

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 1147 OF 2012**

Vijay Kumar Sharma

Aged about 36 years, Occ. Service,

Residing at Flat No.10,

Delhi Government Officer's Flats

GK-1, New Delhi

... Appellant

Vs.

1 Central Bureau of Investigation
Tanna House, House Road,
Colaba, Mumbai – 5

2 The State of Maharashtra ... Respondents

Mr.Girish Kulkarni i/b. Mr.Mandar Goswami for Appellant.

Ms.Ameeta Kuttikrishnan i/b. Mr.S.R. Shinde for Respondent No.1.

Mr.Amit Palkar, A.P.P. for Respondent No.2-State.

CORAM : A. S. GADKARI, J.
RESERVED ON : 11th DECEMBER, 2020
PRONOUNCED ON : 22nd MARCH, 2021.

JUDGMENT:-

Appellant has questioned correctness of Judgment and Order dated 27th September 2012, passed in Special Case No.1 of 2006, by the learned Special Judge, Dadra and Nagar Haveli, Silvassa, thereby convicted him and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.10,000/- in default of payment of fine, to further suffer rigorous imprisonment for three months for the offence punishable under

Section 7 of the Prevention of Corruption Act, 1988 (for short, "*the P.C. Act*") and also sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.15,000/-, in default of payment of fine to further suffer rigorous imprisonment for 6 months for the offence punishable under Section 13(2) read with 13(1)(d) of the P.C. Act. The Trial Court has directed that, both the sentences shall run concurrently.

2 Heard Mr. Kulkarni, learned counsel for the Appellant, Ms. Kuttikrishnan, learned counsel for the Respondent No.1-CBI and Mr. Palkar, learned APP for the Respondent No.2-State. Perused entire record.

3 The prosecution case in brief is as under :-

(i) The Complainant (PW-1), Altaf Gulamali Khutliwala was conducting construction business at Silvassa, 10 to 12 years prior to date of lodgment of the present crime. Complainant knew Mrs. Khatija Masani, a resident of Mumbai, who owned land bearing Survey No.24/2/1 admeasuring about 1 hectare situated at village Khanvel. In the year 2004, the Complainant was intending to purchase the said land of Mrs. Khatija Masani in the name of his mother Smt. Gulshan Gulamali Khutliwala. An Agreement of Sale was executed by Mrs. Khatija Masani in favour of his mother Smt. Gulshan Khutliwala. Complainant thereafter, filed an Application in the name of his mother for conversion of use of the said land for non-agricultural (N.A.) purpose and for permission to purchase the land, in the office of Mamlatdar, Silvassa. His Application was processed in

the concerned office and thereafter, it was forwarded to Resident Deputy Collector (for short, “RDC”) for his comments. The Appellant was then serving as RDC at Silvassa and was also holding additional charge of post of Assistant Commissioner, Sales Tax, Silvassa. On 30th March 2005, Complainant met Appellant in his office at Silvassa and made inquiry about his file. At that time, the Appellant asked him to pay an amount of Rs.1,75,000/- as bribe for granting N.A. permission. Appellant told complainant that, his application would not be allowed in case he fails to pay the amount of Rs.1,75,000/- to him. Appellant also told the Complainant that, he had to provide money to his higher officers i.e. Collector, Administrator and Finance Secretary. Complainant then asked Appellant to give him two days time for thinking over his proposal.

(ii) As the Complainant was not intending to pay bribe amount to the Appellant, he approached CBI, ACB, office at Tanna House, Mumbai. He approached Shri. Jadhav, then Superintendent of Police, ACB, Mumbai and narrated his grievance to him. Appellant also filed his written Complaint (Exh-38) dated 31st March 2005, before Shri. Jadhav in his own hand writing. Shri. Jadhav, then called Shri. Kulkarni, P.I., ACB, CBI (PW-4) in his chamber and informed him about the grievance of Appellant and directed him to take appropriate steps on his Complaint. Appellant then narrated his grievance to Shri. Kulkarni orally. Shri. Kulkarni then told him that, he would meet Complainant at Silvassa on the next day. Shri. Kulkarni

informed Complainant that, he would make phone call to him on his arrival at Silvassa. Complainant thereafter returned back to Silvassa.

