IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.640 OF 2003

The State of Maharashtra — Appellant (Org.Complainant)

versus

Madan Vasudev Vatturkar,
Branch Engineer, Electric Inspector Office,
R/o.2897, `A' Ward, Gangi Bol, Kolhapur. — Respondent (Org.Accused)

Mr.A.R.Patil, APP, for the State.
Ms.Rati Sinhasane i/by Mr.U.R.Mankapure, Advocate for the Respondent.

CORAM : PRAKASH D. NAIK, J.

DATE : 4th November 2020

JUDGMENT :-

1. This appeal is preferred under Section 378 of Code of Criminal Procedure against order of acquittal passed by learned Special Judge and Additional Sessions Judge, Kolhapur, in Special Case No.10 of 2000 vide judgment and order dated 30th November 2002.

2. The respondent-accused was charged for having committed offences u/s 7, 13(1)(d) r/2 Section 13(2) and Section 14 of Prevention of Corruption Ac, 1988 (`P.C.Act' for short).

3. The case of prosecution is as under :-

(i) The complainant was carrying business of Power Looms at Ichalkarangi. On 18th February 1997 the complainant approached Anti Corruption Bureau, Kolhapur (`ACB') with a grievance that the Electrical Inspectors from the Department of Energy of the State of Maharashtra, Kolhapur Division, visit the premises for inspection. They used to verify the electrical bills of supply of electric energy to power looms and inspect the load and charge. On inspection fees was accepted by them by issuing necessary receipts. The inspectors used to harass the power loom owners by demanding more money than the legitimate fee and in case of non payment, they used to put the owners in trouble;

(ii) One officer from the Electrical Division had visited his premises on 18th February 1997 in the morning for inspection purpose. The complainant had asked the Electrical Officer to visit in the afternoon stating that the bills wee not available with him and the same were kept at his residence which he would produce in the afternoon. The complainant also informed that the officer would come to him again and would be asking for more money. The complaint was lodged for initiating action against the Electrical Officer who was to visit the complainant's premises in the afternoon;

(iii) The complaint was recorded by ACB and it was decided to lay a trap in the afternoon on the same day. Two panchas were called from City Survey Office. They were apprised with the grievance of complainant. The complainant presented Rs.200/- for the purpose of trap. Anthracene powder was applied to the currency notes and the same were kept in the pocket of shirt of complainant. Instructions were given to the members of raiding party;

(iv) It was decided that the complainant and panch witness would approach the Electrical Officer on his arrival. Panch no.2 and other would take suitable positions. In case of demand for more money, the complainant shall pay the amount and give specific signal to the members of raiding party;

(v) Panch no.1 accompanying the complainant was supposed to keep watch on transaction and supply information to other members of raiding party. Thereafter the raiding party were to rush to the spot and apprehend the accused;

(vi) The pre-trap panchanama was drawn and the raiding party proceeded for raid. The complainant and one of the Panch reached at the premises of complainant. At about 3.30 pm, the Electrical Inspector visited the premises. He demanded electrical bills from the complainant which were presented to him. The Inspector prepared receipt of Rs.60/- and delivered it to the complainant. Thereafter complainant tendered amount of Rs.100/- consisting of one note of Rs.100/- from his pocket. The accused took the note but did not return the balance amount. He demanded Rs.50/- from the complainant. Hence, one more note of Rs.50/- was handed over to the accused. The anthracene powder was applied to both the notes. The accused took the notes and kept them in his pant pocket. The complainant gave signal to the raiding party. Necessary information was supplied by Panch no.1. The accused was apprehended. Articles were recovered from him. The currency notes recovered from the accused tallied with the notes tendered by the complainant. The anthracene powder was noticed on the currency notes. On completing investigation charge sheet was filed after obtaining sanction u/s 19 of P.C.Act.

4. The prosecution examined three witnesses. PW-1 Gopal Chintaman Lele is the complainant. PW-2 Narayan Damodar Potdar is Panch Witness and PW-3 Govind Shankarrao Mirashi is the Investigating Officer. On recording evidence of witnesses, statement of the accused was recorded u/s 313 of Cr.P.C.. By judgment and order dated 30th November 2002 the respondent-accused was acquitted of all the charges. Hence, the State has preferred this appeal against the order of acquittal.

