IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 167 OF 2005

Mohd. Rafiq Shaikh Mohamed ..APPELLANT

VERSUS

State of Maharashtra ..RESPONDENT

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Mr. H.F. Pawar, Advocate h/f Mr. A.H. Kapadia and Mr. V.N. Damle, Advocates for appellant
Mr. R.B. Bagul, A.P.P. for respondent - State

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CORAM : R.G. AVACHAT, J.
DATED : 23rd MARCH, 2022

PER COURT :

1. This is an appeal against conviction. The appellant was convicted for the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1986 (‘P.C. Act’), and therefore, sentenced to suffer rigorous imprisonment for six months and one year respectively with a fine of Rs.150/- each, in default of payment of fine amount, he was directed to undergo simple imprisonment for fifteen days.

2. At the relevant time, the appellant was serving as Clerk with the Municipal Corporation, Aurangabad. The complainant, P.W.1 - Subhash was a Press Reporter working with weekly Sambhajinagar Police and Kala Pahad News Papers. One Sanjay Joshi, President of Bhartiya Saptahic Sampadak Editors has taken on lease a plot at Samarth Nagar from municipal

corporation. He had received a property tax demand notice in relation to the said plot on 11th November, 1999. The amount of tax was Rs.2,447/-. The complainant had, therefore, been to the municipal corporation office. For want of funds, it was proposed that only half of the amount of property tax to be offered. The balance amount for a period of half of the year was to be paid later on. The appellant herein met him and promised to do the needful, provided he was paid Rs.500/- (lateron scaled down to Rs.300/-). Since the complainant did not want to pay any extra amount (bribe), he approached the Anti Corruption Bureau, Aurangabad ('A.C.B.') and lodged the report (Exhibit 12). Mr. Krishna Bankar - P.W.3 was a police inspector attached to the A.C.B. He, therefore, decided to lay a trap. He secured presence of two persons to act as panch witnesses. Pre-trap panchanama was drawn. As planned, the complainant accompanied by a shadow witness - Sunil - P.W.2, went to the office of the Municipal Corporation on 17th November, 1999. The complainant paid the appellant a sum of Rs.1,550/- and give a determined signal. The raiding party in no time came there and seized the amount under the panchanama.

3. On completion of investigation, the papers were submitted to the appointing authority of the appellant for obtaining sanction for his prosecution. On receipt of the same, the appellant came to be proceeded against by filing the charge-sheet.

4. Learned Special Judge framed the charge. The appellant pleaded not guilty. His defence is of false implication. To bring home the charge, prosecution examined in all three witnesses and let in certain documents. It is in fact a case of no evidence. The complainant - P.W.1 testified nothing incriminating against the appellant. It is in his evidence that the property tax demand notice was received on 11th November, 1999. It was for Rs.2,447/-. The notice pertains to a plot taken on lease by Mr. Sanjay Joshi, President of Bhartiya Saptahic Sampadak Editors. He had, therefore, been to the municipal office. Since he was short of funds, it was proposed that only half of the tax amount i.e. for the period of six months to be paid and the balance later on. It is in his evidence that he met one officer there. He promised to do the needful, provided a sum of Rs.300/- is paid him. It is further in his evidence that he paid the appellant a sum of Rs.1,550/- towards property tax and requested him to issue him receipt there for. It is in his evidence that the amount was given to him for being paid to the officer/cashier and then he (complainant) was to visit the office later on to collect the receipt.

5. In short, it is in the evidence of complainant - P.W.1 that he paid a sum of Rs.1,550/- to the appellant for being paid to the cashier towards property tax. Learned A.P.P. conducting the case was, therefore, permitted to cross-examine the complainant. The questions suggesting prosecution case were put to the complainant in his cross-examination. He denied each and

every suggestions. Although he admitted to have had lodged the report/complaint (Exhibit 12) and the contents therein to be true, the same cannot part take character of a substantive piece of evidence.

6. Sunil - P.W.2, the shadow witness, testified to have had accompanied the complainant to the municipal corporation office. After having paid the appellant a sum of Rs.1,250/- towards property tax, the appellant enquired with the complainant as to whether he had brought a sum of Rs.300/- for him. Even if we accept the evidence as it is, this simply suggests that the appellant had asked the complainant to bring Rs.300/- for him. We cannot jump to the conclusion that the said amount of Rs.300/- was demanded by him as illegal gratification. More so, when the complaint did not utter anything against the appellant.

7. In view of above, the appeal is allowed. The impugned judgment and order is hereby quashed and set aside. Appellant is acquitted of the offence punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1986. Fine amount, if paid, be returned to the appellant.

(R.G. AVACHAT, J.)

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