(iii) On the next day i.e. on 1st April 2005, in the morning, the Complainant received phone call from Shri. Kulkarni, P.I., ACB. He informed Complainant that, he had arrived at Silvassa and called him in Hotel Green Wood at Silvassa. Complainant went to Hotel Green Wood and met Shri. Kulkarni. Members of the raiding party and two panch witnesses were accompanying with Shri. Kulkarni. Complainant was introduced to them as Shri. M.K. Karanje (PW-2) and Shri. Ramesh Sumra, the panch witnesses. Complainant narrated his grievance to the panchas. The panch witnesses verified his grievance with the contents and written Complaint (Exh-38) and thereafter, they put their signatures on it. Complainant orally narrated the panchas that, the Appellant had demanded bribe of Rs.1,75,000/- from him for processing his file for granting permission to use the land for N.A. purpose and for permission to purchase the said land. That, the Complainant had no monetary business transaction with the Appellant. Thereafter, Shri. Kulkarni, P.I., ACB, decided to verify the correctness of the Complaint. Shri. Kulkarni, then asked the Complainant to approach Appellant in his office on that day along with one of the panchas. Shri. Kulkarni, then showed demonstration of operation of tape-recorder, its working and to record conversation in it. Shri. Kulkarni inserted a blank new cassette in the tape-recorder. He, thereafter prepared panchnama of

all the said facts in presence of panchas and the Complainant in Hotel Green Wood.

(iv) At about 11.00 am, the Complainant along with panch witness Shri. Karanje (PW-2) went towards the office of Appellant from his car and thereafter, they entered the chamber of Appellant. Complainant introduced panch witness Shri. Karanje (PW-2) as Shri. Masani, the bother of Mrs. Khatija Masani. Complainant discussed with Appellant about his file and at that time, Appellant asked the Complainant to pay Rs.1,75,000/- for sanctioning his file. Complainant thereafter, negotiated with the Appellant regarding the amount to be paid and after negotiations, the Appellant reduced the amount to Rs.1,50,000/-. Complainant asked Appellant, as to where he had to pay the amount. At that time, the Appellant told him that, the Complainant should pay the amount at his residence on the next day at 9.30 a.m. Complainant and panch witness Shri. Karanje (PW-2) left the chamber of Appellant and visited Hotel Green Wood. The tape recorder was stopped as soon as the Complainant came out of the chamber of the Appellant. At Hotel Green Wood, P.I. Shri. Kulkarni (PW-4) heard the conversation between Complainant and accused, which was recorded on the said cassette and decided to arrange a trap. P.I. Shri. Kulkarni (PW-4) directed the Complainant to visit Hotel Green Wood on the next day morning at 7.00 a.m. and to bring an amount of Rs.1,50,000/- with him.

(v) On 2nd April 2005, at about 7.00 a.m., Complainant went to

Hotel Green Wood along with the amount of Rs.1,50,000/- and met P.I. Shri. Kulkarni (PW-4) and handed it over to him. It was decided that, after the bribe amount was handed over to the Appellant, the Complainant to give a pre-determined signal on mobile phone. A pre-trap panchanama (Exh-39) was accordingly drawn. At about 9.00 a.m., the Complainant along with Shri. Karanje (PW-2) left Hotel Green Wood and went to the house of Appellant, which was situated behind the Court building at Silvassa, from the car of the Complainant. Appellant was residing in Quarter No.4, situated on the first floor of the building of Government Quarters. When the Complainant reached in front of the quarter of the Appellant, he started the tape recorder. He rang the door bell of the house of Appellant. Appellant opened the door and thereafter, Complainant and panch witness Shri. Karanje (PW-2) entered in the house of the Appellant. Complainant opened topic with the Appellant regarding his file and told him that, he has brought an amount of Rs.1,50,000/- as per the earlier talks between them. Complainant requested Appellant to sanction his file. Appellant told him that, he would sanction his Application within a week. Thereafter, on the demand of Appellant, Complainant removed amount kept in his right side pocket of trouser by his right hand and paid it to the Appellant. Appellant accepted the said amount. Complainant and panch witness thereafter, came out of the house of the Appellant. Complainant gave a phone call to P.I. Shri. Kulkarni (PW-4) and gave pre-determined

signal to him. The raiding party immediately reached at the spot. PI. Shri. Kulkarni (PW-4) rang the door bell of the house of Appellant. Appellant opened the door and thereafter, the raiding party entered in the house of the Appellant. PI. Shri. Kulkarni (PW-4) introduced himself to the accused. Two members of the raiding party accosted Appellant and caught hold his hands. Two persons other than Appellant were also present in the house at that time. Thereafter, Shri. Karanje (PW-2) informed PI. Shri. Kulkarni (PW-4) that, the Appellant has accepted bribe amount. Upon inquiry, Appellant told Shri. Kulkarni that, he has accepted bribe amount and had kept it in his cupboard. Appellant took the raiding party to a bedroom in his house and showed the cupboard. PI. Shri. Kulkarni (PW-4) directed panch witness to open the cupboard and collect the bribe amount. Accordingly, the panch witness opened cupboard and removed bribe amount kept in between two shirts. The numbers of the currency notes were verified and tallied with the numbers mentioned in the pre-trap panchanama. The hands of Appellant were washed with a chemical solution. The colour of the chemical changed and turned into pink. The hand wash of the Appellant was collected in two bottles and the said bottles were sealed in presence of panch witnesses.