5. Learned Judge on appreciation of the evidence on record gave finding that the prosecution has failed to prove the charge. It is not proved beyond reasonable doubt that the accused demanded and agreed to obtain money as bribe from the complainant. It is not proved that the accused accepted the amount as illegal gratification from the complainant. It is not proved that the accused adopted corrupt practice to obtain pecuniary advantage and that the accused was found habitually committing the offence. The Trial Court found that evidence of complainant and panch witness is not sufficient to prove that there was any demand by the accused of bribe amount and acceptance of the amount as bribe. The defense of the accused is that demand was not proved. Money were planted. The accused had never visited the premises of the complainant in the past. The complaint was lodged without any demand being made by the accused on the day of the incident or earlier. The panch witness did not hear the conversation between the accused and the complainant.

6. I have perused the evidence adduced by prosecution. PW-1 Gopal Lele has deposed that he was carrying on business of power looms at Ichalkarangi. There were two electricity meters in the premises. The Electric Inspector used to visit every year to the factory. On 18th February 1997 at about 10.30 am the Electric Inspector visited the premises. The accused demanded electricity bills. The complainant stated that the bills are at his residence and he would bring the same in the afternoon. The accused left the premises. The complainant approached ACB, Kolhapur for lodging the complaint apprehending that the Electrical Inspector would demand more money towards bill as bribe. His complaint was recorded. The panch witnesses were called. HE handed over Rs.200/- for the purpose of raid in the denomination of one note of Rs.100/- and two notes of Rs.50/-. Anthracene powder was applied to the notes. Instructions were given to him and the panch witnesses. It was decided that the complainant and PW-2 would remain present at the premises and complete the transaction with the accused. In the event more amount is demanded, the tainted note be handed over to the accused and appropriate signal be given to the raiding party. All of them proceeded towards the premises of power loom of complainant. The complainant sat on chair and PW-2 sat on desk. At about 3.30 pm, the accused visited the premises. The complainant presented the electric bills kept in the desk where PW-2 was sitting and presented them to the accused. The accused entered with one bag with him. He inspected the bills and prepared receipt of Rs.60/- which was given to the complainant. The electric bills were returned to the complainant. He handed over the note of Rs.100/- from the chest pocket to the accused. The said note was

accepted by the accused. The complainant requested the accused to refund the balance amount of Rs.40/-. The accused refused to refund the amount and in addition demanded Rs.50/- from the complainant. The complainant then handed over Rs.50/- to the accused. Thus, the accused demanded Rs.90/- as bribe and accepted the same. Signal was given to the raiding party. The accused was apprehended. The currency notes were recovered from him. All the requisite formalities were completed.

In the cross examination PW-1 stated that the complainant had no previous concern with the accused. He had not seen the accused in the past except in the morning on the same day The accused did not demand any amount from him till the time he reached the office of ACB. It was his desire that trap should be effected successfully. He is member of Grahak Takrar Nivaran Kaksha which is under the control of Collector and he is performing his duties as social worker since last seven years. He did not produce electricity bills in the morning and decided to show them only at the time of trap by giving false excuse to the accused that bills are at his residence and he will produce the same in the afternoon. The Electric Inspector is competent to check the sanctioned load. The Electric Inspector used to check actual consumption and sanctioned load.

7. From the evidence of PW-1 it is apparent that according to him the Electrical Officer used to visit the premises for inspection of electricity bills and charge more money. He apprehended that the Electrical Officer who had visited his premises on the date of trap, would demand more money. During the conversation between the accused and the complainant, which had occurred at about 10.30 am

on 18th February 1997, there was no demand of bribe. It is only on the basis of surmises the complainant approached the ACB with an apprehension that the Electrical Officer would demand bribe. Thus, there was no demand of illegal gratification undisputedly prior to lodging the complaint by the complainant.

8. PW-2 Narayan Potdar acted as Panch Witness in pre-trap and post-trap Panchanama. As per his version, he was called on 18th February 1997 to act as panch witness. He visited ACB office. The grievance of the complainant was apprised to him. The trap was arranged. Instructions were given. Anthracene powder was applied to the currency notes. He was instructed to accompany the complainant. He proceeded with complainant at the premises of power loom. The accused visited the premises. The bills were produced before him. The accused issued one receipt. The complainant saw the receipt and took out note of Rs.100/- and tendered the same to the officer. They had some conversation. He did not remember what was the conversation. The complainant took out another note of Rs.50/- and gave it to the accused. He was sitting at a distance of about 5 feet from the complainant and accused during the transaction. There was noise of power looms and he could not hear the exact words of the conversation. He could only gather that the talk was in respect of more money. He recollect that complainant had paid Rs.100/- and demanded balance amount. As the accused did not return the money, the complainant again took out one more note of Rs.50/- and gave it to the accused. The raiding party reached at the spot and caught both the hands of accused. The currency notes were recovered from him.

