

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL No. 158/2006.

State of Maharashtra,
through Police Inspector,
Anti Corruption Bureau,
Chandrapur. ... **APPELLANT.**

VERSUS

Shalikram s/o Vithobaji Patle,
Aged about 29 years, Occupation -
Junior Clerk, Rural Hospital,
Warora, District Chandrapur. ... **RESPONDENT.**

Mrs. G. Tiwari, A.P.P. for the Appellant.
Shri P.R. Agrawal, Advocate for the Respondent.

CORAM : VINAY JOSHI, J.

DATE OF RESERVING THE JUDGMENT : 19.10.2020
DATE OF PRONOUNCEMENT : 27.10.2020

JUDGMENT :

Heard learned Counsel appearing for the parties.

2. The appellant-State by way of this appeal has challenged

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the acquittal of respondent (accused) in Special Case No.9/1995, passed by the Special Judge, Chandrapur vide its judgment and order dated 08.12.2005. The Special Judge has acquitted the accused from the charges punishable under Sections 7, 13[1][d] read with Section 13[2] of the Prevention of Corruption Act, 1988 (**P.C.Act**). The Trial Court disbelieved the evidence of P.W.1 informant – Shri Pathak for want of corroboration. So also the trial Court, held that the sanction to prosecute was issued without application of mind, and therefore it vitiates.

3. The facts of prosecution case can be stated briefly, that the informant – Pathak was serving as S.T. Conductor at Chandrapur Depot. Due to certain ailment, on 23.03.1995 he went to the Rural hospital at Warora and obtained OPD Card. The then Medical Officer Dr. Jumde examined him and gave prescription to buy the medicines from outside. After recovering from the illness, on 04.04.1995 the informant met Dr. Jumde and requested him to issue fitness certificate for resuming duties, so also requested Dr. Jumde to put his counter signature on the medical bills for the purpose of reimbursement. Dr. Jumde asked the informant to meet accused – Patle for said purpose. Accordingly, the informant produced the

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relevant papers and requested the accused to do the needful. At that time, accused demanded Rs.100/- for obtaining signature of Dr. Jumde on the fitness certificate. Since the informant was not having money, the accused asked him to bring the same on the following day. The informant agreed to pay the bribe amount of Rs.100/- and left the place.

4. Since the informant was not intending to pay bribe amount, he approached to the Anti Corruption Bureau Office at Chandrapur. His complaint was reduced into writing. P.W.10 Inspector Zalke, summoned two panch witnesses. Both the panchas agreed to act as panch in trap case. The panchas have verified the grievance of the informant about the demand of bribe. The informant has produced two currency notes having denomination of Rs.50/- each as bribe money. Police constable gave demonstration to the informant as well as to both panchas about the characteristics and effect of phenolphthalein powder and sodium carbonate. The current notes were smeared with phenolphthalein powder. Necessary instructions were given to the informant and panch witnesses. Particularly P.W.3 panch Zade was asked to remain with the informant, whilst P.W.2 panch Mate was asked to remain with

the raiding party. Specific instruction was given to the informant that he should not pay the bribe amount unless demanded. Accordingly detailed pretrap panchnama [Exh.15] was prepared.

5. It is the prosecution case that on the date of raid, informant, panch witnesses and police party left the Anti Corruption Office to proceed towards Warora by government vehicle. Informant Pathak and shadow panch P.W.3 – Zade proceeded on foot towards the hospital, whilst rest remained in the vicinity. Informant went inside the cabin and met accused Patle, who asked him to come at 4.30 p.m. Informant and shadow panch Zade waited in the verandah. Around 4.30 p.m. informant again met accused, who obtained signature of Dr. Jumde on certificate. Accused asked the informant to wait in the verandah. Within short time accused came in verandah and asked the informant whether he has brought money, to which the informant answered in the affirmative. Accused gave the documents, on which informant took out bribe amount from his pocket and gave it to the accused. By accepting the said amount, accused kept the said bribe amount in his shirt pocket. Thereafter, informant gave predetermined signal, on which the trap party came to the spot and caught hold the accused. Tainted

currency notes were recovered from the pocket of the accused. Serial numbers of the currency notes were matched with the pre-trap panchnama. Right hand fingers of accused were dipped in the solution, on which it turned purple. Solution was sprinkled on the upper pocket of the shirt of accused, on which it also turned purple. The solution was sprinkled on seized currency notes, on which purple colour spots appeared. Detailed post trap panchnama [Exh.21] was prepared.

P.I. Zalke, has lodged written complaint [Exh.58] against the accused. He has carried necessary investigation. After completion of the investigation, papers were forwarded to the sanctioning authority. P.W.6 – Dr. Pandit, Deputy Director of Health Services, Nagpur has accorded sanction for prosecution at Exh.30. On obtaining necessary sanction, charge sheet came to be filed.

6. Special Court framed charge against the accused for commission of offence punishable under Sections 7, 13[1][d] and 13[2] of the P.C. Act. On denial of the charge, prosecution led evidence of 11 witnesses. Certain documents were produced by the prosecution. On appreciation of the entire material on record, the Special Court delivered judgment of acquittal in favour of the

respondent, which is the subject matter of challenge in this appeal.

