IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.321 OF 2010

Sanjay Mansaram Meshram,
Age:42 years, Occ. Service,
r/o. 95-B, New Shantiniketan Colony,
Behind Akashwani, Aurangabad ..Appellant
(Orig. Accused no.1)

Vs.

The State of Maharashtra ..Respondent

AND

CRIMINAL APPEAL NO.327 OF 2010

Vishwas s/o. Hanumantrao Gurav,
Age:35 years, Occ. Labour,
r/o. Mangrul, Tq. Tuljapur,
Dist. Osmanabad ..Appellant
(Orig. Accused no.2)

Vs.

The State of Maharashtra ..Respondent

Mr.S.N.Patil, Advocate for appellant in Cri. Appeal No.327 of 2010

Mr.Joydeep Chatterji, Advocate for appellant in Cri. Appeal No.321 of 2010

Mr.G.O.Wattamwar, APP for respondent

CORAM : R.G. AVACHAT, J.
DATE : APRIL 28, 2022

JUDGMENT :-

Both these appeals are decided by this common judgment and order since the challenge therein is to one and the same judgment and order dated 04.08.2010 passed by learned Special Judge, Osmanabad, in Special Case (AC) No.5 of 2008. Vide impugned judgment and order, the appellants herein have been convicted for the offences under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 ("the Act", for short) and therefore, sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1,000/- and for two years and to pay a fine of Rs.2,000/-, respectively. In default of payment of fine, they have been directed to suffer rigorous imprisonment for three months.

2. For the sake of convenience, the appellants herein are referred to as per their status before the trial Court.

3. The facts, giving rise to the present appeal, are as follows:-

PW 1 – Arun Bhange (complainant) was resident of village, Dudhalwadi, Tq. Kallam, Dist. Osmanabad. He would do the work of erecting electrical poles, setting overhead electricity transmission wires and installation of distribution panel (D.P.) as well. The Maharashtra State Electricity Board (M.S.E.B.)(now M.S.E.D.L.) had sanctioned installation of D.P. in the field of one Ramhari Munde. Said Ramhari and six-seven farmers were going to be benefited thereby. All the articles and instruments required for installation of the D.P. were to be supplied by Sanjay Meshram (accused no.1/appellant in Criminal Appeal No.321 of 2010). The complainant had, therefore, paid accused no.1 Rs.12,500/- as bribe. Said amount was contributed by the farmers to be benefited. The complainant had installed a transformer at the site on 22.12.2006. The D.P., however, could not be made functional for want of cable. The complainant had, therefore, requested accused no.1 to supply him the required cable. Accused no.1 made him demand of Rs.3,000/- as a bribe and asked him to come his home with money next day before 9.00 in the morning.

4. Since the complainant did not wish to pay accused no.1 the bribe, he approached Anti Corruption Bureau (A.C.B.), Osmanabad. The Deputy Superintendent of Police – Shaikh recorded the complainant's statement-cum-complaint (Exh.44). The Dy.S.P. decided to lay a trap. He, therefore, secured presence of

two Government officials to work as panch witnesses. The Dy.S.P. gave requisite instructions to the complainant and both the panch witnesses. A pre-trap panchnama (Exh.40) was prepared. It was specifically instructed to the complainant not to pay the bribe money unless and until demand was made therefor. Then, the raiding party set out for a trap.