In the cross-examination he stated that his statement was recorded on 19th February 1997. It was not possible due to noise of power looms to hear the conversation distinctly. Since it was decided to pay more money, he felt or gathered that the talk between the accused and the complainant was probably in respect of more money. The panch no.2 was immediately told to take notes from the possession of accused. The pre-trap panchanama and the post-trap panchanama were exhibited in evidence. Thus, the evidence of this witness indicate that on account of disturbance of power looms, he did not hear the conversation distinctly. He presumed that the conversation was in respect to payment of more money. Thus, there is no corroboration to the evidence of complainant with regards to demand of money and acceptance of money as bribe.

9. PW-3 conducted the investigation. He has narrated the events of lodging the complaint by the complainant, arrangement for trap, recording of pre-trap and post-trap panchanama. The cross-examination of this witness reflects that he had instructed the complainant to open the talk with Electrical Inspector on his coming to the spot and furnish the bills, if demanded. Panch no.1 did not disclose to him that the complainant went out and brought the accused inside. He did not state that the accused had inquired after coming inside with the complainant whether he had brought the bills. He did not state that the accused made demand of the bills and the complainant told that they were kept in drawer and then he took out the bills and tendered to the accused.

10. The sanction order was admitted by defense and it was exhibited in the evidence.

11. Learned APP submitted that the Trial Court has committed an error in acquitting the accused. The evidence of complainant and other witnesses establishes that the accused had demanded amount and accepted the bribe amount. PW-2 is crucial witness. He was accompanying the complainant. He has corroborated the version of complainant. The Trial Court has misread the evidence on record. The findings of the Trial Court are not in consonance with the evidence led by the prosecution. The bribe amount was recovered from the accused. The anthracene powder was noticed on the amount and the clothes of accused. After accepting the amount of Rs.100/-, the accused refused to refund the amount of Rs.40/- and demanded additional amount of Rs.50/-. There is no explanation from the accused about finding of tainted currency notes from his possession. The Trial Court has ignored presumption u/s 20 of P.C.Act.

12. Learned advocate for the respondent-accused contended that the Trial Court on appreciation of the evidence has arrived at a conclusion that prosecution has failed to establish its case beyond all reasonable doubts. No case is made out to interfere in the judgment of Trial Court. There is no perversity in the judgment of Trial Court and in exercise of powers u/s 378 of Cr.P.C, the Court may not reverse the judgment of acquittal. The demand was not proved. The accused had never visited the premises of complainant in past. In the first meeting there was no demand. The complainant is not trustworthy witness. The conversation between the accused and the complainant was not heard by PW-2. The complaint was lodged on the basis of apprehension of complainant that more amount would be demanded by the accused.

13. Learned advocate for the respondent relied upon following decisions :

(i) N.Sunkanna Vs. State of Andhra Pradesh
((2016)1-SCC-713;

(ii) Bal Krishnan Sayal Vs. State of Punjab
(1987)2-SCC-657;

(iii) Ravindra Mahadeo Kothamkar Vs. The State of Maharashtra
2015-SCC Online-Bom-6558.

14. On scrutiny of the evidence I do not find any reason to overturn the impugned judgment and order passed by the Trial Court acquitting the respondent-accused. This is a peculiar case founded on the assumption of the complainant that the power loom owners were harassed by Electrical Inspectors, who visit the site every year by demanding more money. It is not the case of prosecution that the accused had visited the power loom of the complainant or any other person in the past and demanded bribe from them. It is also not the case of complainant that on the day when the accused had visited the factory of complainant on 18th February 1997, he had demanded more money from him. On the contrary, the accused inquired about the electricity bills for which false excuse was given by the complainant that bills are at his residence and his family members are not in the house and hence the same would be produced in the afternoon. The complainant then approached the office of ACB, Kolhapur. Thus, without any sort of demand or money at the instance of accused, the complaint was lodged. There were no previous instances of such demand being proved by the prosecution. Surprisingly the ACB office without any verification decided to lay

trap. The amount of demand was not known to the complainant because he was under impression that more amount would be demanded. However, he produced Rs.200/- in the office of ACB for the purpose of raid.

15. The evidence of complainant also indicate that he was working for Grahak Takrar Samiti. He was interested in making trap successful on assumption that accused would demand money. The complainant was not knowing the visiting officer. He did not state that the accused had previously visited the premises. Thus, the trap was arranged in the absence of demand of whatsoever nature by the accused.

