IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.580 OF 2017

Suresh s/o. Babanrao Sanve,
Age : 54 years,
Occ. Service as Police Naik,
B.No.708, Working at Bidkin Police Station,
r/o. Bhawani Nagar, Paithan,
Dist. Aurangabad ..Appellant

Vs.

The State of Maharashtra,
Through the Police Sub Inspector,
Anti Corruption Bureau, Aurangabad ..Respondent

Mr.S.S.Tope, Advocate for appellant
Mr.S.P.Sonpavale, APP for respondent

CORAM : R.G. AVACHAT, J.
RESERVED ON : JANUARY 21, 2022
PRONOUNCED ON : MAY 02, 2022

JUDGMENT :-

The challenge in this appeal is to the judgment and order dated 27.11.2017 passed by learned Special Judge (P.C. Act), Aurangabad, in Special Case (PC) No.4 of 2009. Vide impugned judgment and order, the appellant herein has been convicted for the offences punishable under Section 7, Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (“the Act”, for short) and therefore, sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.1,000/-. In default of payment of fine, he has been directed to suffer rigorous imprisonment for six months.

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

PW 2 – Waman (complainant) is resident of village Bidkin, Tq. Paithan, Dist. Aurangabad. He had purchased two plots (house sites) at Ganesh Nagar, Bidkin, in the early 2006. As he was in need of money, he took a hand-loan of Rs.54,000/- from one Kalyan Aware on interest at the rate of 5% per month. As a security for repayment of the loan amount, the complainant executed sale deeds of both the plots in favour of said Aware. It was an understanding between the two that on repayment of the loan amount with interest, Aware would re-convey the plots to the complainant. When the funds were available with the complainant, he approached Aware in January, 2008 and asked him to re-convey the plots in his name by accepting the loan amount with interest thereon. Aware refused to do so. The complainant, therefore, lodged a report with Bidkin Police Station on 09.02.2008 for taking action against Aware of cheating him and also for having indulged in unauthorised money lending. The complainant had, therefore, been visiting Bidkin Police Station. He met the appellant, a Police Constable attached to Bidkin Police Station, on 25.02.2008 and requested him to take action on his complainant. The appellant, in turn, told him that his higher-up had asked him to get Rs.5,000/- from the complainant for doing needful in the matter, lest, nothing would be done. The complainant, in turn, told the appellant to have had met the appellant's higher-up many a time. However, the higher-up did not ask him to spare some money for the work. On negotiations between the complainant and the appellant, a sum of Rs.3,000/- was agreed to be paid by the complainant to the appellant as bribe. The appellant asked the complainant to pay the part amount of Rs.1,000/- on 27.02.2008 to him at Police Station and the balance amount after the work was over. Since the complainant did not wish to pay the appellant the bribe, he approached Anti Corruption Bureau, Aurangabad.

3. PW 4 – Kishor Kamble, Deputy Superintendent of Police, Aurangabad, recorded statement/complaint (Exh.22). He decided to lay a trap. He, therefore, asked the complainant to come to the

office of Anti Corruption Bureau (A.C.B.) the following day. He secured presence of two Government officials to act as panchas. PW 4 – Kishor Kamble gave all requisite instructions to them. He asked the complainant to pay the bribe only on demand to be made by the appellant. A pre-trap panchnama was drawn (Exh.71).

4. The complainant along with PW 3 – Jaiswal, shadow witness, first went to Bidkin Police Station and met the appellant. Since it was a weekly market day and rush on the road, the appellant asked them to come at Nilajgaon Phata. The appellant assured them to come there. The complainant and PW 3 – Jaiswal, shadow witness came back to PW 4 – Kamble and briefed him. The raiding party, thereafter, went to Nilajgaon Phata. Both the complainant and PW 3 – Jaiswal remained at a roadside tea stall waiting for the appellant. The appellant came after a while. He told the complainant to have recorded statement of Aware and assured him (complainant) to register crime against Aware. The appellant inquired the complainant as to whether he had brought money. The complainant asked him not to be worried about money. The appellant, in turn, told him that

unless he is paid Rs.1,000/-, he would not do his job. When the complainant told him to have come with the money, the appellant asked him to give the money. The complainant gave Rs.1,000/- to the appellant in the presence of PW 2 - Jaiswal and then he gave the predetermined signal. The raiding party arrived. Since it was a public place, all of them went to Bidkin Police Station. Paper work namely, trap panchnama was drawn there. Then post-trap panchnama (Exh.73) was also drawn. PW 4 – Kamble, Dy. S.P. lodged FIR (Exh.83). On completion of the investigation, the police papers were submitted to the Superintendent of Police, Aurangabad, who, in turn, accorded sanction (Exh.14) for prosecution of the appellant. The charge sheet, thereafter, came to be filed.

