IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.743 OF 2008

The State of Maharashtra
Through Anti-Corruption Bureau, Latur. … **Appellant**

Versus

Shripati s/o Ganpatrao Kumbhar
Age: 45 years, Occu.: Service,
Inspector, Weights & Measurements
Division No.2, Latur, Dist. Latur. … **Respondent**

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Ms. Vaishali Patil-Jadhav, APP for appellant-State.
Mr. Joydeep Chatterji, Advocate for respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 19th September, 2020

PRONOUNCED ON : 5th November, 2020

JUDGMENT :

. Present appeal has been filed by the prosecution challenging the acquittal of the respondent in Special Case No.2 of 2004 by learned Adhoc Additional Sessions Judge and Special Judge, Latur on 05-12-2007, thereby acquitting him from the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'PC Act').

2. The present respondent i.e. original accused was serving as Inspector, Weights and Measurements Division No.2, Latur around 07-10-2003.

3. Original complainant – Chandrakant Suryawanshi who is the resident of Nath Nagar, Nanded Naka, Latur lodged complaint with Anti Corruption Bureau, Latur on 06-10-2003 contending that his father runs grocery shop by name Shriram Kirana and General Stores since 2000 near Krupa Sadan School. Though the shop is in the name of his father, it is run by his father as well as the complainant. In July 2003, three persons came to their shop when his father was in the shop. They disclosed their identity as the officers from Weights and Measurement Department. Present accused was one of them. Accused asked the father of the complainant to give weights and measurements from his shop and thereafter, the accused told that those weights have not been checked since 2000. He made his intention clear that he would seize those measurements and accordingly, he seized weights of 20 gm, 50 gm, 100 gm, 200 gm, 500 gm and also the scale. The entry about the said seizure was made in a book by the accused and the signature of the father of the complainant was taken on it. In the meantime, the complainant went there and, therefore, the accused had taken the signature of the complainant also on that book/register. An employee from the office of the accused met the complainant in his shop at about 10.00 a.m. on 04-10-2003 and told that he should meet accused on the next day, otherwise their case would be sent to Court. That person did not disclose his name. Complainant went to the office of the accused on 04-10-2003 and met accused. Accused asked him to bring two blank papers which he purchased from outside and thereafter,

the accused told him that he should make an application for compromise by putting a carbon in those two papers. Accused asked him not to put date on the same and, therefore, the complainant gave the application stating that due to oversight the weights have not been verified, but he is ready to pay the fine. Accused accepted the original as well as carbon copy of the application, but did not give acknowledgment. Accused asked him to come on the next date. Complainant went to the said office on 05-10-2003 and met accused, at that time, the accused told him that since the measurements and scale from their shop has been seized, there would be a case in the Court of law, however, if he want to get rid of it, he will have to give amount of Rs.500/- to him. Complainant asked him as to whether it is the fine amount and whether he can get receipt. Accused told that he will not get any receipt, but that amount is for not taking any action against him. He realized that the accused is asking for bribe and then he told accused that he has no capacity to pay that much amount. Accused told him that he will have to give atleast Rs.300/-. Complainant agreed to the same when no alternative was left. Accused told him to come on 07-10-2003. Complainant had no desire to give that amount as bribe and, therefore, he went to Anti Corruption Bureau and lodged complaint.

4. After the complaint was lodged, two panchas were arranged. The complainant narrated his complaint in presence of those two panchas and

thereafter, the ACB officer decided to conduct 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. After the complainant went along with panch No.1 to the Weights and Measurements Department, there was conversation. It is the prosecution story that the accused accepted the amount, which was an illegal gratification for not taking legal action against the complainant or his father. After the raid was completed, panchanama was carried out. The accused was found with the tainted money. ACB Officer Mr. Tandale lodged complaint against the accused on behalf of 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 Exhibit-27 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 four witnesses have been examined by the prosecution and