16. According to the complainant, the amount of Rs.60/- was legitimately charged. The documents produced by him do not furnish any clue that the legitimate fee of the inspection was Rs.60/-. He did not mention as to what was the rate of charging legitimate fee. It is not the case of the complainant that he had shown the bills to the officer in the morning and the figure was determined on inspection of bills. The prosecution has not disclosed as to how it was calculated or ascertained that the amount of Rs.60/- was likely to be the legitimate charge and Rs.90/- was likely to be demanded. The complainant was, however, carrying Rs.250/- and presented Rs.200/- to ACB for being used in the trap. Taking the case of the complainant as it is, even for payment of legitimate charges, he handed over the tainted currency notes. There was no specific material to ascertain as to how much amount was to be used in the trap by applying anthracene powder. The quantum of bribe amount was not clear. Thus, there was no demand of illegal gratification

which would make foundation and basis of decision to lay trap against accused.

17. The complainant and Panch no.1 (PW-2) are two crucial witnesses. The panch witness was accompanying the complainant. Instructions were given to PW-2 to keep close watch on the events taking place. He was supposed to observe the transaction and hear the conversation between the accused and complainant. The evidence discloses that at the time of alleged transaction, he was sitting about five feet away from the accused and the complainant. PW-2 was under obligation to reproduce and furnish information about the transaction to raiding party. The information given by the complainant and the panch witness has to be incorporated in the panchanama. In the present case, the account of talk which took place is important since the trap was not based on any specific demand. The demand which constitute offence was to take place at the time of trap. The complainant had stated that he took the accused inside the premises. He took out electric bills and presented them to accused. The bills were inspected and the accused prepared receipt of Rs.60/-. He verified the details and the bills were returned to the complainant. He kept the bills in the desk. The accused took Rs.100/-. The amount of Rs.40/- was not returned to the complainant and in addition the accused demanded Rs.50/- which was given to him by the complainant. Although PW-1 states that accused refused to return the amount, he does not specify as to what utterances were made by the accused and what were the words used by him in the transaction. He does not clarify as to what was the conversation by accused for demanding more amount of Rs.50/-.

18. According to PW-1 he gave signal to the raiding party and thereafter he was made to wait outside. The members of raiding party then came inside. The accused was apprehended. Inquiry was made with him thereafter. The details of the talk of transaction took place between the complainant and the accused is not appearing in the panchanama. The inquiry was apparently only with the complainant who had allegedly furnished the information.

19. The evidence of panch witness shows that he was instructed to remain inside and to watch the incident carefully and to reproduce his version about it to the raiding inspector. The accused entered and occupied the chair and made inquiry about the bills. The complainant handed over the bills. The accused issued receipt. He accepted the amount of Rs.100/- and Rs.50/-. He further stated that he could not hear the exact words of the conversation between the accused and the complainant. He was the only witness to reproduce the talk between the complainant and the accused which was vital in the peculiar facts of this case. He did not furnish anything positive for the prosecution with regards to the conversation. He stated that there was noise of power looms and the talk could not be heard. The Investigating Officer, however, stated that the inquiry was made with panch no.1 and the information supplied by him was incorporated in the panchanama. However, the panch witness has positively stated that he could not hear the conversation. He also stated that he had presumed that the talk was on account of money because the trap was arranged. Thus, the evidence of PW nos.1 and 2 does not inspire confidence.

20. As far as acceptance of money, the Trial Court in paragraph 42 has observed that the Investigating Officer made inquiry with the accused as to where he kept the money and directed the panch no.1 to take out belongings of the accused. As per the sequence given by the witnesses, it can be seen that bunch of notes were taken out from the pant pocket of the accused. Those notes were then examined under ultra violet lamp. The note of Rs.100/- and Rs.50/- had shown glitterance on both sides and one more note of Rs.50/- also had shown glitterance on its own side. It is further claimed that the numbers of these notes were checked and the numbers of two notes had shown glitterance on their both sides were tallying with the description of the notes in the pre-trap panchanama. It can be seen that all notes are handled by panch witness at least, he must have touched them all while making their sorting. Admittedly anthracene powder was applied to the notes furnished by the complainant. Objects which came in contact with those notes are bound to show reflection. But even admitting that the hands of panch no.2 had shown glitterance at the tips of his fingers, it is not the case that he had handled two notes or three notes only. On the other hand, he has admittedly taken out bunch of notes and had then sorted them out as per their denominations. Remaining amount was coming to Rs.3300/- consisting of various notes. It is, therefore, totally unacceptable as to from which note powder could have adhered to his fingers from that bunch. It would also totally be impossible that other notes remained without getting stained or adhered with trace of powder though touched by the panch no.2 in sorting out the notes from the bunch. Presence of anthracene powder at the site of the pocket of the pant if that bunch of notes is taken out there from does not also therefore furnish any distinct clue or criteria that the

