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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 78 OF 2012

Mr. Sudhir Arjun Keer)
Age 49 years,)
Residing at House No. 105,)
G/South, Municipality Temple,)
Worli, Koliwada, Mumbai -400 025).....Appellant

Versus

1. CBI ACB, Mumbai)

2. The State of Maharashtra).....Respondents

Mr. S.V. Marwadi a/w. Mr. Kartik Garg for Appellant

Mr. H.S. Venegavkar for Respondent -CBI

Ms. Pallavi N. Dabhokar -APP

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : MARCH 1, 2019

JUDGMENT:

1. Heard. The Appellant herein is convicted vide judgment and order dated 14.12.2011 passed by the Special Judge for CBI for Greater Mumbai in CBI Spl. Case No. 51 of 2004 for the offences punishable under Section 7 & 13 (1) (d) r/w. 13(2) of the Prevention of Corruption Act, 1988 and sentenced to suffer

rigorous imprisonment for one year and to pay fine of Rs.2,500/-, in default, to suffer S.I. for two months.

2. It is the case of the prosecution that on 3rd June, 2003, one Mr. Abdul Pasha approached the office of the Anti Corruption Bureau and reported that the Appellant herein had demanded a bribe of Rs.10,000/- for disbursing an amount of reward (informer reward) sanctioned to him by the department of Customs. The Trap Link Officer Rahul Pathak had reduced the report into writing. Two public servants were called upon to act as panchas. It was decided to lay a trap on 4th June, 2003. On 4.6.2003, at about 3.30 p.m., the Original Complainant was sent to the office of the Appellant along with a concealed micro cassette recorder, for verification of demand of Rs.10,000/- and at about 4.15 p.m., when the Original Complainant returned from the Appellant's office, the micro tape was heard by the team.

3. Upon hearing the micro tape, it had transpired that the Complainant had met PW5 Y.D. Banga. He had questioned about the amount he was to receive towards reward. Thereafter, he approached the Appellant but did not discuss about the reward. The demand of bribe was confirmed. There is no verification panchnama drawn by the TLIO. He had instructed the Complainant

to pay Rs.10,000/- as a bribe. At about 5.00 p.m., the Original Complainant had been to the office of the Appellant along with the micro cassette recorder and at 5.30 p.m., he had given pre-determined signal to the raiding party. The raiding party found the Appellant and PW12 Mr. Mudliar in the cashier's cabin.

4. The Appellant had handed over the tainted currency notes to PW12. After it was counted by PW12, the amount was given to PW11 Mr. Kamble for purchasing postal stamps for the office. The tainted money was found in the possession of Mr. Kamble.

5. Further investigation was transferred to Shri Roy on 25.6.2003 and after completion of investigation, the charge-sheet was filed. The case was registered as CBI (Special) Case No. 51 of 2004. The prosecution examined 10 witnesses to bring home the guilt of the accused.

6. In September, 2011, i.e. after filing of the closure purshis, prosecution had filed an application under Section 311 for adding two new witnesses i.e. PW11 Mr. Kamble and Mr. Mudliyar PW12. Needless to mention that in the earlier round of litigation, PW11 and PW12 were shown as accused persons.

7. Before commencement of the trial, the Original Complainant Abdul Pasha had expired and, therefore, except the transcript of

tape recorded conversation, there is nothing on record to prove the demand as well as the acceptance as alleged by the prosecution.

8. The Appellant was working as a cashier with the Customs Department (Marine and Preventive Wing]. Almost all the witnesses are working with the Customs Department on different posts.

9. PW1, Smt. Sanghmitra Panda was working as Commissioner of Central Excise, Mumbai in the year 2004. She was the Competent Authority to remove the accused from office. According to her, she had examined the investigation papers and found that this was a fit case for prosecution and, therefore, had accorded sanction. In her service career, this was the only sanction, which she had accorded. She has deposed before the Court that whenever the department receives a secret information and it materializes, the reward is given to the informant only, after the informant is identified by the officer, who had recorded the information. She has denied the suggestion that she had granted sanction mechanically.

