IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1073 OF 2007

The State of Maharashtra
(Through Anti Corruption Bureau) ....Appellant
(Orig. Complainant)

V/s.

Srirang Dagaduji Bale
Age : 42 years, Occu.: Service,
Residing at : Dhanalaxmi Park,
Kothrud, Pune. ....Respondent
(Orig. Accused)

Ms. M.M. Deshmukh, Addl. P.P. for State.
Mr. Satyavrat Joshi for Respondent.

CORAM : K.R.SHRIRAM, J.
DATED : 30th JUNE, 2021.

ORAL JUDGMENT :

1. This is an appeal impugning an order and judgment dated 5th August, 2006 passed by the Special Judge, Under (P.C. Act) Pune, acquitting the respondent (hereinafter referred as accused) of offence punishable under Section 7 *(Public servant taking gratification other than legal remuneration in respect of an official act)* and Section 13 (1) (d) read with Section 13 (2) *(Criminal misconduct by a public servant*) of the Prevention of Corruption Act, 1988.

2. It is prosecution's case that Sambhaji Namdeo Sakhare (P.W.1) complainant and his family members were served with notice dated 28/02/2003 informing them about compensation of Rs.1,19,290/- to be

paid to them against acquisition of their property. The notice was issued by the office of Sub-Divisional Officer, Maval Sub-Division. Out of this Rs.1,19,290/-, Rs.30,000/- was towards compensation of the building in the acquired land. On 07/08/2003 when P.W. 1 went to the office of Sub-Divisional Officer at Maval to collect the amount of compensation, accused demanded Rs.1,000/- for preparing and giving a cheque of Rs.30,000/- out of the total amount of compensation. As P.W. 1 did not have that much amount, it is alleged that accused asked him to bring that amount on the next date i.e., on 08/08/2003 on which date P.W. 1 can come and collect the cheque. Complainant P.W. 1 therefore approached A.C.B. and lodged complaint. After formalities for pre trap panchanama was completed, the raiding party went to the office of accused on 08/08/2003. At that time, P.W. 1 Complainant and P.W. 2 Shadow Panch Prabhakar Gaikwad met accused who told them to come back on 11/08/2003. On 11/08/2003 after again completing pre trap panchanama formalities P.W. 1 and P.W. 2 went and met accused who told them to come again on 12/08/2003. Again after completing pre trap panchanama formalities P.W. 1 and P.W. 2 went for the raid on 12/08/2003. On that day accused took signature of complainant on a receipt on which revenue stamp was affixed and accused informed P.W. 1 that the concerned officer was not available and therefore he should come again on 14/08/2003.

On 14/08/2003 again after completing pre trap panchanama formalities, raiding party went to the office of accused. When they reached the office of accused, complainant was told to come again at 4.00 p.m. after which P.W. 1 and P.W. 2 came out. At 4.00 p.m., complainant and panch entered the office of accused, cheque was given by accused to complainant and when complainant and panch started going out, accused went towards water cooler which was kept in the office. While drinking water, accused gestured by his hand to the complainant demanding money and then complainant handed over marked currency to accused who accepted those notes by his left hand and kept it in the left side pocket of his pant. Then complainant went out and gave agreed signal to the raiding party. A.C.B. officer, his staff and Panch No.2 entered office of accused. P.W. 2 shadow panch was sitting in the office pointing towards accused who was standing near a cupboard and told that accused has accepted the notes. They immediately caught hold of the hands of accused and took search of the cupboard. Second panch witness found in the cupboard not only the marked currency but also certain other amounts. The marked currency was checked under ultra violet lamp. Anthracene powder marks were found. Hands and clothes of accused were also checked under ultra violet lamp and bluish shining was found on the left hand and left side inner part of the left pocket of the pant of accused. Thereafter post trap panchanama was prepared, investigation commenced and after completion of investigation papers were sent to the sanctioning authority. After receiving sanction order, charge-sheet has been filed. Charges were framed. Accused pleaded not guilty and claimed to be tried.

3. After considering the evidence, Trial Court had come to a conclusion that accused required to be acquitted. I have considered the evidence and impugned judgment with the assistance of learned Addl. P.P. and Mr. Joshi and I would agree with the conclusion arrived at by the Trial Court.

4. To bring home the charge, prosecution has examined four witnesses viz., Sambhaji Namdeo Sakhare, Complainant as P.W. 1, Prabhakar Krishnaji Gaikwad, Panch as P.W. 2, Prabhakar Krishnaji Deshmukh, Sanctioning Authority as P.W. 3 and Hemant Vasudeo Bhat, Investigating Officer as P.W. 4.