(vi) Appellant was wearing a pant and T-shirt at the time of raid. The pant of Appellant was seized by providing him another pant. After applying chemical on the inner side of the pocket of pant under the

instructions of P.I. Shri. Kulkarni (PW-4), the colour turned into pink. The police thereafter, also applied chemical on the T-shirts from which the tainted notes were seized. The colour of T-shirts was also turned into pink. Complainant handed over to P.I. Shri. Kulkarni (PW-4), tape-recorder and cassette after putting it off. P.I. Shri. Kulkarni heard the conversation which took place between the Complainant and Appellant as recorded in the cassette. He, thereafter removed the cassette from the tape recorder and seized it in presence of panchas. A post-trap panchanama (Exh-40) was drawn.

(vii) On 23rd June 2005, the CBI called Complainant at their office at Mumbai. A transcript of conversation from the cassette was prepared by effecting a panchanama in the presence of the Complainant and panch witnesses. The CBI Authority sealed the cassette again and prepared a panchanama. After completion of investigation and receipt of sanction from the Competent Authority to prosecute Appellant, Shri. Maruti S. Patil (PW-5), the then Inspector of Police, CBI, ACB, Mumbai, the Investigating Officer of the present crime, submitted charge-sheet against the Appellant before the Special Court on 26th December 2005.

(viii) Charge below Exh-27 under Sections 7 and 13(1)(d) punishable under Section 13(2) of the P.C. Act was framed on 10th March 2011, by the learned Special Judge. Appellant denied the charge and claimed to be tried. The defence of Appellant was of total denial. The

statement of Appellant under Section 313 of the Code of Criminal Procedure (for short, "*the Cr.PC.*") (Exh-28) was recorded. At the end of recording of his statement under Section 313 of the Cr.PC., the Appellant submitted his written statement (Exh-67). Appellant has not adduced any evidence in his defence.

It is the defence of the Appellant that, he had no Authority to grant permission to sell and/or convert the said land into non agricultural use and it was the authority of Collector to grant permission. That, on 30th March 2005, he wrote his comments on the file and forwarded it to the Office of the Collector and on the date of trap, no work or file of the Complainant was pending with him. That, on the date of incident, the Complainant Altaf alone went to his house and at that time, he was wearing vest and shorts and therefore, he asked him to wait in the drawing room and went inside the bedroom to wear clothes. That, when he returned to the hall, Complainant Altaf was near the table, where the ironed clothes were kept. Complainant inquired with him about his file and he narrated about his file. At that time, Complainant asked him to clear his file with back date, to which Appellant refused. Complainant Altaf thereafter went outside the room and after some time the members of the raiding party came in. It is the defence of Appellant that, Complainant Altaf might have planted the notes in between the ironed clothes kept on the table behind his back. That, Appellant shook hands with the Complainant and at that time,

phenolphthalein powder might have appeared on his hand from the hands of the Complainant. That, the Complainant has falsely implicated him in the case for self glorification. That, the Complainant was in habit of blackmailing Government Officials with his contacts with the CBI Officials and by taking advantage of the said fact, the Complainant has falsely implicated him in the present case.

(ix) To bring home guilt against the Appellant, prosecution examined in all five witnesses, namely, Shri. Altaf G. Khutliwala (PW-1), the Complainant; Shri. Mahadev K. Karanje (PW-2), Panch Witness to the Verification Panchanama, Pre-Trap Panchanama, Trap Panchanama and Panchanama of transcription of conversation; Shri. Rajneesh N. Saxena Tingal (PW-3), Under Secretary, Ministry of Home Affairs, Government of India, who authenticated Sanction Order (Exh-51) on the approval of proposal to prosecute Appellant granted by Competent Authority; Shri. Sanjay K. Kulkarni (PW-4), the then Police Inspector, CBI, ACB and Trap-laying Officer and Shri. Maruti S. Patil (PW-5), the then Inspector of Police, CBI, ACB, Mumbai and the Investigating Officer of the present crime.

(x) After recording evidence and hearing the learned Advocate for the respective parties, the Trial Court convicted and sentenced Appellant by its impugned Judgment and Order dated 27th September 2012.

