IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.99 OF 2020

Vilas s/o Kisanrao Dhole
Age 62 years, Occu. pensioner,
R/o Kendriya Vidyalaya Primary School,
Barshi Naka, Beed, Taluka and
District Beed. … APPELLANT

<u>VERSUS</u>

The State of Maharashtra,
through Police Station Officer,
Ambhora, Tq. Ashti, Dist. Beed.

(Copy to be served on Public Prosecutor,
High Court of Bombay,
Bench at Aurangabad) … RESPONDENT

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Shri K.N. Shermale, Advocate for appellant
Shri R.B. Bagul, A.P.P. for respondent

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CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 27th April, 2022

Date of pronouncing judgment : 6th December, 2022

<u>J U D G M E N T</u> :

The challenge in this appeal is to a judgment and order of conviction and consequential sentence dated 2/1/2020, passed by Special Judge, Beed in Special (ACB) Case No.02/2013. Vide impugned judgment and order, the appellant was convicted for the offences punishable under Sections Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act and, therefore, sentenced to suffer rigorous imprisonment for one year with fine of Rs.5000/- on both counts with default stipulation.

2. Facts giving rise to this appeal in a nutshell are as under :

P.W.2 Kailas (complainant) hailed from Solapurwadi, Taluka Ashti in District of Beed. He has his ancestral land in the village. One Savitrabai is his cousin. She too has one and a half acre of land in the Survey Number in which the complainant has his land. The complainant lodged a complaint against Savitrabai and her family members, alleging them to have stolen standing crop from his field. He was, therefore, present in the Court on 8/9/2019. The appellant was Assistant Sub-Inspector, Ambhora Police Station. He was Incharge of Syed Mir Loni Beat. The appellant informed the complainant that a non-cognizable offence (N.C.) was registered against him and his family members at the instance of husband of Savitrabai. The appellant, therefore, asked him to attend his office. He further told the complainant that a preventive action would be taken against him and his family members. The complainant, in turn, asked the appellant to ensure that no preventive action was taken against his wife and children. The appellant made a demand of Rs.5000/- to do the complainant favour in that regard. On negotiations, the amount was settled for Rs.4000/-.

3. Since the complainant did not want to pay the appellant bribe, he approached the Anti-Corruption Bureau (A.C.B.), Beed on 10/10/2012. Police Inspector Suresh Chate (P.W.5) was present there. The complaint lodged by the complainant came to be recorded. P.W.5 Chate secured presence of two State Government employees to act as panch witnesses. He first decided to have verification of demand of illegal gratification. The complainant, therefore, made a cell phone call to the appellant. A voice recorder was placed into service. The cell phone was kept on speaker mode. The conversation between the two gave confirmation of the appellant to have made a demand of illegal gratification. The taper-recorded conversation was played. A transcript thereof was prepared. The demand verification panchanama (Exh.35) came to be drawn.

4. The appellant agreed to meet the complainant at Dhanora on the following day. The complainant along with shadow witness and A.C.B. officials, therefore, went to Dhanora. Both, the complainant and shadow witness Sachin Jogdand (P.W.3) went to one Tea Stall-cum-Hotel. It was 12.00 noon. The appellant arrived after a while. There was exchange of greetings between the appellant and the complainant. The appellant made a demand of bribe money. The demand was made by gestures. The complainant, therefore, held anthracine powder applied currency notes of Rs.4000/- before the appellant. He (appellant), in turn, received the same. The complainant immediately gave a pre-determined signal. The A.C.B. officials arrived in no time. Bribe money came to be seized from the appellant. Since it was a crowded place, all of them went to a nearby medicine shop. The trap panchanama was drawn thereat.

