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

CRIMINAL APPEAL NO.180 OF 2007

Ramesh S/o Timaji Masram
Aged about 51 years,
R/o Karanja (Ghadge),
Tahasil : Karanja, District Wardha ... Appellant

// VERSUS //

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

Shri Akashay Sudame, Advocate for appellant
Shri S.M.Ghodeshwar, APP for the State / Respondent.

CORAM : ANIL S. KILOR, J.
DATED : 15th SEPTEMBER, 2022.

ORAL JUDGMENT :

This appeal takes exception to the judgment and order dated 26th April, 2007 passed by the learned Special Court, Wardha constituted under the Prevention of Corruption Act in Special Case No. 1 of 2000, convicting the appellant for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 (in short referred as "Act of 1988") and sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.1,000/- and in default to undergo further rigorous imprisonment for 30 days for the offence punishable under Section 7 of Prevention of Corruption Act, he is further sentenced to suffer rigorous imprisonment for the period of one year and to pay fine of Rs.1000/- and in default to undergo further rigorous imprisonment for three months for the offence punishable under Sections 13(1)(d) read with Section 13(2) of Prevention of Corruption Act.

2. The brief facts of prosecution case is that the accused at the relevant time working as a Senior Assistant with Panchayat Samiti, Karanja Ghadge and as such was a public servant within the meaning of section 2 of Prevention of Corruption Act. It is stated that complainant PW-1 was serving as Gram Sevak at Panchayat Samiti Karanja Ghadge, District Wardha and he was in dire need of money for meeting medical expenses of his ailing wife. The doctor has given him approximately expenditure of Rs.7500/- and as such he moved an application for withdrawal of said amount from his Government Provident Fund. It is further stated that the accused at that time was dealing with such application and hence PW-1 met him on 18th January, 1999, 18th February, 1999 and also in the month of March and April 1999.

3. It is further alleged that on all these occasions for forwarding the application of PW-1 the accused demanded Rs.200/- for writing the note sheet and for putting the application before the Block Development Officer. The complainant PW-1 again on 21st May, 1999, met the accused when he repeated his demand of Rs.200/-.

4. As the complainant PW-1 was not ready to pay the amount as bribe, he made a complaint to ACB and after completing pre-trial trap,

trap was conducted on 28th May, 1999. During the trap the accused accepted the amount of Rs.200/- towards gratification and on giving predetermine signal, the trap party caught hold the accused.

5. Thereafter, the offence was registered for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of Act of 1988. After completion of investigation, the papers were forwarded to the sanctioning authority and on grant of sanction to prosecute the accused, the chargesheet was filed. The charge was framed and it was read over and explained to the accused who pleaded not guilty and accordingly the trial was conducted.

6. The learned trial Court after marshelling and scrutinizing the oral as well as documentary evidence, passed the impugned judgment and order dated 26th April, 2007, convicting the appellant for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988, hence this appeal.

7. I have heard Shri Sudama, learned counsel for the appellant and Shri Ghodeswar, learned Additional Public Prosecutor for the State.

8. Shri Sudama, learned counsel for the appellant submits that demand is *sine qua non* to constitute the offence under the provisions of the Act of 1988. It is submitted though in this case the prosecution has failed to establish the demand and acceptance of illegal gratification by the appellant/accused, therefore, the conviction recorded by the learned trial Court is illegal and not sustainable in the eyes of law.

9. Shri Sudama, learned counsel for the appellant submits that PW-4 was the shadow witness and he did not support the case of the prosecution. He submits that as the PW-1 complainant is an interested witness, corroboration is required to establish the demand and acceptance of illegal gratification. In support of his contention, he has placed reliance of the judgments of Hon'ble Supreme Court in the case of *C.M.Girish Babu Vs. CBI, Cochin, High Court of Kerala*[1], *State of Maharashtra Vs. Dnyaneshwar Laxmanrao Wankhede*[2], *State of Punjab Vs. Madan Mohanlal Verma*[3], *B.Jayaraj Vs. State of Andhra Pradesh*[4], *P.Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and another*[5], *Mukhtiar Singh (since deceased) through his legal representatives Vs. State of Punjab*[6].

10. On the other hand, learned Additional Public Prosecutor supports the reasoning recorded by the learned trial Court while convicting the appellant. He submits that learned trial Court after examining the oral as well as documentary evidence, recorded detailed reasoning for such conviction and as the learned trial Court has not

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12009(3) SCC 779,

2. 2009(15) SCC 200,

3. 2013(14) SCC 153,

4 2014(13) SCC 55,
5. 2015(1) SCC 152,

6. 2017(8) SCC 136.

committed any legal infirmity or illegality, this Court may maintain the conviction.

