

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Appeal No. 558 / 2003

Mohammed Ali Khan Mehboob Ali Khan,
Age 56 years, Occu. Service,
R/o. H.No.1/30/23, Chelipura,
Aurangabad.

...Appellant

Versus

The State of Maharashtra,
Copy to be served on Public Prosecutor
High Court of Judicature at Bombay,
Bench at Aurangabad.

...Respondent

Mr. Joydeep Chatterji, Advocate for the Appellant.
Smt. P. V. Diggikar, APP for Respondent/State.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 18th OCTOBER, 2022.

PRONOUNCED ON : 6th JANUARY, 2023.

JUDGMENT :

1. This appeal is against the judgment and order dated 16.07.2003 passed by the learned Special Judge, Aurangabad in

Special Case No. 17/1998, whereby the present appellant-accused is held guilty of the offence punishable under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 ('P.C. Act' for short). He is sentenced to suffer Rigorous Imprisonment (R.I.) for six months and to pay fine of Rs.250/- in default to suffer R.I. for fifteen days for the offence under Section 7 of P.C. Act. He is further sentenced to suffer R.I. for one year and to pay fine of Rs.250/- in default to suffer Simple Imprisonment (S.I.) for fifteen days for the offence under Section 13(1)(d) read with 13(2) of P.C. Act. Both the substantive sentences are directed to run concurrently.

2. The story of the Prosecution in short is as below:

The present appellant/accused was working as a Maintenance Surveyor in the City Survey Office, Aurangabad. The complainant namely Manoj Gadia purchased house (CTS No.5725) at Nagarkhana, Aurangbad from one Jairaj Pandey on 19.08.1997. The complainant applied to City Survey Office to record his name in P.R. card by taking mutation entry on the basis of sale-deed and for that he met the appellant, where it is

alleged that the appellant demanded Rs.2000/-. On 24.11.1997, complainant again met the appellant who told him to come on 26.11.1997 with Rs.1000/-. The complainant therefore, approached the office of ACB, Aurangabad and lodged a complaint against the appellant. On receipt of the complaint, ACB decided to lay a trap on the same day. After trap and completing investigation, the prosecution came to be launched against the appellant.

3. The defence of the accused is that he has not demanded and accepted any amount towards bribe and he is falsely implicated in the offence.

4. There are total five witnesses examined by the prosecution. The first witness is sanctioning authority namely Pandit s/o Ramji Kanekar (PW-1), Deputy Director Land records, Aurangabad. He was authorised to appoint and remove a person to the post of Surveyor under Section 9(1) of the M.L.R. Code. He also stated that there is a notification issued by the State of Maharashtra dated 19.06.1997 under the

provisions of M.L.R. Code. He deposed that he received the papers of investigation of Crime No.69/1997 of City Chowk Police Station. He studied those papers and he was satisfied that a case is made out to accord the sanction and accordingly accorded the same. He proved the sanction order at Exhibit-12.

5. In the cross-examination, he stated that the maintenance surveyor is empowered to propose the mutations before the City Surveyor. Thereafter he has to issue a 15 days notice to the parties, after the City Survey Officer permits him to record the mutations. He accepted that no such notice in form no.4 was issued by the City Survey Officer. He further stated that he did not know whether there was dispute about City Survey No.5725 of Shri. Pande. He denied the suggestion that he has not studied the papers of investigation and accorded a sanction mechanically.

6. The second witness is Complainant namely Manoj Amrutlal Gadiya (PW-2). In his deposition, he stated that he had purchased a house bearing CTS No.5725 Nagarkhana Galli

adm. 105.7 Sq. Mtrs. He had moved an application in City Survey Office for mutation of the house. On 19.11.1997, he met one Mr. Khan in the City Survey Office, who demanded Rs.2000/- for the work. The complainant agreed to pay Rs.1000/- to him. On 24.11.1997, he again met Mr. Khan, who told him that the complainant will have to incur the expenses of Rs.1000/- and called him with money on 26.11.1997. The complainant therefore lodged the complaint with ACB, Aurangabad. He proved the contents of the complaint Exhibit 26. He further deposed that Shri. Borse - Investigating Officer called two Government Servants to act as panchas. He narrated the complaint to the panchas. He was instructed to hand over the currency notes to Mr. Khan only on demand by him. Pancha was also instructed accordingly. A pre-trap panchnama was drawn. After explaining of everything in office of ACB, the raiding party marched to the shop of complainant namely Ambika Stores. Complainant with Panchas sat in his shop as per instructions. At about 07:15 pm., Mr. Khan came on Luna Moped to the shop. Complainant with panchas took him to Mewad Hotel for tea. After having tea, before any