the accused has examined two witnesses in defence. 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. Joydeep Chatterji for respondent – accused. Perused the paperbook 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. The learned Trial Judge went wrong in even issuing notice to the complainant for taking action under Section 344 of the Code of Criminal Procedure, however, he failed to even discuss regarding demand and acceptance. In fact, complaint was well supported by oral evidence. P.W. 1 Chandrakant has specifically stated that as per the message that was received by the complainant, he had gone to the office of the accused and met him. When he demanded his weights and scale, accused told him that they should be duly re-verified and stamped. He also told that after the approval from the superiors, he will have to pay fine. He made inquiry about the same with the accused. Though the accused told him that he cannot tell the definite figure, but he will have to give amount of Rs.300/- for re-stamping and verification. Further,

it was also told that the maximum amount of fine would be Rs.500/-. Though the complainant had not supported the case of the prosecution and, therefore, questions in the nature of cross were put to him, yet, the contents of the complaint were narrated by him to the panchas and after the panchas got assured that what he was telling orally has been reflected in the complaint, they had signed it. Therefore, the contents of the complaint have been proved through P.W. 2 Arvind Malvade - panch No.1 and also by P.W. 4 Tandale – the Investigating Officer-cum-informant. The tainted amount was recovered from the accused by the raiding party. The pre-trap panchanama as well as post trap panchanama have been proved by the prosecution through P.W. 2 Arvind and P.W. 4 Tandale. Though the accused is accepting that he had taken money from the complainant, he has not given a proper explanation. P.W. 3 Prakash Pawar was the sanctioning authority. He was the Controller, Legal Metrology, Maharashtra State, Mumbai. He was the appointing and removing authority for Inspector. There is no legal impediment in the sanction order. There was proper application of mind by the sanctioning authority and, therefore, the learned Trial Judge ought to have come to the conclusion that the prosecution has proved the offence against the accused beyond reasonable doubt. It appears that the learned Trial Judge got swayed away because of the hostility of the complainant. Merely because the complainant turns hostile, we cannot say that the prosecution story is false or does not prove the offence beyond reasonable doubt. A person can be won over at a later stage of proceeding. The presumption under Section 20 of the PC Act puts burden on the accused to show that the amount which has been accepted by him is not illegal gratification. Though the accused has examined two witnesses in defence, yet, it can be seen that the accused could have taken amount from the complainant only after the figure of compromise would have been proved by his superiors. When the accused was caught by the raiding party, there was no communication between the accused and his superiors, which authorized the accused to receive the compounding charges from the complainant. Therefore, the tainted amount which was received by the accused was illegal gratification for not sending the case to the Court. The learned APP prayed for allowing the appeal and convicting the respondent.

10. Per contra, learned Advocate for the respondent supported the reasons given by the learned Trial Judge while acquitting the accused and further submitted that the complainant himself has turned hostile. He has accepted that the amount which he had given was towards the verification charges. His examination-in-chief would clearly show that there was absolutely no demand by the accused to him. In his examination-in-chief, he says that when accused told that he will have to give Rs.300/- for re-stamping and verification as well as the maximum fine amount would be Rs.500/-, he got confused. On the say of one Mr. Kadam, who is the employee from the office of the accused, he came to know

that he will have to give amount to the accused *(चहा -पाणी).* That means, there was no dialogue between the accused and the complainant clearly indicating that accused had demanded bribe. Further, the testimony of the complainant, after learned APP was allowed to put question in the nature of cross, would show that the complainant has deviated from the contents of his own complaint. The accused is accepting that he had gone to the shop of the complainant. He had seized certain weights and scale. He had issued receipt to the complainant as well as to his father. When the complainant met him, the accused had put proposal before him regarding compounding of offence which was permissible under Section 65 of the Standards of Weights and Measures (Enforcement) Act, 1985 with the rules framed thereunder. Those rules prescribed that the compounding charges would be decided by the superiors of the accused. The amount of Rs.300/- which were found in the possession of accused were the charges of re-verification and stamping to be made on the weights seized from the shop of the complainant. The evidence of defence witnesses would show as to what is the procedure that is adopted in the office of the accused regarding re-verification, initiation of proceedings, proposal for compounding of the offence, fixation of the amount and also the acceptance and payment of such compounding charges. It was, therefore, rightly held by the learned Trial Judge that the presumption under Section 20 of the PC Act has been rebutted by the present respondent. It was the probable defence and the prosecution has failed to prove demand and acceptance of the amount as bribe. The respondent has been rightly acquitted. There is no merit in the appeal. It deserves to be dismissed.

