

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 718 OF 2005

S. Manik Reddy S/o S. Sanganna Reddy [Original Appellant]
died through his LRS

- 1-A. Bassamma W/o Manik Reddy
Age: 58 years, Occupation: Housewife
- 1-B. Anita D/o Manik Reddy
Age: 40 years, Occupation: Legal Practitioner,
- 1-C. Venket Manik Reddy
Age: 38 years, Occupation: Engineer
- 1-D. Anuradha D/o Manik Reddy
Age: 36 years, Occupation: Housewife,

All R/o: Behind Central Bus Stand,
Clb Colony, Kalaburgi [Karnataka]

...Appellants
[Near relatives of deceased
S. Manik Reddy].

Versus

The State of Maharashtra

... Respondent

....

Mr. Joydeep Chatterji, Advocate for appellants
Smt. Geeta L. Deshpande, APP for respondent - State

....

CORAM : R. G. AVACHAT, J.

DATED : 13th APRIL, 2022

J U D G M E N T :-

The challenge in this appeal is to the judgment and order dated 26.09.2005, passed by the Special Judge, Latur, in Special Case No.5 of 2004, whereby original appellant (since deceased) was convicted for the offence punishable under Section 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short 'PC Act, 1988') and sentenced to suffer rigorous imprisonment for three years and one year, respectively and pay total fine of Rs.1,500/- (Rupees One Thousand Five Hundred), in default, to suffer rigorous imprisonment for two months and one month, respectively.

2. The appellant passed away pending the appeal. His legal representatives came on record to pursue the appeal.

3. Facts giving rise to the present appeal are as under:

The original appellant was serving as Deputy Engineer (P.W.D.), Zilla Parishad at Ausa. PW1 - Syed Jamil was in construction business. His father was the Chairman of a cooperative society, "Lokmanya Mazoor Sahakari Sanstha Limited", Ausa. The work of a road, Yeli to Tupdi was to be undertaken under

'Employment Guarantee Scheme'. A tender as regards transportation and road roller work was issued. The District Deputy Registrar, Latur was requested to give a letter of recommendation for grant of said work to Lokmanya Mazoor Sahakari Sanstha Limited, Ausa. Accordingly, the District Deputy Registrar had issued a letter in the name of Sub-Divisional Engineer (P.W.D.), recommending for grant of the tender in favour of the said cooperative society. PW1 - Syed Jamil had therefore been to the office of the original appellant. The appellant asked him to pay Rs.10,000/- as illegal gratification for submitting the matter to the Executive Engineer for sanction and issue of work order. Since PW1 - Syed Jamil did not want to pay bribe, he approached Anti Corruption Bureau (ACB), Latur. His statement-cum-complaint (Exh.54) dated 11.07.2003 was recorded there. PW4 – Pandit Kendre, Deputy Superintendent of Police, ACB, Latur, decided to lay a trap. He secured presence of two Government officials to act as panch witnesses. He gave necessary instructions to them and told PW1 - Syed Jamil not to pay bribe money unless demanded. Pre-trap panchanama was drawn on 12.07.2003. As planned, PW1 - Syed Jamil accompanied by PW3 – Bharat Bastewad (shadow witness) went to the house of the original appellant and on

his demand, an amount of Rs.10,000/- was paid. Soon after the raid was effected, a sum of Rs.10,000/- came to be seized from the deceased appellant. Post-trap panchanama was drawn. PW4 – Pandit Kendre, lodged the First Information Report (FIR). Sanction for prosecution was obtained. The charge-sheet, therefore, came to be laid.

4. The Special Judge framed the charge (Exh.46). The deceased appellant pleaded not guilty. To establish the charge, prosecution examined five witnesses and produced in evidence certain documents. The Special Judge, on appreciation of the evidence in the case, passed the impugned judgment and order.

5. Heard.

The learned Advocate for the legal representatives of the deceased appellant would submit that PW1 - Syed Jamil did not utter a single word in his evidence attributing deceased appellant to have made any demand of bribe and accepted the same. According to the learned Advocate, in the given circumstances, the Special Judge ought not to have convicted the deceased appellant. He took this Court through the relevant evidence in the case to ultimately urge for allowing the appeal.

6. The learned APP would, on the other hand, submit that PW3 – Bharat Bastewad, shadow witness was of the rank of Deputy Collector. He had accompanied PW1 to the house of the deceased appellant. According to her, the evidence of PW3 undoubtedly indicate the deceased appellant to have had made a demand of Rs.10,000/- and then accepted the same. The post-trap panchanama would indicate the deceased appellant to have had received the amount from PW1, directly. According to her, PW3 was an independent witness. His evidence must inspire confidence to this Court to uphold the impugned judgment.

