IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPEAL NO. 363 OF 1997

Shivajirao Hari Ajagekar ..Appellant.

v/s.

The State of Maharashtra ..Respondents

Ms. Vrushali Raje for the Appellant.
Mr. P.H.Gaikwad, APP for the Respondent.

CORAM : ANUJA PRABHUDESSAI, J.
DATED : 26th AUGUST , 2022.

JUDGMENT.

1. The challenge in this appeal is to the judgment and order dated 21.05.1997 in Special Case No.3 of 1990 whereby the learned Special Judge, Kolhapur has held the Appellant guilty of offences under Section 13(2) r/w. 13(1)(d) and Section 7 of Prevention of Corruption Act, 1988 and sentenced him to undergo imprisonment for 2 years with fine of Rs.5000/- in default simple imprisonment for 3 months for offence under Section 13(1)(d) of Prevention of Corruption Act, and sentenced to undergo rigorous imprisonment for 6 months with fine of Rs.2000/- i.d. simple imprisonment for 1 month for offence under Section 7 of Prevention of Corruption Act.

2. The brief facts necessary to decide this appeal are as under:

The Appellant was the Chairman of the Devasthan Management

Committee, Western Maharashtra, KOP, hereinafter referred to as the Pachim Maharashtra Devasthan Committee i.e. PMDC. One Mr. Bagade, Madhukar Jadhav and Dilip Patil were the other members of the Committee. The Appellant and Mr. Bagade, who was the Treasurer, were the authorized signatories of the said Devasthan. The Complainant Mahadeo Salokhe, who is in Construction business had submitted tender for construction of a shops of Devasthan at Kolhapur. The bid was accepted and the work order was issued on 27.05.1986. The Complainant deposited total amount of Rs.16,457/- towards security deposit. He completed the work on 14.10.1988 and submitted the bills of Rs.1,28,000/- towards the construction work completed by him.

3. The Complainant alleged that after deduction of income tax, he was entitled to receive an amount of Rs.1,22,633/-. When he requested the Appellant herein to clear the bill, he was told that the budget of PMDC was only to the extent of Rs.50,000/- and for balance amount of Rs.72,633/- sanction of PMDC was required. The Complainant alleged that the Appellant had demanded from him an amount of Rs. 15000/- to clear the bill of Rs.50,000/-. When he expressed his inability to make the payment due to financial constraints, the Appellant suggested that he should make the payment of Rs.10,000/- after encashing the cheque of Rs.50,000/- and pay the balance amount at a

later date. Accordingly, the Appellant issued a cheque of Rs.50,000/- on 26.12.1988. The Complainant has alleged that he encashed the cheque and paid an amount of Rs.10,000/- to the Appellant.

4. The Complainant alleged that the payment of the balance amount of Rs.72,633/- was delayed on one pretext or the other. On 6.5.1989, the Appellant told him that he would get his bills cleared and demanded total amount of Rs.12000/- which included amount of Rs.5000/- which was due towards clearance of bill of Rs.50000/-. The Complainant asked him to obtain the signature of Mr. Jadhav on the application dated 3.4.1989. The Complainant claims that said Jadhav demanded Rs.5000/- to put an endorsement on the said application, but later accepted the cheque of Rs.4000/- to make the endorsement on the said application. The Complainant received cheque for Rs.72,633/- on the same date. He presented the cheque in the bank and also issued direction to stop payment in respect of cheque issued in favour of Mr. Jadhav, On 10.5.1989 the Complainant went to the office of ACB and lodged a complaint against the Appellant. After complying with the formalities, a trap was led and the Appellant was caught accepting an amount of Rs.12,000/- from the Complainant. It is alleged that the tainted notes received by the Appellant from the Complainant were seized and the Appellant was placed under arrest. After completion of investigation, chargesheet was filed against the Appellant for Offence

under Section 384 of IPC and Section 7 and 13(1)(d) r/w. 13(2) of Prevention of Corruption Act, 1988.