10. According to PW2, Janardan Waghmode, he was called upon by the CBI Office to act as a pancha along with one Mr. Sinha. He had heard the conversation which was recorded on the micro

cassette. The transcript of the said conversation is as follows:

Upon inquiry by the Appellant, one Sawant Madam had informed that at the relevant time she was at Thane and one Manchekar and Shashikar were with her. They were having some official conversation. She had named some people to whom the Appellant had referred as Guru. He was requesting her to find out if there were some cheques to be disbursed and that she should send over the same to his office, so that instead of depositing in the treasury, it could be handed over to the recipient. Thereafter, the conversation was between Abdul Pasha and the Appellant. Pasha had informed that he had brought only "ONE", at that time, the Appellant had replied that he had given Rs.2,500/- earlier. The sound was unclear. They could hear the intervention of third voice which said as follows:

"*Abe tere paise tuhi lena*".

Then there was a voice of a fourth person, saying, if not paid by any one of them, who would give money to him?. The reply of the Appellant was *"**Ye bhai, Salary me se diyele hien, maloom hien na**"*.

11. PW2 has deposed before the Court that upon receiving the pre-determined signal, they had been to the cabin of the accused Keer. Abdul Pasha was present and he disclosed that he handed over the cash to Mr. Keer. Mr. Keer had handed over the said amount to Mudliyar for counting, which was further handed

over to Mr. Kamble. Upon a query made by the investigating agency, he had disclosed that he had given the money to Mudliyar and Kamble. The tainted notes were seized. Pasha had not disclosed anything about the actual incident of demand and acceptance. A panchnama is at Exhibit 28.

12. It is a matter of record that at the time of trial, the cassette was not audible. Thereafter, the same was corrected. PW2 after hearing the conversation of the cassette, Article 1(C), candidly submitted that he would be unable to identify the voices in the conversation but the cassette is the same. He subsequently deposed that he would be able to identify the voices of Keer and Pasha but not of the other witnesses. PW2 was working as a Tally Clerk in Bombay Port Trust. He could not recall the names of the officers of the CBI, but submitted that in all probability, it was M.M. Roy who was the CBI Officer and a member of raiding party. There is no material to show as to what was the amount that was demanded. But during the search, the tainted notes were not found in the pocket of the wearing cloths of the Appellant, but they were found cash of Rs.1,100/-, some documents and diary. It is

specifically admitted that the amount was recovered from Mr. Kamble who was sitting in the cabin.

13. It is pertinent to note that in order to prove the demand, the Complainant had been to the office of the Appellant but he had first met Mr. Banga (PW5) where Pasha was telling Mr. Banga that he is fed up and there was next voice which was identified by Pasha as Voice 'C', wherein the Appellant was telling him "*Bolnekana mai liya tha, wo de raha hoon.*" Thereafter, the Appellant had asked Pasha as to when he was making payment and Pasha had said that he is making it on the same day. Pasha had said, he would give two and the Appellant had said 2 ½. Pasha was referring to some other person, who was to give him money and that person is willing to give only one.

14. PW4- Chanda Sawant was working in Marine and Preventive Section. She had received the charge of Reward Section from 24.1.2003.

15. According to her, the job in the reward section is to scrutinize the documents, received from different sections, and then put up those documents before Assistant Commissioner, then Deputy Commissioner, Additional Commissioner and then Commissioner. The final authority is the Commissioner. She

admitted that in the eventuality of receiving a proposal for extending the reward, it is sent to the concerned department for being processed. She was not aware whether in the case of Abdul Pasha, any interim or final reward was given.

16. PW5 Dr. Yogdhyan Banga has disclosed that 10 years prior to the incident, one Mr. Batatawala had recorded some information as it was given to him by Abdul Pasha. For the purpose of giving an award, the informer has to be identified by the Officer who recorded the information. Since Mr. Batatawala was no more, Abul Pasha had been to the office to get his case processed for reward. Mr. P.K. Jain was acquainted with Pasha, but he was posted at Calcutta. The Commissioner of Customs had called upon Mr. Jain to Mumbai for the purpose of sanctioning and disbursement of the award. Subsequently, the award was sanctioned. Abdul Pasha had approached Mr. Banga and he was instructed to contact the officer, who was acquainted with him. It is admitted in the cross examination that Mr. Pasha had given false information to the office mainly to divert their attention. Mr. Pasha had disclosed to PW5 that he was acquainted with Mr. Jain. PW5 had given the phone number of Mr. Jain to Mr. Pasha in order to enable him to contact Mr. Jain.