demand, Complainant took out tainted notes and put the same in the bag lying on the table and told that he kept money in the bag. Thereafter, complainant immediately gave signal, upon which, raiding party came in the hotel and caught hold of Mr. Khan. Complainant told that the amount was kept in the bag. However, he further specifically deposed that the accused sitting in the Court room is not Mr. Khan against whom complaint was made. He stated that he had met Mr. Khan in City Survey Office on 2 to 4 occasions and thereafter he met him twice. He also stated that he suspected identity of the Accused saying that some wrong person is being prosecuted. At this stage, Prosecution sought permission and learned APP was permitted to put leading questions. In the answers, he stated that Mr. Khan was the only Surveyor of the area. A complaint was lodged as there was demand of a bribe. He specifically stated that the accused is not the same person, to whom Complainant had met as Mr. Khan in the Court. He deposed that at the time of trap, there was no demand from Mr. Khan. He again stated specifically that the person sitting in the Court room as accused, is not the same Mr. Khan.

7. In cross-examination by the defence lawyer, he stated that he had given a post dated cheques to his vendor. He does not know whether vendor was given a notice and he had come in City Survey Office. He accepted that one cheque was bounced and therefore he paid the amount of that cheque with interest in cash to the vendor. He denied his signature on Exhibit-17. He denied that he had lodged the report on 24.11.1997.

8. The third witness is Narayan Mahadu Wani (PW-3), who acted as a panch. He stated that Shri. Borse, P.I. (I.O.) ACB, Aurangabad called him to act as panch. He was introduced to one person namely Manoj Gadia. This panch was directed by Shri. Borse to visit City Survey Office with the Complainant and meet Mr. Khan. This witness was further directed to open a talk and fix a place and time for the payment of money. In his deposition, he stated that he alongwith Complainant went to City Survey Office by a jeep. They reached the office at about 04:55 pm. Complainant wished one person by calling him as Khan Saheb. Thereafter, they went to the canteen there Complainant asked about his work. Mr. Khan told him that he

would issue the notice to vendor on the next day. Complainant introduced this witness as his brother-in-law and told the accused that he did not have full amount and requested to settle it suitably. He further told the accused that he would pay Rs.500/- at once and remaining Rs.500/- on the next day. Whereupon Mr. Khan told that he would come at the shop of the complainant at about 07:00 to 07:30 pm. of the same day. This witness narrated the above incident to the Investigating Officer and then returned to ACB Office. It was then decided to lay a trap in the evening at about 07:30 pm. Accused came to the shop of the Complainant, who offered him a tea. Khan told to come outside pointing towards Gulmandi area. Thereafter, this witness alongwith Complainant and Khan went to Mewad Hotel. Complainant ordered for tea and asked Khan about his work. On which, Khan told that he would issue notice in form no. 4 on the next day and asked whether complainant had brought Rs.500/-. On saying yes, Mr. Khan demanded amount to complainant, who took out the tainted notes and held those before Khan. Khan took out the black bag and told the Complainant to put those notes in the said bag. Complainant

asked him to count the money. Then Khan said there was no need to count and told him to put the money in the bag. Complainant kept those notes in that bag and went out of the hotel and gave signal. On receiving signal, Investigating Officer with other members came there and asked the complainant, who received the money? Complainant pointed out towards Mr. Khan. Thereafter the usual process was followed. The hands of accused were tested in the ultra violet lamp.

9. In the cross-examination, he stated that this witness has not signed the complaint to show that he has gone through the complaint. He had never seen accused prior to the date of trap. He deposed that he has seen the accused for the first time in the Court thereafter. He further deposed that he had not seen the accused at the time of verification in the shop and thereafter in the hotel. To the suggestion that at the time of verification, the accused did not ask for the amount of Rs.1000/-, this witness answered saying that it is true. He also further accepted the suggestion that the accused did not tell

complainant that he would issue notice on the next date. Certain portion in the statement recorded by the police, also was disowned by this witness.