4 Mr. Kulkarni, learned counsel for the Appellant submitted that, as per the prosecution case, the initial demand was of 30th March 2005,

lodgment of FIR was on 31st March 2005 and verification by the Investigating Agency was carried out on 1st April 2005. That, the Trial Court did not frame charge for demand of 30th March 2005. He submitted that, for an offence punishable under Section 7 read with Section 13(1)(d) of P.C. Act, it is the first demand of 30th March 2005, which is relevant. He submitted that, therefore, the charge framed by the Trial Court is not only defective but illegal too. He submitted that, the Trial Court has framed charge for acceptance of amount on 2nd April 2005 and not for the initial demand of 30th March 2005. He submitted that, Section 7 of the P.C. Act postulates demand and then acceptance and therefore, for want of specific charge with regard to the demand of bribe, the trial of the Appellant is vitiated.

He submitted that, the original micro cassette was not produced by the Respondents before the Trial Court and in the absence thereof, the Transcript Panchanama (Exh-47) of demand dated 1st April 2005 and 2nd April 2005 cannot be relied upon. He submitted that, the Trial Court has committed an error in relying on the said transcript panchanama (Exh-47) without production of original micro cassette before the Court. He submitted that, neither the micro cassette nor a certificate under Section 65(B) of the Evidence Act was produced and proved by the prosecution before the Trial Court and therefore, the transcript panchanama (Exh-47) cannot be said to be a substantive piece of evidence. He

submitted that, on the date of trap i.e. on 2nd April 2005, the Appellant did not make oral demand with the Complainant and in the absence of it, mere finding of tainted amount in the possession of Appellant is of no consequence. He submitted that, there are contradictions pertaining to persons present in the house of Appellant in the evidence of panch witness (PW-2). He submitted that, on the Seizure Memo (Exh-54) of the file of the Complainant pertaining to the land in-question from the office of the Appellant, there are no signatures of panch witnesses and therefore, the said panchanama cannot be considered in evidence.

He submitted that, the alleged CD/ cassette produced by the prosecution has been marked as Article Nos.9, 10 and 11, however are not exhibited by the Trial Court. He further submitted that, the micro cassette was not played in the Court at the time of trial to corroborate its transcript (Exh-47), which is a secondary evidence. He submitted that, the Trial Court ought not have accepted the said transcript in the absence of primary evidence of micro cassette.

Mr. Kulkarni further submitted that, it was the Joint Secretary, Government of India, who was the appointing and removing authority of the Appellant. That, sanction accorded by Shri. Rajneesh N. Saxena Tingal (PW-3), an Under Secretary, is not only defective but invalid, as he had no authority to accord sanction under Section 19 of the P.C. Act. He submitted that, the Trial Court has not framed a point for consideration pertaining to

the valid or defective sanction and therefore, the trial of the Appellant gets vitiated. That, the Trial Court has erroneously recorded finding in favour of the prosecution pertaining to the sanction.

He submitted that, Shri. Sanjay Kulkarni (PW-4), P.I., ACB, CBI, Trap-laying Officer in his evidence in para No.16 has stated that, N.A. permission of the Complainant was cleared on 31st March 2005 itself and therefore, there was no occasion for the Appellant to demand any money on 1st April 2005.

5 Per contra, Ms. Kuttikrishnan, learned Special P.P. vehemently opposed the Appeal and submitted that, there are no merits in the present Appeal. She submitted that, the demand by Appellant has been proved by the ocular evidence of Shri. Karanje (PW-2), an independent panch witness to the demand and trap of the Appellant. She submitted that, the conduct of the Appellant has also to be taken into consideration. That, the Appellant has accepted bribe amount at his house and the said amount was immediately thereafter found in the cupboard of the bedroom of the Appellant.

She submitted that, in view of Section 19(3)(a) of the PC. Act, no finding, sentence of Order passed by a Special Judge shall be reversed or altered by a Court in Appeal, confirmation or revision on the ground of absence of or any error, omission or irregularity in the sanction required under sub-Section (1), unless in the opinion of that Court, a failure of

justice has in fact been occasioned. She submitted that, in the present case, after the proposal for sanction was scrutinized and approved by the Joint Secretary of the Government of India, who was the appointing and removing authority of Appellant, Shri Rajneesh Tingal (PW-3), has authenticated and signed the same and therefore, it cannot be said that, the sanction is bad in law. She submitted that, unless the Appellant makes out a case of failure of justice has been occasioned on account of such error or irregularity in according sanction, the Appellate Court cannot consider the said aspect. She submitted that, failure of justice is what the Appellate or Revisional Court would in each such cases look for and after recording a finding to that effect, only can reverse the Judgment of conviction. In support of her contention, she relied on decisions, namely, (i) *Mahesh Prasad Vs. State of Uttar Pradesh*, reported in AIR 1955 SC 70, (ii) *Central Bureau of Investigation Vs. V.K. Sehgal & Anr.*, reported in (1999) 8 SCC 501, (iii) *Nanjappa Vs. State of Karnataka*, reported in (2015) 14 SCC 186, (iv) *Vivek Batra Vs. Union of India & Ors.*, reported in (2017) 1 SCC 69 and (v) *State of Orissa Vs. Mrutunjaya Panda*, reported in (1998) 2 SCC 414.