5. The Appellant pleaded not guilty to the charge and claimed to be tried. Prosecution, in support of its case, examined 8 witnesses The statement of the Appellant was recorded under Section 313 of Cr.P.C. The defence of the Appellant was that of total denial. The Appellant stated that on the relevant date the panch witness Kalguti and the Complainant had come to his office. They were frequently going out of the office and abruptly the Complainant shook hands with him and immediately thereafter the Investigating Officer Mr. Mirashi came in and asked him whether he had taken any money. He states that the panch witness had informed the Investigating Officer that the currency notes were kept in a note book. The Appellant claimed that the Complainant is related to Ashokrao Salokhe, Ex-Chairman of PMDC and that the complainant has lodged a false complaint at the instance of said Ashokrao Salokhe.

4. Learned Judge, after considering the evidence on record held that the prosecution has established that the Appellant herein had demanded Rs.15,000/- from the Complainant for clearing the bill of Rs.50,000/-, and further amount of Rs.12,000/- to clear the bill of Rs.72,633/- and refund of his security deposit of Rs.16,457/-. The learned Judge held

that the prosecution had failed to prove the charge under Section 384 of IPC and hence acquitted him in respect of the offence under Section 384 IPC, and held him guilty for the offences under Prevention of Corruption Act and convicted and sentenced him as stated above. Being aggrieved by the conviction and sentence, the Appellant has filed this appeal.

5. Ms. Raje, learned Counsel for the Appellant submits that the prosecution evidence is contradictory and inconsistent. She submits that the prosecution has failed to prove the demand of Rs.15000/- and acceptance of Rs.10,000/- from the Complainant. She further submits that the report regarding completion of work was submitted by the Engineer of Mahalaxmi Trust on 21.12.1988 and as such there was no question of the Appellant threatening to forfeit the security deposit for non payment of bribe amount. She further submits that the evidence of the Complainant clearly indicates that the Appellant had already made an endorsement for clearing the bill, even before the application was presented before the other members for their signatures, and this fact itself shows that the Appellant had not tried to obstruct release of payment. She submits that the prosecution has failed to prove demand of bribe and in the absence of such evidence, conviction under Prevention of Corruption Act cannot be sustained.

7. She further submits that the panch witness is an accused in

Corruption case and no implicit reliance can be placed on his testimony. She further states that the Investigating Officer has also admitted that no verification was done after receiving the complaint on 10.05.1989 and that the sanction was also not obtained. She further claims that as on the date of the complaint, no amount was due to the Complainant from PMDC and as such the question of demanding any bribe would not arise. She submits that the prosecution has failed to prove the guilt of the Appellant beyond reasonable doubt and hence the conviction and sentence cannot be sustained. She has relied upon the decision of the Honourable Supreme Court in ***D. Devaraja vs. Owais Sabeer Hussain Cri. Appeal No. 458 of 2020***; and in ***The State of Maharashtra vs. Ramrao Marotrao Khawale 2017 ALL MR (cri) 3269***; and ***Subhash Narayanraoji Rathod vs. State of Maharashtra 2017 ALL MR (Cri.) 4144***.

8. Per contra, Mr. Gaikwad, learned APP submits that the Complainant had admittedly completed the construction work of Devasthan shop and an amount of Rs.1,22,633/- was due to him. He submits that the Appellant as a Chairman was authorized to make the payment of Rs.50,000/- and that the balance amount was to be sanctioned by the PMDC. He submits that the evidence of the Complainant amply proves that the Appellant had demanded bribe for paying the amount of Rs.50,000/- and for obtaining sanction from

PMDC for payment of the balance amount and refund of security deposit. He submits that the evidence on record proves that the Appellant had accepted the bribe and that the tainted currency notes were recovered from his possession and traces of anthracine powder were detected on his hand. All these circumstances establish the guilt of the accused.

9. I have perused the record and considered the submissions advanced by the learned Counsel for the respective parties. The short point falling for my consideration is whether the Appellant had demanded bribe for payment of Rs.50,000/- and for obtaining the sanction of PMDC for payment of the balance amount of Rs.72,633/- and refund of security deposit of Rs.16457/-. The answer to which in my considered view, is nothing but in the negative, for the following reasons.