5. Statements of persons acquainted with the facts and circumstances of the case were recorded. P.W.5 Chate obtained voice samples of both, the appellant and the complainant. The tape-recorded conversation and voice samples were submitted to Forensic Science Laboratory for

analysis and report. Necessary information was obtained from Nodal Officers of concerned Cellular Companies. On completion of the investigation, all the papers were submitted to the then Superintendent of Police, Beed for obtaining sanction for prosecution of the appellant. He (P.W.4 Dattatraya Mandlik, Superintendent of Police), in turn, granted the sanction (Exh.54). A charge sheet thereafter came to be filed against the appellant.

6. The trial Court framed the charge (Exh.17). The appellant pleaded not guilty. His defence was of false implication.

7. The prosecution examined 5 witnesses and produced in evidence certain documents. The trial Court, on appreciation thereof, convicted the appellant and consequently sentenced as stated above.

8. Heard. The learned counsel for the appellant would submit that, the alleged incident took place when the appellant was in the last years of his service. Years have passed on his superannuation. The appellant is HIV Positive patient. Due to his conviction, the appellant could not receive

any retiral benefits. He even did not have money to buy medicine. Turning to the merits of the matter, the learned counsel would submit that, neither the tape-recorded conversation nor the report of Forensic Science Laboratory was produced in evidence. The shadow witness was a public servant. If he deposed true facts, there was every likelihood of his facing a charge for perjury, which may consequently affect his service. When the incident took place at a crowded place, the investigating officer ought to have examined independent witnesses who were admittedly present by the time the appellant was allegedly trapped accepting the bribe. He would further submit that, the cell phone used by the appellant stood in the name of someone else. That fellow has not been examined. The complainant wanted to teach a lessen to his cousin Savitrabai and her family members. He was, therefore, insisting the appellant to invoke against them offences of serious nature. The appellant did not listen him. The complainant, therefore, took revenge. According to learned counsel, the evidence on record fell short to bring home the charge beyond reasonable doubt. He, therefore, urged for allowing the appeal.

9. The learned A.P.P. would, on the other hand,

submit that, there was documentary evidence to indicate N.C. case to have been registered against the complainant and his family members at the Beat, of which the appellant was Incharge. The demand of illegal gratification was verified in the presence of an independent panch witness, who stood by the prosecution. Tainted money came to be seized from the appellant. He did not offer any reasonable explanation nor has produced any evidence in rebuttal. The trap panchanama was duly proved. It was not taken exception to. It is not unusual for a bribe seeker to make a demand with gestures. According to learned A.P.P., the evidence on record undoubtedly brought home the charge. He, therefore, urged for dismissal of the appeal.

10. Considered the submissions advanced. Perused the evidence on record.

In the case of **Mukut Bihari and anr. Vs. State of Rajasthan, AIR 2012 SC 2270**, it has been observed thus:-

> "8. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused, when the 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 bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act 1988, 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 Act, 1988. 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 as to 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 and in a proper case the court may look for independent corroboration before convicting the accused person."

11. Admittedly, the complainant and his cousin Savitrabai have their lands in Survey No.14/1 at village Solapurwadi. All was not well between the two. The complainant had lodged a complaint against Savitrabai and her family members, alleging them to have stolen standing crop from his field. Gangadhar, husband of Savitrabai also

lodged N.C. against the complainant, his wife and two children. Admittedly, the appellant was Assistant Sub-Inspector of Police with Ambhora Police Station. He was incharge of Syed Mir Loni Beat under Ambhora Police Station. P.W.1 Mahendra was Assistant Police Inspector, incharge of Ambhora Police Station. It is in his evidence that, the then Superintendent of Police, Beed had issued directions that in cases pertaining to non-cognizable offences registered within the limits of his jurisdiction, a prohibitory action (Chapter Case) was taken against the concerned accused. Exh.24 is a true copy of complaint in N.C. Case registered against the complainant and his family members. Close reading of cross-examination of P.W. 1 Mahendra suggests, there is nothing to doubt his evidence.

