

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1369 OF 2004**

The State of Maharashtra	)	
(through Anti-corruption	)	
Bureau, Thane.)	)	Appellant

V/s.

Ramesh Ramdas Salunke	)	
Age 48 years, Occu: Service	)	
R/at Vishnu Bldg., 1 st floor,	)	
Room No.107, N. M. Joshi Road,	)	
Byculla, Mumbai	)	Respondent

Ms Anamika Malhotra, APP for State

**CORAM : K.R.SHRIRAM, J.
DATED : 11th SEPTEMBER 2020**

ORAL JUDGMENT :

1 This is an appeal impugning judgment and order dated 15-7-2004 passed by the Special Judge (Anti Corruption), Thane, acquitting accused of an offence punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act 1988.

2 It is the case of prosecution that the complainant, who is PW-1 Ramesh Kanade, who was first year student of MBBS used to assist his brother in money lending business. The money lending licence was in the name of his brother. On 6-11-2001, a notice was issued by Money Lender Inspector, Mr. Salunke, who is accused, to the brother of the complainant calling upon them to remain present in his office on 26-11-2001 for

verification of the licence, failing which, legal action would be taken.

3 Accordingly, on 26-11-2001 around 12 noon, P.W.-1 with his brother attended the office of accused alongwith required registers for inspection. Registers were verified and suitable endorsements were put on the registers. Accused also prepared a challan to deposit Rs.500/- towards inspection fee. It is alleged that accused told P.W.-1 and his brother to come again on the next day alongwith the amount of Rs.500/- towards challan fee, a sum of Rs.2000/- for himself and a box of sweets. P.W.-1 and his brother were also informed that unless the amount was paid and the box of sweets was given, the challan will not be deposited and the Money Lending Licence will not be renewed. According to P.W.-1, licence fee of Rs.100/-had already been deposited by the brother of P.W.-1 but the verification fee of Rs.500/- had to be paid, without which the licence would not have been renewed, if not renewed the business of the brothers will shut down. Therefore, on 27-11-2001, the complainant approached ACB Thane and lodged the complaint. After following the due procedure trap was laid. P.W.-2 and P.W.-3 were the panch witnesses. P.W.-4 is the Investigating Officer (I.O.). Strangely, the complainant's brother, in whose name the licence stood, did not give evidence. Witness no.10 in the list was the complainant's brother. A total of 16 witnesses were listed but only 4 gave evidence.

4 As instructed by the ACB, P.W.-1 and P.W.-2 went to the office of accused, where accused demanded the bribe amount by gesturing with his thumb and index finger and P.W.-1 informed him that money has been

brought. Thereafter, accused prepared the challan and gave it to P.W.-1 and told him to deposit the money in a bank nearby. On the way, P.W.-1 informed ACB that he was going to deposit the money in the bank. After they returned to the office of accused, accused asked P.W.-1 to accompany him to the toilet on the 2nd floor, the office of accused was on the 3rd floor and he took him to the toilet, where accused received the bribe amount of Rs.2000/- in a handkerchief and put it in his right side pocket of his pant. When they came out from the toilet, P.W.-1 gave the signal to the ACB, who swooped immediately and caught accused with the marked currency. Admittedly, no other witness accompanied P.W.-1 and accused to the toilet. Therefore, the only eye witness for P.W.-1 giving the bribe and accused receiving the bribe, is P.W.-1.

5 I have considered the evidence, impugned judgment, documents and exhibits with the assistance of Ms Malhotra. I see no reason to interfere with the order of the Trial Court.

6 At the outset, P.W.-2 and P.W.-3, the panch witnesses state that pretrap and post trap panchnamas respectively, were not prepared in their presence and it was dictated by the I.O.

7 P.W.-1 states that after he went to the office of accused, accused handed over to him the challan and asked him to deposit the fees with the challan in the bank and after coming out of the office he informed the raiding party that he was going to deposit the fees in the bank. P.W.-1 does not say that P.W.-2 was accompanying him at that time, but P.W.-2 says that

he was accompanying with P.W.-1. P.W.-1 thereafter says that in the toilet, he took out the bribe amount and handed over the same to accused, who accepted the same on the handkerchief and thereafter put the same in his right side pocket of his pant. P.W.-3 and P.W.-4 do not mention that the tainted money was found in the handkerchief inside the right side pant pocket of accused. P.W.-2 says that the money was found in the pocket alongwith the handkerchief. P.W.-3 says he only took out the money from the right side pant pocket of accused and traces of anthracene powder was found on the handkerchief and even in the pant pocket of accused. P.W.-4 also does not state that currency notes were found inside the handkerchief.

8 Another contradiction is, P.W.-1 states that soon after coming out of the toilet, he gave the signal and immediately accused was caught at the threshold of the toilet. P.W.-3 says that after some time P.W.-1 and accused came out of the toilet and when accused was climbing the staircase along with P.W.-1, P.W.-1 gave planned signal and immediately P.I. Mr. R. K. Chikhale rushed forward and caught hold of both the hands of accused. P.W.-4-I.O. says after 5 minutes P.W.-1 and accused came out of the toilet and after passing the passage when they were climbing the staircase for the 1st floor, the complainant gave the signal as planned and immediately accused was caught. Therefore, P.W.-3 and P.W.-4 state that accused was nabbed while on staircase after passing the passage, whereas P.W.-1 says that accused was caught on the threshold of the toilet.

9 Another point which requires to be noted is, P.W.-1 says that accused

took the money on the handkerchief and P.W.-2 and P.W-3 say that anthracene powder was found on the right hand palm and fingers of accused. If the money has been received on the handkerchief and P.W.1 does not state that accused counted the money in his presence or held in his palm, I fail to understand, how anthracene marks could be found on the fingers and palm of accused. Further both panch witnesses state that pre-trap and post-trap panchnamas were not prepared in their presence. P.W.-4 in his cross-examination says that anthracene powder was found only on the tips of right hand fingers of accused. Panch witnesses say that it was found on the palm also. P.W.-1 also admits that he had informed the police that accused accepted the money on folded handkerchief and thereafter, put it in the right hand side pant pocket, but it is not found in the supplementary statement.

10 There are many other such contradictions and lacunas mentioned in the impugned judgment, which for the sake of brevity I do not wish to reproduce again. The observations of the Trial Court has my approval. The prosecution's case against accused has to fail.

11 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 rightly observed that the prosecution had failed to prove its case.

12 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, need not be interfered with.

13 Appeal dismissed.

14 The 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. If during the service, in view of this matter, the promotions or increments of accused have been affected, the concerned Authority/Department will pay, proceed and calculate on the basis that there was no such matter ever on record against accused and will factor in all promotions and increments that accused would have been entitled to and all the amounts shall be accordingly paid within 30 days.

After 30 days interest at 12% p.a. will have to be paid by Government/ Appropriate Authority to respondent.

No authority shall demand certified copy for reimbursing the benefits/dues as directed above. All to act on authenticated copy of this judgment.

Certified copy expedited.

15 Respondent is not represented. The registry shall forward a copy of this order by hand delivery to accused at the address mentioned in the cause title, within one week of this order being uploaded.

(K.R. SHRIRAM, J.)

Meera
M.
Jadhav

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by Meera M.
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