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

CRIMINAL APPEAL NO. 747 OF 2008

Arun s/o Wamanrao Sabbanwar
Age about 53 years, Occ.: Junior Clerk,
Forest Department, R/o Bhanapeth,
Ward No. 2, Old Police Lines, Chandrapur,
Distt. Chandrapur.

.... **APPELLANT**

// **VERSUS** //

State of Maharashtra,
Through Deputy Superintendent of Police,
Anti Corruption Bureau, Chandrapur.

.... RESPONDENTS

Shri R.P. Joshi, Advocate for the appellant.
Mrs. G.R. Tiwari, A.P.P. for the respondent-State.

CORAM : VINAY JOSHI, J.
CLOSED FOR JUDGMENT : 27/10/2020
DATE OF PRONOUNCEMENT : 07/12/2020

ORAL JUDGMENT :

Heard finally by consent of both the learned Counsel appearing for the parties.

2. The instant appeal calls in question the impugned judgment and order rendered by the Special Judge, Chandrapur passed

in Special Case No. 8 of 2004 dated 17.10.2008 thereby convicting the appellant-accused for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred as 'the P.C. Act'). The accused was sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.100/- in default of payment of fine to undergo simple imprisonment for one month for the offences punishable under Section 7 of the P.C. Act and he was sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.200/- with stipulation of default for the offence punishable under Section 13(1)(d) read with 13(2) of the P.C. Act. Being aggrieved and dissatisfied with the impugned judgment and order of conviction and resultant sentence, the appellant-accused has taken re-course of remedy under Section 374 of the Code of Criminal Procedure by preferring present appeal for redressal of his grievance.

3. The factual matrix shrone to unnecessary details, the complainant P.W.-1 Vijay Chalakh was resident of Ram Nagar, District Chandrapur. On 31.12.2003, he had approached to the Anti Corruption Bureau Branch, Chandrapur and ventilated the grievance that the accused serving as a Junior Clerk at Deputy Conservation of Forest Office at Chandrapur, had demanded illegal gratification of Rs.200/- for issuance of transit pass for which he lodged the report (Exhibit 10). It

is his contention that he was in need of timber for repairs of his house. Accordingly on 23.12.2003, he had participated in a public auction sale held at the Forest Conservation Office, Chandrapur. On the date of auction, he had deposited initial amount of Rs.500/- which was pre-requisit for participating in to the auction. His bid of Rs.14,100/- was accepted in auction as a highest bid. As per Rules, complainant was to deposit 10% of the auction price on the date of public auction. Accordingly, on that day, he had deposited Rs.1050/- with the office. It is the complainants' case that on 30.12.2003, he went to the Forest Office with demand draft of Rs.16,628/- for paying balance amount and obtaining transit pass. At that time, accused had demanded Rs.200/- as a bribe and stated that, unless the demand is complied, transit pass would not be issued. The complainant assured to pay the bribe amount on the following day, but as he was not desiring to pay the bribe, he went to the Anti Corruption Bureau Office, Chandrapur and lodged initial report (Exhibit 10).

4. According to the complainant, his initial report was taken down by the Anti Corruption Bureau Officer P.W.5, P.R. Chaudhary who in turn called two panch witnesses. The complainant was introduced to Panch Witnesses and the written report (Exhibit 10) was shown to the Panchas who verified the contents with the complainant and signed on

the report.

5. Thereafter, Police Sub Inspector P.R. Chaudhary and his staff has disclosed the use and importance of Phenolphthalein powder to the complainant and both panchas. On demand, the complainant has produced bribe amount of Rs.200/- consisting of four currency notes having denomination of Rs.50/- each. Serial numbers of all the notes were noted. Demonstration was shown as to how color of solution changes when it comes into the contact of Phenolphthalein powder. The currency notes were smeared with Phenolphthalein powder and kept in the shirt pocket of the complainant. Specific instruction was given to the complainant, that he should pay the bribe amount only on demand. P.W.2 Khushal Pazarey was specifically instructed to remain with the complainant at the time of raid and observe the conversation and things which would happen. Accordingly pre-tap panchanama (Exhibit 21) was prepared. Thereafter, all of them left Anti Corruption Bureau Office and went to the office of Deputy Conservator of Forest, Chandrapur. The complainant and P.W.2 Khushal Pazarey went inside the office whilst raiding party including another panch waited out side.

