

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1046 OF 2007

The State of Maharashtra ...Appellant

Versus

1. Ashok Ramdas Patil
Age about 61 years, Occu : Retired
R/o Apte Road, Pune

2. Ramchandra Devchand Mali
Age about 63 years, Occu : Retired
R/o. Karve Road, Pune.

...Respondents

Mr. S. H. Yadav, APP for the Appellant – State.

Mr. Vijay Killedar, Advocate for the Respondent No.1.

CORAM : PRAKASH D. NAIK, J.
DATE : 6th JANUARY, 2022.

ORAL JUDGMENT :

1. This appeal is preferred by the State of Maharashtra under Section 378 (3) of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) challenging the judgment and order dated 27th September, 2005 acquitting the respondent – accused for the offences under Sections 7 and 13(1)(d) r/w Section 13(2) and Section 12 of the Prevention of Corruption Act, 1988 (for short “PC Act”).

2. During the pendency of this appeal, the respondent No.2 has expired. The death certificate of respondent No.2 has

been produced by the learned counsel for the appellant which indicate that the respondent No.2 has expired on 22nd August, 2021. The photo copy of the death certificate is taken on record and marked as 'X' for identification. In view of the aforesaid circumstance, the appeal against the respondent No.2 stands abated.

3. The case of the prosecution is as under :-

(a) The accused No.1, Ashok Ramdas Patil was working as Chief Engineer and the accused No.2 was Executive Engineer. It is alleged that, being a public servant the accused No.1 had accepted the amount of Rs.1,00,000/- from the complainant as a gratification other than legal remuneration for supplying copies of contract drawings, working drawings and lay out plans to the complainant in respect of work allotted to him on accepting his tender and thus obtained pecuniary benefit of Rs.1,00,000/- from the complainant by corrupt or illegal means or otherwise abusing his position as a public servant and thereby committed for offence under Sections 7, 13(1)(d) punishable under Section 13(2) of PC Act. Accused No.2 was charged on the accusation that while acting as a public servant in the office of Pimpalgaon Joge Dam Division, Narayangaon, Dist. Pune, abetted the commission of offence

under Section 7 of the PC Act by accused No.1 and thereby committed offence under Section 12 of the PC Act.

(b) Public notice calling tenders for carrying out the work of canal at Pimpalgaon Joge was published. The complainant submitted tender for the said work of Rs.92,46,384/-. Being lowest rate, the tender was accepted on 17-10-1997. Subsequently, the Executive Engineer, (accused No.2) had issued the work order to the complainant in respect of that work. The complainant then met accused No.2 on 26-12-1997 and 01-01-1998 for supply of certified copies of tender along with lay out plan, drawings of the work. The accused No.2 suggested the complainant to pay 1% of the total amount of accepted tender to the Chief Engineer (accused No.1) for supplying lay out plan and drawings.

(c) On the suggestion of accused No.2, the complainant met the Chief Engineer on 09-01-1998. He demanded 1% amount of total value of tender and agreed to accept Rs.1,00,000/- from the complainant for that purpose on 10-01-1998 in his office or residence.

(d) The complainant approached A.C.B. Office on 10-01-1998 and lodged the complaint. On 10-01-1998, the A.C.B. Officers made arrangement for telephonic talks between

accused No.1 and the complainant for verification of complaint. For that purpose they went to hotel situated at Apate Road, Pune and occupied room No.305. In the presence of panch witnesses, the complainant had a conversation with accused No.1. It was recorded on Audio tape and it was decided to send Mr. Kamble, Engineer working with the complainant for paying the bribe amount to the accused.

(e) On 11-01-1998, the complainant, panch witnesses, A.C.B. Officers, and Mr. Kamble gathered at Hotel Shreyas. The complainant had arranged the amount of Rs.1,00,000/- which was to be paid to the accused No.1 as bribe. Anthracene powder was applied to the currency notes. Necessary instructions were given to Mr. Kamble and panch witnesses. Polythene bag containing the bribe amount was given to Mr. Kamble for handing it over to accused No.1 on demand of bribe. Panch No.1 Asawale was instructed to accompany Mr. Kamble while visiting the house of accused No.1 and to stay outside and directed Mr. Kamble to enter into the house of accused and on demand to pay the bribe amount to him. Tape recorder with blank tape was arranged for recording conversation between them and it was kept with Mr. Kamble.