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 ?

12. P.W. 1 Chandrakant is the complainant. Perusal of his examination-in-chief itself would give a clear picture that there was no demand made by the accused regarding bribe. After giving the story as to how the accused seized some weights and scale from his shop, he met accused when accused had invited him to office. But then he states that accused had told him that he would be required to pay fine and stamping charges. Accused did not tell him the exact fine amount, but he told that amount of Rs.300/- would be required for re-stamping and verification. Maximum fine amount that can be imposed would be Rs.500/-. The complainant states that he was then confused, but on the say of another employee from the office of accused, whose name was Kadam, complainant got the idea that

he is required to give some amount as bribe. That means there was no direct demand of money. Further examination-in-chief would show that anthracene powder was applied to three currency notes of denomination of Rs.100/- before trap. According to the complainant, Mr. Tandale - the Investigating Officer had given those currency notes in the hand of the complainant and then complainant had put that amount in the left pocket of his shirt. Complainant does not say that the investigating officer-cum-informant had asked the complainant to wash his hands. That means, when he went to the office of the accused, already the complainant had handled the tainted currency notes which cannot be the part of the procedure. Further examination-in-chief would show that though the accused was talking about the amount whether brought or not by the complainant, yet, it appears to be the amount towards verification and stamping charges. It is to be noted that even the prosecution was not happy with the examination-in-chief and, therefore, prayed for putting questions in the nature of cross. After that permission was granted, it appears that the complainant has disowned the portion mark - 'A' from his complaint as well as Statement under Section 161 of the Code of Criminal Procedure i.e. in respect of demand and his firm impression that the amount has been demanded as bribe. In the cross-examination taken on behalf of the accused, P.W.1 Chandrakant has admitted almost every fact that was put on behalf of the accused. He has accepted that the said amount which he had given was the stamping and verification charges. He also admits that immediately after the accused was caught, he told the raiding party that the said amount has been accepted towards the verification and stamping charges. At the end, it can be said that the complainant himself has not supported the prosecution story.

13. P.W. 2 – Arvind Malvade is the panch witness. He has tried to prove all the panchanmas, however, he is contradicting the informant that after the anthracene powder was applied to the three currency notes of denomination of Rs.100/- each, Investigating Officer had asked Police Head Constable Mr. Chavan to put that tainted amount in the left pocket of the shirt of the complainant. Thus, he is ruling out application of anthracene powder to the hands of complainant before they started towards the office of accused. His cross-examination is nothing but denials, but the important aspect that has come on record is that he admitted that after the trap was over, immediately the accused gave his explanation before Mr. Tandale that the amount is in connection with re-verification and stamping of weights and measurements. This witness states that the accused had given the explanation in writing. If we consider the testimony of P.W. 4 Tandale – the Investigation Officer, then it can be seen that there is absolutely no reason given by him as to why he had not carried out the investigation in view of the explanation. Further, in the testimony of P.W. 3 Prakash Pawar, who is the sanctioning authority, it can be seen that the said explanation given by the accused in writing was never transmitted or made available to the sanctioning authority. If

