IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 929 / 2010

1. Rajendra Nivruti Gaikwad
Age: 41, Occ : Service
R/at. Sidharth Nagar,
B.K. Pagare Chawl, Kolsewadi
Kalyan (E), Dist: Thane.

2. Shivaji Kautik Patil
Age: 47, Occ : Service
R/at Airoli, AR-1, D-96,
Sector-3, Navi Mumbai .....**Appellants**
(Orig.Accd no.1 & 2)

V/s.

State of Maharashtra ....**Respondent**

* * * *

Mr. Ganesh Gole a/w. Mr. Ateet Shirodkar a/w. Mr. Ritesh Ratnam, advocate for the applicants.
Mr. S.R. Agarkar, APP for State.

CORAM : SANDEEP K. SHINDE, J.
Tuesday, 23rd February, 2021.

ORAL JUDGMENT :

1. It is an appeal under Section 374(2) of the Criminal Procedure Code, 1973 against the conviction recorded under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentence of one year rigorous imprisonment, and fine Rs.1,000/-, in default, imprisonment for one month for each offence imposed in Special Case No.1/2007 by the Special Judge, (Anti-Corruption), Thane by judgment and order dated 14th October, 2010.

2. Prosecution case in brief is, that accused no.1 a Traffic Constable and accused no.2 a Police Naik, were to regulate the traffic in Thane City. Alleged, that accused no.1 demanded bribe Rs.50/- from the complainant, for returning driving license, which was taken for alleged violation of traffic rules. Complainant, thus approached the Anti-Corruption Bureau. After drawing a pre-trap panchanama, Complainant and the panch witness, Patange reached the spot. At the relevant time, accused no.1 could not be seen around, but instead Police Naik-accused no.2 was regulating the traffic. Complainant enquired with accused no.2 about accused no.1, whereupon, accused no.2 told him that, accused no.1 had

given his license to him. After a while, accused no.1 reached the spot, who then asked the complainant to pay Rs.50/- to accused no.2 and collect the license from him. Consequently, license was handed over by accused no.2 to the complainant, after accepting Rs. 50/- after which, accused no.2 was apprehended and tainted currency notes were recovered from his possession. Following completion of investigation, previous sanction under Section 19 of the Act was granted. The learned trial Court, upon appreciating the evidence of the complainant-P.W.1, Panch Witness, Patange-P.W.2, Sanctioning Authority and/or Investigating Officer convicted the accused of offence punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and sentenced them to suffer for one year and fine with default stipulation. It is against conviction and sentence, the Appeal is preferred.

3. Heard Mr. Gole, learned Counsel for the appellants and Mr. Agarkar, learned Prosecutor for the State.

4. Mr. Gole, learned Counsel for the appellants has taken me through the evidence of the complainant

and the panch witness and would submit that neither the complainant nor panch witness supported the prosecution, on the point of demand of illegal gratification. Mr. Gole submitted, that the learned trial Court did not appreciate the evidence of these two witnesses in right perspective and recorded erroneous finding that prosecution has proved, demand of illegal gratification beyond reasonable doubt. Mr. Gole, would also submit that the complaint lodged by the complainant was against accused no.1 and the pre-trap panchanama indicates that, tainted money was to be handed over to the accused no.1, once he makes a demand. Mr. Gole, submits that, though trap was laid as against the accused no.1, however, the tainted currency was allegedly recovered from accused no.2. It is therefore submitted that, in absence of evidence of pre-arrangement between accused nos.1 and 2 and complainant that accused no.2, would accept the bribe on behalf of accused no.1, the recovery of tainted currency from accused no.2, does not further prosecution case. In support of his contention, Mr. Gole, has relied on the judgment of the Apex Court in the case of **Sadashiv Mahadev Yavaluje & anr. V/s. State of Maharashtra, 1990 (1) SCC 299.** On these submissions, he seeks acquittal of the appellants-accused.

5. Mr. Agarkar, learned Prosecutor would support the impugned conviction and sentence and submits that, this Court should not interfere with the findings when it is founded on cogent and reliable evidence, unless it is perverse. He seeks dismissal of appeal.

