IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.33 OF 2013

The State of Maharashtra, Through
Vijay Raghunath Dhopavkar,
Deputy Superintendent of Police,
Anti Corruption Bureau, Ahmednagar.

… **Appellant**

… **Versus** …

Rajesh Kailaschandra Puranik
Age 49 yrs., Occ. Junior Engineer Class-II,
R/o M.S.E.D.C.L., 33 K.V. Sub Station,
Rajur, Tq. Akole, Dist. Ahmednagar.

… **Respondent**

…

Mrs. Vaishali Patil-Jadhav, AGP for appellant

Mr. N.K. Kakade, Advocate for respondent

…

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 18th SEPTEMBER, 2020

JUDGMENT :

1 Present appeal has been filed by the prosecution challenging the acquittal of the respondent in Special Case No.4/2019 by learned Special Judge, Ahmednagar on 25.01.2012, thereby acquitting him from the offences

punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as, "P.C. Act").

2 Present respondent i.e. original accused was serving as Junior Engineer Class-II with Maharashtra State Electricity Distribution Company Limited. He was posted at 33 KV Sub Station, Rajur, Tq. Akole, Dist. Ahmednagar in October, 2008.

3 Original complainant Santosh Rambhau Arote is resident of village Chital-vedhe, Tq. Akole, Dist. Ahmednagar. He is an agriculturist. He used to take water from river Pravara by electric pump to his land Gat No.69. Earlier the said pipeline, which was laid from the river to his land, was joint pipeline of 15 farmers. He felt need to lay new pipeline, as there was problem of load shadding, and therefore, he decided to place his demand with quotation. He collected all the necessary documents and gave application for electricity of 5 Horse Power about a month prior to 22.10.2008. The said quotation was required to be sanctioned by Maharashtra State Electricity Distribution Company Limited, and therefore, he visited the office of the accused on 21.10.2008. Accused demanded amount of Rs.5,000/- to him, but at that time, the complainant told, that he is poor and cannot arrange for that much amount. The said amount was then settled at Rs.3,500/-. It was told by the accused, that he will have to

give at least Rs.3,500/-. The said amount was to be given on 23.10.2008 in his office, then he was to sanction the quotation. Complainant agreed in his presence. However, he had no desire to give that amount, which was bribe/illegal gratification. But since he had the fear, that his quotation will not be sanctioned, he had no alternative except to give that amount to the accused. The complainant thereafter went to the office of Anti Corruption Bureau, Ahmednagar and lodged complaint on 22.10.2008.

4 After the complaint was lodged, two panchas were arranged and in their presence verification panchnama was carried out. At the time of verification the complainant had given phone call in presence of ACB officer Mr. Dhopavkar and the two panchas. The recording of the conversation has been done. After the verification was done, it was decided to carry out raid. ACB officer explained the entire procedure, as to how the raid would be carried out, gave instructions to complainant and both the panchas. It was also explained to them, as to how the anthracene powder applied on the amount brought by the complainant would act and demonstration was shown. Pre trap panchnama was carried out.

5 As per the instructions, the complainant and the panchas attended the ACB office on 23.10.2008 in the morning. Necessary further instructions were also given, as to what would be the signal to indicate, that

the accused has accepted the bribe amount. It is the prosecution story that the accused accepted the said amount, which was illegal gratification for sanctioning the quotation of the complainant for allowing him to take electricity to pump the water from the river to his land. When complainant and panch No.1 (PW 2 Chabukswar) went inside the office of the accused, there was conversation between the complainant and the accused and it is stated, that the accused had demanded the amount and thereafter the complainant had taken out the bribe amount and had put it in the bag, which was indicated by the accused, lying on his table. Thereafter, the complainant went outside the office under the pretext that one certificate remained to be submitted and then gave signal. The accused was then apprehended. The tainted amount was found in the bag. Post trap panchnama was carried. ACB officer Mr. Dhopavkar lodged the complaint against the accused on behalf of the State and carried out further investigation.