accused was definitely receiver of either of two tainted notes and one of Rs.100/- and other of Rs.50/- having reflection on their both sides. The prosecution claims that the identification of the notes is duly brought by their examination under ultra violet lamp and their numbers, but when a scientific technique is sought to be applied and utilized in view of the chemical properties utmost precautions are required to be taken that the notes do not get touched to other articles where from sanctity of importance of use of such technique could be lost. The claim of the prosecution that the technique of scientific use of anthracene powder and ultra violet lamp is also properly utilized to establish the identity of tainted amount does not also inspire confidence. The mess of the work of the counting of the notes do not also therefore provide any distinct evidence to show that the accused officer was the author and receiver of the acceptance of the tainted money. It also can easily be found here that the evidence of the recovery is also not very much credible. On the other hand, it is too feeble to point out that accused had received the amount with any knowledge or the quantum of the same.

21. The Trial Court also observed that on making the scrutiny of the evidence of the prosecution carefully it is found that there is absolutely no positive and substantive evidence where from it could be said that at least at the scene of offence, demand of money as bribe was made and same was accepted as such. The evidence fails to show that either before initiation of the complaint or even at the time of the trap, money was demanded by the accused from the complainant as illegal gratification for doing any official work in the exercise of his official function as motive or reward. Conduct of the accused, on the other hand, appears to be very fair and polite. He

had visited site in the morning. Bills were not deliberately shown to him. They were hidden. On the other hand, complainant desired to arrange a trap deceitfully to implicate the accused officer. Bills actually were in the premises itself. Complainant was definitely in a position to consume time to prepare their xerox copies and approach anti corruption office. There was o criteria for assessing amount of the legitimate bill provided by the complainant. Figures of Rs.60/- and Rs.90/- appearing in the set of allegations of the complaint appear most unwarranted. On the other hand, figures appear to have been furnished consistent to the set of story of trap. There is no verification of truthfulness and reasonableness of the allegation sufficient to lay a trap. On the other hand, it appears that in view of general grievance of the power loom owners that more money is taken from the consumers, the accused was decided to be implicated at the time of his visit. In fact, it is also not case that accused had previously visited that town for the inspection. The statement made by the anti corruption officer that he also inquired with other persons and had found that more money was also taken from them is also not supported by any evidence. In this situation, absence of the information furnishing credible material by the prosecution to constitute offence becomes more conspicuous. The story of the prosecution is, thus, therefore, more improbable and impossible. I do not find any ground to deviate from the cogent reasons given by the Trial Court.

22. In the case of N.Sunkanna Vs. State of Andhra Pradesh (supra), it was observed that unless there is proof of demand of illegal gratification, proof of acceptance will not follow. In the case of Bal Krishnan Sayal Vs. State of Punjab (supra), it was observed

that the prosecution witnesses have followed to state what transpired in conversation between bribe giver and the accused preceding passing off the currency notes and in view of unsatisfactory nature of prosecution evidence, the accused is entitled for benefit of doubt. In the decision of this Court in case of Ravindra Mahadeo Kothamkar Vs. The State of Maharashtra (supra), this Court had observed that the Trial Court had proceeded on the presumption of guilt as opposed to the presumption of innocence. There had been no verification of demand before laying of trap. The trap was laid as soon as the complaint was made and rather hurriedly. The details regarding manner and the place of acceptance of the bribe amount given by the prosecution witnesses differ.

23. In the light of nature of the evidence and the findings of the Trial Court, I do not find that there is any reason to differ from the view taken by the Trial Court. No interference in the judgment of acquittal is warranted and the appeal deserves to be dismissed.

24. Hence, I pass following order :

ORDER

(i) Appeal is dismissed;

(ii) The impugned judgment and order dated 30th November 2002 passed by learned Special Judge and Additional Sessions Judge, Kolhapur, in Special Case No.10 of 2000 acquitting the respondent-accused is confirmed.

(PRAKASH D. NAIK, J.)

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