IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.465 OF 2005

Chandrakant s/o Manikrao Samatkar, aged about 45 years, Occupation – Technical Assistant in Nagpur Municipal Corporation, Mahal, Nagpur, R/o. Qr.No.4/39, Raghuji Nagar, Nagpur. ... Appellant

// VERSUS //

State of Maharashtra through Anti Corruption Bureau, Nagpur. ... Respondent

Shri R.M. Daga, Advocate for appellant
Shri T.A. Mirza, APP for the State / Non-applicant

CORAM : ANIL S. KILOR, J.
DATED : 20th July, 2022.

ORAL JUDGMENT :

The present appeal is arising out of the judgment and order dated 2nd August, 2005 passed by the learned Special Court, under the Prevention of Corruption Act, in Special Case No.15 of 1997, convicting the appellant for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (In short "the Act of 1988").

2. The case of the prosecution in brief, is as under:

i. The informant/complainant purchased the plot No.187 in the name of his son in 1987 and constructed house in the year 1988-89, where the informant was residing with his family.

ii. On 11th October, 1995, three persons, including the accused/appellant visited the house of the complainant to know, whether the informant was paying taxes, and on informing them by the complainant that he was not paying taxes, they calculated the tax at Rs.40,000/- as due against the complainant.

iii. It is also alleged that demand of Rs.15,000/- for reducing the tax amount to Rs.15,000/-, was made by those three persons. After negotiations, the said amount was further reduced and the complainant agreed to pay Rs.10,000/-, out of which the complainant paid Rs.2,000/- to the appellant and the remaining amount was agreed to be paid after two days. As the complainant was not willing to pay the amount, he made a complaint to the Anti Corruption Bureau (ACB) Office against the appellant, who was working as 'Technical Assistant' in Tax Office of Nagpur Municipal Corporation.

iv. On 16th October, 1995, the complainant submitted supplementary complaint, stating therein that on 15th October, 1995, Samatkar/ the appellant and Yawalkar had come to his house and said that they would come on 16th October, 1995 around 2.00 to 3.00 p.m. for receiving bribe amount.

v. PW-6 Inspector Jaiswal recorded the complaint of the complainant and after following process in this regard, a raid was conducted.

vi. On 16th October, 1995 around 13.45 hrs. Panch No.2 and members of trap party conducted the trap and during the same when complainant gave signal by uttering words, "Saheb Mera Sab Kam Aap Ko Karna Hai", members of trap party rushed to the spot i.e veranda of house of complainant. On enquiry by Inspector Jaiswal panch No.1 disclosed that bribe amount was received by the person sitting in veranda, pointing out finger towards the accused. HC Kshirsagar caught hands of that person. Inspector Jaiswal disclosed his identity and introduced ACB staff and panchas to the said person. On request of Inspector Jaiswal said person told his name as Chandrakant Manikrao Samatkar, working as 'Technical Assistant'.

3. Thereupon, the learned Special Judge framed the charge against accused for the offence punishable under Section 7 and 13(1)(d) read with Section 13(2) of the Act of 1988, and after explaining the contents thereof, recorded the statement of the accused.

4. In order to bring home the guilt of the accused, the prosecution has examined in all seven witnesses – Shri Manohar Borkar as PW-1, Shri Sudam Dadave as PW-2, Shri Sukhdeo Gaikwad as PW-3, Shri Ashok Sakhare as PW-4, Shri Khushal Kshirsagar as PW-5, Shri

Ashok Jaiswal as PW-6 as Investigating Officer and Shri J.S.Sahariya as PW-7 (Sanctioning Authority)

5. The learned Special Judge after marshaling and scrutinizing the oral as well as documentary evidence, convicted the appellant and thereby sentenced him to suffer Simple Imprisonment for one year and to pay fine of Rs.1,000/- (Rs. One Thousand only), in default to suffer further Simple Imprisonment for six months for the offence under Section 7 of Prevention of Corruption Act, 1988 and further he is sentenced to suffer simple imprisonment for three years and to pay fine of Rs.1,500/- (Rs. One Thousand Five Hundred only), in default to suffer further simple imprisonment for six months for the offence under Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988, vide judgment and order dated 2nd August, 2005, which is under challenge.

