

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 360 OF 2009

Vinod s/o Balgiri Gosawi,
Aged about 60 years,
Occupation – Retired Government Servant,
R/o Swastik Garden, C-2/904, Pokharan,
Pokharan Road, No.2, Thane (West).

.... **APPELLANT**

VERSUS

State of Maharashtra,
through Anti Corruption Bureau,
Gadchiroli (Police Station, Gadchiroli).

.... **RESPONDENT**

Mr. R.P. Joshi, Counsel for the appellant,
Mrs. Kalyani Deshpande, Addl.P.P. for the respondent/State.

CORAM : ROHIT B. DEO, J.

DATED : 08th SEPTEMBER, 2021

ORAL JUDGMENT :

The appellant (hereinafter referred to as the “accused”) is challenging the judgment dated 09-7-2009 rendered by the Special Judge, Gadchiroli in Special Case 3/2001 whereby the accused is convicted for offence punishable under Section 7 of the Prevention of Corruption Act (“Act” for short) and is sentenced to suffer rigorous imprisonment for six months and to payment of fine of Rs.1,000/- and in default, to suffer further simple imprisonment for two months, and

is further convicted for offence punishable under Section 13(2) read with Section 13(1)(d) of the Act and is sentenced to suffer rigorous imprisonment for two years and to payment of fine of Rs.2,000/- and in default, simple imprisonment for four months.

2. The case of the prosecution is that the accused was serving as Assistant Regional Transport Officer and the acquitted co-accused was serving as Inspector of Motor Vehicles, at Gadchiroli. Manish Sharma (hereinafter referred to as the “complainant”) was plying a bus on the Gadchiroli-Yavatmal route, which the acquitted accused inspected at 6-30 a.m. on 29-8-1998 and imposed a fine due to certain alleged violations. The acquitted accused conveyed to the driver of the bus that since the owner of the bus did not pay any amount, he is acting against the violations. The complainant met the acquitted accused on 01-9-1998 and was asked to pay monthly bribe (known as “hafta”) of Rs.500/-. The complainant then met the accused who confirmed that the monthly bribe will have to be paid and asked the complainant to pay Rs.1,500/- towards the monthly bribe payable for three months. The complainant lodged report dated 09-9-1998 with the Anti Corruption Bureau, Nagpur. A trap was arranged. Two Government servants Prashant Borkar and Deepak Thakare were requested to act as panchas, the complainant was asked to deposit the currency notes, the

usual demonstrations were given to the complainant and the panchas and the raiding party reached Gadchiroli at 11.30 a.m.

The prosecution case is that the complainant, his father and the shadow panch first went to the chamber of the acquitted accused, who did not accept the amount and then they went to the cabin of the accused, who assured that the work will be done and then accepted the amount of Rs.1,500/- with his right hand and kept the same in the wallet. The complainant then again went to the chamber of the acquitted accused, who did not accept the amount. The complainant gave the predetermined signal and the raiding party rushed into the cabin of the accused. The finger tips of right hand and left hand of the accused were kept in separate solutions of sodium carbonate and the phenolphthalein powder test proved positive. The marked currency notes were seized from the wallet of the accused. The usual investigation was carried out and the post-trap panchanama was prepared. The report was lodged by Police Inspector Choudhary, on the basis of which Crime 3063/98 was registered. After the culmination of investigation and obtaining the statutory sanction, the charge-sheet came to be filed.

The accused pleaded not guilty to the charge. The defence of the accused was, he did not demand muchless accept the amount of bribe. The accused took a defence that the complainant kept the amount of

Rs.1,500/- on his table under the pretext of calling his clerk for depositing the compounding fees and shook the hand of the accused while leaving the chamber. Then the officers of the raiding party demanded his identification card and that is how the trace of phenolphthalein powder on the hand and the wallet was detected.

3. The learned trial Judge was pleased to convict the accused and to acquit the co-accused. According to the learned Counsel Mr. R.P. Joshi for the accused, the conviction is manifestly illegal and the findings rendered and observations made by the learned trial Judge are contrary to the statutory scheme and the law consistently enunciated by the Hon'ble Supreme Court. The learned Additional Public Prosecutor Mrs. Kalyani Deshpande would disagree. The crux of the submissions canvassed by Mr. R.P. Joshi is that the demand is not proved, the statutory presumption under Section 20 of the Act, does not come into play, and that the conviction which is rendered on the sole basis of the alleged recovery of the tainted currency notes, is unsustainable.