6. It is well settled that, demand of illegal gratification is sine-qua-non for constituting the offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused. Mere receipt of amount by the accused is not sufficient to fasten the guilt in absence of any evidence with regard to 'demand' and 'acceptance' of the amount as illegal gratification, as held by the Apex Court in the case of **State of Punjab V/s. Madan Mohanlal Verma, reported in 2013 (14) SCC 153**.

7. To test the arguments of Mr. Gole that, prosecution has not proved the 'demand', I have minutely assessed the evidence of the complainant and, of, panch witness. Complainant-Dalvi, in his testimony all over said, that Rs.50/- were demanded by the accused no.1 towards fine for traffic offence. Neither in examination-in-chief nor in cross-examination, he would allege that Rs.50/- were demanded by accused no.1 as

illegal gratification for releasing the driving license which was kept back by him. In para-8, while under cross-examination, the complainant testified that;

> *"When I was stopped, I was asked for papers of motorcycle so also my driving license. The papers were returned to me but driving license was not returned. Accordingly to me, my license was not returned to me for no reason. He had demanded the fine amount but I said him that I had no money. I did not lodge any complaint to the Superior officers to complaint against accused no.1 for retaining my license. It is not true that he said to me that he was there for the whole day and I can pay the fine amount at any time and get that license. (emphasis supplied)*

8. Thus, it is notable that, the complainant was not sure or was unclear, that Rs.50/- demanded, were as illegal gratification or towards fine. In the backdrop of the complainant's evidence, let me assess the evidence of panch witness, Patange. This witness testified that, when he reached on the spot, accused no.1 was not seen

around, however, accused no.2 was present in his place. In cross-examination, this witness testified thus :

> *"After we went to the spot, we did not meet the accused no.1-Mr. Gaikwad for about 45 minutes. When we met him, complainant initiated talk about the return of license with him. Correct to state that, accused no.1-Mr. Gaikwad did not make any demand for money from complainant, and took him to accused no.2-Mr. Patil. Correct to state that complainant told accused no.1-Mr. Gaikwad about return of his driving license and of having brought the amount as per his say. After complainant met accused no.2-Mr. Patil, accused no.1-Gaikwad did not stay back but went away from there.*

9. The testimony of the panch witness, as reproduced above, therefore makes it clear that accused no.1 did not demand bribe from the complainant. Infact, his testimony suggests, the complainant volunteered and told accused no.1 that he had brought the money, whereafter accused no.1 went ahead.

10. Thus, reading of the evidence of the complainant and panch witness conjointly, it leads me to hold that the prosecution has not proved the 'demand' of illegal gratification, which is an essential requirement for proving the charge under Section 7 of the Prevention of Corruption Act. As stated above, the Apex Court in the case of State of Punjab (supra), has held that, mere receipt of the amount by the accused, is not sufficient to fasten the guilt in absence of any evidence with regard to demand, is squarely applicable to the facts of this case.

11. It is not prosecution case that, while accused no.1 demanded Rs.50/-, accused no.2 was present. It is also not prosecution case that, accused no.1 at the time of demanding Rs.50/- told the complainant that, he would hand over the license to accused no.2, which he may collect from him after paying Rs.50/-. In the circumstances and in absence of any evidence on record of such understanding and arrangement made known to the complainant, the recovery of tainted money from accused no.2, would not, *ipso-facto*, establish that it was accepted by accused no.1 through accused no.2 as illegal gratification. Thus, prosecution has not proved, that accused no.1 attempted to obtain undue advantage

through accused no.2. In the case of **Sadashiv V/s. State of Maharashtra, SCC 299**, tainted money was recovered from the co-accused on the allegation that, it was accepted by him on behalf of the co-accused. The conviction impugned in the cited judgment was set aside by the Hon'ble Supreme Court, after noting that, at the time of demanding the alleged bribe of Rs.100/-, the accused from whom the money was recovered was not present. On this premise, it was held, accused no.2 was not a party to demand and therefore he could not have been convicted.

12. Be that as it may, in the case in hand, since the prosecution has failed to prove the demand of illegal gratification beyond reasonable doubt, the impugned conviction and the sentence is required to be quashed and set aside and accordingly quashed and set aside.

13. Appeal is allowed. Bonds executed by the appellants are cancelled and sureties are discharged. The fine amount, if any, paid be returned to the appellants. The Appeal is disposed off.

(SANDEEP K. SHINDE, J.)