7. Considered the submissions advanced. Perused the evidence of PW1 - Syed Jamil and PW3 - Bharat Bastewad. The demand of bribe and acceptance thereof has to be proved, so as to sustain conviction under Section 7, 13(1)(d) read with 13(2) of the PC Act, 1988. The evidence of PW1 - Syed Jamil has first to be appreciated on the question demand of bribe. This witness, however, did not state anything in his examination in chief. It is in his evidence that he had been to the office of the Deputy Engineer (P.W.D.), Zilla Parishad, Ausa. The deceased appellant was present in

the office. He demanded him a sum of Rs.10,000/- as hand loan. He refused to pay the amount. Again on the next day, he had been to the office. The deceased appellant again asked him to pay him money. The deceased said PW1 - Syed Jamil that he would send the tender after receiving amount from him. PW1 - Syed Jamil, therefore, informed his father. His father asked him to pay the appellant money by cheque. It is further in his evidence that he along with PW3 - Bharat went to the house of the deceased appellant in connection with his tender work. He put the amount on the T.V. showcase. Thereafter, the deceased appellant handed over him the file of tender. Thereafter the raiding party arrived and the necessary procedure in regard post-trap panchanama was followed.

Since PW1 - Syed Jamil did not stand by his complaint (Exh.54), the learned APP subjected him to searching cross examination. Nothing could be illicited from his evidence to suggest the deceased appellant to have had made a demand of bribe and then accepted the same.

8. True, PW3 - Bharat Bastewad, Deputy Collector, had accompanied PW1 as shadow witness. It is in his evidence the ACB officer had instructed PW1 - Syed Jamil to pay the amount to

deceased appellant only on his demand. It is further in his evidence that both of them went to the house of the deceased appellant. It was PW1 - Syed Jamil, who himself informed the deceased appellant to have brought a sum of Rs.10,000/-. Thereupon, the deceased appellant responded saying his work had been done and the file was in his custody. There was some conversation between the two, thereafter PW1 - Syed Jamil paid the deceased appellant a wad of currency notes of Rs.100/- denomination. The deceased appellant received the same and kept in his pocket. Soon thereafter the raiding party arrived. The deceased appellant was overpowered. The amount paid to him was recovered. Post-trap panchanama was drawn.

9. If we appreciate the evidence of both these witnesses, it appears that on recording of the complaint Exh.54 lodged by PW1 Syed Jamil, no exercise as to verification of alleged demand was made. Be that as it may. PW1 did not stand by his complaint. It is his case that deceased appellant had asked him to pay him Rs.10,000/- as a hand loan. The evidence of the complainant is silent to state the deceased appellant to have had made a demand of bribe to clear the tender file. PW1 - Syed Jamil even went out to state to have had not paid the amount directly to the deceased appellant. He, on his own,

placed the amount on the T.V. showcase. True, PW1 - Syed Jamil appears to have been won over. The Court, however, cannot travel beyond the evidence on record. Even we accept the evidence of the shadow witness (PW3) as it is, what has been proved by his evidence is a fact that he had accompanied PW1 - Syed Jamil to the house of deceased appellant. During their meeting, the deceased appellant did not make demand first. It was PW1, who himself told the deceased appellant to have brought a sum of Rs.10,000/-. Thereupon, the deceased replied that his work had been done and the file was in his possession. Thereafter, PW1 paid him wad of currency notes, which came to be seized under the post-trap panchanama. The evidence of PW3 doesn't suggest the deceased appellant to have had made demand of bribe and accepted the same as bribe money. It is reiterated that it was the case of PW1 that the deceased appellant had asked him to pay a sum of Rs.10,000/- as hand loan. As such, the prosecution evidence fall short to bring home the charge. Based on this evidence, the Special Judge ought not to have convicted the appellant. Interference with the impugned order of conviction and resultant sentence, is therefore warranted.

10. In the result, the appeal succeeds in terms of following order.

ORDER

- (i) The appeal is allowed.
- (ii) The impugned order dated 26.09.2005, passed by the Special Judge, Latur, in Special Case No.5 of 2004, convicting and sentencing the deceased appellant for the offence punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988, is hereby quashed and set aside.
- (iii) The deceased appellant is acquitted of the offence punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.
- (iv) The amount of fine, if paid, be returned to the legal representatives of the deceased appellant.

[R. G. AVACHAT, J.]