IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1118 OF 2013

Praful Pandurang Patil …. Appellant
v/s.
The State of Maharashtra …. Respondent

Mr. Kuldeep Patil for the Appellant.
Mr. S.V. Gavand, APP for the State.
Mr. Shashank P. Borade for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 25th NOVEMBER, 2021.

ORAL JUDGMENT :-

. This Appeal, filed under Section 374 of Cr.P.C. is directed against the judgment and order dated 13/09/2013 passed by the learned Special Judge, Vasai in Special Case No.04/2008.

2. By the impugned judgment, the learned Special Judge, Vasai has held the Appellant guilty of offence under section 8 of Prevention of Corruption Act, 1988 and sentenced him to undergo rigorous imprisonment for two years with fine of Rs.10,000/- in default to undergo simple imprisonment for three months. Out of the said fine amount, Rs.5,000/- is ordered to be paid to the complainant by way of

compensation.

3. The case of the prosecution in brief is as under :-

The Complainant - Bhagwan Vitthal Solanki had planned to open a grocery shop in one of the rooms of his friend – Jairam Mane. In January, 2003, he approached Mr. Mankikar, Shop Inspector to obtain a license under the Shops and Establishments Act. Mr. Mankikar referred him to the Appellant herein who was having his office on the 1st floor of the said building. Accordingly, he met the Appellant and gave him the relevant forms. It is the case of the prosecution that the Appellant had demanded Rs.800/- for issuance of license. Thereafter, on 01/04/2003, the Appellant demanded Rs.200/- for payment of challan. On 08/04/2003, the Appellant demanded the balance amount of Rs.600/- and told the complainant – Bhagwan that he will not get the license unless the money is paid. The complainant told him that he would return on 02/05/2003 after arranging the money. PW1 was not inclined to make the payment. Hence, on 02/05/2003, he went to ACB office, Thane and lodged a complaint (Exhibit – 14) against the Appellant.

4. PW5 – Pramod Eknath Tambe, the Investigating Officer, secured presence of pancha witnesses. He explained to them the contents of the complaint. He applied anthracene powder to the six notes in the denomination of Rs.100/-, produced by the complainant. The said notes were kept in the shirt pocket of the complainant. He gave demonstration of anthracene test and after completing the required formalities and giving necessary instructions, prepared a pre-trap panchanama. They proceeded to the office of Municipal Council at Vasaigaon. The complainant and PW2 – Bhushan Gharat, one of the pancha witnesses entered the office of Municipal Council while others waited outside. The complainant asked the Appellant whether his work was done. It is the case of the prosecution that the Appellant asked the complainant whether he had brought Rs.600/-. The Appellant accepted Rs.600/- from the complainant and handed over to him an envelope containing the license. The complainant came out of the cabin and gave pre-determined signal to the raiding party. The raiding party entered the cabin. The investigating officer disclosed his identity and took the Appellant out of the cabin since it was too small for conducting the raid. The notes recovered from the Appellant showed traces of anthracene powder when placed under ultra violet lamp. The serial number of the notes recovered from the Appellant

tallied with the serial number of the notes recorded in the pre-trap panchanama. After following the requisite procedure, post trap panchanama was drawn and the FIR was lodged against the Appellant for offence under Section 8 of Prevention of Corruption Act, 1988.

5. After completion of investigation, charge sheet was filed against the Appellant before Special Court, Vasai. Charge was framed. The Appellant pleaded not guilty to the charge and claim to be tried. The prosecution, in support of its case, examined five witnesses. The statement of the Appellant was recorded under Section 313 of Cr.P.C. The defence of the Appellant was of total denial. The learned Special Judge, after appreciating and analyzing the evidence, held the Appellant guilty of offence under section 8 of Prevention of Corruption Act and convicted and sentenced him as stated above. Being aggrieved by the judgment, the Appellant has filed this Appeal under section 374 of Cr.P.C.