11. Learned Additional Public Prosecutor submits that there is presumption under Section 20 of the Act of 1988 which operates against the accused and the burden lies on the accused to explain the money he received is not the bribe amount, but it was received for some other purpose. He submits that accused has failed to discharge his burden. Accordingly, he prays for dismissal of the appeal.

12. In the backdrop of the submissions made by the learned counsel for the appellant and learned Additional Public Prosecutor, I have perused the record and proceedings as well as the impugned judgment and order of the trial Court.

13. It is a well settled law that the demand is *sine qua non* to attract the offence under the provisions of the Act of 1988 and mere recovery of tainted money is not sufficient to convict the accused whereas corroborative and cogent evidence is required.

14. At this juncture, looking to the controversy involved in this case, I am of the opinion that it would be relevant to refer the Section 7 and 13 of the Act of 1988, which read thus:

> ***7. Public servant taking gratification other than legal remuneration in respect of an official act*** – *Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal*

remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

13. ***Criminal misconduct by a public servant*** *– (1) A public servant is said to commit the offence of criminal misconduct, -*
(a)…
(b)…
(c)…
(d) if he,-
(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage or
(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or
(e)…..

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

15. The Hon'ble Supreme Court of India while dealing with the law on 'demand of illegal gratification', in the case of *State of Punjab v/s Madan Mohan Lal Verma (supra),* has held thus:

> *"11. The law on the issue is well settled that 'demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person."*

16. In the case of *B. Jairaj ..vs.. State of Andhra Pradesh* (supra) while considering the issue whether mere possession and recovery of the currency notes from the accused is sufficient to hold that there was a demand of bribe, the Hon'ble Supreme Court of India has held thus:

"8. … *We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13 (1) (d) (I) and (ii) is concerned as 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 established.*

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13 (1) (d) (I) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."

17. Thus from the above referred judgments, it is clear that demand of illegal gratification is *sine quo non* for constituting an offence under the Act of 1988. It is further clear that mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable. Proof of acceptance of illegal gratification can follow, only if, there is proof of demand.

18. As held in the case of *Mukhtiar Singh V/s State of Punjab* (supra), by the Hon'ble Supreme Court of India that, the prosecution in

order to prove the charge under the provisions of Sections 7 and 13 of the Act, has to establish by proper proof, the demand and acceptance of illegal gratification and till that it is accomplished, the accused should be considered to be innocent and mere possession and recovery of the currency notes from the accused without proof of demand would not establish an offence under Section 7 as well as Section 13 (1)(d) read with Section 13(2) of the Act, evidence on record has to be scrutinized to find out whether foundational facts are established on demand.

19. In the teeth of above referred well settled principle of law, I revert to the evidence relating to demand and acceptance of illegal gratification. For this purpose, the oral testimony of PW-1 complainant and PW-4 Panch No.2 (shadow witness) is relevant.

20. PW-1 complainant in his oral testimony has deposed that he was working as Gram Sevek at Gram Panchayat Khairwada. His wife was suffering from stomach ache and waist. For her medical treatment expenditure of about Rs.7000/- was expected and therefore on 5th October, 1988 he applied to Block Development Officer for grant of loan from Government Provident Fund. He further states that on 18th January, 1999, he met Senior Assistant Masram, the accused/appellant who told him that by writing note sheet the matter would require to put before the Block Development Officer and for that he would require the amount of Rs.200/-. PW-1 further states that as he was unable to pay that amount, he told the accused his inability, thereupon the accused told PW-1 unless the amount of Rs.200/- is paid, the work will not be done.

Thereafter, the accused made demand of Rs.200/- whenever PW-1 met him i.e. 15th April, 1999 & 21st May, 1999 and on 24th May, 1999 PW-1 complainant lodged report with Anti Corruption Bureau and accordingly, the trap was conducted.