4. Mr. R.P. Joshi is factually and in law right in the submission that the demand is not proved. The complainant did not support the prosecution. *Au contraire* he supported the defence and asserted that

the accused did not demand any amount. The trial Court permitted the Prosecutor to cross-examine the complainant, and the elaborate cross-examination failed to bring on record any material assisting the prosecution. The learned trial Judge rightly notes that the complainant did not support the prosecution, that, as a fact, he supported and substantiated the defence version and that the cross-examination by the Prosecutor failed to take the prosecution case further. In the same breath, the learned trial Judge opines that the complainant did support the prosecution to the extent the complainant admits that the numbers of the currency notes tally with the numbers of the currency notes recovered from the accused.

5. Prashant Borkar, who is examined as PW 2, is the shadow panch. Prashant Borkar has deposed that the complainant told the accused (Mr. Gosavi) that the acquitted accused (Mr. Maheshkar) had asked him to pay the amount to him and accordingly, the complainant gave the amount to the accused, which he accepted. Notably, Prashant Borkar is absolutely silent about any demand made by the accused.

6. The learned trial Judge has proceeded on the assumption that the demand is proved by the mere fact of recovery of the currency notes. I am afraid, the learned trial Judge fell in serious error.

Demand of illegal gratification, and a decisive and unambiguous demand, must be proved by the prosecution, as a fact, and by adducing independent cogent evidence and cannot be inferred on the basis of recovery of currency notes. I would, therefore, proceed, and the learned Additional Public Prosecutor Mrs. Kalyani Deshpande in all fairness does not argue to the contrary, on the basis that the prosecution failed to prove the demand. The learned trial Judge has heavily relied on the presumption under Section 20(1) of the Act. It is held in plethora of decisions of the Hon'ble Supreme Court that the presumption can be drawn only after the demand for and acceptance of illegal gratification is proved. The latest in the longline of decisions is ***N. Vijaykumar v. State of Tamilnadu, (2021) 3 SCC 687***. The learned trial Judge further failed to appreciate an extremely important aspect. The accused immediately offered an explanation, which the Investigating Officer reduced to writing, as is reflected from the panchanama. The Investigating Officer fairly admits that the accused did tender an explanation. The prosecution was under a bounden duty to place the explanation before the Court and not to suppress the same, as is apparently done. Even if it is assumed, *arguendo*, that the presumption under Section 20(1) of the Act could have been invoked, the failure of the prosecution to disclose to the Court the explanation, is, in the factual matrix, sufficient, to rebut the presumption.

7. Mr. R.P. Joshi has relied, apart from *N. Vijaykumar v. State of Tamilnadu*, on several decisions of the Hon'ble Supreme Court and this Court to buttress the submission that proof of demand is a *sine qua non* to bring home the charge and mere acceptance or recovery of tainted currency notes cannot be the basis of conviction. Some of the decisions which Mr. R.P. Joshi has pressed in service are (i) ***State of Punjab v. Madan Mohanlal Verma*, 2013(14) SCC 153**, (ii) ***C. Sukumaran v. State of Kerala*, (2015)11 SCC 314**, (iii) ***B. Jayaraj v. State of Andhra Pradesh*, (2014)13 SCC 55**, and (iv) ***Mukhtiar Singh v. State of Punjab*, (2017)8 SCC 136**. The law is too well settled to burden the judgment by an elaborate reference to the articulation in the decisions cited.

8. In my considered view, the prosecution clearly failed to prove that the accused demanded gratification. The complainant did not support the prosecution. As a fact, the complainant supported the defence and stated that he kept the currency notes on the table and told the accused that he would summon the clerk. The shadow panch speaks nothing about any demand made. In the absence of proof of demand, the learned trial Judge seriously erred in convicting the accused on the basis of the recovery of the tainted currency notes. I have already noted that presumption under Section 20(1) of the Act

could not have been invoked and even if the presumption were to be available, the same is rebutted since the prosecution suppressed the explanation in writing submitted by the accused immediately after the trap. The prosecution clearly failed to prove its case beyond reasonable doubt.

9. The judgment of conviction is manifestly erroneous and is, therefore, set aside.

10. The appellant-accused is acquitted of the offences punishable under Sections 7, 13(2) read with Section 13(1)(d) of the Act.

11. Bail bond of the appellant-accused shall stand discharged.

JUDGE

adgokar