6 During the course of the investigation the statement of witnesses were recorded, accused came to be arrested, sanction was obtained and after the completion of investigation charge sheet was filed.

7 After the accused had appeared before the Special Judge, charge was framed at Exh.9 against the accused. The contents of the charge were read over and explained to him in vernacular. He pleaded not guilty and his

trial has been conducted. In all five witnesses have been examined. After considering the evidence on record and hearing both sides the present respondent-original accused came to be acquitted. The said acquittal is under challenge in this appeal.

8 Heard learned APP Mrs. Vaishali Patil-Jadhav for appellant-State and learned Advocate Mr. N.K. Kakade for respondent-accused. Perused the paper book and evidence.

9 It has been vehemently submitted by the learned APP, that learned Trial Judge has not appreciated the evidence properly. The demand and acceptance of the amount, which was definitely an illegal gratification, was proved by the prosecution beyond reasonable doubt. PW 1 Santosh Arote has proved the contents of his complaint. He has specifically stated, that when he had gone to the office of the accused on 21.10.2008 and requested to accused to sanction the electric supply as per his demand, the accused has demanded Rs.5,000/- from him. It is not the say of the accused that, that amount was the statutory amount, which the complainant was suppose to deposit towards the charges, therefore, it is definitely an illegal gratification. Further, the complainant has stated that, that amount was then settled at Rs.3,500/-. Examination-in-chief of complainant would show, that he has told all the necessary facts to prove the pre-trap panchnama as well as

post-trap panchnama. He has stated that he had put the tainted amount in the black bag indicated by the accused, after the accused has demanded the bribe amount in order to complete the work of the complainant, when he went to the office of accused on 23.10.2008 along with panch No.1. Accused has then accepted the hand bag and then told the complainant to bring two photo copies of order of water permission, and therefore, the complainant went outside and gave signal to the raiding party. The raiding party thereafter found the bribe amount from the bag, which was still on the table of the accused. Thus, the complainant has proved the demand and acceptance. His testimony is well supported by PW 2 Chabukswar, however, only to the extent that he has given a different colour of the bag, doubts have been raised. The learned Special Judge went wrong in technically expecting that the same words or same fact about the colour of the bag from the panch witness. The learned Special Judge failed to consider that though the trap had laid in 2008, yet PW 2 Ashok Chabukswar was examined only on 29.11.2011. Therefore, due to the time gap he might not have remembered the exact colour. But he was certain that the said amount was kept in the bag, which was provided by the accused. The accused has tried to contend in his statement under Section 313 of the Code of Criminal Procedure as well as to the cross of the prosecution witnesses, that he was not aware about the bag and the ownership of the bag there is no cogent evidence. However, the

Special Judge failed to consider that it was the office of the accused and the bag was found on his table. He was bound to give proper explanation for the same. There is no legal lacuna left in respect of the sanction accorded for the prosecution of the accused. The prosecution has examined panch No.2 also. No doubt, to a minor extent PW 2 Chabukswar and PW 3 Irnak have turned hostile. Yet, their hostility was not affecting the merits of the case. There was sufficient corroboration brought on record to prove the demand and acceptance. Therefore, the acquittal of the accused is wrong and illegal, it deserves to be set aside. Learned APP prayed for allowing the appeal and convicting the respondent.

10 Per contra, the learned Advocate for the respondent supported the reasons given by the learned Judge while acquitting the accused and submitted, that the discrepancies in the testimony of the prosecution witnesses as well as the hostility of the panchas have definitely prompted the Special Judge to acquit the accused. The sanctioning authority examined by the prosecution, PW 4 Puranik, has clearly stated, that the accused could have been removed from his service by Chief General Manager of Maharashtra State Electricity Distribution Company Limited. However, PW 4 Puranik was not serving in that capacity. He was working as Superintendent Engineer, Establishment Section of Company on the day when the sanction

was accorded. His testimony has been discarded by the learned Special Judge, on the ground, that he had no authority to grant sanction. The Investigating Officer has not taken proper pains to bring it on record, as to how PW 4 had the authority to give sanction to prosecute accused. The acquittal of the appellant is legal and correct and there is absolutely no necessity to interfere with the said Judgment and order. Learned Advocate for respondent has prayed for the dismissal of the appeal.