10. The another panch is examined as PW-4 namely Arvind Shivram Girgosavi, who was serving as Instructor in Land Record office at the relevant time. He deposed that on 01.10.1997, Mr. Bhandurge - City Survey Officer, Aurangabad had proceeded on medical leave for fifteen days and therefore he was working incharge. The accused in his place was serving as Maintenance Surveyor consisting of Nagarkhana Galli area. On 15.11.1997, the accused produced before him a proposal for the mutation of the city survey. After inspecting the same, this witness ordered to issue notices in form no.9 to record the name of the land owner and this was done by the accused. Till 04.12.1997, the accused had not issued notices in the above matter. This witness mainly deposed in chief about the mutation entry and the procedure followed for the same. This witness mainly through the prosecution deposed that the accused was the person, who was to make the compliance to

record the mutation entry.

11. In the cross-examination of PW-4, this witness deposed that the notices are required to be issued and if the objections are received then those are to be decided by the City Survey Officer after those are referred by Maintenance Surveyor. The Maintenance Surveyor is not authorised to certify the mutation. The power to certify the mutation entry is vested in the City Survey Officer. On 04.12.1997, the accused was produced by the ACB with the file. He denied the suggestion that there were two Maintenance Surveyors in the office. Thus the accused could not bring on record that there was any other person also working as Maintenance Surveyor.

12. The last witness is Ashok Ganpat Borse (PW-5), who was the Investigating Officer in the case. In the chief, he stated that the panch Mr. Wani (PW-3) told him that a person with golden hair and in safari had received the money at the time of trap. Thereupon he caught hold his hands. On asking him about the said person? He told this witness, the name of that person as

Mohd. Ali Khan Maheboob Ali Khan. He also told that the said person having a bag and money was kept in the said bag. The members of the squad and the accused were not found carrying the blue shining of anthracene powder. The notes were taken out from the bag since people gathered around. After that the raiding party went to the office alongwith accused. The panch produced the notes in the office, on which blue shining was seen.

13. In the cross-examination, it is brought on record that the complainant never had told the portion mark A and B in his statement. The physical appearance of the accused was recorded in the arrest panchnama. This witness did not ascertain the whereabouts of Majit Khan shown in his identity card. He denied the suggestion that the bag was not of the accused and the tainted notes were not put at the instance of accused and therefore the bag is not attached. He accepted that he did not interrogate one Vijay Mundada. He denied the suggestion that the had filed a false charge-sheet against the accused.

14. After evidence and trial, the learned Sessions Judge found that the sanction is properly accorded. The learned Court below held that since there was only one Maintenance Surveyor and therefore it is only this accused, who had reason to accept the money and it has to be this accused only, who accepted the amount. The panchas and Investigating Officer stated that accused is the person, who was caught red handed in the hotel, while accepting the amount from the complainant and thus the accused is properly identified. The Court also accepted that the trap was successful and the accused was found to have accepted the bribe amount. The learned Sessions Judge thus held accused guilty of the offences and convicted him and awarded sentence. It is against this judgment the appellant has approached this Court. The learned Advocate for the appellant submits that the identity of the accused itself under doubt. In the panchnama, there is no proper description given of the accused. The power to take mutation entry and to survey the same was not with the accused. The panch witness no.3 clearly stated that he had not seen the accused after the trap, he had seen him only in the Court thereafter. The story of the

prosecution that the amount is given without any demand. It is submitted that the complainant is not a reliable person and therefore his evidence cannot be relied upon. In the evidence of panch witness, he had also said that the word as unknown person appears in the panchnama and this creates a doubt as this witness had seen the person, who had made a demand at the time of demand verification panchnama. There was no question to mention in the panchnama as unknown person. It is further submitted that the accused is falsely implicated and therefore his conviction cannot be upheld.

15. Learned APP submits that though PW-2 did not identify the accused and therefore was declared hostile, the identity of the accused is very well, established through the evidence of PW-3 and 4. In paragraph no.8 of the cross of PW-3, he has identified the accused. He invited attention to the observations by the learned Sessions Court. He submits that without demand there was no reason for the complainant to put the amount in the bag belonging to the accused. He submits that though the complainant has turned hostile, still through the evidence of

other witnesses the guilt is clearly proved. Learned APP further submits that PW-3 has also proved the demand of amount by the accused, which is accepted. The amount is found in the bag belonging to the accused person. He further submitted that the file in respect of work of the complainant was found in the house of the accused. All these things clearly establish that the accused had demanded a bribe and has accepted the same.