5. The complainant accompanied by PW 2 – Ashok (shadow witness) went to the house of accused no.1 early in the morning. Since he (accused no.1) was fast asleep, they went back and again came to accused no.1's house after an our. That time, Vishwas Gurav (accused no.2/appellant in Criminal Appeal No.327 of 2010) was present at accused no.1's house. The complainant asked accused no.1 to give him cable. Accused no.1, in turn, informed him to have instructed accused no.2 to do the needful and he should meet accused no.2 in the store room/godown at Yermala road. Accordingly, the complainant along with the PW 2 - shadow witness and others in the raiding party went towards the store room/godown at Yermala road, near M.S.E.B. Sub-Station. It was about 10.30 a.m., accused no.2 came there. The complainant asked him to give him cable. Accused no.2, thereupon, asked him as to whether he

had brought Rs.3,000/-, as was directed by accused no.1. The complainant replied in the affirmative and paid him the bribe money, smeared with anthracene powder. In response to a predetermined signal, Dy.S.P. - Shaikh and others in the raiding team came there. The bribe money came to be seized from accused no.2. Post trap panchnama (Exh.51) was drawn. Dy. S.P. - Shaikh lodged the FIR on behalf of the State. After completion of the investigation, all the police papers were forwarded to the competent authority for obtaining sanction for prosecution of both the accused. PW 3 – Narayan accorded sanction (Exh.54). Both the accused, thereafter, came to be proceeded against by filing the charge sheet.

6. Learned Judge framed Charge (Exh.63.). The accused pleaded not guilty. They claimed to have been falsely implicated. It is the defence of accused no.2 (Gurav) that he was unaware of the transaction between accused no.1 (Meshram) and the complainant, while the stand of accused no.1 was that the employees of M.S.E.B. had formed a group of making agitation against his behaviour. Since he was exonerated in an enquiry held pursuant to such grievance, he has been falsely trapped.

7. The prosecution examined eleven witnesses to bring home the Charge. A number of documents were produced in evidence. The trial Court, on appreciation of the evidence in the case, convicted and sentenced both the accused, as stated above.

8. Heard learned counsel appearing for the parties.

9. Learned counsel representing the respective accused would submit that no valid sanction was accorded for prosecution of the accused. According to them, a draft sanction was supplied by the Investigating Officer along with the police papers. The sanctioning authority (PW 3) did not go through the the police papers. It was his Assistant, who prepared the draft sanction and the sanctioning authority signed on the dotted lines. According to learned counsel for accused no.1 (Meshram), there was no verification of the demand, while learned counsel for accused no.2 (Gurav) would submit that accused no.2 was not in the know as to the amount was to be paid to accused no.1 as bribe. Both learned counsel, ultimately, urged for allowing the appeals.

10. Learned APP would, on the other hand, submit that the trial Court has passed a well-reasoned order. Since accord of

sanction for prosecution is not usual work of the Officer concerned, the Investigating Officer forwards draft sanction along with the police papers. It has now become such practice. The sanctioning authority, after going through the police papers, has accorded sanction. Application of mind is evident from the very recitals in the sanction. According to learned APP, both the complainant and the shadow witness stood the ground. Both the accused did not have authority to give cable (wire) to the complainant. Learned APP took me through the relevant evidence of both the witnesses to ultimately urge for upholding the impugned judgment.

11. Considered the submissions advanced. Perused the evidence and the documents relied on. It is not known as to why eleven witnesses have been examined before the trial Court. The evidence of only three witnesses was referred to during hearing of this appeal, and rightly so. Let us appreciate the evidence relied on.

12. The complainant testified that he would do the work of erecting electrical poles, setting overhead electrical transmission wires and installation of distribution panel, etc. It is in his evidence that the office of M.S.E.B. (now M.S.E.D.C.L.) had sanctioned the work of installation of D.P. in the land of Ramhari Munde. Ramhari

had engaged him for installation work. Ramhari and six-seven other farmers were going to be benefited by installation of the D.P. Accused no.1 was the Asst. Engineer, M.S.E.B., at Kallam. The complainant had paid accused no.1 Rs.12,500/- as bribe for supply of electrical material for installation of D.P. Accordingly, the D.P. was installed on 22.12.2016. It, however, could not be made functional for want of cable. He had, therefore, been to accused no.1 and requested him to give the cable (wire). Accused no.1 asked him to pay Rs.3,000/- as bribe. Accused no.1 also asked him to come his home early in the morning next day and on receipt of money, he would give him the cable. Since the complainant did not wish to pay the bribe amount, he approached Anti Corruption Bureau, Osmanabad. His statement-cum-complaint was recorded vide Exh.44.