12. P.W.4 Dattatraya, was the then Superintendent of Police, District Beed. His evidence undoubtedly suggests that, he had received all the papers of investigation. He perused the same and then accorded sanction (Exh.54) for prosecution of the appellant. Reading of the sanction order reinforces oral evidence of the sanctioning authority.

13. The complainant gave his evidence consistent with

his complaint Exh.28. It is in his evidence that, husband of her cousin Savitrabai had lodged N.C. against him and his family members. He too had lodged a complaint against Savitrabai and her family members in the Court of Judicial Magistrate, First Class, Ashti. He was, therefore, present in the Court at Ashti on 18/9/2012. The appellant met him there and informed about N.C. to have been registered against him and family members. The appellant asked him to remain present in the police station. The complainant, therefore, went to Ambhora Police Station on 20th September. He met the appellant there. The appellant told him that a Chapter Case would be required to be filed against the complainant and his family members. The complainant, therefore, requested the appellant to see that no preventive action was taken against his wife and two children. The complainant made a demand of Rs.5000/- to do the favour. On negotiations, bargain as struck for Rs.4000/-.

14. It is further in the evidence of complainant that, he could not meet the appellant for some days for one or the other reason. The appellant, therefore, made him a phone call and asked to come to the police station with money. The complainant, therefore, approached A.C.B., Beed on 10th

October since he did not wish to pay the appellant bribe. The complaint lodged by him (Exh.28) came to be reduced to writing. P.I. Chate (P.W.5) secured presence of two employees from Irrigation Department to act as panch witnesses. They were, Sachin Jogdand and Shaikh Faiz Mohammad. He decided to verify the demand of bribe. The complainant, therefore, made a cell phone call on Cell Phone Number 9604745768 of the appellant. A voice recorder was placed into service. Cell phone was put on speaker mode. The appellant received the call. After exchange of greetings, both talked about the complainant's work. The appellant informed the complainant to have done the needful. The appellant asked him to come to the police station. The complainant expressed his inability as he was far away. The complainant told the appellant that he would be visiting Dhanora the next day. The complainant himself asked the appellant how much was to be brought. The appellant asked him to bring Rs.5000/-. On the complainant expressing his inability to cough-up that much amount, the appellant asked him to make it four (4). They agreed to meet at Dhanora.

15. The evidence of the complainant further suggests that, the demand verification panchanama (Exh.35) was

drawn. P.W.5 Chate asked him and the panchas to come to A.C.B. on the following day. All of them accordingly attended A.C.B. the next day. Pre-trap panchanama was drawn. Currency notes of Rs.4000/- were applied with anthracine powder. All of them were given due instructions. Then they set out for village Dhanora in two jeeps. The complainant and the shadow witness Sachin (P.W.3) together went to a Tea Stall of one Nadim near Bus Stand. A voice recorder was concealed on the person of the complainant. It was little past 12.00 noon. The appellant arrived on motorbike within 10 – 15 minutes. The appellant went to the Tea Stall. They occupied chairs. Some talk took place between him and the complainant. It is further in the evidence of the complainant that, the appellant made a gesture with his hand about money. The gesture was suggestive of the appellant made enquiry as to whether money was brought. The complainant took out tainted currency notes and held them before the appellant. The appellant in turn received the same. the complainant gave a pre-determined signal. Immediately the A.C.B. officials arrived. Tainted money came to be seized from the appellant’s hand itself. As it was a crowded place, all of them went to a nearby medicine shop. Further exercise was done thereat. Trap panchanama (Exh.38) was drawn.

16. On the same line is the evidence of shadow witness P.W.3 Sachin. Only with a view to avoid reiteration, the same is not adverted to. Then we have on the same lines, the evidence of investigating officer P.W.5 Chate. Since he is not a witness to the actual receipt of bribe money by the appellant, his evidence is also not adverted to in extenso. Suffice it to say that, his evidence indicates that the complaint lodged by the complainant was recorded. He decided to go ahead to secure presence of two State Government officials to work as panch witnesses. He did have the demand verified. Pre-trap panchanama was drawn and the rest followed.

