

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.619 OF 2001

The State of Maharashtra	)....Appellant
V/s.	
Sardar Chandsaheb Silar	)
Age-32 years, Occ. Service,	)
R/o 321/30, Muslim Paccha Peth,	)
Solapur, Dist. Solapur.	)....Respondent

Ms.Anamika Malhotra APP for appellant/State.
Mr.Satyavrat Joshi for respondent.

CORAM : K.R.SHRIRAM,J
DATE : 20.1.2020

JUDGMENT :-

1. Appellant is impugning an order and judgment dated 25.5.2001 passed by Special Judge, Solapur, acquitting respondent of offences punishable under Section 7 (*Offence relating to public servant being bribed*) 13(1) (d) and 13(2) (*Criminal misconduct by a public servant*) of the Prevention of Corruption Act, 1988.

2. The case of the prosecution in short, is that complainant is residing in house no.51 in a slum area at Fakruddin Nagar, Solapur. Though the house belongs to complainant, the name of his brother

Shridhar More had been entered in the record of municipal corporation as owner of the said property and complainant is shown as in possession. Therefore, complainant wanted to delete his brother's name Shridhar More from the record of municipal Corporation and he approached respondent (accused). According to complainant, it was accused who could get the work done and when he informed accused to delete the name of his brother Shridhar More, accused demanded Rs.500/- as bribe for doing that work. Since the hands of the accused had anthracene powder, accused is stated to have committed the offence though the alleged bribe amount was found on the floor.

3. Charges were framed and accused pleaded not guilty and claimed to be tried.

4. The case of the defence is one of total denial. According to defence the said area where the house of complainant is situated was not within the control of accused and therefore, there was no question of accused dealing with the work that complainant had with the Corporation. It is also the stand of defence that accused has not accepted any bribe amount from complainant or at any time even demanded any bribe amount from complainant.

5. In support of its case, prosecution examined 5 witnesses viz. Dattatray Tukaram Pawar, panch witness as (PW-1); Nagendra Annarao Shimpi, a colleague of accused working in the same office as (PW-2); Sandipan Ganpat More, Complainant as (PW-3); Krushnath Shekappa Bhandare (PW-4), who at the relevant time was working as Assessment Assessor Officer and Recovery officer in the same department as accused; and Bhaurao Rupchand Chavan, Investigating officer, Dy.S.P. of A.C.B., Solapur as (PW-5).

6. The prosecution also relied on documents like complaint, pre and post trap panchanama. Defence did not lead any evidence but got certain documents proved.

7. The prime witnesses are (PW-1) & (PW-3). PW-1 says that along with complainant (PW-3), he reached Rippon hall at 4.10 p.m. on 6.9.1993. Accused inquired about his work with complainant and complainant told accused that as per the directions of accused, he has brought Rs.500/-. Accused demanded the amount of Rs.500/- and Complainant took out amount of Rs.500/- from the chest pocket of his shirt and gave the same to accused with his right hand and accused accepted the amount of Rs.500/- in his left hand. Accused held that

amount in his left hand. PW-1 says thereafter complainant PW-3 left taking leave of accused and reached upto the doors of the office. At that time, accused asked PW-1 as to whether he had any work with accused and PW-1 replied that he was only accompanying PW-3. PW-1 further says that by that time raiding party arrived and accused who was holding Rs.500/- in his left palm shifted it immediately to his right palm and thereafter threw the same on the floor. PW-1 in his cross-examination states that the amount of bribe was in the left hand of accused for a period of 1 or 2 seconds and thereafter the amount was transferred to the right hand by accused when he saw that the raiding party was approaching towards him and then accused threw the amount to the floor.

As against this, PW-3 in his cross-examination says that this amount was in the left hand of accused for a longer period. He says he was with accused for about 1 or 2 minutes after paying the amount and then he left the table of accused and proceeded towards the door of the office to go out of the office and at the time he left, the amount was in the left hand of accused. This is a major contradiction.