She submitted that, the objection as contemplated under Article 311 of the Constitution of India by the Appellant was not raised before the Trial Court at the first instance and in view of the ratio laid down by the Hon'ble Supreme court in the case of *Mahesh Prasad (supra)*, the same now cannot be raised. She further submitted that, unless a finding is

recorded that, there is failure of justice, the trial cannot be held to be as *non est*.

She further submitted that, an omission or defect in framing of charge cannot be a ground for acquittal and the accused may still be convicted for an offence actually committed and proved on the basis of evidence on record, so long as accused has not been misled by any error or omission in framing the charge and no failure of justice has been occasioned. She placed reliance on the decision of the Hon'ble Supreme Court in the case of *K. Prema S. Rao & Another Vs. Yadla Srinivasa Rao & Ors., reported in (2003) 1 SCC 217*. She submitted that, in the present case, a specific charge for acceptance of bribe by the Appellant on 2nd April 2005, was framed by the Trial Court and therefore, there is no substance in the contention of the learned counsel for the Appellant in that behalf.

She submitted that, it was the precise prosecution case that, the Appellant initially made demand on 30th March 2005, FIR came to be registered on 31st March 2005 and verification was done by the Investigating Agency on 1st April 2005. That, actual demand and acceptance of bribe has been witnessed by an independent witness (PW-2) and therefore, it cannot be said that, the charge for 2nd April 2005, is defective. She submitted that, there is no failure of justice at all caused in the present case. She submitted that, PW-2 is an independent witness for demand and acceptance of bribe by the Appellant and his evidence is not at

all shaken in the cross-examination by the Appellant. She therefore submitted that, there are no merits in the Appeal and it may be dismissed.

6 In rejoinder to the arguments advanced by the learned Special PP, Shri Kulkarni submitted that, Section 465 of Cr.P.C. will not be attracted to the present case, as the impugned Judgment and Order does not suffer from error, but it suffers from vitiation of the trial for non compliance of mandatory provisions. He submitted that, the Judgments cited and relied upon by the learned Special PP are not applicable to the case in hand. He submitted that, in view of the glaring defects pointed out by him, in the earlier paragraphs, the entire proceedings gets vitiated. He therefore prayed that, the present appeal may be allowed in its entirety.

7 The facts pertaining to the first demand by the Appellant, its verification and accosting of the Appellant on the date of trap i.e. on 2nd April, 2005, have been briefly narrated in Paragraph No.3 (i) to (vi), are culled out from the testimony of the Complainant (PW-1) and its reproduction is hereby avoided for the sake of brevity.

PW-1, in his cross-examination has admitted that, when he entered into house of Appellant, two other persons were present. He has denied the suggestion that, Mr. Rajesh Goel, Asstt. Commissioner of Excise and Mr. Anurag Saran, may be those persons, but he did not know their names. PW-1 denied the suggestion by answering that, he did not remember whether the Appellant shook his hand by both his hands when

he left his house on that day. He has admitted that, he had filed an Application with CBI Authorities, making grievance against Mr. Mathur, the then Administrator (U.T.) of Dadra and Nagar Haveli and Shri. Dharmendra Kumar, the then Collector of Silvassa. Apart from these admissions, nothing beneficial to the Appellant has been extracted from the detailed and elaborate cross-examination of PW-1.

8 Shri. Mahadav K. Karanje (PW-2) was the panch/shadow witness to the demand by the Appellant on 1st April, 2005, 2nd April, 2005 and acceptance of tainted amount on 2nd April, 2005 and is a star witness of the prosecution. PW-2 has deposed that, in the month of March, 2005, he was serving as a clerk in the Dock Department of Mumbai Port Trust. Under the directions of his Superior Authority, he visited CBI office, Tanna House, Mumbai on 31st March, 2005 at about 5.30 p.m. and approached Shri. Kulkarni, P.I., ACB. (PW-4). Shri. Kulkarni introduced him with Mr. Ramesh Sumra, who was serving in the office of D.G.F.T. as a clerk. Mr. Kulkarni then asked both of them to act as panch in the confidential operation to be held at Silvassa on 1st April, 2005. On 1st April, 2005 at about 5.30 a.m. PW-2 along with Shri. Sumra visited CBI office at Mumbai and met Shri. Kulkarni (PW-4). 5-6 police personnel were also present in the CBI Office. They left Tanna House at about 6.00 a.m. and proceeded to Silvassa by Government Police Jeep. They reached at about 10.00 a.m. to Silvassa and went to Hotel Green Wood. Shri. Kulkarni introduced him

with the members of raiding party. Mr. Kulkarni also introduced him with Mr. Altaf Khutliwala (PW-1) and informed about the Complaint filed by PW-1 with their office on 31st March, 2005 against the Appellant. He then informed PW-2 that, he was intending to verify correctness of the allegations made in the written complaint (Exh-38) and therefore, requested PW-2 and other panch witness Mr. Sumra to act as panch for verification of Complaint. Both of them consented for it.

