

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

CRIMINAL APPEAL NO. 576 OF 2017

The State of Maharashtra, Through Dy. Superintendent of Police Anti Corruption Bureau, Ahmednagar, Dist. Ahmednagar	...APPELLANT (Ori. Complainant)
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VERSUS

Pravin Namdeo Shinde, Age-32 years, Occu- Service As Assistnat Lineman, MSEB, R/o. Sainagar, C/o. Shri Date, Near Virbhadrha Mandir, Manmad Pune Road, Rahata, Tq. Rahata, Dist. Ahmednagar	...RESPONDENTS
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Mrs. P. V. Diggikar, APP for the appellant/State
Mr. L. V. Sangit, Advocate for the respondent

CORAM : KISHORE C. SANT, J.

RESERVED ON : 20th October, 2022

PRONOUNCED ON : 09th January, 2023

JUDGMENT:

1. The State has filed this appeal challenging judgment and order passed by the learned Additional Sessions Judge, Koparagaon in Special Case No. 75 of 2014 dated 28-03-2016. By way of impugned judgment and order the respondent came

to be acquitted of the offences punishable under Sections 7, 13 (i)(d) read with Section 13 (2) of the Prevention of Corruption Act, 1988. The prosecution was lodged against the respondent who was working as Lineman in MSEDCL for alleged demand of bribe for giving electricity supply to the complainant.

2. The complainant- PW-1- namely Nivrutti Paraji Gavhane lodged a complaint with the Anti Corruption Bureau, Nashik on 26-12-2013 stating that the accused had made demand of money for giving electricity supply. After receipt of complaint a trap was arranged. It is alleged by the prosecution that this respondent accepted amount of Rs.7,000/- from the complainant. In support of prosecution, the prosecution has examined five witnesses. PW-1 Nivrutti Gavhane a complainant, PW-2 Vasant Ughade shadow panch, PW-3 Dattatraya Gosavi, Executive Engineer who granted sanction to prosecute the accused, PW-4 Sarika Ahirrao Investigating Officer and PW-5- Vijay Murtadak who filed a charge-sheet and who drew panchanama of the spot.

3. PW-1 in his deposition stated that he is having land Gut No. 227 and 228, adm. 2-Acres 7-Gunthas at village Dherde Korhale. He was having electricity connection for his motor pump in the name of Bhimraj Ranganath Dube. There was arrears of bill of Rs.45,000/- for electricity consumption. As the arrears were not cleared one Aute, Junior Engineer disconnected the electricity supply. On 23-12-2013 the complainant went to Shri Aute requesting for re-connection of the electricity supply. The complainant with the help of Aute and the present accused took electricity supply by putting hook on the high tension wire. Thereafter, Aute asked the complainant to pay amount of quotation of Rs.5,200/- and he demanded Rs.10,000/- towards bribe. He further deposed that the accused took away the starter, wire, panel board that was used by the complainant by taking illegal electric supply on 21-12-2013 and therefore, the complainant had lodged the complaint. It has come in his evidence that after giving the complaint with the Anti Corruption Bureau Office, he made phone call to Aute from the

spot of canal wherein it revealed that Shri Aute was on leave and therefore he told the complainant to meet the accused. Upon that the complainant met the accused. He was given voice recorder by the ACB Officer-PW-4 for recording conversation. The complainant went with one Gaikwad and thereafter the accused told the complainant, he will get back his material like starter, cable after paying Rs.7,000/-. Accused thereafter accepted the amount and counted the same. On accepting of amount by the accused a single was given to the raiding party which came immediately on the spot and caught hold the accused person. Amount was taken from the pant pocket of accused.

4. In the cross-examination this witness accepted that on 21-12-2013 a Squad lead Aute Officer had seized the articles which were used for getting illegal supply from Gut No. 228 by drawing panchanama. He further accepted that when alleged demand was made this accused was not in the office. He further accepted that Aute had told him that he will file case against the

complainant for theft of electricity and for that purpose Aute had demanded Rs.10,000/-. He accepted that there were two quotations. One was of Rs.5,200/- for 3 hp motor and another was of Rs.1,800/- for conducting and giving testing report. Further he accepted that there was bill of Rs.8,000/- given to the complainant for illegal consumption of the electricity etc. This witness proved the complaint that was lodged with the Anti Corruption Bureau.

5. PW-2 Vasant Ughade who acted as a panch in his deposition stated that he was working as a Clerk in the Finance Department of Zilla Parishad, Nashik. This witness agreed to act as a panch as per direction of his superior. He went alongwith complainant on motorcycle to one Gund Workshop and made inquiry about the accused. There was a talk between accused and complainant about return of articles those were seized by Aute and about new connection. He stated that about verification panchanama Exh.24 was prepared. The raiding party proceeded for a trap at around 6.45 to 7.00 in the evening.