(f) The members of the raiding party approached the

house of accused. The complainant was not with them. The flower basket was purchased for presenting it to the accused. Other members of the raiding party stayed outside the courtyard. Complainant, panch - Asawale entered into the house of the accused No.1. The panch - Asawale stayed outside the verandah. Mr. Kamble along with the bribe amount and flower basket entered into the house of the accused. He met accused No.1 and on demand of bribe amount by the accused, Mr. Kamble handed over the polythene bag containing bribe amount to accused No.1. He accepted the amount. The panch - Asawale while standing near the window in the verandah saw what was going on inside the room. After handing over the amount to accused Mr. Kamble came out and informed the raiding party that the accused have demanded and accepted the amount.

(g) The members of raiding party entered into the house of the accused. The house was searched. In the office room situated at residence of accused, brief-case was found. It was having number lock. It was opened by adjusting number by the accused. It was found containing bribe amount. The photographs were taken. The house of the accused was searched. Inventories of articles were prepared and trap

panchanama was executed. The polythene bag containing the bribe amount was seized. Investigation proceeded on the basis of the report filed by the A.C.B. After obtaining the sanction for prosecution, the charge-sheet came to be filed against the accused.

4. Charge was framed against both the accused vide order dated 16th September, 2003 for the aforesaid offences.

5. The prosecution had examined six witnesses in support of the prosecution case. The defence of the accused No.1 is that he was working as Chief Engineer at Krishna Khore Vikas Mahamandal. Non-official members were interfering with the work of allotment of public tender showing their personal interest and political influence used to be there. But it was not possible for the accused to by-pass normal procedure. Hence, the accused No.1 was implicated in false case.

6. The evidence of witnesses was recorded. Statement of the accused was recorded under Section 313 of Cr.P.C. The trial Court has acquitted both the accused.

7. The State of Maharashtra is aggrieved by the impugned judgment and order passed by the learned Special Court acquitting the accused.

8. Learned App appearing for the appellant – State of Maharashtra has submitted that the trial Court has committed an error in acquitting the respondents-accused. Although there was sufficient evidence to establish the demand and acceptance, the learned Special Judge acquitted the accused. The presumption under Section 20 of the PC Act, was not rebutted by accused in any manner. Minor discrepancies could have been overlooked. The demand and acceptance of illegal gratification has been established by evidence. The findings of the trial Court are contrary to the evidence on record. The accused No.1 was the Chief Engineer, while the accused No.2 was the Executive Engineer. The accused No.1 had demanded the bribe of Rs.1,00,000/- for providing requisite documents to the complainant in relation to the acceptance of his tender. There was demand by accused No.1 There was abetment by accused No.2. The demand was followed by acceptance. The prosecution has examined independent witnesses in the form of the panch witness, who has supported the prosecution case. At the time when the demand and acceptance was made, the accused No.1 and the witness were present in the premises, the panch witness was waiting outside the room, but he could see what was happening inside through the window. The panch witness could hear the sound of opening and closing the brief-case. The amount

was found in the brief-case. Traces of anthracene powder were noticed in the bag. The amount of Rs,1,00,000/- was lying in the brief-case. There are strong circumstance to infer that the accused No.1 has demanded and accepted the bribe amount. The initial demand was verified by the investigating agency in the presence of the panch witnesses. Telephonic talk was arranged between the complainant and the accused No.1. The accused No.2 had suggested that the complainant shall approach the accused No.1 and one percent of the tender amount towards bribe amount. The amount was found in the custody of the accused. The presumption under Section 20 of the PC Act was invoked. It was the duty of the accused to rebut the same by adducing the evidence. However, there was no such rebuttal. There was no reason to doubt the veracity of the evidence of the witnesses. The complainant has deposed before the Court and proved the demand and acceptance. The panch witness has corroborated the prosecution case relating to demand and acceptance. Conversation was established between the accused No.1 and complainant. Merely on the ground that PW-2 has not fully supported the other evidence adduced by the prosecution could not be discarded by the trial Court. The reasons and the findings assigned by the trial Court are contrary to the evidence on record. Minor discrepancies in the evidence can be ignored.