Mr. Kulkarni requested PW-2 to accompany Complainant (PW-1) and go to the office of the Appellant along with micro cassette and its recorder. Functions of micro cassette recorder were explained to PW-2 by Shri. Mahesh Patil, Police Constable of CBI. A new blank cassette was inserted in the micro cassette recorder. A mike was attached to the said recorder. Shri. Kulkarni instructed PW-2 to introduce himself as brother of Smt. Khatija Masani, who was the owner of the land, to the Appellant on inquiry made by him. At about 11.20 a.m. PW-2 along with others left Hotel Green Wood and proceeded towards the office of the Appellant.

After reaching to the office of the Appellant, the Appellant called PW Nos.1 and 2 in his cabin. The Appellant asked them to sit in chairs. The Appellant was talking with somebody else on mobile and after completion of his conversation, he asked PW-1 by saying *"Hi Altaf Boliye"*, Mr. Altaf Khutliwala (PW-1) introduced PW-2 as Mr. Masanji to the Appellant. Thereafter, there was a dialogue between the Appellant and PW-

1 about pending file of PW-1. During the said conversation, the Appellant was saying about Rs.1,75,000/-. PW-2 interrupted in the said dialogue and asked the Appellant to reduce the amount. Mr. Altaf Khutliwala, PW-1 also requested the Appellant to reduce the amount by Rs.25,000/-. The Appellant agreed to reduce the amount and asked PW-1 to pay Rs.1,50,000/- to him in lumpsum on 2nd April, 2005 in the morning at 9.30 a.m. at his residence. At about 12.00 noon, PW-1 and PW-2, left the office of the Appellant. They came at Hotel Green Wood where, Shri. Kulkarni (PW-4) heard the conversation recorded in the cassette, removed the cassette and after keeping it in envelop, sealed it. PW-2 has identified micro cassette (Exh-A) in the Court. Shri. Kulkarni (PW-4) thereafter, prepared a detailed Panchanama (Exh-39) of the said events.

On 2nd April, 2005, in the morning, the Complainant (PW-1) came at Hotel Green Wood along with Rs.1,50,000/- and produced it before Shri. Kulkarni. Necessary formalities were complied with. A micro cassette recorder was affixed on the person of the Complainant (PW-1) and thereafter, a pre-trap panchanama was drawn. Complainant and PW-2 left Hotel Green Wood and proceeded towards Government Quarters situated behind District Court Building, Silvassa by car of the Complainant. They went to quarter No.1 on the first floor of the Government Quarters. After reaching there, the Complainant rang door bell by pushing the button. One person opened the door. The Complainant greeted that person by saying,

"Hallo Sir". Complainant and PW-2 entered the house of Appellant, the Appellant asked them to sit in chairs kept in the hall. Complainant then made inquiry with Appellant about his pending file and told him that, he has brought Rs.1,50,000/- as per the discussion on the previous day. Appellant informed the Complainant that, he has already completed his work and the entire work will be completed within a week. Appellant then held his hand in front of the Complainant and demanded amount from the Complainant. Complainant removed the bundle of notes kept in his right side pocket of his trouser with his right hand and held it before the Appellant. Appellant then, accepted the said bundle of notes by his right hand and held it in his left hand. Appellant kept bundle of notes in his left side pocket of his track-suit. Thereafter, a discussion took place between the Appellant and the Complainant about the file of the Complainant. Appellant told the Complainant that, his file will be cleared on coming Tuesday. They thereafter, left and came out of the house of the Appellant at about 9.30 a.m.. There were only three persons present in the hall of the Appellant i.e. PW-2, the Complainant and the Appellant, when the said event of handing over of amount took place. The Appellant closed the door of his house. Complainant gave per-determined signal to Shri. Kulkarni. Thereafter, P.I. Shri. Kulkarni along with raiding party reached the spot within 2-3 minutes. Shri. Kulkarni rang door bell of the Appellant and Appellant opened the door. P.I. Shri. Kulkarni introduced himself, panchas

and members of the raiding party to the Appellant. Two constables caught hold both the hands of the Appellant. Appellant tendered his apology to Shri. Kulkarni saying that, it was his first posting. Appellant told Shri. Kulkarni that, he has kept the amount accepted by him in between two shirts kept in the wardrobe in bedroom No.2. Traces of anthracene powder were found on the hands of the Appellant on examination with field testing kit. The Appellant showed wardrobe, where he kept the said amount to Shri. Kulkarni. The tainted amount was found therein. Serial numbers of the said notes were verified which were tallied with the description of the pre-trap panchanama. During the search of Appellant, his wife, mother, niece and two friends were noticed in the house. A post panchanama (Exh-40) was accordingly recorded.

