.

14. Thus mere demand by itself is not sufficient to establish the offence under the Act. There must be a clinching evidence with the tacit approval of the accused that money was given by the complainant as an illegal gratification.

15. In the case in hand, there is no evidence to establish that the alleged acceptance

of Rs.1,000/- by the accused no.2 was with knowledge that it was illegal gratification. That save and accept bare word of the complainant that accused no.1 told him on 22nd August, 1991 to handover money to accused no.2 if he was not found or not available in the office on 26th August 1991 to handover money to accused no.2 there is no other evidence at all.

13. Thus, the prosecution has failed to prove the demand, as well as, the acceptance as an illegal gratification from the complainant and therefore in absence of proof of demand the question of raising the presumption under Section 20 does not arise as argued by the State.

14. Thus, the findings recorded by the trial Court is consistent with the evidence on record. It is settled law that the Court sitting in Appeal against the order of acquittal cannot substitute its own view even if two reasonable conclusions are possible on the basis of the evidence on record.

15. That for the reasons stated hereinabove, I am not inclined to interfere with the order impugned in this Appeal. Appeal fails and dismissed accordingly.

(SANDEEP K. SHINDE, J.)