21. Oral testimony of appellant about the demand during the trap is relevant, PW-1 states that on 24th May, 1999 at 3.30 pm he and panch Pusdekar went to Masram. PW-1 asked Masram as to what happened to his work. Upon that accused said that he will finish his work and then he will speak with PW-1. Accused finished his work and then took out file regarding his GPF Loan from the cupboard. Accused asked Pusdekar as to why he had come. PW-1 says that he wants signature on the form of Khadi Gram Udyog. Accused told PW-1 that work of Pusdekar should be finished and he should allow to go. Accused told PW-1 that he will do the work of Pusdekar. Then Masram put the file of PW-1 on the table and came in Varandha. Then, Masram signaled PW-1 to let Pusdekar go. PW-1 signaled Pusdekar to go and accordingly he went away. Then PW-2 Marape came there. PW-1 pointed accused by his finger.

22. He further states that he and Panch No.2 were in Varandha, when accused came towards them and asked PW-1 whether Rs.200/- brought or gave that amount to him. Thereupon, PW-1 took out currency note by his right hand from his left chest pocket of his shirt and gave it to accused. The accused accepted those tainted notes and kept in

his heap pocket of his full pant. Thereafter, PW-1 came out and gave pre-determined signal and thereupon the trap party caught hold the accused.

23. Thus, from the above referred oral testimony, the prosecution has succeeded in bringing on record the case of the prosecution to the extent that the amount of Rs.200/- was accepted by the accused and before the amount was accepted, appellant asked the PW-1 whether PW-1 has brought the amount.

24. Since, the complainant PW-1 is an interested witness and as per the settled law the words "whether the amount is brought" or the fact of acceptance of amount, is not sufficient to establish the demand and acceptance of illegal gratification but further cogent and corroborative evidence is required, I proceed to examine whether any such corroborative evidence is brought on record by the prosecution to bring the guilt against the accused at home. In this regard, the oral testimony of PW-4 (Panch No.2) is relevant.

25. PW-4 in his oral testimony has deposed that panch no.1 and PW-1 complainant went to the office of Panchayat Samiti. PW-4 and trap party took their position in their vicinity. Panch no.1 returned to trap party and told that accused Masram suspected him. Then PW-4 was instructed to hear the talks between the PW-1 and accused and to witness the passing of money. PW-4 went to the office of Panchayat Samiti. He further states that accused was sitting on the chair. PW-1 went to accused and sat there for about 15 to 20 minutes. He further states that he did

not hear what accused was saying to the complainant. He further deposed that then Masram Babu stood up and from Varandha he was going towards toilet and PW-1 was behind him. He states that he was standing at Varandha and the accused did not say anything in Varandha. He further states that accused Masram and PW-1 complainant returned from toilet to a room of agricultural department and PW-1 came out and gave pre-determined signal.

26. Considering the oral evidence given by PW-4 in his examination in chief, the learned Additional Public Prosecutor has sought permission to cross-examine the said witness and accordingly he was cross-examined.

27. In his cross-examination PW-4 states that PW-1 enter into the room of the accused and after talking for some times they both come out from Varandha. He further admits that both stood infront of agricultural department and he was at a distance of 7 to 8 feets from them. He further denied that at that time accused told to the complainant whether the amount of Rs.200/- was brought and the same be given immediately.

28. Thus, from the examination-in-chief of the PW-4 and the cross-examination, the prosecution has failed to bring out any corroborative evidence as regards demand. The prosecution has not examined any other witness in support of demand and acceptance and from the above referred oral testimony of PW-1 and PW-2, it can safely be

said that the said evidence falls short to that in this case that the demand and acceptance has been proved by the prosecution.

29. As far as the presumption under Section 20 of the Act of 1988 is concerned, it is clear from the evidence led by the prosecution that the prosecution has failed to establish foundational facts and therefore, it cannot be said that in this case the accused has failed to discharge his burden to establish with reasonable probability that the money was accepted by him other than the motive or reward as referred to Section 7 of the Act, 1988.

30. Thus, in the light of the above referred discussion and the fact that the prosecution has failed to establish the demand and acceptance of the bribe amount by the appellant, no offence would attract in this case. Accordingly, the conviction recorded by the learned trial Court is illegal and bad in law. In the circumstances, I have no hesitation to hold that the impugned judgment and order dated 26th April, 2007 passed by Special Judge, Wardha in Special Case No. 1 of 2000 convicting the appellant is illegal and liable to be quashed and set aside. Accordingly, I pass the following order.

i. The criminal appeal is allowed;

ii. The judgment and order dated 26th April, 2007 passed by Special Judge, Wardha in Special Case No. 1 of 2000, is hereby quashed and set aside;

iii. The appellant is acquitted of the offence punishable under Sections 7, 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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