6. Mr. Kuldeep Patil, learned counsel for the Appellant submits that the Appellant was the inward – outward clerk in Municipal Council and he was not competent to issue license under Shops and Establishments Act. He submits that prosecution has failed to prove that the Appellant

had demanded or accepted the money as illegal gratification to be paid to the public servant. He contends that in the absence of evidence to show that the amount was demanded to induce or influence the public servant, the Appellant could not have been held guilty of offence under section 8 of Prevention of Corruption Act. In support of his submission, he has relied upon the decision of the Apex Court in ***Babji v/s. State of Andhra Pradesh (2018) 17 SCC 732.*** He has also relied upon the decision of the Single Judge of Madras High Court in ***Jothiramalingam @ Jothi v/s. State, 2001 DGLS (Mad.H.C.) 650.***

7. Per contra, Mr. S.V. Gavand, learned APP for the State has submitted that the evidence on record clearly indicates that Mankikar who is a public servant and who was authorized to issue license, had referred the complainant to the present Appellant. He further submits that the Appellant had demanded an amount of Rs.800/- out of which Rs.200/- was paid to the Appellant and that the Appellant had told the complainant that the license would be issued only on payment of the balance amount of Rs.600/-. Learned APP submits that there was direct nexus between the Appellant and Mankikar. The evidence on record proves beyond reasonable doubt that the Appellant had accepted an illegal gratification of Rs.600/- from the complainant to

induce Mankikar, a public servant, to issue the license.

8. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

9. The Appellant herein was charged for committing offence under section 8 of Prevention of Corruption Act, 1988 which reads thus :-

> *" **8. Taking gratification, in order, by corrupt or illegal means, to influence public servant.**—Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine. "*

10. As it has been held by the Apex Court in ***Babji*** (supra) :-

> *" 5. In order to establish the offence under Section 8 of the Prevention of Corruption Act it must be proved:*
>
> *(i) That the accused accepted or obtained, or agreed to accept, or attempted to obtain, from someone;*
> *(ii) For himself or for some other person;*
> *(iii) Any gratification whatever;*
>
> *(iv) As a motive or reward for inducing by corrupt or illegal means any 'public servant' to do or forbear to do any official act or to show favour or render any service to any of the persons specified in the section.*
>
> *6. In order to constitute an offence under Section 8 of the Act, three things are essential. In the first place there must have been the solicitation or receipt of the gratification. Secondly, such gratification must have been asked for or paid as a motive or reward for inducing a public servant to do an act or do a favour or render some service as stated under Section 8 of the Act.... "*

11. In the instant case, the evidence on record reveals that the complainant who wanted to start a grocery store, had approached Mankikar, who was a Shop Inspector under Shops and Establishments Act for obtaining a license. The evidence of the complainant indicates that Mankikar had referred him to the Appellant and that the Appellant had agreed to fill in the form and complete the other formalities required for obtaining the license. It is also in his evidence that the

Appellant had demanded Rs.800/- and that he had paid to the Appellant Rs.200/- out of which, an amount of Rs.150/- was used in paying the challan. The evidence adduced by the prosecution further indicates that the Appellant had demanded the balance amount of Rs.600/- for issuing the license. The complainant had handed over to the Appellant the currency notes which were smeared with anthracene powder. The raiding party had recovered the currency notes from the Appellant which had traces of anthracene powder. The question is whether the Appellant had accepted the said amount as a motive or reward for inducing a public servant to do an act or to do a favour or render some service as stated in section 8 of the Act.

12. It is to be noted that the Appellant was only working as an inward – outward clerk in the Municipal Council. He was not competent to issue the license. The case of the prosecution appears to be that the money was demanded to induce the licensing authority i.e., Mankikar to issue the license. The evidence of the Complainant only reveals that Mankikar had referred him to the Appellant to fill in the form and complete the other formalities in obtaining the license. There is absolutely no evidence to prove that the Appellant had received the said money from the complainant for inducing Mankikar to issue the

license. It is pertinent to note that said Mankikar has not been charged for any offence. The Investigating Officer has stated that the Investigation did not reveal that the trap money was to be given to Mankikar. The prosecution has therefore failed to establish that the Appellant had demanded the money from the complainant on behalf of Mankikar or to induce said Mankikar, who was a public servant to do any official act. The prosecution has thus failed to establish the essential ingredient of Section 8 of Prevention of Corruption Act. Hence, the impugned judgment cannot be sustained.

13. Under the circumstances and in view of discussion supra, the Appeal is allowed. The impugned judgment dated 13/09/2013 passed by the Special Judge, Vasai in Special Case No.04/2008, is quashed and set-aside. The Appellant is acquitted of offence under section 8 of Prevention of Corruption Act. Fine amount, if deposited, be refunded to the Appellant. Bonds stand discharged. The Appellant shall furnish bonds before Trial Court under section 437A of Cr.P.C. within the reasonable time.

PREETI
H JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)