6. It is the complainant's case that when they entered into the office, he asked accused whether his work was done, on which accused

asked him to come tomorrow. The complainant shown his inability to come tomorrow, and said that transit pass should be handed over to Panch no. 1 Pazarey who was introduced as his brother. At that time accused by gesture of his left hand asked to the complainant whether he had brought the amount. The complainant answered in the affirmative and then appellant-accused took them out side and demanded money. The complainant offered the money which was accepted by accused and kept in his pocket. Thereafter, P.W.2- Khushal Pazarey came outside and gave pre-determined signal to the trap party who arrived instantly. They caught hold the hands of accused who stated that he had not demanded the amount but, the complainant gave at his own.

7. Thereafter, the solution of Sodium Carbonate was prepared. The accused was asked to dip his fingers in the solution on which it turned violet. The trouser of accused was seized and the solution was also sprinkled on seized currency notes on which color changes. Accordingly, post trapped panchanama (Exhibit 29) was prepared. The Investigating Officer completed other formalities of investigation, prepared a report (Exhibit 49) and lodged with Ram Nagar Police Station, Chandrapur. The Police Station Officer registered the Crime bearing C.R. No. 3001 of 2004 for the offences punishable

under Sections 7, 13 (1)(d) read with 13(2) of the P.C. Act. The printed First Information Report is at Exhibit 51. The Investigating Officer, Police Sub Inspector of Anti Corruption Bureau, Chandrapur – P.R. Chaudhary recorded the statement of the witnesses. The entire papers of the investigation along with his report were sent to the office of the Deputy Conservator of Forest, Chandrapur who in turn accorded sanction (Exhibit 33) to prosecute the accused.

8. Learned Special Judge, Chandrapur framed charge against the accused for aforesaid offences. The accused adjured the guilt and claimed for trial. In order to bring home the guilt of the accused, the prosecution has examined in all six witnesses, they are P.W1 Vijay S. Chalakh the complainant who lodged initial report, P.W.2 Khushal Pazarey a shadow panch, P.W-3 Dy. Conservator of Forest, Chandrapur Shri Jasbirsingh s/o Raghuvirsingh Sanctioning Authority, P.W.4 dispatched clerk Sanjay M. Salam, P.W.5 Police Inspector of Anti Corruption of Bureau, P.R. Choudhary and P.W.6 Arvind Lohey Round Officer of Forest Department. As against this, the accused entered into the witness box to put up his defence. In short, it is his defence that he never demanded bribe from the complainant. On the date of auction, the complainant had not deposited 10 percent of the auction price which was pre-requisite. On the date of incident, the complainant

under the guise of paying partial deposit of money handed over tainted currency notes, on which the raiding party apprehended him and seized the amount. Precisely, he gave explanation about the seizure that the said amount was handed over by the complainant towards part payment of auction price. Learned Sessions Judge on appreciation of the prosecution case and on evaluating the evidence as adduced on record, found that the prosecution has proved it's case beyond reasonable doubt, and consequently, passed the judgment of conviction and order of sentence as stated above.

9. Heard Shri R.P. Joshi, learned Counsel appearing for the accused and Mrs. G.R. Tiwari, learned Additional Public Prosecutor appearing for the State in *extenso*. Also minutely scrutinized the entire record of the prosecution with the assistance of both sides. Learned Counsel Shri Joshi in support of his submission relied on several decisions of this Court and Supreme Court which were gone into.

10. It is the submission of Shri Joshi, learned Counsel for the appellant that, the prosecution has utterly failed to prove that at any point of time, the appellant-accused demanded the amount as a bribe. The complainant had not deposited the initial 10 percent amount of auction sale which he deposited at the time of incident. According to

him, the accused has offered the plausible explanation for the seizure of amount, however, the Trial Court has utterly failed to consider the same. It is contended that the evidence on prior demand and demand on the spot is totally inadequate. Moreover, he has seriously challenged the validity of sanction for prosecution. According to him, there is total non-application of mind, therefore, sanction under Section 19 of the P.C. Act would vitiate.

11. Per contra, Mrs. Tiwari learned Additional Public Prosecutor would submit that the evidence of complainant is well corroborated by shadow panch witness. Both have stated about the demand of bribe and the seizure of tainted currency notes. According to her, on such a background, the presumption under Section 20 of the P.C. Act would assist to establish the guilt. Learned A.P.P. submitted that the Trial Court has rightly discarded the explanation given by the accused, and by supporting the impugned judgment, she prayed for dismissal of appeal.