8. PW-1 says that when they reached the office on 6.9.1993 at 4.10 p.m. complainant inquired with accused in respect of his work and accused replied that his work was not over as he was under

pressure of other work. PW-1 says thereafter complainant told accused that as per the direction of accused he has brought amount of Rs.500/-. He does not state anything about any inquiry being made by complainant regarding strike.

Per contra, PW-3 complainant says that when he reached the office of accused at 4.00 p.m. after greeting each other, accused told complainant to sit down in the chair and he sat on the left side of the chair of accused. PW-1 does not state anything about complainant sitting on the chair at all. PW-3 states that at the time he sat down on the chair, he inquired with accused whether there was any strike in the office. Accused replied that there was no strike in the office. PW-1 does not say anything about this conversation regarding strike between accused and complainant.

PW-3 says that PW-1 who was with him was standing behind at the back side of the chair on which PW-3 sat down in front of the table of accused. PW-1 is silent about that.

9. If one reads the evidence of PW-3, particularly paragraph nos.3 & 4 together, it appears like on 20.7.1993 he went to the office of accused at 4.30 p.m. again when accused is alleged to have told him that unless he pays the amount of Rs.500/- as bribe, his work will not be completed. We will come to the work to be done later. I am

saying, it appears because in paragraph-4, PW-3 does not give the date on which he went to the office of accused at 4.30 p.m. As compared to this, in the complaint PW-3 says that on 4.9.1993 at 4.30 p.m. he went to the office of accused when accused demanded sum of Rs.500/-. Therefore, in the absence of any other evidence in corroboration of the testimony of complainant, it needs to be taken that prosecution has not proved the alleged earlier demand of bribe by accused.

10. PW-1 says, on arrival, complainant asked accused regarding the work and there is no mention of strike and accused immediately replied it was not done because he has too much of work, whereas PW-3 does not say any of these things. According to PW-3 he inquired with accused about his work and accused demanded the bribe amount. This inconsistency is very material because the defence of accused is that whatever work complainant had with the Corporation for which complainant alleges he paid the bribe amount, that work was not entrusted to accused and accused could not have done the work for the complainant.

11. Another inconsistency, though it might appear minor, nevertheless is an inconsistency, is that PW-1 says that after payment

of amount, PW-3 telling accused that he would proceed left the place and went towards the door. As against this, PW-3 complainant deposes, that after he paid the bribe amount, he inquired with accused whether he could leave and accused answered in the affirmative uttering that he may go and then complainant left the place.

12. It is the case of PW-3 that the work, that he had, of deleting the name of his brother Shridhar More was to be done by accused. PW-4 who was the Assessment Assessor Officer and Recovery officer, in his cross-examination states that Fakroddin Nagar where the house of complainant was situated, was not under the control of accused but under the control of one M.K.Shahapure. Shahapure is not examined. He also says that the main work of accused was to fix amount of taxation, recover the same and maintain register of the persons who are in occupation of slum area. PW-4 also says accused has to take approval and he has to maintain the concerned register etc. in discharge of his duties. Even for a moment, one says that accused was incharge of Fakroddin Nagar, still his job was only to fix the amount of taxation, recover the same and maintain the register of the persons who are in occupation of the slum area and for that he was to take approval. His power did not include entering in the register or

changing the contents of the register regarding ownership. PW-4 also says that the concerned clerk will not make entry in the property register unless he has personally verified the contents of form 8(2) by personally visiting the place and on verification of the amount of taxes fixed and it is communicated to occupant by directing the occupant to pay the tax who then deposits the tax in the municipal Corporation. PW-4 in his cross-examination further adds that for the purpose of ascertaining rights and duties, on the point of occupancy of particular person, he has to put up note to his higher officer along with previous correspondence in order to see that the matter should be understood by concerned officer. There is no right available and it is not within the power of accused to change the record by deleting the name of person like that of Shridhar More and issue the certificate accordingly in favour of person who demands. It is in the hands of Competent authority. Therefore, first of all, Fakroddin Nagar was not within the jurisdiction of accused and secondly accused did not have the power to change the records as sought for by complainant. Therefore, question of accused demanding any bribe or saying that he will not do the job unless he is given the bribe of Rs.500/- would not arise.