6. I have heard the learned counsel for the respective parties.

7. Shri Daga, learned counsel for the appellant submits that the trial Court has committed error in convicting the appellant in absence of any cogent and sufficient evidence on the point of demand and acceptance of gratification. Shri Daga learned counsel for the appellant has pointed out that the complainant died after the crime was registered and one Manohar Borkar (PW-1) was examined by the prosecution as an independent witness.

8. It is further submitted that if the evidence of Manohar Borkar (PW-1), Sudam Dadave (PW-2) who is the Panch No.1, Sukhdeo Gaikwad (PW-2) Panch no.3 and Ashokkumar Jaiswal (PW-6) who is the Investigating Officer, is considered, it can be seen that the demand and acceptance was not proved and established by the prosecution.

9. Shri Daga, learned counsel for the appellant has drawn attention of this Court to the oral evidence of J.S.Sahariya (PW-7) who is a Sanctioning Authority and submits that nowhere he has stated that he is the competent authority either to appoint or to remove the appellant. Thus, he submits that the sanction order vitiates.

10. He has further argued that though in the complaint name of Mr. Yawalkar was mentioned and the allegations of demand were made against him as well, however, chargesheet was not filed against him. He submits that the reason for not filing chargesheet against him was that, no sanction was granted to prosecute him. Thus, he submits that in a similar set of facts, the sanction was granted against the appellant, whereas, it was refused in favour of Shri Yawalkar.

11. To fortify his submission, the learned counsel for the appellant has placed reliance on the judgment of Hon'ble the Supreme Court of India in the case of *M/s P.Satyanarayana Murthi Vs. District Inspector of Police, State of Andhra Pradesh and another*[1].

1 (2015) 10 SCC 152

12. On the other hand, Shri Mirza, learned Additional Public Prosecutor supports the impugned judgment and order dated 2nd August, 2005, and submits that the learned trial Court has rightly convicted the appellant after analysing oral as well as documentary evidence available on record. It is submitted that no legal infirmity is committed by the trial Court in convicting the present appellant.

13. Shri Mirza, learned Additional Public Prosecutor submits that prosecution has succeeded in establishing that the appellant has accepted the amount of gratification. He therefore, submits that it cannot be said that the demand and acceptance was not proved by the prosecution. Accordingly, learned Additional Public Prosecutor submits that there is no case made out by the appellant for interference and he prays for dismissal of the present appeal.

14. To consider the rival contentions of the parties, I have perused the record and proceedings and also the impugned judgment and order.

15. Before considering the matter on merit, I will first consider the validity of sanction. The oral evidence of PW-7 is relevant, for this purpose.

16. After going through the chief as well as cross-examination of PW-7 it is evident that he has stated that his office had examined whether all the papers brought or not on receipt of the investigation papers from ACB Office, Nagpur and after such examination by his office, the papers

were put before him. He states that he examined the papers thoroughly and as he was convinced that it was fit for grant of sanction. The sanction was granted and it was put before the Corporation as the resolution of Corporation was required. It is also stated that in the meeting dated 26th March, 1998 the General Body of NMC passed the resolution appointing the sanction to prosecute the appellant. It has also come in his evidence that Corporation is the appointing authority.

17. Thus, there is nothing to show that the sanctioning authority has not applied its mind and as such I do not find any fault with the sanction granted by the Commissioner and approved by the general body of Corporation, Nagpur. Accordingly, I reject the submission of the learned counsel for the appellant that the sanction is not valid.

18. Moving further on the merit of the matter. In the case of *P.Satyanarayana Murthy Vs. District Inspector of Police Station of Andhra Pradesh and another* (supra), the Hon'ble Supreme Court of India while considering the purport of statutory prescription of Section 7 and 13(1)(d) of the Act, 1988 has observed thus:

> *"20. This Court in A. Subair vs. State of Kerala (2009)6 SCC 587, while dwelling on the purport of the statutory prescription of Sections 7 and 13(1)(d) of the Act ruled that the prosecution has to prove the charge thereunder beyond reasonable doubt like any other criminal offence and that the accused should be considered to be innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, which are vital ingredients necessary to be proved to record a conviction.*

21. In State of Kerala and another vs. C.P. Rao (2011) 6 SCC 450, this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

22. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder."