10. The evidence on record reveals that PMDC had given a contract to the Complainant to construct shops. The Complainant had completed the construction work and raised a bill of Rs.1,22,633/-. It is in the evidence of the Complainant, PW1 Mr. Mahadeo Salokhe that the Appellant had told him that he can pay the maximum amount of Rs.50,000/- and that sanction of PMDC was required for the payment of the balance amount. It is not in dispute that on 26.12.1988 the

Appellant had issued a cheque of Rs.50,000/- in favour of the Complainant. The statement of the Complainant that the Appellant had demanded cash of Rs.15,000/- for paying the said amount of Rs.50,000/- is not corroborated by any other evidence. The contention of the Complainant that on the same day he had paid the amount of Rs.10,000/- to the Appellant from the said amount is also not corroborated by any other evidence. Furthermore, PW1 had not lodged complaint before any authority for over a period of four months in respect of demand and acceptance of illegal gratification. There is no cogent proof of demand of bribe which is an essential requisite to constitute offence under Section 7 , 13(1)(d) and 13(2) of the Prevention of Corruption Act.

11. The Complainant has also deposed that the Appellant had demanded sum of Rs.12,000/- for obtaining sanction of PMDC for release of the balance amount and refund of the security deposit. The evidence of PW1-Complainant reveals that he had filed an application dated 3.4.1989 for release of the balance payment. This application was submitted to PMDC on 5.4.1989. The Complainant has deposed that the Appellant had made an endorsement on the said application on the same day for sanction of the said amount. The Complainant has further deposed that the Appellant had told him to obtain signatures of the other members since the meeting of PMDC was not scheduled in immediate

future. The Complainant has deposed that he could not approach the other members due to demise of his father.

12. The evidence of PW1 reveals that the Appellant had approved payment of the balance amount on the very same day and it was because of personal difficulties of the Complainant that he could not obtain signatures of the other members. The Complainant thereafter complained to the Charity Commissioner on 19.4.1989 about non conducting the meeting and non payment of bills. Even in the complaint, the Complainant had not made any allegation about demand of illegal gratification. PW1 made another application on 3.5.1989 to PMDC for release of the balance payment. The evidence of PW1 reveals that the Appellant had signed this application on the same day and handed over the same to the Complainant to obtain signatures of the other persons for sanctioning the amount. The Complainant alleges that he had approached the Treasurer Madhukar Jadhav and that he had demanded Rs.4000/- for signing the application. The Complainant claims that he had issued a post dated cheque to Mr. Madhukar Jadhav and had obtained the signature on the said application. On 5.5.1989 the Complainant handed over the application with the signature of the Appellant and the other three members to PW7, the Secretary of PMDC.

13. The evidence of PW7 Vilas Jarag, the Secretary of PMDC reveals

that the Complainant had carried out construction work exceeding the budget and hence PMDC could pay only Rs.50,000/-. He has stated that the Appellant had paid the said amount of Rs.50,000/- to the Complainant. He has further stated that PMDC was unable to pay the balance amount of Rs.72,633/- for want of budget. The subject relating to the payment of the amount wqas raised in meeting dated 22.03.1989, but the members viz. Bagade and Dilip Patil suggested that the subject should be discussed in the next meeting. Thereafter the meeting could not be held, resulting in the Complainant making several complaints to the Charity Commissioner, Law Secretary alleging delay in payment of his dues. He has stated that they had received instructions from the Law Department to clear the bill of the Complainant at the earliest. He has stated that despite the said instructions, it was not possible to clear the bill since the meeting of PMDC was not scheduled. He has stated that the Complainant was therefore told to obtain signatures of the Chairman and the other four members of the Committee. PW7 has stated that the Appellant, as a Chairman had signed the application and had handed over the same to the Complainant to obtain signatures of the other members. This witness has stated that one of the members by name Mr. Bagade had not signed the application. PW7 has further deposed that Mr. Jadhav had agreed to sign the application and that he had informed this fact to the said Applicant. The Appellant had instructed him to obtain the signature of Mr. Jadhav. PW7 has stated that the Complainant had informed him that Jadhav had demanded post dated cheque of Rs.4000/-. He has admitted in his cross examination that he had not stated in his statement under Section 161 that the Complainant had informed him that Jadhav had demanded Rs.4000/- for signing the said application.