In his detailed cross-examination, except very few minor discrepancies and omissions, nothing beneficial to the Appellant has been brought on record. It clearly appears that, the testimony of PW-2 in his examination-in-chief, has been unshaken.

9 Shri. Rajneesh Narendra Saxsena Tingal, (PW-3), has authenticated and signed the Sanction Order (Exh-51). PW-3 has deposed that, in the year 2005 he was serving as Under Secretary in U.T.S. Section, Ministry of Home Affairs, Government of India, New Delhi and was dealing with the Management of Cadre of Civil Services of Union Territories. He was dealing in the matters pertaining to promotions, transfers, posting and

vigilance matters of the concerned officers. He has deposed that, the recruitment of RDCs was made through UPSC. The Joint Secretary, Ministry of Home Affairs, Government of India, New Delhi used to appoint and remove them. His Department had received a file of the Appellant from the CBI, Mumbai regarding a trap conducted on 2nd April, 2005. At the time of trap, the Appellant was serving as RDC, Dadra and Nagar Haveli and he was entry grade-B officer. On going through the documents and examining the papers submitted by CBI, he *prima facie* found that, there was sufficient material to show that, the Appellant demanded and accepted bribe from the Complainant for discharging his official duty. He accordingly prepared a note and submitted it to Joint Secretary, Ministry of Home Affairs through the Deputy Secretary for approval. Joint Secretary approved the proposal and the said file was returned to him. On the basis of approval given by the Joint Secretary, he prepared a draft Sanction Order and forwarded it to the Joint Secretary for its approval. The Joint Secretary, Ministry of Home Affairs approved the draft Sanction Order and returned the said file to him. On receipt of file, he issued the Sanction Order (Exh-51).

In his cross-examination, he has admitted that, the Joint Secretary, Ministry of Home Affairs is the appointing and disciplinary authority for the entry grade-B class officers. That, the Joint Secretary was the only competent authority for removing said officers and accord sanction

to prosecute Appellant. To a question put by the Court, he has answered that, as per the Authentication Rules-2002, officers of the level of Under Secretary and above can convey the decision of the Government of India.

10 Shri. Sanjay K. Kulkarni, PI. CBI (PW-4) was the trap-laying officer. In his testimony, he has corroborated the version of PW-1 and PW-2, on all counts. He has deposed all the events from lodgment of the Complaint by the Complainant till completion of trap and seizure of file of Complainant under a seizure memo (Exh-54). In his cross-examination, he has denied all the suggestions given by the Appellant. His testimony in the examination-in-chief has also not been shaken by the defence.

 Shri. Maruti S. Patil. PI, ACB, CBI (PW-5) is the Investigating Officer of the present crime. He took over investigation of the present crime from Shri. Kulkarni on 6th June, 2005. He collected report from CFSL, New Delhi (Exh-59). On 23rd June, 2005, he called PW-2 and the Complainant in his office at Mumbai for transcription of the conversation recorded during trap. By following necessary procedure, he prepared panchanama of transcription of conversation (Exh-47). On completion of investigation, he sent proposal through proper channel for grant of sanction to prosecute the Appellant. On 23rd December, 2005, he received a letter from the Disciplinary Authority of the Appellant along with Sanction Order (Exh-51). Nothing beneficial to the Appellant has been brought on record in his cross-examination.

11 This leads me to consider the contentions raised by the learned counsel for the Appellant.

It is true that, while framing the charge (Exh-27), the Trial Court has mentioned about the incident of demand and acceptance by the Appellant on 2nd April, 2005. PW-2 in his deposition, has categorically stated that, on 1st April, 2005, when he along with the Complainant (PW-1) went to the office of the Appellant, he initially demanded Rs.1,75,000/- and subsequently reduced the said demand by Rs.25,000/- and asked the Complainant to pay Rs.1,50,000/- to him in lumpsum on 2nd April, 2005 at 9.30 a.m. at his residence. PW-2 has also witnessed that, on 2nd April, 2005 at his residence, the Appellant demanded and accepted an amount of Rs.1,50,000/-. It is thus clear that, the trap on 2nd April 2005, was a corollary to the prelude of demand by Appellant on 30th April 2005, lodgment of crime by the Complainant on 31st April 2005 and initial verification on 1st May 2005. Even otherwise, no prejudice at all has been caused to the Appellant by framing the aforestated charge. The prosecution case, since inception is consistent and there was no ambiguity at all in it. The Appellant was called upon by the prosecution to answer a particular and specific charge which he has done. Therefore, the contention of the learned counsel for the Appellant that, there is a defect in framing of charge cannot be accepted.