that explanation would have been made available to the sanctioning authority, then the sanctioning authority would have taken help of the rules and then after proper application of mind, would have decided the point whether to grant sanction or to prosecute the employee or not. Another fact that is required to be noted from the testimony of P.W. 3 – Prakash Pawar is that, in his cross, he is admitting that charges are levied for re-verification and stamping. At this stage itself, it is necessary to consider testimony of D.W. 1 – Narendra Singh who was then working as Assistant Controller of Legal Metrology, Food and Civil Supply Department. He has given the entire procedure how inspector is empowered to inspect any shop or establishment, then the procedure that is adopted when it is found that the weights and measurements used in a particular shop or establishment are not verified or stamped. He has categorically stated that after initiating the proceedings the inspector is required to issue notices to the concerned trader to compound the offence. The concerned inspector sends the relevant papers to the Assistant Controller or the Deputy Controller for consideration and after receiving the authority, he accepts the amount as compounding charges. Here we are also required to then consider Section 65 of the Standards of Weights and Measures (Enforcement) Act, 1985 which provides for compounding of offences. It prescribes that the offences mentioned therein may be compounded by the Controller of such other officer as may be authorized in this behalf by the Controller, on payment, for credit to the State Government, of such sum as the Controller or such other officer may specify. It is the defence of the accused that as regards those weights and measurements which were seized by him, the complainant had shown willingness to compound the offence and an application to that effect was made by P.W. 1 Chandrakant. However, Chandrakant wanted his weights and measurements to be returned, which were seized by the accused. Accused told him that unless he pay the verification and stamping charges, they will not be given and, therefore, on the particular day, the complainant had paid that amount of Rs.300/- towards the charges. In order to support this contention, accused has also examined D.W. 2 Ramesh Chakrupe. He is the trader and he was present in the office of the accused at the relevant time. He has stated that in his presence, the accused had told P.W. 1 Chandrakant that he should pay amount of Rs.300/- for the re-verification of weights and measurements. In the cross examination of this witness taken by learned APP, nothing contradictory has been transpired. It has not come on record that this witness was in any way related to the accused. The witness has specifically stated that he had gone to the Administrative Building of Latur for verification of weights and measurements. Interesting point to be noted is that he has specifically told in his examination-in-chief that police had interrogated him and in spite of this fact, nothing is there in the cross-examination which would discard his presence in the office of accused at the relevant time. He is definitely an independent witness, and therefore, his testimony has more weight than the testimony of P.W. 1, whose evidence will have to be considered like an accomplice.

14. P.W. 2 Arvind though proved all the panchanamas, yet, it can be seen that his testimony is not corroborated by the complainant. From the testimony of the Investigating Officer, the situation in the office of the accused can be seen. He states that all Inspectors in the office of accused have the sitting arrangement in one hall. But then he volunteered that each Inspector had independent section, which were established in the same room with the help of Almira, but then he accepts the position that there is absolutely no mention in the panchanama or any other document to support his say that independent section has been made with the help of Almira. The spot panchanama would give a picture that it is one big hall. If this is so, then definitely the act of giving and taking of the bribe would have been noticed by other employees in the office, but none of them have been examined by the prosecution for the reasons best known to it. The Investigating Officer accepts that the weights and measurements and balance in the shop of the father of the complainant were not verified and stamped for the period from 1999 to 2003. Therefore, when the action has been taken by the accused, he need not be blamed. The prosecution has failed to show that the amount, which was found from the accused, was not towards the charges of stamping and verification. The learned APP has strongly submitted that the compounding of offence was not sanctioned by the higher authorities of the accused, then he was not empowered

to accept that amount as compounding charges. The learned APP appears to have missed the explanation given by the accused together with the admission of P.W. 1 Chandrakant that the said amount was accepted as charges towards verification and stamping. When the accused was about to issue receipt, the raiding party came and he could not issue the receipt. The defence put forward by the accused is probable, and therefore, it cannot be stated on the basis of evidence adduced by the prosecution that the offence was proved beyond reasonable doubt. Further, the testimony of the sanctioning authority would also clearly give a picture that there is absolutely no application of mind since the explanation given by the accused was not at all considered.

15. 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 learned 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.]

SCM