IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1289 OF 2012

The State of Maharashtra	]	
Through – Sadar Bazar Police Station	]	
Tal. Solapur, Dist. Solapur	]	… Appellant
		(Orig. Complainant)

V/s.

Mallinath Rajaram Harsure	]	
Age : 36 Yrs., Occu. Inspector,	]	
Social Welfare Office,	]	
R/o. 101, Gajanan Apartment,	]	
in front of Daily Kesari,	]	
Hotgi Road, Solapur	]	… Respondent
		(Orig. Accused No.1)

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

CORAM : A.S. GADKARI, J.
DATE : 25th September 2020.

ORAL JUDGMENT :-

The Appellant-State has questioned correctness of the Judgment and Order dated 21st May 2010 passed by the *Adhoc* Additional Sessions Judge, Solapur in Special (ACB) Case No. 4 of 2005, acquitting the original accused No.1, i.e. present respondent, from the offence punishable under Sections 7, 13 (1) (d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short, “the P.C. Act”). The Appellant-State has not questioned the acquittal of original accused No.2 Dattatray S. Gaikwad in the present case.

2. Heard Mr.Hulke, learned A.P.P. for the appellant-State. Despite service, none appears for the respondent.

Perused the entire record.

3. The prosecution case in brief is that, the respondent was working as Inspector in Social Welfare Department, Zilla Parishad, Solapur and the original accused No.2 was serving as peon in the said Department. Mr.Mahendra Aurangabadkar (PW-1), complainant, a stamp vendor was conducting his business in the precincts of the Zilla Parishad Building Solapur. The complainant (PW-2) was a person belonging to Hindu Brahman Caste and was married with Smt.Chaya Pundlik Londhe, who was belonging to Hindu Mang Caste. Their marriage took place on 3rd May 1993. As the said marriage was an inter-caste marriage, the complainant had received grant of Rs.5,500/- from the Government, in or around December 1993. That in the year 1995, the Government of Maharashtra declared additional grant of Rs.9,500/- to the couple, who had performed inter-caste marriage. It was alleged that, in furtherance of the said Government Notification the complainant (PW-1) submitted application to the Office of the respondent i.e. the Social Welfare Department, Zilla Parishad, Solapur for getting additional grant and/or difference in the Government grant. It is further alleged that, in connection

with the additional grant, the complainant met respondent in his office, who demanded a bribe of Rs.1,000/- for processing his application. As the complainant PW-1 was not interested in paying illegal gratification to the respondent, he lodged a complaint with the Anti Corruption Bureau, Solapur.

4. The Investigating Agency after complying with the necessary legal formalities, laid a trap on 31st January 2004. PW-2, namely, Sayabana Basappa Bere was a 'Panch Witness', who accompanied the complainant at the time of trap. It is alleged that, the respondent accepted the bribe amount from the complainant and gave it to the original accused No.2, who consequently again handed over it back to the respondent. Respondent thereafter kept it in the pocket of his trouser. After receipt of predetermined signal, the Investigating Officer (PW-4) along with other Officers of Anti Corruption Bureau accosted the respondent and the original accused No.2. The First Information Report came to be lodged with the Sadar Bazar Police Station bearing Crime No. 3052 of 2004 under Section 7, 12, 13 (1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988. After completion of investigation, the Investigating Agency submitted Chargesheet against the respondent and the original accused No.2 in the Special Court.

5. The Trial Court framed 'Charge' below Exhibit-4. The said Charge was read over and explained to the respondent and the original accused No.2, to which they denied and claimed to be tried.

The defence of the respondent and the original accused No.2 was of total denial. It was the further defence of the respondent that, he was very well acquainted with the complainant, as the complainant was doing business of 'Stamp Vendor' in the premises of the Zilla Parishad, Solapur. That the office of the respondent was also situated in the same premises from where the complainant used to do his business as 'Stamp Vendor'. It was the habit of the complainant to file complaints against public servants with the Anti Corruption Bureau. That, on an earlier occasion a false complaint was filed against the then Residential Tahsildar, Mr.Pawar, wherein the Investigating Agency had filed a 'B' Summary Report against the complainant. That, the complainant had already received total grant of Rs.5,500/- prior to December 1993 and therefore, as per the Government Notification which was published in the year 1995, the complainant was not entitled for additional grant. That, the said fact was informed to the complainant. However, the complainant was insisting to forward his proposal to the higher Authority for additional grant to which respondent did not oblige. It was the further specific defence of the respondent that, the complainant PW-1 had obtained a hand-loan of Rs.1,000/- from him prior to 15 days of trap and on 31st January 2004, the complainant repaid the said hand-loan to him. That, the complainant falsely implicated respondent by giving it a colour of acceptance of bribe. That, he never demanded and accepted bribe amount. There was no work pending with him of the complainant and therefore, there was no question of making demand and accepting bribe amount from the complainant. The respondent therefore categorically pleaded that, he had been falsely implicated in the present case.

6. It was the defence of the original accused No.2 that, he was proceeding to deposit bill amount and at the time of trap, he was only accompanying the respondent. He never accepted any amount either for himself or on behalf of the respondent. That, he was merely present with the respondent on the date and time of the trap and had nothing to do with the monetary transaction *inter-se* between the respondent and complainant.

7. The prosecution in support of its case has examined in all 4 witnesses, namely, Mr.Mahendra M. Aurangabadkar (PW-1) complainant, Mr.Sayabana B. Bere (PW-2) the panch witness, Mr.Ganesh P. Thakur (PW-3) Director, Social Welfare Department, Maharashtra State, Pune, the Sanctioning Authority and Mr.Abhay S. Kurundkar (PW-4), the Investigating Officer. The Trial Court after recording evidence and hearing the learned counsel for the respective parties, has acquitted the respondent and original accused No.2 from the charges framed against them by its impugned Judgment and Order dated 21st May 2010.