12 It is to be noted here that, the said CD, on which the

conversation between the Appellant and the Complainant was recorded was not played in the Court. No witness speaks that, the transcript of conversation (Exh-47) is the true translation of the said cassette. The said cassette was not played in the Court to tally the transcript panchanma (Exh-47). It is further to be noted here that, the transcript panchamana (Exh-47) was effected in the absence of Appellant. That, the Complainant himself has identified the voice of the Appellant. No independent witness or even PW-2 has identified the voice of the Appellant. In view thereof, the transcript panchamana (Exh-47) is kept aside from consideration, while deciding the present Appeal.

13 Shri. Mahadev K. Karanje (PW-2), is an independent panch witness. In his testimony, he has categorically stated that, on 1st April, 2005, the Appellant in his office demanded Rs.1,50,000/- from the Complainant and asked him to pay it in lumpsum at his residence on 2nd April, 2005, in the morning at 9.30 a.m.. He has also witnessed, the demand and acceptance of the tainted amount by the Appellant at his residence on 2nd April, 2005. The said amount was immediately found in the cupboard of the Appellant by the raiding party. PW-2 has fully corroborated the version of the Complainant.

It is to be further noted here that, PW-2 in his testimony has nowhere stated that, in the living room of the Appellant, iron clothes were kept on a table and after accepting the tainted amount, the Appellant kept

it in between two shirts. In fact, PW-2 has deposed that after accepting the amount, Appellant kept bundle of notes in left side pocket of his track-suit. The defence adopted by the Appellant in that context, is accordingly belied by the version of PW-2. The evidence of PW-2 is fully reliable and trustworthy. The evidence of PW-1 and PW-2 is not at all shaken in their cross-examination. The prosecution has thus, proved demand and acceptance by the Appellant beyond reasonable doubt.

14 The CFSL Delhi Report (Exh-59) pertaining to the examination of hand-wash of Appellant, T-shirts and track-suit discloses that, it gave positive test for presence of phenolphthalein powder and Sodium Carbonate. There is no reason at all for not accepting the opinion given by CFSL. It is to be further noted here that, the bed room of the Appellant was not accessible to outsider. When the raiding party immediately reached to the house of Appellant within 2-3 minutes after receipt of pre-determined signal, the Appellant showed a wardrobe in his bedroom wherein, he had kept the said amount. The possibility of planting amount in the house of the Appellant by the Complainant within such a short span, in the presence of PW-2, an independent panch witness, is therefore, ruled out. The Appellant has not established by leading cogent evidence that, when Complainant and PW-2 had been to his house and were sitting in chairs in the living room, there were ironed clothes kept on a table. The Appellant has thus, failed to rebut presumption under Section 20 of the PC. Act.

15 Shri. Rajneesh Narendra Saxsena Tingal (PW-3), in his deposition has categorically stated that, it was the Joint Secretary, Ministry of Home Affairs, who has in fact granted approval to prosecute the Appellant and after receipt of the said approval, he prepared draft Sanction Order. That, the Joint Secretary has approved the said draft Sanction Order and thereafter, he passed the Sanction Order (Exh-51). It is thus, apparent that, PW-3 has only authenticated and/or signed the Sanction Order (Exh-51) after its proper and lawful approval by the Joint Secretary, Ministry of Home Affairs, who was the appointing and removing authority of the Appellant. Therefore, I do not find any substance in the submissions advanced by the learned counsel for the Appellant in that behalf.

16 Taking into consideration evidence available on record and the aforestated discussion, it is abundantly clear that, the prosecution has proved beyond reasonable doubt that, the Appellant on 2nd April, 2005 demanded and accepted bribe amount of Rs.1,50,000/- from the Complainant (PW-1) in presence of an independent panch witness (PW-2). The Appellant has failed to give any plausible explanation regarding the recovery of tainted amount from the wardrobe of his bed room and presence of phenolphthalein powder on his left side pant pocket. Appellant has not rebutted presumption under Section 20 of P.C. Act. The prosecution has successfully proved all the necessary ingredients of the charge framed against the Appellant.

17 In view of the above, the Appeal being de hors of merits, is accordingly dismissed.

 The Appellant is directed to surrender before the Trial Court within a period of 8 weeks from today for undergoing sentence.

(A.S. GADKARI, J.)

Sanjiv S.
Mashalkar

Digitally signed
by Sanjiv S.
Mashalkar
Date: 2021.03.22
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