They reached to Gund Workshop and halted there for sometime. After sometime, the accused came there. The complainant and accused again had a talk for sometime. The complainant thereafter handed over 7/12 extracts and other documents to the accused and at that time the accused demanded bribe of Rs.7,000/-. The complainant took out a bundle of currency notes by his right hand from his left hand shirt pocket and handed over the same to the accused. The accused accepted the currency notes by his right hand and thereafter counted the notes by his both hands and kept the notes in his watch-pocket of trouser. The complainant gave signal and on that the raiding party and PW-4 the Investigating Officer came to the spot. Police Inspector asked this witness as to who accepted the bribe amount and where it is kept. This witness pointed out his finger towards the accused by telling that he has accepted bribe amount and same is kept in watch-pocket of his trouser. Another member of the raiding party namely Dalvi caught hold both hands of the accused. The Investigating Officer introduced the raiding party members to

the accused. The Investigating Officer asked one Sunil Pawar to take out the amount from the watch-pocket of the accused and put it in the khaki envelope. Photographs were snapped of the panch of taking the amount from the watch-pocket of the accused and later on the procedure was followed. He deposed that notes were found showing the bluish shining under the ultra-violet rays. Even the photographs were snapped of the currency notes etc. This witness proved the pre-trap and post-trap panchanama.

6. In the cross-examination, PW-2 accepted that the complainant did not tell the raiding party of the ACB Office about the arrears of electric bills of Rs.45,000/-. There was no discussion about disconnection of the electric supply for arrears of Rs.45,000/-. In the complaint there was a reference about Junior Engineer Aute. He accepted that the starter, meter and other material, panel board of the complainant were seized by Aute because of theft of electricity. However, same was not informed by the complainant. This witness shown ignorance

about place of voice recorder and anthracene powder. He accepted that he saw the accused for the first time at about 4.45 to 5.15 pm and before that the Investigating Officer had given instruction to panch and the complainant and Gaikwad. He did not remember that when he met the accused. The Investigating Officer in his cross states that when this witness and other panch came to Gund Workshop there was conversation in between the complainant and other panch Gaikwad. After talk he handed over A-Form and 7/12 extract to the accused and Rs.7,000/- was paid to the accused. He deposed that after the incident he was called after 15 days after trap for recording of natural voice. He could not tell as to what was done by the Investigating Officer about the conversation recorded on the day of incident etc.

7. PW-3 is the authority who accorded sanction to prosecute the accused. This witness in his evidence deposed that he was working as a Executive Engineer. A letter was received from the ACB on 21-05-2014 by the Divisional Executive Director, Pune for sanction to prosecute the accused. The

Divisional Executive Director issued a letter directing this authority to consider the application of ACB. Said letter is proved by him. He deposed that after going through the documents and as per the demand of ACB, he gave sanction for prosecution. This witness proved the order of sanction at Exh.36. From the reading of the cross-examination further it is seen that no relevant documents and material was placed before the said authority. Third Schedule of the MSEDCL Employees Service Regulation, 2005 is proved wherein the categories are given of the office and competent to remove or appoint a person. From the schedule it appears that that lineman is removable by the Executive Director. In the cross-examination he accepted that he had not gone through the written representation of accused submitted to the ACB office, Nashik. He had not gone through the statement of Aute before issuing of sanction order and even the statement of panch witness. He accepted that the Divisional Executive Director-II had removed the accused from service. The Divisional Executive Director-II is higher in rank than Executive Director. He also accepted that he

had informed the Executive Director that he is the authority to remove the accused. He accepted that accused being Assistant Lineman was authorized to make recovery of the arrears of bills from the spot as per usual practice. He accepted that it is usual practice to receive quotation and electricity bill amount from the consumers and deposit the same in the bank.

8. The Investigating Officer who is examined as PW-4 deposed about receiving of complaint and procedure followed after receipt of complaint, preparation of trap and subsequent investigation. In the cross-examination this witness accepted that she first call was made to Engineer Aute by the informant. She did not collect the panchanama under which articles of the complainant were seized by Shri Aute. She had not prepared a separate panchanama for verification. She accepted that after coming to Police Station, Kopargaon after trap the complainant made a representation at Exh.46. She accepted that the complainant did not inform about quotation, test report and report of capacitor and its amount.

9. PW-5 Vijay Murtadak, Police Inspector who filed a charge-sheet was also examined. In the cross only suggestion given that he filed the false charge-sheet which he denied.

10. This was the evidence by the prosecution. After recording the evidence the learned Sessions Court held that the prosecution has failed that the accused is guilty of the offence and acquitted the accused. The court had also held that sanction was not validly granted to prosecute the accused. It is this judgment which is assailed by the State.