5. The trial Court framed Charge (Exh.21). The appellant pleaded not guilty. His defence was of false implication. It is his case that with a view to pressurise the appellant to take action against said Aware, a false complaint was lodged against him.

6. The prosecution examined four witnesses and produced in evidence a number of documents. The trial Court, on appreciation of the evidence in the case, convicted and sentenced the appellant, as stated above.

7. Learned counsel for the appellant would submit that the transaction between the complainant and said Aware was out and out sale. The complainant did not file any civil suit against Aware nor has he approached the Assistant Registrar (Co-operative Societies) who has authority to take action against the unlicensed money lenders. The complainant has criminal antecedents. The demand had not been verified. The shadow witness did not understand Marathi. Soon before he entered the Court hall to give evidence, panchnama in the case was read over to him only with a view to lead him to give evidence consistent therewith. As such, the evidence of PW 3 - Jaiswal is unreliable one. Based on the sole testimony of the complainant, conviction for an offence of receiving bribe may not sustain. Learned counsel, therefore, urged for allowing the appeal.

8. Learned APP would, on the other hand, submit that in the examination under Section 313 of the Code of Criminal Procedure, the appellant did not offer any explanation about the tainted money to have been recovered from him. He also did not give any immediate explanation soon after he was trapped. According to learned counsel, there is consistency *inter se* the evidence of the complainant, PW3 - Jaiswal, shadow witness, PW 4 – Kamble and the Investigating Officer as well. Since the tainted money was recovered from the appellant, it was for him to rebut the presumption under Section 20 of the Prevention of Corruption Act. Since he did not offer a plausible explanation, a well-reasoned judgment passed by the trial Court may not be interfered with.

9. Heard learned counsel appearing for the parties.

10. The appellant was a Police Constable at the material time. The superintendent of Police, Aurangabad, was the appointing and removal authority of a Police Constable. The sanction (Exh.14) to prosecute the appellant was, therefore,

accorded by the then Superintendent of Police, Aurangabad. The sanction (Exh.14) has not been taken exception to on any of the grounds.

11. The complainant gave his evidence consistent with his complaint (Exh.22). It is in his evidence that in early 2006, he had purchased two plots (house sites) at Ganesh Nagar, Bidkin. When he was in need of money, he had approached Aware, a money lender. He (Aware) advanced Rs.54,000/- to the complainant at the interest of 5% per month. As a security therefor, he ostensibly transferred both the plots in favour of Aware, who had agreed to re-convey the plots on repayment of the hand loan money with interest thereon. When the funds were available with the complainant, he approached Aware and offered to pay him the amount of hand loan with interest thereon. Aware refused to receive the amount and claimed to have purchased the plots. The complainant, therefore, lodged a complaint with Bidkin Police Station against Aware for taking action for cheating and unauthorised money lending. A copy of the complaint lodged by the complainant was marked as

Article `A'. It was dated 09.02.2008. It is further in the evidence of the complainant that he had been to Police Station, Bidkin, many a time, to see that action is taken against Aware on his complaint. On 25.02.2008, he met the appellant at Bidkin Police Station and requested him to do the needful. The appellant, in turn, told him that his higher-up had asked him to get Rs.5,000/- from the complainant for doing needful in the matter, lest, nothing would be done. The complainant, in turn, told the appellant to have had met the appellant's higher-up many a time. However, the higher-up did not ask him to spare some money for the work. On negotiations between the complainant and the appellant, a sum of Rs.3,000/- was agreed to be paid by the complainant to the appellant as bribe. The appellant asked the complainant to pay the part amount of Rs.1,000/- on 27.02.2008 to him at Police Station and the balance amount after the work was over. Since the complainant did not wish to pay the appellant the bribe, he approached Anti Corruption Bureau, Aurangabad.

12. It is further in his evidence that PW 4 – Kamble recorded his complaint (Exh.22) and decided to lay a trap on the following day. He, accordingly, went to the office of A.C.B.,

at Aurangabad. Two persons were already present to act as a panch witness. PW 4 – Kamble gave requisite instructions to all of them. Pre-trap panchnama (Exh.71) was drawn. Accordingly, the complainant along with PW 3 – Jaiswal, shadow witness, went to Bidkin Police Station. They met the appellant there. The appellant asked them to come to Nilajgaon Phata and assured that he would come there. Accordingly, both the complainant and PW 3 – Jaiswal came back to PW 4-Kamble and briefed him. The raiding party then went to Nilajgaon Phata. Both the complainant and PW 3 - Jaiswal remained at a roadside tea-stall waiting for the appellant. The appellant arrived after a while. Some interaction took place between the appellant and the complainant. The appellant told the complainant to have recorded statement of Aware. He also asked the complainant as to whether he has brought money (bribe) to pay him. The appellant told him that unless, he was paid the money he would do nothing in the matter. The complainant, therefore, paid him the bribe money and gave the predetermined signal. PW 4-Kamble along with other members of the team came there. The tainted currency notes came to be recovered from the appellant. Post-trap panchnama (Exh.73) was drawn at Bidkin Police Station.