16. In this case, the judgment reported in 2015 ALL MR (Cri) 4551 (S.C.) in the case of **N. Sunkanna Vs. State of Andhra Pradesh**, where the facts are to sum extent identical to this case would be helpful. In the said case, the complainant was declared hostile. It was further held that in absence of proof of demand, evidence of recovery and possession of tainted currency notes will not bring home the offence under Section 7 or Section 13(1)(d). The Hon'ble Apex Court has also held that to raise presumption under Section 20, prosecution needs to prove the acceptance of illegal gratification. The acceptance can be said to be acceptance only if there is a proof of demand.

Paragraph No.6 of the said judgment is reproduced below.

“6. The prosecution examined the other fair price shop dealers in Kurnool as PWs 3, 4 and 6 to prove that the accused was receiving monthly mamools from them. PWs 4 and 6 did not state so and they were declared hostile. PW-3 though in the examination-in-chief stated so, in the cross-examination turned round and stated that the accused never asked any monthly mamool and he did not pay Rs.50/- at any time. The prosecution has not examined any other witness present at the time when the money was demanded by the accused and also when the money was allegedly handed-over to the accused by the complainant. The complainant himself had disowned his complaint and has turned hostile and there is no other evidence to prove that the accused had made any demand. In short there is no proof of the demand allegedly made by the accused. The only other material available is the recovery of the tainted currency notes from the possession of the accused. The possession is also admitted by the accused. It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since demand of illegal gratification is sine-qua-non to constitute the said offence. The above also will be conclusive insofar as the offence under Section 13(1)(d) 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. 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. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reference may be made to the two decisions of three-Judge Bench of this Court in B. Jayaraj vs. State of Andhra Pradesh [(2014) 13 SCC 55] and P. Satyanarayana Murthy vs. The District Inspector of Police and another [(2015 (9) SCALE 724):[2015 ALL SCR3171]].”

. Thus, considering the ratio of the judgment, it is clear that in this case also prosecution has utterly failed to prove the demand by the accused. The prosecution has also not proved that the bag from which tainted notes were recovered, belong to the accused. Thus, on this count, the prosecution failed to prove the guilt of the accused/appellant.

17. Considering that the above evidence and the discussion, it is clear that at the time of actual trap, there was no demand of

the bribe amount by the accused or Mr. Khan. The identity of the accused itself is under doubt. PW-3 has clearly accepted in his evidence that he did not see Mr. Khan prior to the incident. Therefore the verification process also becomes doubtful. Had PW-3 seen the accused at the time of verification process, he would not have deposed that he saw the accused for the first time in the Mewad Hotel. As it is the amount was kept in the bag allegedly belonging to the accused is not attached by the Investigating Officer. The accused person was not authority to sanction the mutation entry. When the allegation was that the accused accepted the amount by directing the complainant to put the said amount in the bag, then it was very much necessary for the Investigating Officer to attach the said bag and to prove the said bag belong to the accused person. In the evidence of Investigating Officer, it has come that he did not attach the bag, in which the amount was allegedly kept. Thus, it is clear that the prosecution has not proved the guilty of the accused beyond reasonable doubt. The accused clearly come with the case that he has never demanded the amount and he had no power. Thus the fact of the demand is not proved.

There is thus no question of acceptance of amount.

18. Considering all the above position, this Court finds that the prosecution has failed to prove the guilt of the accused beyond the reasonable doubt. The appeal therefore succeeds. Hence the following order.

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The judgment and order passed by the learned Special Judge, Aurangabad in Special Case No. 17/1998 dated 16.07.2003 is quashed and set aside.
- (iii) The appellant is acquitted of the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.
- (iv) Amount of fine deposited in the Trial Court be refunded to the Appellant.
- (v) Bail bonds of the Appellant stand cancelled.

- (vi) Appellant to furnish fresh bail bonds with sureties as per Section 437-A of the Code of Criminal Procedure, 1973.

19. With this, the Criminal Appeal is disposed off.

[KISHORE C. SANT, J.]

NAJEEB..