13. PW-3 says that on 6.9.1993 accused and his subordinate Hundekari were looking after the work on their table. PW-1 does not

mention anything about subordinate of accused Hundekari. PW-3 says Hundekari, a clerk who was sitting on the side of accused has witnessed the conversation between complainant and accused from beginning to end. PW-1 was totally silent about Hundekari. Moreover, Hundekari was not called to depose.

PW-3 says that papers of house no.1, Fakroddin Nagar were lying on the table of accused. PW-1 does not say any such thing. In fact, PW-1 says that when accused was directed to produce relevant papers of the work of complainant, accused informed that the papers are in possession of Bhandari saheb who is PW-4. Therefore, there is clear contradictions between these two witnesses itself. PW-4 says that the file marked 'A' which is relating to Fakroddin Nagar was taken out from the cupboard by accused from his chamber and it was produced to the ACB officer on the date of alleged incident in presence of PW-4. Therefore, again there is further contradiction.

PW-5 who was Investigating officer states that after accused was caught, he told accused to produce necessary papers like that of Exh.5A pertaining to house no.51. Accused produced the file for inspection and the file was kept in chamber of Mr.Bhandari (PW-4) in iron cupboard. This is a major and material contradiction which makes it difficult to believe the story of complainant.

14. PW-1 and PW-3 and also PW-5 in their evidence state that there were anthracene marks on both the hands of accused. PW-1 says in his examination-in-chief that during the raid when the personal search of accused was taken, bunch of keys, receipts, money, photo and learners driving license and some amount of his pay and salary was found and those articles were examined under ultra violet lamp but they had no shining or tinges of anthracene powder and hence they were returned to accused. It is strange that these were on the person of accused in his pocket but supposedly his palms had anthracene powder. The things which were recovered from his pocket did not have anthracene powder. Therefore, I have my own doubt as to whether there were traces of anthracene powder in the palms of the accused.

15. We must keep in mind that the bribe amount was found on the floor and not on the person of accused. PW-5 admits in his cross-examination that accused was not knowing till the raiding party reached him that they belonged to the office of ACB. The panch witness has admitted in his cross-examination that the main entrance door of office was visible from the place where accused sat and that the visitors entering the office can be seen easily by accused. PW-1 also says that no sooner complainant left, accused inquired with PW-1

as to what did he want and whether he had any work with accused. Thus, it is clear from this evidence that accused was totally oblivious of the impending raid. If that is so, accused would have put the money in his shirt pocket or pant pocket but how could the amount be found on the floor. I would assume it is natural that person accepts bribe amount particularly in the office where there are many other staff members and more when his assistant was sitting with him hearing all the conversation as stated by PW-3, he would have tried to hide the amount by putting it in his pocket. He would not be holding the amount in his left hand for some time and then move it to his right hand and after seeing the raiding party, throw the amount on the floor.

16. There are many such contradictions and gaps which have been listed in the judgment impugned. For the sake of brevity, I am not going into those details.

17. Learned APP Ms.Malhotra submitted that there is a presumption under Section 20 of the Act for the offence under Section 7 of the said Act. Learned APP submitted that since the anthracene powder was found on both the palms of accused, there is a presumption of guilt of accused. It is settled law that the presumption

raised under Section 20 of the Act is a rebuttable presumption and that the burden placed on respondent for rebutting the presumption is one of preponderance of probability. It is also settled that accused need not step into the box to prove his innocence but he could rebut the presumption even by cross-examination of witnesses cited against him [*State of Gujarat Vs. Navinbhai Chandrakant Joshi*¹].

18. It is also settled law that if two views are possible, the appellate Court should not interfere with the acquittal of the lower court and unless material on record leads to an escapable conclusion of the guilt of accused, the judgment of acquittal will not call for interference by the appellate Court. [*V.Sejappa Vs. State by Police Inspector, Lokayukta, Chitradurga*²] In *V.Sejappa (supra)* the Apex Court has also laid down the factors that must be kept in mind by the appellate court dealing with the appeals against acquittal and the same can be found in paragraph-22 of the said judgment which reads as under :-

“..... It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following :

(i) There is presumption of innocence in favour of an

1 2018 CRI.L.J.3733

2 AIR 2016 SUPREME COURT 2045

accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court ;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal ;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.....”

