

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

CRIMINAL APPEAL NO.284 OF 2014.

(State of Maharashtra ..**Vs.** Rajesh Bansilal Agrawal)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Ms M. H. Deshmukh, APP for Appellant.
Shri A. A. Bhide, Advocate for the Respondent/Sole.

CORAM : AVINASH G. GHAROTE, J.

DATE : 7th JULY, 2022.

. The Appeal challenges the judgment dated 02.02.2013 passed by the learned Special Judge, Buldana, whereby the Respondent has been acquitted for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. Ms M. H. Deshmukh, learned Additional Public Prosecutor for the Appellant/State submits, that the PW-1 Sadanand Gaikwad, who has been examined before the learned Trial Court, has proved the demand as well as the acceptance, and therefore, the impugned judgment acquitting the Accused is incorrect and is liable to be quashed and set aside.

3. Shri Bhide, learned Counsel for the Respondent/Accused submits, that there has been an abject failure on the part of the prosecution witness to prove the material particulars necessary for bringing home the guilt to the Accused, and therefore, the impugned judgment has rightly been passed by the learned Special Judge, Buldana.

4. A perusal of the record indicates, that though a trial was conducted and the Respondent/Accused was charge-sheeted for the aforesaid offences, in the entire proceedings except for the PW-1 Sadanand Gaikwad, no other witness has been examined including the Investigating Officer. The complainant had passed away by the time the evidence commenced, and therefore, was not available.

5. Though, PW-1 Sadanand Gaikwad, who has been examined at Exh-37 is claimed to have proved the complaint (Exh-38), Panchanama-1 (Exh-39), the seizure of the shirt of the Accused at Exh-40, the seizure of the solution at Exh-49 and Panchanama-2 at Exh-42, however, a perusal of the evidence of PW-1 Sadanand Gaikwad, indicates the following material omissions.

“After effecting raid Mahale has not recorded my statement. I have not stated before police at the time of recording statement instruction was given in A. C. B. Office to the complainant after accepting bribe amount by accused to show signal by folding left sleeve of shirt. I have not stated before police at the time of recording my statement the complainant told me the person sat on backside on motorcycle is Rajesh Agrawal. I have not stated before police at the time of recording statement the accused asked to complainant whether amount of Rs.100/- is brought and complainant asked to accused whether amount ought to have pay and the accused said all person use to pay and complainant should also pay and, complainant answered in affirmative and, then accused opened Almira. I have not stated before police at the time of recording statement that after prepared

panchanama solution of sodium carbonate sprinkled on the inner right side shirt pocket of complainant and faint purple colour stains came out clear.”

6. This would clearly indicate, that there is material contradiction regarding the demand and the demand has not been proved, considering which, in absence of any other evidence on record, in my considered opinion, the learned Special Court, Buldana, has rightly found the testimony of PW-1 unsafe to be relied upon so as to base a conviction upon it. I, therefore, do not see any infirmity in the impugned judgment. The criminal appeal is without any merit and accordingly is **dismissed.**

JUDGE

TAMBE.

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