8. Perusal of record reveals that, the complainant Mr.Mahendra Aurangabadkar (PW-1) in his examination-in-chief has narrated the facts

pertaining to his submission of application for enhancement of grant upto the trap by the Anti Corruption Bureau, wherein the respondent was found with the alleged tainted currency of Rs.1,000/- . In his cross examination, the defence was successful in bringing on record the fact that, the complainant was in habit of lodging complaints against public servants from various Government Departments. He has admitted that, he had filed a case against, the then Residential Tahsildar, Mr.Pawar, with the Anti Corruption Bureau and Mr. Pawar was caught while accepting a bribe of Rs.1,000/- from the complainant. That, the said case was resulted into filing of 'B' Summary Report by the Anti Corruption Bureau and the complainant was issued summons by the concerned Court in that behalf. He has further admitted that, it was informed to him by the Social Welfare Officer that, as he had already received grant in respect of his inter-caste marriage, he was not entitled to get enhanced grant vide Government Notification dated 1st April 1995. The PW-1 has admitted that, 15 days prior to the trap, he had been to the respondent and had met him. He has categorically denied the suggestion that, he was acquainted with the respondent prior to the issue involved herein. He has denied the suggestion that, 15 days prior to the trap, he had borrowed Rs.1,000/- from respondent No.1. The PW-1 has also admitted that, he had filed a complainant in Anti Corruption trap case of Mr. Dnyandeo Kamble. The complainant (PW-1) has categorically admitted that, he was complainant in 4

Anti Corruption cases till the date of lodgement of the crime against the respondent. He has admitted that, in the hotel/canteen after taking tea, when he produced amount of Rs.1,000/- and tried to gave it to the respondent, the respondent had asked him, whether the complainant had laid a trap like in the case of Residential Tahsildar, Mr.Pawar, and at that time, the complainant replied it in the negative.

The Panch Witness (PW-2) in his cross-examination has admitted that, in his presence the complainant PW-1 did not demand bribe amount from the respondent. That, the PW-2 and complainant (PW-1) were with the respondent for about one hour and 10 minutes till the signal was given to the trap party. During this span, he realized that, the complainant (PW-1) and respondent were well acquainted with each other.

9. It is thus clear that, there was no demand of bribe by the respondent from the complainant (PW-1). That, on the date of alleged trap, no work of the complainant was pending with the respondent, as the complainant was already informed by the office of Social Welfare Department that the complainant (PW-1) was not entitled for additional / enhanced grant in furtherance of the said Government Notification of 1995. The prosecution has thus clearly failed to prove the basic ingredient in a trap case, i.e. demand of bribe by the respondent.

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. In this background, it is to be noted here that, it is the specific defence of the respondent since beginning i.e. even after he was accosted by the Officers of the Anti Corruption Bureau that, he had advanced a hand-loan of Rs.1,000/- to the complainant and it is that amount which the complainant repaid to him in the hotel/canteen on the date and time of trap. As noted earlier, in his cross examination, the complainant PW-1 has clearly admitted that, in hotel/canteen after taking tea when he produced an amount of Rs.1,000/- and tried to gave it to the respondent, when the respondent asked him whether he had laid a trap like in the case of the then Residential Tahsildar Mr.Pawar and at that time, the complainant replied it in the negative. It is therefore clear that, the habit of the complainant (PW-1) of false implication of Government servants in Anti Corruption cases was well within the knowledge of the respondent and therefore also, he would have never willingly went with the complainant, if any official work of the complainant

would have been pending either with him or on his table. As noted earlier, PW-1 is a habitual complainant with the Anti Corruption Bureau and on earlier occasions had falsely implicated a few Government Officers.

12. After perusing the entire record, it is clear that, the prosecution has failed to prove the basic ingredient in the present crime i.e. demand of bribe by the respondent. It appears that, the demand of bribe by the respondent has not been brought on record by leading cogent evidence by the prosecution. The prosecution has thus failed to prove, firstly the demand of bribe by the respondent and secondly to prove beyond any reasonable doubt that, the respondent in fact accepted the tainted amount at a particular place in presence of independent witness. It can clearly be discerned from the record that, taking into consideration the reputation of the complainant of implecating Government servants in false trap cases, the respondent, even while accepting the repayment of hand-loan, had casually asked him the said question. That, at the time of return of the said hand-loan given by the respondent, the complainant gave it a colour of bribe, got a trap laid by the Anti Corruption Bureau and thereafter, the present case is filed.

13. Perusal of entire evidence would make it abundantly clear that, the original accused No.2 had no role at all to play in the present case/crime, apart from the fact that, the original accused No.2 being a subordinate (peon of the respondent) of respondent, only accompanied him to have a tea in the

hotel/canteen along with complainant (PW-1) and punch witness PW-2.

14. After perusing the entire record and the impugned Judgment and Order, this Court finds that, the view adopted by the Trial Court is a reasonable and possible view in the facts and circumstances of the present case. The Trial Court has not committed any error either in law or on facts while passing the impugned Judgment and Order dated 21st May 2010, thereby acquitting the respondent and original accused No.2 from the charges framed against them.

Appeal is accordingly dismissed.

15. This Order will be digitally signed by the Personal Assistant of this Court. All the concerned will act on production by fax or e-mail of a digitally signed copy of this Order.

[A.S. GADKARI, J.]

Omkar S. Kumbhakarn
Digitally signed by Omkar S. Kumbhakarn
Date: 2020.09.29 17:16:19 +0530