5. Admittedly, on 08/08/2003, 11/08/2003, 12/08/2003 and on 14/08/2003 (first visit) trap failed and there is nothing to indicate that during any of these dates accused made any demand.

6. P.W. 1 Sambhaji Namdeo Sakhare says on 14/08/2003 when they went to meet accused, he and P.W. 2 met accused. P.W. 1 says accused told that his officer is not in the office and asked them to wait outside. P.W.1 says he and P.W. 2 went and waited outside and they were called inside at 4.00 to 4.30 p.m. But P.W. 2 and P.W. 4 say that after accused stated that the concerned officer was not in the office and told them to come back around 4 o'clock, P.W. 1 and P.W. 2 went to the office of A.C.B. This is a material

contradiction in the evidence of the witness. Though Ms. Deshmukh stated that it was a very minor defect, the fact is that the offence charged is under the Prevention of Corruption Act, 1988 and if prosecution succeeds, it would amount to accused not only losing his job but all shame and stigma also sticks to the family. In my view, therefore even a minor defect, though I do not view it as a minor defect, has to be viewed seriously.

7. P.W. 2 Prabhakar Krishnaji Gaikwad says that when they went back at about 4.00 p.m., accused asked them to come after 10 to 15 minutes. P.W. 1 does not say this. Then P.W. 2 says that they went out and sat on the bench and at 5.00 p.m., P.W. 1 and P.W. 2 again entered the office of accused. This also is not stated by P.W. 1. Then P.W. 2 says accused inquired with P.W. 2 whether he knows P.W. 1 and when he told he knows P.W. 1, signature of P.W. 2 was obtained by accused on receipt and thereafter accused handed over cheque to P.W. 1. P.W. 1 does not say any of these things. P.W. 1 says that accused took them to his office where officer signed on check and then complainant and accused came out and on the table of accused cheque was given to the complainant by accused.

8. Admittedly, there are disputes within the family of complainant P.W. 1. The officer to whom accused took P.W. 1 also has not been examined. In the notice dated 28/02/2003 issued by the Sub-Divisional Officer, Maval, it is stated that an amount of Rs.1,19,290/- was the compensation that was

payable. Pursuant to notice P.W. 1 went to the office of Sub-Divisional Officer, Maval Sub-Division on 28/03/2003. However, it has come on record in the evidence of P.W. 1 that on 28/03/2003 he produced authority letter of all share holders for issuing cheque in his name and also filed one application. But on that day mother of P.W. 1 Anusayabai was not alive but her name was also mentioned in the notice. On inquiry by accused complainant told that his mother Anusayabai was not alive so accused asked complainant to get heirship certificate and also amended mutation entries. P.W. 1 has also admitted that his cousin Rajendra Murlidhar Sakhare had also filed an application on 29/04/2003 stating that payment should not be given to complainant. P.W. 1 has also admitted that on 09/06/2003 his uncle also has raised similar objection. P.W. 1 has also admitted that on 03/06/2003 he moved an application before Sub-Divisional Officer for re-measurement. There are various such issues mentioned and on 07/08/2003 complainant moved an application before Sub-Divisional Officer that amount of Rs.30,000/- be given to him out of the compensation amount and the balance can be issued after the dispute between family members are resolved. On 07/08/2003 no order was passed by the Sub-Divisional Officer. P.W. 1 has filed an application only at about 3.00 to 3.30 p.m. and he was in the office of Sub-Divisional Officer till 4.00 to 4.30 p.m. on 07/08/2003. If this was the position, the Trial Court correctly observed that how did complainant go to the office of A.C.B. on 07/08/2003 at 2.30 p.m. to lodge the complaint. There is nothing on record to even indicate that during the entire period there was any demand by accused.

9. As noted earlier, when complainant visited accused on 08/08/2003, 11/08/2003, 12/08/2003 and on 14/08/2003 in the morning and in fact even when the cheque was handed over accused had not demanded any money to complainant. Neither complainant P.W. 1 nor panch witness P.W. 2 have stated that during these meetings accused demanded money or even inquired with complainant whether he has brought money. One would have expected accused to ask not only on 08/08/2003 but on every date when they met him as to whether money has been brought because even before money was demanded allegedly by gesture by hand, cheque has been handed over to complainant.