Huge bribe of Rs.1,00,000/- was demanded by the accused. The judgment of the trial Court perverse and it requires interference.

9. Learned Advocate Mr. Killedar representing the respondent – accused No.1 has submitted that the powers of the Appellate Court adjudicating appeal against acquittal are explained in various decisions. The judgment of acquittal could be interfered only in exceptional circumstances, viz. the judgment is contrary to evidence on record it is perverse, it is contrary to the provisions of law and suffers from miscarriage of justice. In the present case, the trial Court has appreciated the evidence on record and came to the conclusion that the prosecution has failed to establish the case beyond doubt. The trial Court has assigned detail reasons while acquitting the accused. The findings of the trial Court are in consonance with the evidence on record. The prosecution has failed to establish that there was demand of bribe by accused No.1 which is *sine-qua-non* to convict the accused for the offences with which he is charged. Neither the demand nor the acceptance has been established beyond doubt. The complainant was present at the time of the alleged demand or acceptance of bribe. The complainant had allegedly arranged another person Mr. Kamble for parting the bribe amount. The accused cannot be convicted

on the basis of inferences. Merely on account of the fact that the panch witness could hear the sound of opening the bag and closing it, it cannot be accepted that there was demand and acceptance of the bribe by the accused. Undisputedly, the panch witness was not present when the witness Mr. Kamble had entered into the room premises. Panch witness was waiting outside. He did not hear the conversation between PW-1 and accused No.1. Thus, there is no independent evidence to establish that there was demand of illegal gratification by accused No.1 and acceptance by him. Assuming that the amount was found in the house of the accused No.1 that would not be sufficient to convict the accused in the absence of proof of demand. The conversation was not proved. The script of conversation incorporated in the panchanama does not reflect demand. There is no experts evidence to establish the identity of the voice of the persons, who had conversation in respect to the demand of the bribe amount. Thus, the prosecution has failed to establish the charges against the accused No.1. The judgment and order of the trial Court does not warrant interference.

10. Learned Advocate Mr. Killedar has placed reliance on the following decisions :-

a) V. Venkata Subbarao V/s. State Represented by

Inspector of Police, A.P. (2006) 13 SCC 305.

b) B. Jayraj V/s. State of Andhra Pradesh (2014) 13 SCC 55.

c) P. Satyanarayana Murthy V/s. Dist. Inspector of Police and Anr. 2015 (4) Bom. C.R. (Cri.) 523

d) Decision of this Court delivered in the case of Anil Krishnarao Apashingkar V/s. State of Maharashtra 2021(3) Bom. C.R. (Cri.)51.

11. On perusal of the evidence on record and Judgment of trial Court , I do not find any reasons to deviate from the findings arrived at by the trial Court. The law relating to the demand and acceptance is well settled. The demand of bribe is *sine-qua-non*. Mere acceptance of bribe amount is not sufficient to prove the charges under Sections 7 & 13(1)(d) of the PC Act. The prosecution has to establish its case beyond all reasonable doubt. The accused cannot be convicted on surmises and conjectures. The demand and acceptance cannot be inferred and there has to be cogent evidence. The presumption under Section 20 of the PC Act cannot be invoked mechanically. The foundation supported by the cogent evidence must be established to invoke the said presumption. The burden to rebut the presumption under the said provisions is based on preponderance of probability and it cannot be equated with the burden lying on the prosecution to

establish its case.