13. Dy.S.P. - Shaikh attached to A.C.B., Osmanabad, decided to lay a trap. He, therefore, secured presence of two Government officials to act as panch witnesses. He asked the complainant to come to A.C.B. office early in the morning next

day. It is further in his evidence that the complainant, accordingly, went there. Pre-trap panchnama (Exh.40) was drawn. The complaint lodged by him was verified by the panchas. Dy.S.P. - Shaikh gave them necessary instructions. Accordingly, both complainant and PW 2 – shadow witness went to the house of accused no.1 at 6:30 a.m. Since he was fast asleep, they came back and again went to his house after an hour. That time, accused no.2 was there at the house of accused no.1. The complainant asked accused no.1 to give him the cable. Accused no.1, in turn, told him to have instructed accused no.2 to do the needful and accused no.2 will meet them at store (godown). Accordingly, both the complainant and the shadow witness went to M.S.E.B. Sub-station on Yermala road. It was 10.30 a.m. Accused no.2 came there. Both the complainant and the shadow witness met him. Accused no.2 asked the complainant as to whether he had brought Rs.3,000/- as was directed by accused no.1. The complainant told him to have come with the money. Accused no.2 told them to give money. He prepared gate pass.

The complainant then held money (currency notes) before accused no.2. He received the same. After the pre-determined signal was given, the members of the raiding party arrived. A sum of Rs.3,000/- came to be seized from accused no.2. The post trap panchnama (Exh.51) was drawn.

14. On somewhat same lines is the evidence of PW 2, shadow witness – Ashok. It is in his evidence that he had accompanied the complainant all along first to the house of accused no.1 and then to the store of M.S.E.B. at Yermala road. It is in his evidence that at the house of accused no.1, the complainant asked him to give the cable. Accused no.1, in turn, told them to have instructed accused no.2 to do the needful. Accused no.2, in turn, asked them to come to the godown near the Sub-Station. Accordingly, they went there. It was about 10.00 a.m. Accused no.2 came there. The complainant requested him to give the cable. Accused no.2, thereupon, asked him whether he had brought Rs.3,000/- as was told by accused no.1. The complainant told him to have come with the money and paid him as well. Soon thereafter,

the raiding team arrived there. A sum of Rs.3,000/- was seized from accused no.2.

15. Both complainant and PW 2 – Ashok were subjected to searching cross-examination. The complainant admitted to have specifically been instructed by the Dy. S.P. -Shaikh to pay money to accused no.1 only on his demand. He further admitted that accused no.2 was not aware of the nature of transaction between the complainant and accused no.1. He did not have any complaint against accused no.2. Accused no.2 did not make any demand of money. PW 2 – Ashok testified in his cross-examination that the panchnama was prepared by Dy.SP. - Shaikh the way he wanted. He had signed the panchnama without going through the entire details therein.

16. On appreciation of the evidence of both these witnesses, it leads me to observe that the complainant had met accused no.1 on 27.12.2006. Accused no.1 had made demand of Rs.3,000/- from him that time. Accused no.2 was not present during the meeting between the complainant and