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

[State of Punjab Vs. Madan Mohan Lal Verma]³

3 (2013) 14 Supreme Court Cases 153

20. Therefore, recovery of tainted currency is not sufficient to hold a person guilty. Demand has to be unequivocally proved.

21. In the case at hand, I have to note that the evidence of complainant is fraught with lot of inconsistencies and there are contradictions with the evidence of PW-1, PW-3, PW-4 and PW-5. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested very carefully. *State of Punjab (supra)* has followed the law laid down in ***State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede***⁴.

22. The Apex Court in ***Suraj Mal Vs. State (Delhi Administration)***⁵ under the Prevention of Corruption Act 1947 has held that mere recovery of tainted currency is not sufficient to infer the guilt of the accused. It is well settled where witnesses make two inconsistent statements the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances, no conviction can be based on the evidence of such witnesses.

4 (2009) 15 Supreme Court Cases 200

5 (1979) 4 SCC 725

23. A learned single Judge of this court in ***Khushalchand Yashwant Gaikwad Vs. The State of Maharashtra***⁶ also has held that it is well settled law that mere possession and recovery of currency notes without proof of demand will not bring home the offence under Section 7 since the demand of illegal gratification is sine qua non to constitute the offence. The same will also be conclusive in so far as offence under section 13 (1) (d) is concerned, as in the absence of any proof of demand of illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on the proof of acceptance of illegal gratification that presumption can be drawn under section 20 of the said Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification, proof of acceptance will not follow. Paragraph-12 of the said judgment reads as under :-

“It is well settled law that, mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since the demand of illegal gratification is sine-qua-non to constitute the said offence. The same also will be conclusive insofar as the offence under Section 13 (1)(d) is concerned as in the absence of any proof of demand for illegal gratification

6 2018 SCC Online Bom. 1073

the use of corrupt or illegal means or abuse of position as to public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Prevention of Corruption Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reliance is placed on (i) N.Sunkanna v. State of Andhra Pradesh; (ii) T.K.Ramesh Kumar v. State through Police Inspector Bangalore; (iii) Khaleel Ahmed v. State of Karnataka; ((iv) Suraj Mal v. The State (Delhi Administration); and (v) Sita Ram v. The State of Rajasthan.”

24. Learned APP submitted that even if accused could not have done the work himself directly, he could be deemed to have accepted the bribe by promising to get it done by others. But that is not the charge or the case of prosecution. The case of prosecution is that accused was a public servant and in exercise of his official position, he demanded Rs.500/- as bribe to do the work required of him by complainant. I would have given credence to what learned APP submitted if any such averments were made in the charge and accused was given an opportunity to explain the circumstances appearing against him. While the charge mentioned gratification being paid for showing favour in exercise of his official function what learned APP now submits is that the gratification was for inducing public servant to show favour in this respect. Nowhere it was

suggested that the money was intended to be paid to another public servant.

25. Prosecution did not lead evidence of material witnesses as noted above, Mr.Shahapure and Mr.Hundekari. The Apex Court in *S.Harnam Singh Vs. The State (Delhi Administration)*⁷ has held that non production of material witnesses will cause miscarriage of justice. The charge-sheet reads 18 witnesses including the name of Hundekari but only 5 witnesses were examined. I would say it amounts to serious irregularity vitiating the trial.

26. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Trial Court observed that prosecution had failed to prove its case.

7 (1976) 2 SCC 819

27. In the circumstances, in my view, the opinion of the trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with.

28. Appeal dismissed.

29. The State Government/Appropriate Authority shall pay over to respondent, within a period of 30 days from today, all pensionary or other benefits/dues stalled, in view of pendency of this appeal. No authority shall demand certified copy for reimbursing the benefits/dues as directed above.

All to act on authenticated copy of this order.

Certified copy expedited.

(K.R.SHRIRAM,J)