12. The case of prosecution is that the accused No.1 was the Chief Engineer and accused No.2 was the Executive Engineer. It is not disputed that they were public servants. According to the complainant, in 1997 tender notice of work of Krishna Khore Project was published in the newspaper. It was pertaining to work of canal. He applied for getting tender of work. His tender was accepted and work was allotted to him. The order was issued by accused No.2. He received work order. Mr. Milind Kamble was assisting him in his work. He was deputed to look after work of complainant. PW-1 met accused No.2 for having drawing of construction. Accused No.2 told him to pay Rs.1,00,000/- to Chief Engineer. The complainant then approached complainant and spoke to him. Chief Engineer demanded 1% of total amount. He approached ACB and filed complaint. He talked to Chief Engineer on telephone. Accused No.1 told him to come on next day at his house. He told accused that he would send Mr. Kamble. Conversation was recorded by officer. Trap was arranged. Amount provided by PW-1 for trap.

13. Mr. Kamble was examined as PW-2. He was introduced to accused No.2. Along with the tender, company had received maps and drawings of work. He stated that complainant

told him to wait outside. He do not know what had transpired in cabin of accused No.2 Complainant told him to meet Patil and give gift. He do not know what was the gift. He was handed over gift and told to give it to Patil. He went to residence of Mr. Patil (Accused No.1). He kept plastic bag containing gift on table. He returned home. He do not know about talk between accused No.2 and PW-1. Since he did not support prosecution, learned APP sought permission to cross examine this witness. He was cross examined. PW-3 Vasant Asawale acted as Pancha. He deposed that complainant had talk with accused No.1 He was told by accused that he had no time. It was decided to go to accused on next day. The talk between complainant and accused was recorded. Trap was arranged. Mr. Kamble (PW-2) was instructed not to touch currency notes unless, the accused demands bribe. Microphone was attached to the bag for recording talk before proceeding for trap. PW-3 was instructed to accompany PW-2 upto bungalow of accused, and to stay outside, while PW-2 would enter the house. He could see from window. PW-2 entered the bungalow. PW-2 put on the microphone. PW-3 could see through window what was going on inside the room. He could hear the talk between them. Exhibit- 53 is trap panchanama. PW-2 offered bouquet of flowers. Than PW-3 could not see what was going on there, when PW-2 was standing. He

could hear the sound of opening bag and closing it. Raiding party entered bungalow. Bag was opened by accused. It was containing amount. Cassette was seized from Mr. Kamble. Contents were heard. Panchanama prepared (Exhibit-53). Cassette was played. Panchanama prepared. It was seized. The amount was brought from bag. The said bag was not seized by ACB. There is no mention of brief case in the schedule of articles found in the office room of the house of accused. Panchanama Exhibit-50 was recorded on 10th January, 1998. The said panchanama refers to conversation between complainant and accused No.1 which was recorded by tape recorder. The script has been reproduced. The said conversation does not refer to demand of bribe. The complainant spoke to accused No.1 asking him whether he can meet him now or in the evening evening at home. The accused told him to come in the morning. He was told to come on next day in the morning. There is no corroboration by independent evidence to the fact that there was demand and the accused had accepted the amount except the inferences drawn by the prosecution. PW-3 waited outside the office of accused. On reading the evidence of PW-3, it can be seen that, except stating that he heard the sound of opening the bag and closing it and he did not hear the conversation between PW-1 and accused No.2. He did not hear any demand made by accused No.1, nor

acceptance by him. Assuming that the amount was found in the office. Only on the basis of belief that there was demand and acceptance, accused cannot be convicted. Thus, there was no cogent evidence before the trial Court to establish the demand of the bribe amount by accused No.1. Findings of the trial Court acquitting the accused are supported by reasons.

14. Exhibit-53 panchanama refers to script of conversation recorded on the day of trap between accused No.1 and Mr. Kamble (PW-2). The script reproduced in panchanama does not refer to any demand of bribe by accused No.1. PW-2 has not supported prosecution. PW-4 Shrinivas Shintre was Deputy Secretary in Irrigation Department. He accorded sanction to prosecute accused. He admitted that heading of Exhibit - 65 is 'draft sanction' and not sanction order and claimed it to be typing mistake. It is pertinent to note that Exhibit - 65 is purportedly sanction order dated 12th January, 1999. PW-5 Kanhayalal Sarvayya accorded sanction to prosecute accused No.2 PW-6 Vasant Ingawale is investigating officer. He admitted that, there is no mention in Panchanama Exhibit-50 that, before recording conversation it was verified that the cassette was blank. There is no mention in panchanama Exhibit-56 that peon Tote has identified the voice of accused No.1 Voice samples were not

obtained. Thus, expert opinion regarding identification of voice of accused and complainant is not on record.

