

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.39 OF 2012

Naresh Dasrao Shinde, **...APPELLANT**
Age-35 years, Occu-Service,
R/o. Omkareshwar Nagar Nanded,
Tq. Nanded, Dist. Nanded

VERSUS

The State of Maharashtra **...RESPONDENT**

AND

CRIMINAL APPEAL NO.40 OF 2012

Hanmant Venkatrao Kulkarni, **...APPELLANT**
Age-31 years, Occu-Service,
R/o. Shardanagar Nanded,
Tq. & Dist. Nanded

VERSUS

The State of Maharashtra **...RESPONDENT**

Mr. V. D. Sapkale, Senior Advocate i/b Mr. S. R. Sapkal, Advocate
for the appellant in appeal No.39/2012

Mr. Satej S. Jadhav, Advocate h/f Mr. Ganesh P. Shinde, Advocate
for the appellant in appeal No.40/2012

Mrs. P. V. Diggikar, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

RESERVED ON : 03rd MAY, 2023

PRONOUNCED ON : 08th JUNE, 2023

JUDGMENT:

1. Both the appeals are arising out of the same trial and the same judgment and hence are taken up together. The appellant in appeal No. 39/2012 is original accused No. 1 and the appellant in appeal No.40/2012 is original accused No.2. The judgment under challenge is the judgment passed by the learned Additional Sessions Judge, Nanded in Special (ACB) No. 01/2009 dated 27-02-2011. Both the accused persons are held guilty of the offences punishable under Section 7 read with Section 12, Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.2000/- in default to suffer rigorous imprisonment for one month each for the offence punishable under Section 7 r/w 12. They are directed to suffer rigorous imprisonment for three years and to pay fine of Rs.2000/- in default to suffer rigorous imprisonment for one month each. Sentences are directed to run concurrently.

2. Story of the prosecution in short is that one Ganesh

lodged a complaint with the Anti Corruption Bureau, Nanded (hereinafter referred to as 'the ACB'). It is alleged that the complainant was appointed at Loha Police station. However his service would be at Police Headquarter, Nanded. Due to some family problem he made an application to Inspector of Loha Police Station to take him back to Loha Police Station. He also gave a copy of the application to Dy. S. P., Nanded on 03-10-2007. Dy. S. P. made an endorsement to the effect that the complainant be sent back to Loha Police Station directing accused No.1 to prepare an order. When the complainant approached accused No.1 he demanded bribe amount of Rs.1500/- for issuing an order.

3. On the basis of complaint, ACB decided to lay a trap. At the time of trap the complainant and the panch witness went to the police station. They were directed to give signal if the amount is demanded and accepted by the accused. Raiding party was also following the complainant. Raiding party reached at the office of Superintendent of Police at about 05.10. pm. The

panch and complainant went to the office of the accused. Accused No.2 came out of the office. The complainant gave signal. After alleged trap the investigation was carried and charge-sheet came to be filed. Sanction was also obtained. The learned Special Judge framed the charges for the offences punishable under Sections 7 r/w 12, 13(1)(d) & 13(2) of the Prevention of Corruption Act.

4. The prosecution examined total five witnesses. PW-1, the complainant in his evidence deposed that he made an application to post him at Loha. He made an application to Dy. S. P. on 03-10-2007. Dy. S. P. called accused No.1 and asked him to prepare an order of posting complainant at Loha Police Station. Accused No.1 came out of the office and told the complainant to pay Rs.1500/- towards the said work. The informant told that he has got the amount of Rs.500/- only. The accused then told to pay at least Rs.1500/- for issuing order. The complainant therefore went to the ACB office Nanded and narrated the incident. The Officer at ACB called two persons in

the ACB office working in the B & C office. The officer explained the procedure of the raid. Pre-trap panchanam was also prepared at around 02.30 to 04.55 pm. As decided the raiding party alongwith the complainant and the panch went to the Police Headquarter. Panch and the complainant went in the S. P. Office. They entered in the S. P. Office. He wished accused No.1. Accused No.1 wished him back. The complainant asked him about his order. On that accused No.1 asked as to whether the complainant has brought amount of Rs.1500/- by telling that an order is ready. Accused No.1 asked the complainant to wait and asked him to sit in the chair. Accused No.1 looked as to whether any one is there and called accused No.2 and asked him to go out alongwith complainant and collect the amount of Rs.1500/-. The complainant, panch and accused No.2 therefore went out of the office near Pimpal tree. Accused No.2 demanded an amount of Rs.1500/-. The amount was given to accused No.2. Accused No.2 counted the amount with both the hands. On that this witness gave signal to the raiding party. On receiving signal the party apprehended accused No.2. Thereafter the hands were

seen under ultra rays. Anthracene powder was found on the hands of the complainant. Spot panchanama was prepared.