12. P.W.1 - Vijay Chalakh (complainant) was in need of teak wook for repairs of his house. The Forest Department has arranged an auction of wood on 23.12.2003 at Ram Bag Nursery, Chandrapur. It was auction condition that each bidder shall deposit Rs.500/- before to

the auction and on acceptance of bid should deposit 10 percent amount of the auction price. As per procedure, on deposit of entire auction price a transit pass was to be issued to the successful bidder for transportation of auctioned goods. The complainant has deposited prior amount of Rs.500/- and put a bid in the auction. The complainant's bid of Rs.14,100/- was accepted as successful bidder.

13. It is complainant's case that on the date of auction in order to comply the condition of 10 per cent deposit of auction price, he had deposited Rs.1050/- with accused. According to him, as such he had deposited total Rs.1550/- which was more than 10 per cent, and therefore nothing remained on his part towards initial compliance. On 30.12.2003, the complainant handed over a demand draft of Rs.16,628/- to the office towards full compliance and accordingly the entire amount was deposited. On such the complainant has asked for issuance of transit pass, however, the appellant-accused demanded bribe of Rs.200/- for issuance of transit pass.

14. On the other hand, it is the defence that accused never demanded bribe, but the amount which was offered on the date of trap, was towards deficit amount of 10 per cent deposit, and therefore, neither there was demand nor acceptance of bribe amount.

15. The complainant led evidence about initial deposit of Rs.500/- and deposit of Rs.1050/- on the date of auction. It is his contention that the 10 per cent amount was inclusive of initial deposit of Rs.500/- and as such he deposited excess amount of Rs.140/-. On the point of initial demand, the complainant deposed that on 30.12.2003, when he met accused for issuance of transit pass, the later asked whether he had brought an amount of Rs.200/- for issuance of transit pass. Learned Counsel for the accused vehemently challenge the evidence on prior demand. According to him, the conversation as stated by the complainant itself is doubtful. According to him, unless there was pre-negotiation, it is difficult to comprehend that at first meeting the accused directly asked as to whether the amount of Rs.200/- has been brought. He would submit that, unless demand of illegal gratification is proved, mere recovery of tainted currency notes would not be enough to establish the charge. In support of said contention, he relied on the decisions of the Hon'ble Supreme Court in cases of ***State of Punjab vs. Madan Mohan Lal Verma reported in (2013) 14 SCC 153, B. Jayaraj vs. State of Andhra Pradesh reported in (2014) 13 SCC 55*** and ***Mukhtiar Singh vs. State of Punjab reported in (2017) 8 SCC 136.*** The law is well settled that mere possession and recovery of currency notes from the accused without proof of demand,

will not bring home the guilt for the offence punishable under Sections 7, 13(1)(d) of the P.C. Act, and there cannot be conviction merely because, the tainted currency notes were found in possession of the accused. The Supreme Court has consistently expressed said view in several decisions of which reference can be made of the decision in case of ***Surajmal vs. State reported in (Delhi Admn) (1979) 4 SCC 725***.

> *"21. While dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it illegal gratification and that the prosecution has a further duty to prove that what was paid was an illegal gratification, reference can be made to the following observation in Mukut Bihari v. State of Rajasthan, wherein it was held as under : (SCC P.P. 645-46, para 11) -*
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> *"11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused. When the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal*

> *gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for independent corroboration before convicting the accused person."*

16. Therefore, to bring home the guilt of the accused, the prosecution is under an obligation to prove that there was a demand. The prosecution has endeavored to establish prior demand dated 30.12.2003 and on the spot demand through the evidence of complainant and shadow panch witness. As regard to initial demand

dated 30.12.2003 is concerned, the complainant stated that the accused has inquired with him as to whether he had brought amount of Rs.200/- for transit pass. True, it is difficult to accept that at first meeting there was a direct demand of Rs.200/- pre-supposing that earlier they had a talk relating to the payment of bribe.