10. Another point which requires mentioning is that defence case is that when accused was drinking water, complainant tried to thrust money in the left pocket of the pant of accused and accused pushed hand of complainant. Evidence of P.W. 2 states that after getting cheque P.W. 2 and P.W. 1 left the room and they went outside the room. At that time, accused came out of the room by another door near the water cooler for drinking water. Accused was drinking water and complainant went in front of accused. At that time, accused by gesture asked money and complainant gave money to accused and accused accepted those notes by his left hand and kept it in the left side pocket of his pant. P.W. 2 says then accused went to his table and P.W. 2 followed him and meanwhile members of trap party

came there and enquired with P.W. 2 and P.W. 2 who was standing near the cupboard told that accused has accepted money. Members of the trap party caught hold of the hands of accused. P.W. 2 has not stated that accused kept the bribe amount in the cupboard. Then I ask myself how did Investigating Officer directed second panch witness to open the cupboard and take the money out of cupboard because P.W. 2 has also stated that money has been kept in the left side pocket of pant. Another point which has to be noted is in the evidence of P.W. 4 Investigating Officer it has come on record that at the time of trap accused has given a written explanation in which accused has explained that complainant was demanding the entire amount of compensation of Rs.1,19,290/- but when accused declined he was infuriated with complainant and hence this false complaint has been filed though the dispute is of internal family dispute of complainant. In the explanation, it is also mentioned that out of the amount seized from the cupboard a sum of Rs.6,352/- were of Krishi Utpanna Bazaar Samiti, Talegaon and defence has proved by filing certified copy of the cash book alongwith written statement under Section 313 of the Code of Criminal Procedure. The A.C.B. Officer has still seized that amount.

11. There are many other such points raised in the impugned judgment which for the sake of brevity, I am not reproducing, for acquitting accused.

12. It is also settled law that if two views are possible, the Appellate Court should not interfere with the acquittal of the lower court and unless material on record leads to an escapable conclusion of the guilt of accused, the judgment of acquittal will not call for interference by the Appellate Court. [***V .Sejappa Vs. State by Police Inspector, Lokayukta, Chitradurga***[1]]. In V. Sejappa (supra) the Apex Court has also laid down the factors that must be kept in mind by the appellate court dealing with the appeals against acquittal and the same can be found in paragraph-22 of the said judgment which reads as under :-

> *"....... It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following :*
>
> *(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court ;*
>
> *(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal ;*
>
> *(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully*

1 AIR 2016 SUPREME COURT 2045

> *justified; and*
>
> *(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court……….”*

13. The law on the issue is well settled that demand of illegal gratification is sine quo non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when 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 a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, 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 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. In a proper case, the court may look for independent corroboration before convicting the accused person. [***State of Punjab Vs. Madan Mohan Lal Verma***[2]]

14. Therefore, recovery of tainted currency is not sufficient to hold a person guilty. Demand has to be unequivocally proved.

15. In the case at hand, I have to note that the evidence of complainant is fraught with lot of inconsistencies and there are contradictions with the evidence of PW-1, PW-2 and PW-4. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested very carefully. State of Punjab (supra) has followed the law laid down in ***State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede***[3]***.***

16. The Apex Court in ***Suraj Mal Vs. State (Delhi Administration***)[4] under the Prevention of Corruption Act 1947 has held that mere recovery of tainted currency is not sufficient to infer the guilt of the accused. It is well settled where witnesses make two inconsistent statements the testimony of

2 (2013) 14 Supreme Court Cases 153
3 (2009) 15 Supreme Court Cases 200
4 (1979) 4 SCC 725

such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances, no conviction can be based on the evidence of such witnesses.

17. A learned single Judge of this court in ***Khushalchand Yashwant Gaikwad Vs. The State of Maharashtra***[5] also has held that it is well settled law that mere possession and recovery of currency notes without proof of demand will not bring home the offence under Section 7 since the demand of illegal gratification is sine qua non to constitute the offence. The same will also be conclusive in so far as offence under section 13 (1) (d) is concerned, as in the absence of any proof of demand of illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on the proof of acceptance of illegal gratification that presumption can be drawn under section 20 of the said Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification, proof of acceptance will not follow. Paragraph-12 of the said judgment reads as under :-

> *"It is well settled law that, mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since the demand of illegal gratification is sine-qua-non to constitute the said offence. The same also will be conclusive insofar as the offence under Section 13 (1)(d) is concerned as in the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of*

5 2018 SCC Online Bom. 1073

position as to public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Prevention of Corruption Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reliance is placed on (i) N.Sunkanna v. State of Andhra Pradesh; (ii) T.K.Ramesh Kumar v. State through Police Inspector Banglore; (iii) Khaleel Ahmed v. State of Karnataka; ((iv) Suraj Mal v. The State (Delhi Administration); and (v) Sita Ram v. The State of Rajasthan."

18. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless they are 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 Sessions Court rightly observed that the prosecution had failed to prove its case.

19. 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.

20. Appeal dismissed.

21. The Government/Appropriate Authority shall pay over to respondent, within a period of 30 days from the date of receiving a copy of this order, 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 order. Certified copy expedited.

(K.R. SHRIRAM, J.)