

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 496 OF 2012**

The State of Maharashtra
(Through Bund Garden Police Station
and Anti-Corruption Bureau, Pune)

....Appellant.

Vs.

Kailas Pandurang Pawar,
Age- Adult, Occup. Service,
R/at- Hadapsar Police Station,
Pune.

....Respondent.

Mr. S.S. Hulke APP, for the Appellant-State.
None for the Respondent.

CORAM : A. S. GADKARI, J.
DATE : 24th SEPTEMBER, 2020.

ORAL JUDGMENT:-

This is an Appeal under Section 378(1) of the Code of Criminal Procedure against the Judgment and Order dated 31st March, 2011, passed by the learned Special Judge (Under P.C. Act), Pune in Special Case No.3 of 2006, acquitting the Respondent from the offence punishable under Sections 7, 13(1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (for short, P.C. Act).

2 Heard Mr. Hulke, learned APP for the Appellant-State.
Respondent is absent, despite service. Perused the entire record.

3 Prosecution case in brief was that, the informant Shri. Ismail Abdul Sayyad (PW. 2) was having illicit relations with Smt. Nanda M. Darawade, a mother of two children. The said Smt. Nanda M. Darawade was residing with her two children and mother. The informant used to bear maintenance costs of Smt. Nanda Darawade and her two children and also used to pay rent for the accommodation provided to her. Smt. Nanda Darawade used to threaten the informant to sent him to jail through Pawar Mama (Respondent).

4 The informant wanted to go to Baramati on 1st August, 2004 and therefore, he visited the house of Smt. Nanda Darawade on 30th July, 2004. Smt. Nanda Darawade, told the informant that, she wish to change the rented room where she was residing at that time and asked the informant to help her for shifting her material and for deposit of amount towards the new accommodation. A quarrel ensued between them. The informant pushed Smt. Nanda and came out of the room. Smt. Nanda and her mother therefore assaulted the informant and took the informant to Mundhwa Police Chowky. The informant met Pawar Mama (Respondent) at the said Police Chowky. The Respondent threatened the informant and detained him in the Police Chowky by handcuffing him from 7.00 a.m. to 10.30 a.m.

5 It is alleged that, the Respondent while releasing the informant from Mundhwa Police Chowky, had directed him to bring an amount of Rs.400/- on 7th August, 2004 at Mundhwa Police Chowky for not initiating further action against the informant. The informant did not want to pay the said illegal gratification to the Respondent and therefore, he lodged a Complaint with the Anti-Corruption Bureau on 6th August, 2004.

After completing necessary legal formalities, the Investigating Agency decided to lay a trap on 7th August, 2004. Accordingly, on 7th August, 2004, the Respondent came at Koregaon Park Police Chowky and accepted the alleged bribe amount from the informant (P.W. No. 2). The informant gave predetermined signal to the Officers of the Anti Corruption Bureau and the Respondent was caught red-handed. The tainted bribe amount was recovered from his right hand side pocket of trouser. After completion of investigation and getting necessary sanction as contemplated under Section 19 of the P.C. Act from the P.W. No.1 i.e. the Sanctioning Authority, charge-sheet was submitted before the Special Court.

6 The Trial Court framed charge below Exh.4 under Sections 7, 13(1)(d) read with Section 13 (2) of the P.C. Act-1988. The charge was read over and explained to the Respondent, to which he pleaded not guilty and claimed to be tried.

The prosecution examined in all four witnesses in support of its

case namely Shri. Prabhatranjan Sinha, (PW. No.1) Joint C.P and Sanctioning Authority, Shri. Ismail Sayyed (PW. No.2), the informant/Complainant, Shri. Manohar K. Chandpure, (PW.No. 3) panch witness and Shri. Shivaji Bedre, (PW. No.4) Investigating Officer.

The Trial Court after recording the evidence and hearing the learned counsel for the respective parties, acquitted the Respondent from the charges framed against him by its impugned Judgment and Order dated 31st March, 2011.