11 Taking into consideration the above submissions, following points arise for determination, findings and reasons for the same are as follows.

POINTS

1 Whether the prosecution has proved demand and acceptance of the bribe by the accused from the complainant ?

2 Whether interference is required in the decision of acquitting the present respondent ?

REASONS

12 At the outset, while deciding any case involving the offence under Anti Corruption Laws, the fact is required to be borne in mind, that the complainant's evidence will have to be scrutinized meticulously. Giving bribe

is also an offence but then in order to arrest a person, who has demanded and then would be accepting the bribe, it has to be given; then the testimony of such person requires to be carefully tested. In **Pannalal Damodar Rathi vs. State of Maharashtra, AIR 1979 SC 1191**; it has been held that "There could be no doubt that the evidence of the complainant should be corroborated in material particulars After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon".

12.1 Further, in **M.O. Shamsudhin vs. State of Kerala, (1995) 3 SCC 351**; wherein it has been held that "the word 'accomplice' is not defined under the Indian Evidence Act. It is used in its ordinary sense, which means and signifies a guilty partner or associate in a crime. Reading section 133 and illustration (b) to section 114 of the Evidence Act together, the courts in India have held, that while it is not illegal to act upon the uncorroborated testimony of accomplice, the rule of prudence so universally followed has to amount to rule of law, that it is unsafe to act in the evidence of accomplice unless it is corroborated in material aspects so as to implicate the accused". In this case the Hon'ble Supreme Court has thoroughly discussed as to how the evidence of bribe giver is required to be appreciated.

12.2 Further, reliance can be placed on the decision in **Bhiva Doulu Patil vs. State of Maharashtra, AIR 1963 SC 599**; wherein it has been held that “the combined effect of section 133 and 114, illustration (b) may be stated as follows : according to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter which is a rule of practice is almost always unsafe to convict upon his testimony alone. Therefore, though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal, yet the courts will, as a matter of practice, nor accept the evidence of such a witness without corroboration in material particulars”.

12.3 Further, reliance can be placed on the decision in **Gulam Mahmood A. Malek vs. State of Gujarat, 1980 (Supp) SCC 684**; wherein it has been held that “the complainant himself is in the nature of an accomplice and his story is prima-facie suspect for which corroboration in material particulars is necessary”.

13 Now, after taking note of the legal requirements, as to how the evidence of complainant is required to be appreciated, we would see the testimony of the complainant herein. His examination-in-chief would reiterate his complaint, the events those were covered in pre-trap panchnama as well as post-trap panchnama. However, the point, that is required to be

explained is, that according to him, the accused had supplied to him a black colour bag and had asked him to put the bribe amount in that bag. He has acted as per the direction of the accused. In his cross-examination he has admitted, that when he entered in the office of the accused, the black hand bag was lying on the table. He was not able to state the owner of the said hand bag. He was unable to tell, as to whether any article was there in the said hand bag or not. He has categorically stated that other persons were present in the office of accused, at that time. It is not his case, that he had gone to the cabin of the accused and the entire event had happened in the said cabin, though other persons were present in the office. Therefore, his testimony creates a fact that some independent persons were available in the office of the accused, at the relevant time. However, none of them has been examined in this case.