17. Always, on the spot demand in the presence of shadow panch witness assumes significance. In this regard, it is the evidence of complainant that, at the time of trap he met accused and asked whether his work was done. At that time accused told that his work is not done but he should come tomorrow. The complainant expressed his inability to visit again and said that transit pass should be handed over to shadow panch witness posing him as his brother. The complainant stated that thereafter accused by moving his finger of left hand asked by gesture whether amount was brought. Precisely, this was the evidence of complainant about the demand on the spot. Apparently, as per complainants' evidence on the date of occurrence there was no verbal demand, as the prosecution case itself is of raising demand by signal.

18. Learned Counsel for the accused would submit that demand by signal or gestures can not be construed as demand of bribe.

To substantiate said contentions, he relied on the decisions of this Court in the cases of ***State of Maharashtra vs. Deepak Gopalrao Dande passed in Criminal Appeal 663 of 2008 on 14.09.2020, Dattatraya s/o Udaji Warkad vs. State of Maharashtra reported in 2018 ALL MR (Cri.) 1305*** and ***Mahesh Ramesh Jadhav vs. State of Maharashtra reported in 2019 SCC online Bom 1274***. In these cases, this Court has disbelieved the demand by gestures by expressing that without specification of exact monitory demand towards bribe, it is difficult to accept the same as a demand of bribe.

19. Contextually the evidence of P.W.2 – Khushal Pazarey on the point of demand was seen. It is his evidence that at the time of incident, the complainant asked to the accused whether his job was done to which accused replied that it is under process. Further, he deposed that the complainant said that on the following day transit pass should be issued to the witness i.e. he himself, thereafter, the accused agreed for the same and asked to the complainant whether his work was done or not. P.W.2 – Khushal Pazarey no where supported the complainant’s case that there was a demand by gestures. On the other hand, it is his evidence that appellant-accused asked whether his work was done or not. It is difficult to construe such conversation as a demand of bribe. Pertinent to note that evidence of shadow panch

witness requires strict scrutiny. This is so because he was specifically instructed to observe the things and hear the conversation. In other words, incident was not an abrupt event for him as he was sent for the said very purpose. In short, there was inconsistent version about demand, hence, it raises reasonable doubt.

20. In trap cases, it is enough for accused to offer a plausible explanation about receipt of amount. The appellant-accused in his defence has stated that the complainant had not deposited the requisite 10 per cent amount of auction price i.e. Rs. 1410/-, and therefore, on the date of auction he was to pay the deficit amount. As against this it is a prosecution case that on the date of auction the complainant deposited initial amount of Rs. 500/- and then towards compliance of 10 per cent condition, deposited additional amount of Rs. 1050/- i.e. total Rs.1550/- instead of Rs.1410/-. Pertinent to note that neither complainant has produced nor prosecution endeavored to tender a receipt of payment of Rs.1050/- on the date of occurrence. It was a crucial aspect of the case in the light of defence taken by the accused. It is difficult to understand that when the complainant was supposed to pay Rs.1410/- as to why he has paid Rs.1550/- i.e. additional amount of Rs.140/-.

21. In order to establish payment of Rs.1410/-, the prosecution has heavily relied on the evidence of P.W.6- Arvind Lohey who was working as a Round Officer in the forest department. He has explained the procedure that on the date of auction the bidder has to deposit Rs.500/- as earnest money and then to deposit 10 per cent of the biding money after auction. He has produced auction result sheet (Exhibit 56) prepared on the date of auction. According to him, in said auction chart there is entry that complainant has deposited Rs.1410/- on that date. Though he stated that receipt of payment of Rs.1410/- has been issued, however, it is not produced. The chart (Exhibit 56) bares a reference about deposit of Rs.1410/-, however, the receipt is not produced. Pertinent to note that in initial report (Exhibit 10) complainant himself has stated that he has not received the receipt of payment. Therefore, the aspect of requisit deposit is doubtful.

22. Learned Counsel appearing for the accused while criticizing the evidence of P.W. 6 Lohey has stated that auction result sheet is secondary evidence which cannot be relied. It has not come in the evidence that P.W.6 Arvind Lohey has prepared the auction sheet (Exhibit 56). The prime objection raised by the defence is that the evidence of P.W.6- Arvind Lohey along with the copy of auction sheet (Exhibit 56) cannot be used against the accused as evidence. This is so

because, the said circumstance was not put to the accused during his statement under Section 313 of the Code of Criminal Procedure.