7. The State has challenged the judgment and order of acquittal by stating that despite sufficient evidence adduced by the prosecution, the trial Court erred in discarding the same. It is submitted that the accused had not offered probable explanation for seizure of tainted currency notes from his possession. The learned A.P.P. appearing on behalf of the State submitted brief notes of arguments challenging over all reasoning and finding recorded by the Special Court.

8. Learned A.P.P. would submit that as a rule, the evidence of informant does not require any corroboration, nor evidence can be rejected for want of corroboration. It is for the accused to give probable explanation about possession of the tainted currency notes. It is her submission that merely because witness has turned hostile, his evidence cannot be rejected. The Court on careful analization can rely on part of the evidence of hostile witness which inspires confidence. Lastly, it is submitted that on seizure of tainted currency notes from the possession of the informant, statutory presumption under Section 20 of the P.C. Act can be drawn. In order

to buttress these submissions, learned A.P.P. has placed reliance on the decisions in the following cases :

- (1) **Dhanvantrai Balwantrao Desai .vrs. State of Maharashtra – AIR 1964 SCC 575.**
- (2) **Dalpat Singh and another .vrs. State of Rajasthan – AIR 1969 SC 17.**
- (3) **Man Singh .vrs. The State of Haryana – AIR 1973 SC 910.**
- (4) **State of Assam .vrs. Krishna Rao and another – AIR 1973 SC 28.**
- (5) **State of Gujarat .vrs. Anirudhsing and another – (1997) 6 SCC 514.**

9. On the other hand learned Counsel appearing for the respondent / accused has strongly supported the judgment of acquittal passed by the trial Court in his favour. At the inception, he would submit that this being an appeal against acquittal, the scope of interference is very limited. Unless there happens to be a perversity, it is not permissible to reverse the finding of acquittal. In this regard he sought to rely on the decision of Hon'ble Supreme Court in case of **Arulvelu and another .vrs. State represented by the Public Prosecutor and another - 2009 (10) SCC 206.** It is his submission that the complainant of corruption case has to be regarded as an accomplice,

and therefore, his evidence requires corroboration before placing reliance. To support said contention, he has relied on the decision of Hon'ble Supreme Court in case of **Panalal Damodar Rathi .vrs. State of Maharashtra - (1979) 4 SCC 526**. The learned counsel for the accused would submit that if the bribe amount is trivial, then it is inappropriate to draw statutory presumption in terms of Section 20 of the P.C. Act. This submission is made by relying on the decision of Hon'ble Supreme Court in case of **A. Subair .vrs. State of Kerala - 2009 (6) SCC 587**.

The learned Counsel for the accused has straneously argued that mere recovery of tainted currency notes from the accused is not sufficient unless the demand of bribe has been proved. In order to impress said submission, he has relied on several decisions in case of - **C.M. Girish Babu .vrs. CBI Cochin, High Court of Kerala - 2009 (3) SCC 779**, **State of Maharashtra .vrs. Dnyaneshwar Laxman Rao Wankhede - 2009 (15) SCC 200**, **P. Satyanarayana Murthy .vrs. The District Inspector of Police and another - 2015 (10) SCC 152**, **Mukhtair Singh [since deceased] through L.R. .vrs. State of Punjab - 2017 (8) SCC 136** and **Namdeo Bakaramji Pagare .vs. State of Maharashtra - 2018 (5) Mh.L.J. (Cri)**

432. Lastly the learned counsel for the accused submitted that, if there is total non application of mind by the sanctioning authority, the sanction would vitiate. For this purpose, he has relied on the decision of this Court in case of **Ramrao Satyanarayan Ramod .vrs. State of Maharashtra – 2008 All MR (Cri) 2807.**

10. It is prosecution case that the accused was working as junior clerk at Rural Hospital, Warora and as such he was public servant within the meaning of Section 2[c] of the P.C. Act. It is further prosecution case that the informant was in need of medical fitness certificate to resume his duties. He has requested treating Dr. Jumde to issue fitness certificate, who in turn asked to meet his clerk i.e. accused – Patle. According to prosecution, accused has demanded bribe of Rs.100/- for giving fitness certificate and doctor's endorsement on medical bills for the purpose of reimbursement. So also on 05.04.1995, the accused reiterated demand, and had accepted the bribe amount which was recovered by the raiding party.

11. In order to constitute an offence punishable under Section 7 of the P.C. Act, a person accepting illegal gratification should be a public servant, that he should raise a demand for bribe for

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performing his official duty and should accept the said gratification for himself as a motive or reward for doing the official act. Insofar as the offence under Section 13[1][d] of the P.C. Act is concerned, it is essential that he should have used corrupt practice or illegal means, by abusing his position and he could have obtained a valuable thing from another person.