19. Thus, from the above observations of the Hon'ble Supreme Court of India, it is evident that proof of demand of illegal gratification, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. It is further evident from the above observations that mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under sections 7 and 13(1)(d)(i)&(ii) of the Act, 1988.

20. In the teeth of above referred well settled law, I revert to the evidence of PW-1, PW-2 and PW-6 to examine whether demand and acceptance is established and proved.

21. PW-1 is an independent witness who has stated in his chief that in the evening of 14th October, 1995 appellant/accused came to his house and told him that on next date they would go on site. On next date, the PW-1 and appellant had gone to the site i.e. house of the complainant. He states that appellant has given receipt of transfer fees and documents to the house owner. He further states that on 16th October, 1995, he attended the office at 9.45 hours and he was doing his usual office work, there the appellant came to him and asked him to come on site with him. It is stated that he has gone to the house of Vargis i.e. complainant where the complainant had given Rs.8000/- to the accused Samatkar. He further states that accused Samatkar counted those notes on the request of Mr. Vargis and kept by him. Then officers of ACB came

and both hands of Mr. Samatkar caught by ACB Officers. Police recovered notes from the pocket of pant of Mr. Samatkar.

22. In the examination-in-chief thus, at no place the PW-1, has stated that the appellant had made demand of bribe or illegal gratification and on such demand, the amount of Rs.8000/- was paid.

23. It is pertinent to note that, PW-1 in his oral testimony further states that he cannot say for what amount Rs.8000/- was paid by Mr. Vargis as the talks between accused and Mr. Vargis on prior day were in English and I could not understand it.

24. Thus, in the evidence of PW-1 there is nothing to show that there was any demand of bribe by the appellant and the amount paid by the complainant to the appellant was towards the gratification.

25. PW-2 who is the panch witness, as regards demand has stated that Mr. Samatkar asked the complainant whether he had brought the amount from bank which he has to pay. The complainant answered in affirmative. He further states that the complainant and Samatkar had talked in English. The accused said to give amount to him. The complainant said that he would give the amount but his work should be done and his tax should be reduced.

26. In cross-examination of PW-2 says that Samatkar said to the complainant whether he had brought the amount told him on earlier date about tax. On said enquiry the complainant told that he had brought the amount from Bank.

27. Thus, there are contradictions in the oral testimony of PW-1 and PW-2 as regards demand and acceptance of bribe and same are fatal. In the circumstances, conviction cannot be based on such evidence.

28. Moving further, the PW-2 i.e. Panch No.1 in cross-examination has stated that on suggestion of Inspector Jaiswal, he made endorsement of correctness of panchanama Exh.35 and signed on it. This shows that, PW-2, signed panchnama Exh.35 without verifying its correctness.

29. As far as the evidence of PW-6 is concerned, in his cross-examination he has stated that the plot was in the name of complainant's son. He did not record statement of complainant's son as he was not at Nagpur. He further states that during investigation he did not try to record statement of complainant's son. He further states that during the investigation it is not transpire that complainant had entrusted the work of mutation to the accused Samatkar and Yawalkar.

30. He further states that son of complainant had not submitted the application to NMC for assessment of tax. He further submits that he had not called duty list of accused Samatkar and Yawalkar from NMC. He then states that, he had not obtained the appointment order of accused Samatkar from authority of NMC.

31. Thus, considering the evidence of PW-1, PW-2 and PW-6, on the point of demand and acceptance it can safely be said that prosecution has miserably failed to prove the demand and acceptance in this case.

Accordingly, the offence under Sections 7 and 13(1)(d) read with Section 13(2) of the Act, 1988 will not attract in this case against the appellant.

32. In the circumstances, I am of the considered view that the present appeal needs to be allowed for the reasons recorded herein above. Accordingly, I pass the following order.

i. The criminal appeal is allowed;

ii. The judgment and order dated 2nd August, 2005 passed by Special Judge, Nagpur in Special Case No.15 of 1997 is hereby quashed and set aside;

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

iv. His Bail Bonds shall stand cancelled.

v. The Muddemal Property be dealt with as per order of the learned Special Judge.

[ANIL S. KILOR, J.]

SACHINDANAND K NAIR

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