5. In the cross-examination he deposed that he had worked in ACB Office for three years. He joined the police department in 2002 and prior to that he was in SRP. Then he deposed that because of the default in report of one PI Parande the complainant was posted at Police Headquarter. One PI Kolekar had given report that he has given up habit of liquor and it is thereafter the complainant was posted at Loha Police Station. He accepted that in the hall where the amount is paid there were eight to nine persons. In the year 2005 he was posted at Loha Police Station and since 01-03-2010 he was working at Police Headquarter.

6. So far as PW-2 Sudhakar Ambulgekar a panch witness is concerned he deposed in his chief about demand of bribe by the accused. He stated that accused No.1 asked accused No.2 to collect the amount from the complainant. The

complainant gave an amount of Rs.1500/- and gave signal to the raiding party. The raiding party came and caught hold the accused No.2. On testing the hands of accused No.2 under ultra violate lamp it shown gliterance of anthracene powder. In the cross-examination he accepted that in the explanation the accused No.1 had explained that he had no right to issue the order. He accepted that place where the accused No.1 was sitting is not shown in spot panchanama. He also accepted that there were many people sitting in the hall of the S. P. Office. He accepted that conversation can be heard by neighboring clerk. He accepted the suggestion that though the complainant had the amount of Rs.1700/- with him he paid only amount of Rs.1500/- out of the same.

7. PW-3 Asaram, the Investigating Officer deposed about the decision of laying of the trap and procedure followed thereafter. In the cross-examination he accepted that no panchanama was prepared of the fact that the panch No.1 and complainant had gone and about acceptance of the bribe

amount by accused No.2. He accepted in the cross that they could see all the activities of accused No.2 and the complainant from outside. He accepted that there is no record about the happenings between completion of spot panchanama and registration of offence in the police station. His evidence about acceptance of Rs.1500/- is in contravention to the evidence of PW-2.

8. PW-4 is the sanctioning authority. In his evidence he only stated that he had gone through the papers of the proposal of sanction and found that case is made out to accord the sanction for prosecution by applying his mind. In the cross-examination he stated that he does not remember whether transfer orders were allotted to the administration branch. He further accepted that he has not gone through the papers. Thus, this is the only evidence of the prosecution.

9. On this, Mr. Sapkal, learned senior counsel submits that in this case the prosecution could not produce satisfactory

evidence to prove the guilt of the accused. He submits that the conduct of the complainant appears to be highly unnatural. There is no corroboration to any of the evidence. No specific case is made out to hold the accused guilty of the offences. He submits that it was necessary for the prosecution to prove the time and place of the offence. In this case both these things are absent. Transfer was already effected on 03-10-2007. Thus on day of incident no work was pending. He submits that vital documents are not exhibited by the prosecution. Prosecution could not establish as to why there is difference of amount of demand and amount of payment. It has come on record that the complainant was possessing the amount of Rs.1700/- however, why he had paid only Rs.1500/-, where he made bifurcation of the amount is not proved. The Investigating Officer could not explain this aspect. He further submits that even no panchanama is prepared by the Investigating Officer as appears from his cross-examination. So far as the sanction is concerned he submits that in the cross-examination sanctioning authority clearly accepted that he has not gone through the papers. So far

as the evidence of PW-5 is concerned he submits that his evidence is not material. This witness is not aware about vital aspects. PW-5 also deposed that accused has no reason to prepare any order etc.

10. Learned advocate Mr. Jadhav in Criminal Appeal No.42/2020 submits that accused No.2 was only working as a peon (Pattewala) Class-IV on probation. He had no knowledge in respect of demand etc. He was simply told by the accused No.1 to go alongwith complainant and to take amount from him. He points out from para 24 from the judgment of the trial court that the court has also discussed that accused No.2 was asked by accused No.1 to collect the amount. Reasoning that accused No.2 maintained a silence is sufficient to accept the guilt is totally perverse. The court had recorded finding that accused No.2 had knowledge of the transaction is also without any evidence. He submits that thus the knowledge to accused No.2 cannot be presumed unless specifically proved by the prosecution. The complainant is also a police officer. So his

complaint should have been specific. He submits that at the most the prosecution has shown that accused No.2 was present at the time of incident and nothing more.