11. Learned APP submits that the accused is found with the money that was given by the complainant towards bribe. His hands were found with the traces of anthracene powder. Accused had accepted amount for giving new electricity connection. He accepted Rs.7,000/-. The complainant is wrongly disbelieved by the trial court. The trial court has not considered the verification panchanama, pre-trap panchanama as well as

post trap panchanama and relevant documents of the investigation. Thus, though there is sufficient evidence, the court below has failed to appreciate the evidence. Further, learned APP submits that this is a fit case where presumption under Section 20 needs to be invoked as the accused is found to have accepted the amount of Rs.7,000/- pursuant to the demand and prays for setting aside the impugned judgment of acquittal and to hold accused guilty for the said offence.

12. Learned Advocate Mr. Sangit for the accused - respondent submits that the court has acquitted the accused on 3 counts. i] Prosecution has failed to prove that sanction is not properly granted and authority who granted sanction was not competent to accord the sanction ii] Investigation is carried by Officer of the rank of Police Inspector who is below rank of Deputy Superintendent of Police and therefore, was not competent as per Section 17-C of the Act and iii] the demand of bribe is not proved by the prosecution. Even as per the story of the prosecution, there was a demand by one Shri Aute who is

not made an accused in this case. He further submits that there were two quotations first for Rs.5,200/- and second for Rs.1,800/- for test report. Thus, total amount comes to Rs.7,000/- i.e. allegedly given by the complainant to the accused and it was not an amount of bribe.

13. In the light of submission we need to see the evidence carefully. While going through evidence of PW-1 it is seen that the complainant himself had stated in his deposition that he had gone to Shri Aute for new electricity connection who had demanded amount of Rs.10,000/-. On 23-12-2013 it has also come in the evidence that two days prior to the said alleged demand, this accused alongwith Aute had seized the material from the spot where the complainant had taken unauthorized connection by putting hook on the high tension line and he was apprehended. Thus, there is no direct demand from the accused. Even when the raiding party proceeded for a trap initially there was a call to Shri Aute and it was reported that he was not in the office. At that time Shri Aute told to see the accused and it is

only thereafter a call was made to the accused. This is the first time a reference has come of this accused. The Investigating Officer asked the complainant to meet the accused and to keep the voice recorder on. Further he stated that accused had told him about return of starter, cable etc. However, there is no demand by the accused as such. In the cross-examination it is seen that Aute had seized the article from Gut No. 228 as the complainant had taken un-authorized electricity supply. He also accepted further that on 21-12-2013 Aute had told that he will file case against the complainant for theft of electricity. On 23-12-2013 Aute had demanded bribe of amount of Rs.10,000/- He also accepted that there was no conversation between Shri Aute, himself and the accused. He further accepted that there were two quotations one for Rs.5,200/- for 3 hp motor and another for Rs.1,800/- for testing report which are at Exh.17 & 18. He also further accepted that Shri Aute had given a bill of Rs.8,000/- for illegal use of electricity. He also further accepted that in fact he was to pay amount to Shri Aute and therefore, he first called Aute. Thus, it is clear that there was no demand by

the accused. Amount of Rs.7,000/- appears to be an amount of two quotations one is for Rs.5,200/- for 3 hp motor and Rs.1,800/- for testing report which comes to Rs.7,000/-. Thus, rightly an inference is drawn by the learned trial court that the amount is towards quotations and there was no demand of any bribe. It is clear that this complainant had a reason to implicate Shri Aute or this accused falsely action was taken against him.

14. Moving to the next witness i.e. PW-3-panch it is seen that complainant handed over 7/12 extracts and other documents to the accused and at that time, the accused demanded bribe of Rs.7,000/- by making sign by hands and thereafter, it was given by the complainant to the accused. Accused accepted the currency notes and counted the notes by both his hands and thereafter, panchanam was drawn. In the cross-examination this witness accepted that the complainant did not tell the Investigation Officer about arrears of electricity bill of Rs.45,000/- and there was no discussion that illegal electricity supply was disconnected because of arrears of

Rs.45,000/-. In the compliant there was a reference of Shri Aute who was Junior Engineer. He accepted that on 21-12-2013 the meter was seized on account of theft of electricity. He also further accepted that when they met the accused, the accused demanded one form and 7/12 extracts from the complainant. The accused has told the complainant that at least 15 days time is required to reconnect the electricity supply. He also told that sometime is required for sanction of quotations etc. He could not tell whether the amount handed over to the accused was amount including amount of the quotations.