14 PW 2 Chabukswar is the panch No.1. He has proved the prosecution case till pre-trap panchnama. As regards the post-trap panchnama is concerned, he has stated that after amount was demanded complainant took out bribe amount from his left shirt pocket and held it before accused but then accused instructed the complainant to put that bribe amount in blue colour hand bag. Thus, in his examination-in-chief the colour of the hand bag is blue. But when questions in the nature of cross were put

to him by learned APP, he has admitted, that the colour of the hand bag was black. Thereafter almost all the other contents of post trap panchnama has been admitted by him in the said cross-examination by learned APP. Basically, the question is, whether the Court was justified in granting the said permission to the prosecution to put the questions in the nature of cross to this witness, when in fact, he was supporting the prosecution on other major facts. The scope of Section 154 of the Indian Evidence Act cannot be so enlarged, as to allow the prosecution to put other questions also or other circumstances also to the witness, which were not asked to the witness prior to granting such permission. It is a trend with the prosecution, that after one or two questions are answered in the negative, then the permission is sought to put the questions in the nature of cross and such permissions are immediately granted without considering the scope and applicability of Section 154 of Evidence Act . All the left out facts were put to the witness by learned APP after the said permission was granted and thereafter on the basis of those admissions, now, it is stated, that the said panchnamas have been proved beyond reasonable doubt, which is not within the spirit of legal provisions. Evidence of such witness, whose admissions have come by such means i.e. after he is declared as hostile, then those statements are required to be accepted with caution. This witness has also stated in the cross-examination by accused that there were 7-8 persons present in the office of the accused. In fact, there was a scope for the accused to bring exact situation in the office on record, as to whether the accused had his cabin and the sitting arrangement for other witnesses was at a different place. Yet, that situation has not been encashed.

15 Another fact, that is, coming on record from the testimony of the complainant as well as panch witness No.1 and the reference can also be made in respect of testimony of panch witness No.2, who has been examined as PW 3, so also by the Investigating Officer (complainant-cum-Investigating Officer), that there was absolutely no verification panchnama and after the complaint was lodged, directly the raid has been arranged. The prosecution story was that there was such verification of the demand and recording to the phone call given by complainant to the accused has been done; but no evidence has been adduced to support this fact. Thus, in absence of such evidence it can be concluded that PW 5 Dhopavkar, then Dy. S.P., Anti Corruption Bureau, Ahmednagar has accepted what the complainant was saying in his complaint as gospel truth. In **Avinash Sitaram Garware vs. State of Maharashtra, 2008 (1) Bom.C.R. (Cri.) 260 : 2007 (109) Bom. L.R., 2579**, this Court has held that," once the prior demand is not proved, the rest of the prosecution case regarding money allegedly demanded by the accused will have to be read with great caution and circumspection". It can be seen that

as per the complainant, the demand was for Rs.5,000/- and thereafter it was settled for Rs.3,500/-. This had happened on 21.10.2008 and except the bare statements of the complainant and the recitals in the complaint, there is nothing on record. The Investigating Officer ought to have taken verification of the alleged demand and then would have decided to go ahead with the raid. That precaution was necessary in order to protect the Government servants from being framed. If we consider the contents of post-trap panchnama Exh.24 and the oral evidence to that effect, then it can be seen, that after complainant went in front of accused, complainant asked him what happened to his quotation. Accused replied, that his work has been done, what about money, whether money has been brought. Complainant replied, that he has brought. Then accused asked him to give. Thereafter, accused put the black bag in front of complainant and complainant put that amount in the said hand bag. If we see the said conversation in panchnama Exh.24, there is absolutely no figure of the amount quoted. There is also no reference, for what purpose the amount was to be given. We cannot presume that it was illegal gratification only when the complainant was supposed to place quotation on record and was suppose to pay charges. Another surprising thing, which has to be mentioned at this place itself, that PW 4 Shashikant Puranik, who is the sanctioning authority, has stated in the cross-examination, that the accused was not empowered to accept such applications for new electrical connections. Under such circumstance, the question arises, as to how the accused would have accepted the amount, if we take this fact to be proved. This fact will have to be connected to the fact that the amount of Rs.3,500/- was found in the said bag, which is stated to have been offered by the accused. As aforesaid, there was discrepancy in the colour of the bag told by PW 1 and PW 2. Further, they both could not say, who is the owner of that bag and the said bag was on the table. We cannot accept that it belonged to accused merely it was on his table. Therefore, when so many doubts are raised, at the point of appreciation the evidence of both the panchas as well as complainant, then definitely benefits of the same should go to the accused.