11. Learned APP in reply submits that the prosecution has proved its case by sufficient evidence. Demand and acceptance are proved. Sanction order is not at all disputed. From para 8 of the judgment he submits that accused No.2 has accepted the amount is already proved. In 313 statement in his submission it is seen that prosecution has established its case. He further submits that the evidence of PW-1 is corroborated by the PW-5. He submits that on the day of incident order was not issued and thus work was pending. He submits that learned trial court has thus rightly considered the case and has found accused persons guilty of the offences.

12. Considering the entire evidence this court finds that prosecution has not proved exact time and place of incident which is material. On the point of sanction PW-3 in his cross has

not accepted that he has not gone through the evidence. However, looking at the chief which runs in hardly 8-10 lines he has not deposed as to how he came to conclusion that case was fit for grant of sanction to prosecute. He has also not stated that as to on what material he formed the opinion about the sufficiency of the evidence collected by the prosecution to prosecute the accused person. There is no proper corroboration found to the evidence of PW-1 i.e. complainant considering that he is also from the police department. So far as accused No.2 is concerned the prosecution has not proved that he was present when the demand of bribe was made to show that the amount was paid towards the bribe. PW-2 has also accepted in his evidence that accused No.2 was not present when conversation about alleged bribe amount took place between the complainant and accused No.1. Thus, the question of holding accused No.2 guilty does not arise as there is no demand and there is also no knowledge. This court finds force in the submission that the prosecution has failed to prove the application of mind by sanctioning authority. The learned advocate for the respondent

had rightly placed reliance on the judgment in the case of Virendranath Vs State of Maharashtra reported in AIR 1996 SC 490 wherein the Hon'ble Apex Court has held that accused No.1 had told the accused No.2 to accept the money when the complainant would give him. Thereafter the complainant gave money to accused No.2 as per the direction of accused No.1 and signal was given. In that case the Hon'ble Apex court held that accused No.2 had no knowledge of the demand of bribe amount, he could have received amount innocently from the complainant at the asking of accused No.1. He further relies on the judgment in the case of K Subba Reddy Vs State of Andhra Pradesh reported in AIR 2008 8 SC 106 it was held that accused was not guilty of the offence under the Corruption Act as there was no evidence to show that accused had even knowledge that the money that was paid was bribe amount. In this case one more factors needs to be considered is that complainant himself is a police personnel and naturally accused No.2 had no reason to ask accused No.1 as to why amount is to be given or to doubt it.

13. Mr. Sapkal, learned senior counsel placed reliance upon the judgment in the case of Ambalala Motibhai Patel Vs State reported in AIR 1961 Gujrat 1 in support of his submission that the prosecution must establish that the test for detection of anthracene powder had been properly made and had yielded positive results.

14. This court finds that learned trial court has accepted the case of the prosecution without there being sufficient evidence on record. The court has not considered that no transfer order was required as it was not the case of the transfer and turning down the submission on that aspect by the accused. The learned court below has also further erred in holding that the prosecution has proved that sanction was granted by application of mind. He did not accept the defense of accused No.2 saying that under 313 statement accused No.2 answered that complainant thrust the amount in his hand and held that defense appears to be after thought. In fact it was necessary for the prosecution to prove the positive knowledge to accused

No.2. Sole statement under 313 cannot be used to convict the accused person in absence of sufficient evidence on record.

15. It was necessary for the prosecution to prove the positively that sanctioning authority had applied his mind. Considering the judgment in the case of CBI VS Ashok Kumar Aggrawal reported in 2007 (10) SCC 736 this court finds that the prosecution has totally proved the sanction. Thus this court finds that impugned judgment deserves to be quashed and set aside. Hence, the following order:-

ORDER

- a] Both the criminal appeals are allowed.
- b] The impugned judgment and order dated 27-02-2011 passed by the learned Additional Sessions Judge, Nanded in Special (ACB) No. 01/2009 is hereby quashed and set aside.
- c] The appellants in both the appeals are

(16)

criapl39.12

acquitted of the offences punishable under Sections 7 read with Section 12, Sections 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. The amount, if any, paid by the appellants be refunded to them.

d] Appellants to furnish bail bonds with sureties as per Section 437-A of the Code of Criminal Procedure, 1973.

[KISHORE C. SANT, J.]

VishalK/criapl39.12