15. In the evidence of PW-4 the Investigating Officer, it is seen that from the verification panchanama dated 26-12-2013 at the time of trap verification recorded shows that this accused had asked for extracts of the property. He had told that the complainant has to pay Rs.7,000/- on which the accused told him to give extracts. The complainant said that he is giving two 7/12 extracts and on that the accused told that he will retain whichever extract is required. Thus, from the conversation

which was recorded at the alleged time of trap it is clearly seen that there is no demand of bribe amount. Secondly; coming to Exh.46 i.e. the explanation offered by the accused in writing clearly shows that the complainant had been to the accused for new connection and complainant forcibly tried to give the amount to the accused without his knowledge and suddenly some persons came and caught hold the accused by saying that they are the persons from the ACB. Considering both these aspects, it is clear that there is immediate explanation offered by the accused person. Though there appears to be some variance in the explanation given under Section 313 of the Cr. P.C. and this immediate explanation, still it is seen that the prosecution has failed to prove the demand at the hands of the accused.

16. Even in the Statement under Section 313 the accused has given written explanation that he had stated that the complainant was carrying a grudge against the accused as his material was seized that was used for theft of electricity. His complaint in fact was against Shri Aute. Amount of Rs.7,000/-

was the amount towards two quotations. If this explanation is seen with the cross-examination of the sanctioning authority, it is seen that this explanation is quite probable. Sanctioning authority in its cross-examination has accepted that it was a normal practice to handover the amount of bills to the Lineman. Even the quotation amounts were accepted by the Lineman as a matter of practice and there was nothing illegal in it. Considering this, defense is probable.

17. Coming to the evidence of the Investigating Officer it is seen that she has accepted that she had not collected the copy of panchanama under which articles of complainant were seized. Though she denied suggestion that alleged demand was at the hands of Aute, but this is a matter of record that even the complainant had filed the complaint that the demand was made by one Aute. This accused came into picture on the date of trap when it was found that said Aute was not in the office. She accepted that complainant did not disclose about testing report and report of capacitor.

18. As regards authority to investigate the offence at the hands of the officer below the rank of Dy. S. P. it is submitted that in view of the Section 17(c) of the Act the Investigating Officer in this case was not having authority to investigate the offence. The learned trial court has rightly held that in this case the investigation is carried by the Officer lower in the rank than Dy. S. P. therefore, there is no investigation by authorized officer. On this count also the acquittal is rightly given by the learned trial court.

19. Learned advocate for the accused relied upon the judgment reported in *2015 All MR (Cri) 4551 (SC) in the case of N. Sunkanna Vs State of Andhra Pradesh* wherein the Hon'ble Apex Court has held that in absence of proof of demand, the evidence of recovery and possession of tainted currency notes will not bring home the offence under Section 7 or Section 13 (1)(d) of the Corruption Act. Further it is held that the presumption under Section 20 can be drawn only on proof of

the acceptance of illegal gratification and such proof of acceptance will not follow unless there is proof of demand. Para 6 reads as under:-

“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)].”

20. Further judgment relied upon by the accused is the judgment reported in (2011) 13 SCC 142 in the case of *Fahim Khan Vs State of Bihar now Zarkhad*. It is held that when view

taken by the trial court appears to be possible view, the High Court should not interfere with the said judgment. It is settled position of the law that while dealing with the appeal against acquittal what needs to be seen is that whether the judgment of the trial court is totally perverse or conclusion arrived at is totally erroneous and unreasonable. In this case learned Sessions Court had acquitted the accused from charges under Section 302 of the IPC. Acquittal was challenged by filing an appeal in the High Court. The High Court reversed the acquittal and held the accused guilty. The conviction by the High Court was upheld by the Hon'ble Apex Court. However, the consideration while dealing with the judgment of acquittal are stated in a judgment.

21. Reference to a judgment reported in *(2009) 12 SCC 515 in the case of State of Rajasthan Vs Mohan Lal* can be of much benefit in this case. The Hon'ble Apex Court while upholding judgment of the High Court dismissing the appeal against acquittal has restated the principles while dealing with

the appeal against acquittal by considering various other judgments.

22. Considering all the above, this court does not find that view taken by the trial court is totally perverse. On the contrary, it is found that the court has rightly considered all the aspects involved in the matter. Learned trial court has ultimately came to a conclusion that the prosecution has failed to prove the demand by the accused. The prosecution further failed to prove that validity sanction was granted by the sanctioning authority. Prosecution has also failed to show that the Investigating Officer in this case was not authorized to carry the investigation. On all these counts, this court finds that the trial court has rightly acquitted the accused and no inference is called for. Appeal thus, deserves to be dismissed. Hence the following order.

ORDER

- i] Criminal Appeal stands dismissed.

[KISHORE C. SANT, J.]