15. In the case of V. Venkata Subbarao (Supra), the apex Court had observed that the presumption under Section 20 of the PC Act cannot be raised when demand by accused is not proved. In B. Jayraj (Supra), the apex Court has observed that so far as for the offence under Section 7 is concerned, it is settled position in law that demand of illegal gratification is sine-qua-non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7, unless it is proved beyond doubt that the accused voluntarily accepted the money knowing it to be the bribe. In the case of P. Satyanarayana Murthy (Supra), the Apex Court as made similar observations. In Paragraph-21 of the said decision it was observed that the proof of demand of illegal gratification is an gravamen of offence under Sections 7 and 13(1)(d)(i)(ii) of the Act and in the absence thereof the charge must fail. Mere acceptance of any amount allegedly by way of illegally gratification or recovery thereof de hors. Demand *ipso-facto* would not be sufficient to bring home the charge under the aforesaid provisions. In the decision of this Court delivered in the case of Anil Krishnarao Apashingkar V/s. State of Maharashtra, (Supra), this Court had considered the

settled principals of law laid down in the aforesaid decision and set aside the demand of conviction under the similar provisions.

16. Applying the principles enunciated in the aforesaid decisions to the facts and the evidence adduced by the prosecution in the present case, I am of the opinion that, no case is made out to set aside the judgment of acquittal. The learned trial judge has carefully scrutinized the evidence. The trial Court has observed that, PW-2 has not stated about any suggestion by accused No.2 about payment of bribe amount to accused No.1. He was asked to wait outside. He does not know what happened inside the cabin of accused No.2. There is no corroboration to the evidence of complainant in respect of suggestion given by accused No.2. The complainant has admitted that his tender was accepted and in notification all details of work were displayed on notice board in office of Executive Engineer, Narayangaon. He had been to the office of Executive Engineer for collecting forms for filling tender. Two volumes of tender were supplied to him. Documents are on record. The Executive Engineer did not accept the amount. PW-2 has not stated that he went to office of Chief Engineer with PW-1 and met accused No.1 and there was demand of his presence. The conversation dated 10th January, 1998 do not refer to any demand. It only refers to giving appointment to

complainant. The conversation was arranged to verify demand. The reason for choosing hotel for verification of demand was to maintain secrecy, but that becomes doubtful since telephones were in ACB office, house of complainant and in normal course demand could have been verified by talking to accused from office of ACB. Maps for which demand was allegedly made were already supplied and additional copy of documents could have been obtained by depositing amount of Rs.1,500/-. The evidence of earlier demand does not inspire confidence. The motive for demand itself appears to be doubtful. PW-2 Mr. Kamble has not supported the case of prosecution. Panch was not knowing what was the gift given by PW-1. He was not present inside the room. The notes were kept in polythene bag after applying anthracene powder. The accused did not accept the amount in his hand. The purpose of applying powder was not known. Digital number of bag was 000. After purchasing bag the purchaser chooses his number for opening bag. No other papers were found in bag. If brief case was in use by the accused, some papers belonging to accused would have found therein and finding of amount in empty brief case creates doubt. Nothing was brought on record to show that the bag belongs to accused. It was not seized. It is relevant to note that the demand and acceptance of bribe is not proved. Invoking presumption under Section 20 of PC Act would

not help prosecution. No case is made out to interfere in the judgment of trial Court.

17. Hence, I pass the following order :-

ORDER

Criminal Appeal No. 1046 of 2007 is dismissed and stands disposed of accordingly.

(PRAKASH D. NAIK, J.)

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LIYAKAT
JAMADAR

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signed by
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