16 The main important point, that was considered by learned Trial Judge for acquitting the accused, is the lacuna in sanction to prosecute the accused. PW 4 Puranik has stated, that he was serving as Chief General Manager (Technical/Establishment) with Maharashtra State Electricity Distribution Company Limited from February, 2009 to April, 2010. He has also stated that he was appointing and removal authority of Junior Engineer Class-II. In his cross-examination he has stated, that one Kisan Wane was Chief General Manager till 31.01.2009, but thereafter PW 4 Puranik was appointed as Chief General Manager. He has stated in his examination-in-

chief, that after police officer had sent the investigation papers, he had forwarded those papers to their disciplinary cell. Thereafter he had discussed the said fact with the officer from Disciplinary Cell and then accorded sanction. As aforesaid, when the demand was not clear as stated in post-trap panchnama Exh.24; it shows lack of application of mind by the witness when he did not consider that aspect while according sanction. I do not agree with the reasons given by the learned Special Judge expressing doubt over the veracity of PW 4. Surprisingly the learned Special Judge has relied on documents filed by accused along with list Exh.41. That means, those documents were not exhibited and it appears that they were produced on record after the testimony of PW 4 was over. There is absolutely no reference of those documents in the cross-examination of PW 4 Puranik. Learned Special Judge, in fact, did not apply his mind while relying upon those documents, which were not put to the witness as well as those were not at all exhibited by legal recourse. It appears that there is a document along with said list Exh.41, which shows, that PW 4 has voluntarily retired as Superintendent Engineer w.e.f. 07.04.2010. At the costs of repetition, it can be said, that there is absolutely no suggestion to that effect to PW 4 Puranik, that he had retired on 07.04.2010. Only a suggestion was given, that at the time of giving sanction order he was serving as Superintendent Engineer, has been denied by him. If those documents along with Exh.41 produced by the accused were so important for the accused; he could have recalled PW 4 Puranik or those documents could have proved by the accused by examining appropriate person. When such mode was available, the learned Special Judge ought not to have relied upon those documents alongwith list Ex.41 and observations based upon the analysis of those documents. Courts should not rely on those documents which have not been proved by any side and unless opportunity is given to the party against them those documents are proposed to be used. A party can not be taken by surprise with the use of such un-exhibited documents. Ultimately it is required to be seen, that while issuing the sanction order, there is no proper application of mind by PW 4, though a very detailed order appears to have been passed. The benefit of the illegal sanction order will have to be given to the accused. Another fact, that is required to be noted is, that it has been brought on record that accused was holding amount of Rs.5,150/-. That was on his person and the Investigating Officer has unnecessarily seized that amount. According to Investigating Officer, accused did not give proper explanation for that amount. PW 5 without any reason cannot treat the said amount as bribe amount, accepted from some other persons. What kind of investigation he has made to search for the owner of said amount has not been stated by him.

17 In his written statement appended to/part of statement under

Section 313 of Cr.P.C. the accused has given a detailed procedure, as to what a new customer is required to adopt for getting a new connection. He has specifically stated, that the Divisional Office of Maharashtra State Electricity Distribution Company Limited is the only appropriate office, which can accept such application. He was not empowered to accept the said amount. There is no explanation for it by the prosecution nor it has been tried to be got explained from the PW 4, rather PW 4 is supporting accused to that effect. Thus, the prosecution was not able to prove the demand and acceptance by cogent, material and conclusive evidence. Fact of recovery of tainted amount from the bag laying on the table of accused will not *ipso facto* prove the guilt of accused.

18 Taking into consideration all the above said evidence, scanning thereof and the reasons aforesaid, it will have to be held, that the prosecution has miserably failed in proving the charge levelled against the accused, and therefore, the first point is answered in the negative. Point No.2 is also required to be given in negative, as interference in the Judgment and order passed by the Special Judge is absolutely not called for. There is no merit in the present appeal, it deserves to be dismissed. Accordingly, it is dismissed.

(Smt. Vibha Kankanwadi, J.)

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