IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 583 / 2004

Sanjay Bapurao Kale
Adult, Occupation-Nil
R/o-Sector 21, Scheme No.10,
Bldg No.42/1, Yamunanagar
Nigdi, Pune .....**Appellant**
(Orig. Accused)

V/s.

The State of Maharashtra ....**Respondent**
(Orig. Complainant)

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Mr. Ganesh K. Gole a/w. Mr. Ateet Shirodkar and Mr. Ritesh Ratnam, Advocate for the appellant.
Mr. S.R. Agarkar, APP for the State.

CORAM : SANDEEP K. SHINDE, J.

Monday, 15th February, 2021.

JUDGMENT :

1. The Special Judge, (Prevention of Corruption Act), Pune by judgment dated 7th April, 2004 passed in

Special Case No.16 of 1999, convicted the appellant, a Deputy Accountant with the Pimpri-Chinchwad Municipal Corporation under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 ("the Act" for short) and sentenced him to suffer rigorous imprisonment for one year for each offence and pay fine of Rs.2,000/- with default stipulation. Aggrieved by the conviction and sentence, this Appeal is preferred under Section 374(2) of the Criminal Procedure Code.

2. Heard Mr. Gole, the learned Counsel for the appellant and learned APP, Mr. Agarkar for the State

3. The question, that falls for my consideration is, "Whether the prosecution has proved the twin requirement of "demand" and "acceptance" of bribe money by the accused, in as much as, proving of one alone but not the other, is not sufficient to uphold the conviction ?"

4. Briefly stated, prosecution case is that, complainant after executing the work contract, claimed refund of Earnest Money Deposit (EMD), from the office of Pune-Chinchwad Municipal Corporation. His

grievance was, the accused agreed to refund the EMD, but for illegal gratification/reward. He thus approached the Executive Engineer, Chief Accountant and Accountant-Nigade of the Corporation. However, these officers told him that, he should pay Rs.100/- to the accused to seek release of EMD. Complainant thereupon approached the Anti-Corruption Bureau, Pune; however, the Deputy Commissioner was also reluctant to register the complaint. On his insistence, a complaint was accepted by P.I. Shinde, (Officer attached to ACB), which is at Exhibit-19. After drawing the pre-trap panchanama and on completing related formalities, two tainted currency notes amounting to Rs.100/- after applying the, anthracin powder, were kept in his pant pockets. The raiding party, thereafter, proceeded to the Corporation office on 2nd August, 1997 at 3:15 p.m.

5. It is complainant's evidence that, he was accompanied by a panch witness in whose presence the accused demanded bribe. The learned trial Judge, to great extent relied on the evidence of the complainant and held that 'demand' of bribe has been proved. However, in my view, the evidence of the complainant, is not trustworthy, reliable and dependable. Infact, the

complainant would assert and testify that, when he approached the accused and enquired about refund of EMD, complainant voluntarily informed/told accused and other staff members, that, he had brought Rs.100/- as agreed and handed over Rs.100/- to him and it was accepted by the accused. Thus, there is no demand by the accused. Infact, the alleged demand of bribe was also not verified by the Investigating Officer before laying a trap. On the contrary, the evidence of the complainant suggest that, he paid Rs.100/- to the accused as advised by the Executive Engineer, Chief Accountant working in the same establishment. It is therefore to be held that, the evidence of the complainant is falling short of "demand" envisaged in Section 7 of the Prevention of Corruption Act. So far as the evidence of P.W.3- panch witness, is concerned, he deposed that the moment the complainant approached the accused, complainant handed over EMD receipts to the complainant and no sooner, the complainant received the receipt, he asked the accused, whether he should pay the money as agreed.

6. Thus, the evidence of the complainant and of the panch witness, has not proved the factum of

'demand' by the accused a illegal gratification or reward, for releasing the EMD receipts, though tainted currency notes were recovered from him.

7. Infact, for more than one circumstance, renders complainant's evidence not worthy. He deposed that, after laying the trap, a post-trap panchanama drawn by P.I. Shinde, was crumpled and torn by him. This assertion has not been, clarified by the prosecution, as to which panchanama was drawn and how it was crumpled and torn by the complainant. This circumstance/assertion renders the evidence of the complainant deceitful and also renders the prosecution's case debatable. Another circumstance is that, though the trap was laid on 2nd August, 1997 at about 16:00 hrs, complaint was lodged on 3rd August, 1997. It is complainant's evidence that, post-trap panchanama was torn by him, however, there is a panchanama on record, which was drawn during 16.15 to 22.45 hrs. It may further be noted that, the complainant deposed that, he stayed in the office of the Corporation for whole night and on the second day i.e. 3rd August, 1997, the FIR was lodged. Thus, the events narrated by the complainant being not probable, it creates doubts and

renders his evidence uncertain. As such whole exercise undertaken by the respondent, post trap, cast shadow of doubt. Be that as it may, there are material variances in the evidence of the complainant and panch witness on several aspects which equally renders their evidence uncertain. To say, the complainant deposed, on personal search of the accused, Rs.35,000/- were recovered; however, panch witness would say Rs.6,682/- were recovered.

8. Thus, taking into consideration the evidence on record, and in order to attract the rigors of Section 17, 13(1)(2) of the Prevention of Corruption Act, though prosecution was under legal obligation of proving twin requirements of "demand" and "acceptance" of the money by the accused, but herein the prosecution could not prove that Rs.100/- were demanded by accused as bribe for releasing the Earnest Money Deposit Receipts to the complainant. Prosecution therefore fails.

9. In consideration of the evidence on record, the Appeal is allowed.

10. The conviction recorded in the Special Case No.16/1999 and the sentence imposed on the appellant by the learned Special Judge by judgment and order dated 7th April, 2004 is quashed and set aside. Appeal is allowed in the aforesaid terms and disposed off.

11. The Bonds executed by the appellant is cancelled and the sureties are discharged. The fine amount, if paid, be refunded to the appellant.

12. All applications in the appeal are disposed off accordingly.

(Sandeep K. Shinde, J.)