17. The question is, whether the charge against the appellant got proved. Admittedly, the complainant had been to the appellant on 20/9/2012 in response to the appellant's call in connection with N.C. registered against the complainant and his family members. The appellant allegedly made a demand of illegal gratification of Rs.5000/- during his meeting with the complainant on 20th September itself. The complaint (Exh.28) is, however, silent to state therein as to why did the complainant approached A.C.B. first time on 10th of October i.e. 20 days after the appellant made a demand of illegal

gratification. True, the complainant in his evidence before the Court testified that there were telephonic conversations between the two on number of occasions. The C.D.R. record, however, is not placed on record. The complainant being an interested person, his evidence that the appellant made a demand of illegal gratification on 20/9/2012 is, therefore, not relied on for want of corroborative evidence.

18. Then comes the alleged demand made by the appellant during telephonic conversation, which was said to have been tape-recorded in an exercise of demand verification. True, the said talk took place in the presence of shadow witness and the investigating officer as well. The fact that the appellant was not personally present cannot be lost sight of. The complainant made a cell phone call on a particular number. It is his case that, the said number was of the appellant herein. Admittedly, the said cell phone number (Sim Card) stands in the name of one Limaye. He has not been examined. Admittedly, the tape-recorded conversation (recorded call) was not played before the Court. The transcript thereof along with voice samples of the appellant and the complainant were submitted to Forensic Science Laboratory for analysis and report. The report thereof has

also not been placed on record. Although it has been mentioned in the trap panchanama that the handset that was seized from the appellant had in it a Sim Card of a particular number, on which the complainant had made a phone call. During exercise of the demand verification, the said record has not been placed before the trial Court. Even it is assumed that it was the very Sim Card on which the complainant made a phone call, it is reiterated that the tape-recorded conversation was not played before the Court. As such, there is no concrete evidence to suggest it was a call made to the appellant and during conversation, he made demand of illegal gratification.

19. Then remains the evidence as regards demand of illegal gratification and actual receipt thereof that took place immediately before the appellant was caught, and the tainted money came to be recovered from him. Admittedly, the appellant met the complainant at a Tea Stall at Dhanora. The shadow witness was in the company of complainant that time. After initial talk between the two, the appellant admittedly did not make demand of illegal gratification in so many words. It is the case of the complainant and the shadow witness as well that the appellant made a gesture indicating whether the

bribe money was brought. Both the witnesses did not describe what kind of gesture it was. It is not that no demand of illegal gratification could be made by gesture. This Court is reluctant to rely on the evidence of the complainant and the shadow witness in that regard mainly on the ground of there being no details as to what kind of gesture was made by the appellant herein. Benefit of doubt, therefore, needs to be extended to the appellant as regards demand of illegal gratification. The seizure of bribe money from the appellant's hands immediately on receipt of the same by him would, therefore, be of little consequence to convict him for the offence with which he was charged with. For want of proof of demand of illegal gratification, no presumption under Section 20 of the Prevention of Corruption Act could be raised merely on the basis of recovery of tainted money from him. It was the case of the appellant that, under the pretext of extending a shake-hand, currency notes were placed in his hand. It is reiterated that, the tainted money was not found in his shirt or trouser pocket. The amount came to be seized from his fist. Needless to mention that, it was for the prosecution to have the charge proved beyond reasonable doubt. Since this Court is not inclined to rely on the prosecution case about the demand made by the appellant with gestures, the appeal deserves to be allowed. Hence the order :

ORDER

(i) The Criminal Appeal is allowed.

(ii) The order of conviction and sentence dated 2/1/2020, passed by learned Special Judge, Beed in Special (ACB) Case No.02/2013 is hereby set aside. The appellant is acquitted of the offences punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act. Bail bonds of the appellant stand cancelled. Fine amount, if paid, be refunded to him.

(R. G. AVACHAT, J.)

fmp/-