7 Perusal of record would indicate that, in his cross-examination, Ismail Sayyed (PW. No.2), the informant has admitted that, on 30th July, 2004, he was detained in Mundhwa Police Chowky at the instance of Smt. Nanda Darawade. At that time, the Respondent had given him 2/3 slaps. That, Shri. More and Shri. Bansode, were the other policemen present in the said Police Chowky at that relevant time. P.W. No.2 has admitted that, he was not detained in the Police Chowky for money by the Respondent on that day. That, he was assaulted in the presence of Smt. Nanda Darawade, her mother and children, the informant got annoyed. After 3/4 days of the incident, he went to Anti Corruption Bureau office and recorded his Complaint on 6th August, 2004. On 7th August, 2004, after completion of formalities pertaining to the pre-trap panchanama, between 6.30 to 6.45 p.m. he along with the Officers of the Anti Corruption Bureau, had been to

the Mundhwa Police Chowky, however, the Respondent was not present there. He waited there for 10 minutes and thereafter, gave a phone call to the Respondent. That, the Respondent called him at Koregaon Park Police Chowky. P.W. No.2 has given an admission that, the Respondent did not demand money immediately after he came on his motor-cycle near Koregaon Park Police Chowky. That, the Respondent persuaded him to keep away from Smt. Nanda Darawade. He thereafter gave money to the Respondent and immediately 2/3 constables apprehended the Respondent. He has further admitted that, at the time of lodgment of Complaint by him, there was no crime registered against him at Koregaon Park Police Chowky. He has further admitted that, the Investigating Officer (P.W. No.4) had instructed him and the panch witness (P.W. No.3) that, the trap should be successful. He has further admitted that, from 30th July, 2004 to 7th August, 2004, he had no concern with the Respondent nor did he phone him.

8 Mr. Manohar Chandpure, P.W. No. 3 is the panch witness who had accompanied the P.W. No. 2 at the time of alleged trap. In his examination-in-chief, he has stated that, after he and the informant met the Respondent near Koregaon Park Police Chowky, the informant introduced him with the Respondent as his uncle. The Respondent commented about the incident of the Complainant with the said lady and the talk regarding the said lady was going on between the informant and the Respondent. The Respondent thereafter, asked the informant whether he has brought

money by saying '*Aanlet Ka?*', to which the informant said 'yes' and then the Complainant took out the tainted money from his shirt's pocket and gave the same to the Respondent. The Respondent kept the money by his right hand in his right side trouser pocket. The Complainant thereafter gave predetermined signal by moving his left hand and thereafter the members of the raiding party accosted the Respondent.

In his cross-examination, P.W. No.3 has admitted that, till meeting with the informant, the Respondent did not ask whether the informant had brought money. That, till going up to the tea stall, there was no demand of money by the Respondent. That, the informant and the Respondent were talking about the said lady and the relations of the informant with her.

9 It is thus clear that, there is material variance in the version of the first informant (P. W. No.2) and panch witness (P.W. No.3) about the alleged demand by the Respondent. The informant (P.W. No.2) has admitted that, as he got annoyed due to the treatment meted out to him by the Respondent, he decided to lodge a Complaint against him. P.W. No.2 has admitted that, the Respondent did not demand amount from him. The alleged demand stated by P.W. No.3 has not been mentioned by the P.W. No.2. The record clearly indicates that, on the date of lodgment of the Complaint i.e. on 6th August, 2004, the Respondent was no way concern

with any investigation and/or inquiry against the informant on the basis of the Complaint lodged by Smt. Nanda Darawade and therefore, there was no occasion for the Respondent to demand any amount from the P.W. No.2. The prosecution has, thus clearly failed to establish the basic ingredient of demand of bribe amount by the Respondent from the P.W. No.2.

10 It is the settled position of law that, demand is *sine qua non* in the case of bribery. Unless there is proof of demand of illegal gratification, proof of acceptance will not follow. Reliance is placed on the decisions of the Hon'ble Supreme Court namely, (i) *N. Sunkanna Vs. State of Andhra Pradesh*, reported in (2016) 1 SCC 713, (ii) *T.K. Ramesh Kumar Vs. State*, reported in (2015) 15 SCC 629 and; (iii) *Khaleel Ahmed Vs. State of Karnataka*, reported in (2015) 16 SCC 350.

11 It is to be further noted here that, the pre-trap demand has also not been proved by the prosecution by leading cogent and trustworthy evidence. The genesis of demand by the Respondent has not been established by the prosecution beyond reasonable doubt. The evidence of demand and acceptance of bribe amount by Respondent at the time of trap is not reliable and trustworthy for the reasons stated in the foregoing paragraphs.

12 After perusing the entire evidence available on record and the impugned Judgment and Order, this Court is of the view that, the Trial

Court has not committed any error either in law or on facts, while passing the impugned Judgment and Order dated 31st March, 2011.

Appeal is accordingly dismissed.

13 This Judgment will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this Order.

(A.S. GADKARI, J.)

Sanjiv S.
Mashalkar

Digitally signed
by Sanjiv S.
Mashalkar
Date: 2020.09.29
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