14. The evidence of this witness does not indicate that the Appellant had caused any obstruction in sanctioning the balance payment. On the contrary, his evidence reveals that the Appellant had made an endorsement on the application on the very same day for sanctioning the payment of the balance amount. Furthermore, he had signed two cheques both dated 5.5.1989 towards payment of Rs.72,633/- and Rs.16,547/-, in the name of the Complainant, and another cheque of Rs.2568/- in the name of State Bank of India, towards payment of Income Tax. These cheques were handed over to PW8 Mohan Vaichal.

15. PW8 Mohan Waichal has deposed that on 5.5.1989 he obtained the signature of the Appellant on the cheques. He has stated that Treasurer Bagade had refused to sign the cheque and when he brought this fact to the notice of the Appellant, he told him to once again go to Bagade and obtain his signature. This witness has stated that Mr. Bagade refused to sign the cheque. When he informed this fact to the Appellant, the Appellant told him to submit a written report. Accordingly, he sent a

report to the Appellant stating that Mr. Bagade had refused to sign the cheque. Thereafter the Complainant instructed him to obtain the signature of Mr. Jadhav. He has stated that Mr. Jadhav signed the cheques. He informed the Complainant that the three cheques were signed by Mr. Jadhav and that he handed over the cheques to the Complainant on 6.5.1989. He had admitted that the Complainant had signed all the three cheques on 5.5.1989. He has further stated that Jadhav had informed him that the security deposit should be refunded six months after completion of the work and hence he did not hand over the cheque of Rs.16,547/- to the Complainant. The evidence of PW7 and PW8 amply proves that the Complainant had sanctioned the payment and signed the cheques on the same day without raising any objection, and this fact raises a doubt about demand of illegal gratification.

16. The evidence on record reveals that the cheques were received by the Complainant on 5.5.1989, whereas the complaint was lodged on 10.5.1989. The Complainant has not explained the delay in lodging the complaint. The evidence on record reveals that the Complainant was awarded contract by the previous Committed headed by the the Chairman Ashokrao Salokhe, who is stated to be the relative of the Complainant. PW7 has admitted that the suggested Committee headed by the Appellant had passed a resolution to inquire into the work/several

acts of the previous Committee. PPW7 had forwarded the said resultion to the Government for taking necessary action. Under the circumstances, the unexplained delay in lodging the complaint casts a serious doubt about genuineness of the demand of illegal gratification, which is sine qua non to constitute offence under Section 7, 13(1)(d) and Section 13 of the Prevention of Corruption Act.

17. It is on record that no verification was done on receipt of complaint on 10.5.1989. Though the conversation between the Complainant and the Appellant was allegedly recorded, no transcript of the conversation recorded in the tape recorded was prepared. No sanction was obtained. Furthermore, the Investigating agency had led a trap on 11.5.1989 in presence of PW4, Subhash Kalgutki, This witness has admitted in his cross examination that he was caught accepting bribe and that the case under Prevention of Corruption Act is pending against him before the Court. The prosecution has not assigned any satisfactory explanation for not securing presence of any other independent witness to serve as a panch witness. Considering the criminal antecedents of this witness, the possibility of this witness being influenced by the Officers of Anti Corruption Bureau cannot be ruled out. Hence evidence of the Complainant and the panch witnesses is unreliable and inadequate to prove demand and acceptance.

14. The evidence on record reveals that the notes smeared with anthracine powder were recovered from the note book in the cabin of the Complainant. As noted above, in the absence of proof of demand, mere recovery of tainted notes would not be sufficient to bring home the guilt under Section 13(1)(d) r/w. 13 (2) of the Prevention of Corruption Act. Furthermore, the defence of the Appellant is that the Complainant had kept the tainted notes in the note book and abruptly shook hands with him before leaving the office. PW4 has admitted that he had seen the Complainant shaking hands with the Appellant. This fact also prima facie probabalizes the defence raised by the Appellant.

15. Considering the above discrepancies, in my considered view, the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. Under the circumstances, the conviction and sentence cannot be sustained. Hence the appeal is allowed. Impugned judgment and order dated 21.5. 1987 is quashed and set aside. The Appellant is acquitted of the offences punishable under 7, Section 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988.

(ANUJA PRABHUDESSAI, J.)