17. The above mentioned facts would lead to an inference that the prosecution has failed to prove the demand and acceptance on part of the Appellant for the following reasons:

(i) The work of sanctioning or distributing or disbursing the amount of reward was not entrusted with the accused.

(ii) No implicit reliance can be placed on the recorded conversation as the voices of all speakers could not be identified.

(iii) In the course of investigation no voice samples were taken.

(iv) The gesture of the accused and his statement that he had given the money from his salary account would lead to an inference that since the accused was acquainted with the complainant, there was some transaction between them and the accused was demanding the same as the next line says that *"You should tell the authorities that you had borrowed money from me"*.

(v) That there is no shadow witness to the incident and the prosecution seeks to place implicit reliance on the tape recorded conversation.

(vi) The tainted notes were not found in the possession of the accused appellant. But, were found with PW11 and PW12. PW11 and PW12 were initially arraigned as accused and subsequently for the reasons best known to the prosecution, they were examined as prosecution witnesses. The explanation for acceptance and receiving the amount from the Appellant was given by none other than PW11 and PW12.

(vii) It was specifically contended by PW11 that he had received the amount of Rs.1,000/- for purchasing stamps and had retained the same.

(viii) In fact, PW11 was supposed to maintain the account of postal stamps in the office and in case of shortage, he was to inform Mrs. Kamat and she used to make the stamps available through peon. None of this work was entrusted to the accused.

(ix) In the cross examination, PW11 has stated that the amount was returned to him subsequently.

(x) PW12 has also corroborated that the accused had handed over Rs.1,000/- to PW11 and upon query made by the raiding party, the accused had maintained silence.

(x) According to PW12, the Complainant had entered the cabin from window side and that he could not hear any conversation and discussion between the accused and the complainant. It is also admitted that the accused had handed over the amount to PW12 even without counting it. According to him, the complainant had left the cabin from window when the accused had kept the amount before him. Thereafter, PW11 had come into the cabin and the amount was handed over to PW11.

17. The Hon'ble Apex Court in the case of **Dashrath Singh Chauhan Vs. Central Bureau of Investigation in Criminal Appeal No. 1276 of 2010** has held as follows:

> *"It is for the reasons in order to prove a case against the Appellant, it was necessary for the prosecution to prove the twin requirements of demand and acceptance of the bribe amount by the Appellant."*

18. The law contemplates that demand is *sine qua non* to acceptance. In the case of **P. Satyanarayan Murthy Vs. District Inspector of Police, State of Andhra Pradesh and Another [(2015) 10 Supreme Court Cases 152]**, the Hon'ble Apex Court has held as follows:

> "*23. The proof demand of illegal gratification, thus, is the gravamen of the offence under Section 7 and 13(1) (d)(i) and (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 the present case, apart from the failure to prove demand and acceptance, the prosecution has failed to prove that the tainted notes were given by the Complainant towards any bribe or gratification. The conduct of the accused, at the relevant time, also needs to be taken into consideration under Section 8 of the Indian Evidence Act.

19. In view of the preceding discussion, it is held that the prosecution has unequivocally failed to prove demand of illegal gratification and, therefore, it would be wholly unsafe to sustain the conviction of the Appellant.

20. Hence, the following order:

ORDER

(i) The conviction of the Appellant passed by the Special Judge for CBI for Greater Bombay vide judgment and order dated 14.12.2011 in CBI Spl. Case No. 51 of 2004 for the offences punishable under Section 7 & 13 (1) (d) r/w. 13(2) of the Prevention of Corruption Act, 1988 is hereby quashed and set aside.

(ii) The Appellant herein is acquitted against all the charges leveled against him.

(iii) Bail amount shall stand cancelled.

. **[SMT.SADHANA S. JADHAV, J.]**

V.A. Tikam