12. So far as the first requirement is concerned, there is no dispute that the accused was serving as a public servant at the relevant time. Rest both the requirements are heavily disputed by the accused. In other words, it is the defence of respondent /accused that the prosecution failed to establish the demand as well as seizure of tainted currency notes from his possession.

13. Before embarking on the rival contentions, it is necessary to remember that this Court is dealing with the judgment and order of acquittal, and thus, it is absolutely essential to bear in mind the well settle principles of law that, in the event two views are possible, this Court should not interfere with the judgment of acquittal. In above referred case of Arulvelu and another .vrs. State, the Hon'ble Supreme Court while deciding the scope of appeal against the order

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of acquittal, has laid down various guidelines. In brief the order of acquittal would bolster the innocence running in favour of the accused. Though the Court may re-appreciate the entire evidence, however, the Appellate Court must give due weightage and consideration to the decision of the trial Court. The Appellate Court shall keep in mind that the trial Court had an advantage of watching the demeanor of the witnesses. The Appellate Court can over turn the trial Court's verdict of acquittal, if there are compelling reasons. In the light of said position, the evidence requires assessment.

14. P.W.1 Pathak - informant deposed that initially on 23.03.1995, he got himself medically examined from Dr. Jumde. On 04.04.1995, when he met Dr. Jumde for obtaining fitness certificate, he was asked to meet the accused. It is his evidence that, he has entrusted the papers to accused for obtaining certificate, on which the later said that he has to pay an amount of Rs.100/-. On the following day when the informant again met the accused as a part of trap, at that time the accused gave him certificate, but, asked whether he had brought the amount. This is precisely the evidence regarding demand of bribe amount.

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15. The prosecution has examined P.W.3- Panch Zade, who was a shadow panch witness. It is his evidence that though he had accompanied the informant at the time of trap, however, he could not say as to what has transpired in between the informant and the accused. In short, the shadow panch witness has not supported the informants' version about demand on the date of trap. So far as the prior demand dated 0.4.03.1995 is concerned, there is no corroboration at all. True, the informant's sole testimony can be believed, however, it should inspire full confidence of the Court.

16. It is informant's evidence that on the date of trap, initially the accused met him in the hospital and asked to wait till 4.30 p.m. Thereafter, Dr. Jumde came in the hospital. The accused obtained signature of Dr. Jumde in the hospital and handed over papers to the informant in verandah, and asked whether he has brought money. The learned counsel for accused submits that the demand is not in clear terms. According to him, the demand must be in specific words for which he took me through the observation of the Hon'ble Supreme Court in above referred case of Mukhtair Singh [since deceased] through L.R. .vrs. State of Punjab. In the light of such

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position, it requires corroboration so as to rely on the words of the informant. However, the shadow panch witness P.W. 3- Zade who was specifically instructed to remain present with the accused and hear the conversation, did not support the prosecution case on demand of bribe. The trial Court has considered the evidence of informant as insufficient, which appears to be rational and sound conclusion.

17. It is the prosecution case that after acceptance of the bribe amount, the informant gave predetermined signal to the trap party. Immediately members of the raiding party arrived and caught hold the hands of the accused. The tainted currency notes were recovered from the accused. P.W.2 Panch - Mate stated that on receiving the signal he went inside along with the trap party. According to him, one of the police officer took out tainted currency notes from the pocket of the accused. It is his evidence, that the police prepared detailed post trap panchnama, however, his signature were obtained in the rest house. It creates reasonable doubt about genuineness of post-trap panchnama. He is unable to say as to actually who has taken money from whom. He is not in a position to say as to what was the talk which took place inside the

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hospital. Thus, his evidence does not corroborates the evidence of the investigating officer on the point of seizure and preparation of panchnama at the time of effecting raid.

18. It has come in the evidence of the informant that he had already received the fitness certificate, as well as he has not stated the exact wording in which monetary demand was raised. Mere recovery of currency notes in the facts and circumstances of the present case by itself cannot be held to be proper or sufficient proof of demand and acceptance of bribe, when the evidence produced by the prosecution is neither of that quality, nor having credibility. It would therefore, unsafe to base conviction on such evidence. In several decisions, the Hon'ble Supreme Court has reiterated that the demand is an essential ingredients to establish the offence, whilst mere recovery would not prove the charge in absence of any evidence to prove payment of bribe or the accused voluntarily accepting the money, knowing it to be bribe amount.

19. In order to base conviction, the prosecution has to establish the guilt beyond reasonable doubt like any other criminal offence. Herein the shadow panch witness – P.W.3 Zade, has not

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supported the prosecution case at all. Same is the evidence of another panch witness - P.W.2 regarding actual seizure and drawing seizure panchnama at the time of trap. In such a background it is not worth to rely on bare words of the informant. The trial Court has correctly assessed the evidence and disbelieved the prosecution case on these counts. Though the State has also challenged the finding about non application of mind by the sanctioning authority, it needs no consideration on the background of above finding. In view of that, the reasoning recorded by the trial Court in support of acquittal cannot be termed as improbable or perverse. In the result, the appeal fails and is dismissed.

JUDGE

Rgd.