13. The complainant was subjected to searching cross-examination. It has come in his evidence that PW 4 – Kamble (Investigating Officer) had asked him to use a tape-recorder, while he was going to interact and pay the bribe money to the appellant. The complainant, however, expressed his inability to operate tape-recorder. It is, therefore, decided not to use tape-recorder. Anthracene powder was, therefore, applied to the currency notes to be offered as bribe money. It is in his evidence that he was a businessman and doing social work as well. He was Member of Grampanchayat also. He knew that the Asst. Registrar, Co-operative Societies, is authorised to deal with a complaint against the money lender. He admitted to have had not lodged any complaint with the Asst. Registrar, Co-operative Societies. He admitted that the appellant being a Police Constable, was not empowered to make enquiry or investigate the matter. The sale deed executed with said

Aware did not contain any clause of re-conveyance of the plots. No independent document was executed to indicate it to be a hand-loan transaction. Even when the complaint was recorded with the police station, he did not lodge any complaint against Aware under the Money Lenders' Act. Until 2014, Aware had not executed re-conveyance in favour of the complainant. The complainant, however, denied the suggestion that he attempted to thrust the tainted money into the hands of the appellant only with a view to compel the appellant to take action against Aware and then, to have the plots re-conveyed in his name.

14. PW 3 – Jaiswal gave his evidence in the examination-in-chief consistent with what has been deposed to by the complainant. During the cross-examination, however, he made somersault. It is in his evidence that he was unable to read Marathi. He could understand Marathi little. When he came to the Court to give his evidence, the A.C.B. Officer showed him the panchnamas. He was read over the complaint.

It is further in his evidence that the A.C.B. Officer told him to depose in terms of the complaint and the panchnamas.

15. True, the complaint and the pre-trap and the post-trap panchnamas are consistent with the evidence given by the complainant, PW 3 – Jaiswal and PW 4 – Kamble as well. Admittedly, PW 4 – Kamble was not around when the appellant made the demand of bribe and even accepted the same. Although PW 3 – Jaiswal, in his examination-in-chief, gave evidence consistent with the prosecution case, in his cross-examination, he testified to have given evidence after having read over the contents of the panchnamas soon before he entered the dock to depose. He went on to state that he was instructed by A.C.B. Officials to give evidence consistent with the panchnamas. As such, PW 3 – Jaiswal loses his character as an independent witness.

16. Then, what remained before this Court is the sole testimony of the complainant. It is true that the conviction can be based on the sole testimony of the complainant, provided it

is found to have a ring of truth. Here, the complainant in his complaint (Exh.22) stated his occupation as `Labour'. In the evidence before the Court, he admitted to have been a businessman. He claimed to have been doing social service. He is in politics as well. He was a Member of Grampanchayat.

17. The appellant placed on record before the trial Court a certified copy of the details in Summary Criminal Case No.1477 of 2005, whereunder the complainant was convicted for the offences punishable under Sections 323, 353 and 506 of Indian Penal Code and therefore, sentenced as well. If one reads the judgment, whereunder the complainant was convicted, it appears that he had misbehaved with the Gramvikas Officer on 31.08.2005 in Grampanchayat office Bidkin. Said incident took place over circulation of order of his (complainant) disqualification to hold the office of Member of Grampanchayat.

18. PW 4 - Kamble had asked the complainant to make use of a tape-recorder while the complainant would be

interacting with the appellant to pay the bribe amount on the appellant's demand. The suggestion to use the tape-recorder was only with a view to have verification of the allegations made by the complainant in his complaint (Exh.22). The complainant had expressed his inability to operate the tape-recorder. It is not known as to whether he was really unable to operate the same or he consciously declined the same with an oblique motive. In such a case, PW 4 – Kamble ought to have first verified the demand and then should have decided to lay the trap. So has not happened in this case.

19. For holding the conviction of the appellant, this Court has only evidence before it, is that of the complainant. For the reasons given herein before, this Court finds that the evidence of the complainant has no ring of truth. It does not inspire confidence to act upon his sole testimony. In the facts and circumstances of the case, although the tainted money (currency notes) was recovered from the appellant, the prosecution could be said to have failed to bring home the

charge beyond reasonable doubt. This Court is, therefore, not in agreement with the impugned judgment and order.

20. In the result, the appeal succeeds. Hence, the following order:-

(i) The appeal is allowed.

(ii) The impugned judgment and order dated 27.11.2017 passed by learned Special Judge (P.C. Act), Aurangabad, in Special Case (PC) No.4 of 2009, is set aside.

(iii) The appellant is acquitted of the offences punishable under Section 7, Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

(iv) His bail bonds stand cancelled.

(v) Fine amount deposited by the appellant, if any, be refunded to him.

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

KBP