accused no.1. Thus, the demand of Rs.3,000/- has not been verified. Accused no.1 had asked the complainant to come his residence early in the morning and to pay him bribe. Accordingly, both the complainant and the shadow witness went to the residence of accused no.1. Accused no.2 was present at the house of accused no.1. The complainant asked accused no.1 to give him cable. Accused no.1, in turn, told to have instructed accused no.2 to do the needful and they should meet accused no.2 in the store room/godown. As such, the evidence of both complainant and shadow witness, undoubtedly, indicate that when they had been to the house of accused no.1 to pay him bribe, accused no.1 did not make demand of bribe money. He simply asked them to meet accused no.2 as he had instructed accused no.2 to do the needful. It is not the case of the prosecution that accused no.1 had asked accused no.2 in the presence of the complainant and the shadow witness, to receive on his behalf Rs.3,000/- and then give cable to the complainant. True, as directed by accused no.1, both complainant and shadow witness went to the store room/godown near M.S.E.B. Sub-Station at Yermala road. Accused no.2 came there and inquired with the complainant as to whether he had brought Rs.3000/- as was directed to be brought by accused no.1. Close scrutiny of evidence of both these witnesses would indicate that there is nothing to infer that accused no.2 was in the know of the transaction between accused no.1 and the complainant. The fact that accused no.2 inquired with the complainant as to whether he had come with Rs.3000/- as was asked by accused no.1, would, in noway, be presumed to be the amount of bribe. It is reiterated that the complainant has categorically admitted that accused no.2 was not in the know of the transaction between him and accused no.1. There is also no evidence to indicate that accused no.1 had asked accused no.2 to receive amount of Rs.3,000/- for him from the complainant as illegal gratification. As such, evidence of both these witnesses indicate that accused no.1 had not made any demand of illegal gratification when both of them had been to his residence with bribe money on the day of trap.

17. There is another aspect of the matter. The sanction for prosecution of both the accused is found to be not valid one.

18. PW 3 – Narayan was serving as Chief General Manager, Technical Establishment, Mumbai, at the relevant time. It is not in dispute that he was the competent authority to accord sanction for prosecution of both the accused. It is in his evidence that he had received all the papers of investigation. After having gone through those papers, he accorded sanction for prosecution vide Exh.54.

19. If one goes through the sanction (Exh.54), it may appear to have been issued after having gone through all the papers of investigation. It has, however, come on record during the cross-examination of PW 3 (sanctioning authority), that he had received the draft sanction along with the police papers. It is further in his evidence that the Asst. Manager – Changdeo had prepared the draft sanction and placed it before

him. The draft sanction prepared by said Changdeo was tendered in evidence during cross-examination of this witness. The draft sanction prepared by Changdeo came to be admitted in evidence vide Exh.56. The sanction for prosecution (Exh.54) accorded by PW 3 is nothing but a mirror copy of the sanction prepared by the Asst. Manager, Changdeo. Same indicates that the sanctioning authority had not applied its mind before accord of sanction for prosecution. When both the accused were to be prosecuted for the offences punishable under the Prevention of Corruption Act only, the draft sanction (Exh.56) and the sanction (Exh.54) find mention therein about sanction for prosecution of the accused for the offences punishable under Sections 420, 467, 468 and 471 of Indian Penal Code. It is not known as to why the provisions of Indian Penal Code were sought to be invoked against the accused. Admittedly, no crime was registered against both or any of the accused for the offences punishable under Indian Penal Code. Mention of Sections under Indian Penal Code in the sanction order, reinforces the claim of the accused persons that the sanction has been accorded without application of mind. Learned counsel for the accused have every reason to contend that the sanction was prepared by the Asst. Manager and the sanctioning authority had simply signed on the dotted lines. This Court has, therefore, every reason to hold the sanction (Exh.54) to have not been valid one.

20. Based on such quality of evidence, the trial Court ought not to have held the charge against both the accused to have been proved. This Court is, therefore, not at one with the impugned judgment of conviction and resultant order of sentence. The appeal, therefore, succeeds.

21. Hence the following order:-

(i) Both the appeals are allowed.

(ii) The impugned judgment and order dated 04.08.2010 passed by learned Special Judge, Osmanabad, in Special Case (AC) No.5 of 2008, is set aside.

(iii) The appellants are acquitted of the offences punishable under Section 7, Section 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988.

(iv) Their bail bonds stand cancelled.

(v) Fine amount deposited by the appellants, if any, be refunded to them.

[**R.G. AVACHAT, J.**]

KBP