23. True, the incriminating material which emerges from the evidence of P.W.6-Arvind Lohey along with the documents (Exhibit 56) were not put to the accused to obtain his explanation while recording his statement under Section 313 of the Code of Criminal Procedure. The defence relied on the decision in cases of ***Sujit Biswas vs. State of Assam reported in (2013) 12 SCC 406, Sukhjit Singh vs. State of Punjab reported in (2014) 10 SCC 270*** and ***Narayan Ramchandra Mante vs. State of Maharashtra reported in 2018 ALL MR (Cri.) 4518*** to state that non obtaining explanation on incriminating material would cause prejudice to the defence and therefore, it cannot be relied. The said submission bares substance as the explanation on said evidence was not sought from the accused.

24. The prosecution has not cogently established the entire calculation as to how the complainant has paid Rs.16,628/- by demand draft in addition to alleged earlier payment of Rs.1550/-. The detail breakup of taxes and other charges was not given, and therefore, it is difficult to understand whether any amount towards auction was deficit. Therefore, the explanation offered by the accused is probable

and plausible. The prosecution has not established foundational fact of demand of bribe and as the explanation appears to be probable it is difficult to hold that the evidence is sufficient on the set parameter of beyond reasonable doubt to establish the guilt.

25. The defence has seriously criticized the sanction accorded for prosecution in terms of Section 19 of the P.C. Act. In this regard, the prosecution has examined Divisional Manager, F.D.C.M., Ballarshah, P.W.3 – Jasbirsingh Raghuvirsingh who was working as a Deputy Conservator of Forest. It is his evidence that Deputy Conservator of Forest was the appointing and removing authority for the post of Clerk held by the accused. He deposed that on receipt of investigation papers, he has perused the same and accorded sanction (Exhibit 33). According to the defence, there is total non application of mind and therefore, sanction vitiates. To substantiate said stand the defence took through the cross-examination of P.W.3-Jasbirsingh Raghuvirsingh. He has admitted that he did not go in detail about the facts of the case before granting sanction. He was unable to say whether a complaint in the investigation paper was received from the office of Anti Corruption Bureau. He deposed that he had not gone through any detail examination whether any party has deposited any money after the auction. So also he has not verified from the accounts whether any

such amount has been deposited after the auction. Further, he admits that he had not gone in details to know whether any amount was due or balance towards the auction from the party. These several admissions would clearly go to show that there is total non-application of mind on the part of Sanctioning Authority for according sanction to the prosecution.

26. The validity of sanction depends on the application of the mind by the Sanctioning Authority to the facts of the case and the material collected during investigation. It naturally flows that the Sanctioning Authority has to apply his mind independently for grant of sanction. The evidence of P.W.3- Jasbirsingh Raghuvirsingh shows that he has not independently applied his mind for whatsoever reason and without verifying the things sanction has been accorded. Moreover, learned defence Counsel has brought to the notice that as per evidence led by Sanctioning Authority P.W.3 Jasbirsingh Raghuvirsingh (Exhibit 32) his name was Jasbirsingh Raghuvirsingh. Pertinent to note that sanction order (Exhibit 33) bares the name of the Authority as Yashwir Singh. It is difficult to understand whether the person who has signed the sanction order was different or in the alternative it is to be assumed that without reading the contents signature has been put by the Authority. Any way, for non-application of mind, the sanctioned to

prosecute vitiate.

27. In consequence on re-appreciation of the entire evidence, it emerges that the prosecution has utterly failed to prove the initial demand dated 23.12.2003 and Second demand dated 31.12.2003. Not only that though the tainted currency notes were found in possession of accused, he gave plausible and reasonable explanation. The explanation of accused on incriminating material evidence was not sought under statement under Section 313 of the Code of Criminal Procedure. Moreover, the sanction for prosecution is defective. The Trial Court has not adhered to the true import of evidence while basing conviction. Consequently, the Appeal deserves to be allowed, therefore following order is passed :

(a) The Criminal Appeal is allowed.

(b) The impugned judgment and order of conviction passed by the Special Judge, Chandrapur in Special Case No. 8 of 2004 on 17.10.2008 is hereby quashed and set aside.

(c) The appellant-accused is acquitted for the offence punishable under Sections 7, 13(1)(d) of the P.C. Act.

(d) The bail bond of the appellant stands cancelled and he is set at liberty.

(e) Fine amount if deposited, be refunded to the appellant-accused.

The Criminal Appeal is allowed and disposed of accordingly.

JUDGE

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