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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1079 OF 2007

The State of Maharashtra

... Appellant

Versus

Dattatraya Mahadev Nalawade

Age : 45 Years, Occupation : Jr. Engineer,

Plot No. 43/44, Juni Mill Society,

Dharmashi Line, Solapur.

... Respondent

Mr.H.J.Dedhia, APP for the Appellant-State.

Mr.Karan Dilip Bhosale a/w Ms.Laveena Tejawani, Ms.Sharayu Kate,
Ms.Anuja Diwadkar i/b. NDB Law, Advocates for the Respondent.

CORAM : S. M. MODAK, J.

DATED : 7th JANUARY, 2023

P. C. :-

1. Heard learned APP Shri.H.J.Dedhia for the Appellant-State and learned Advocate Mr.Karan Bhosale for the Respondent-Accused.

2. He was Accused No.2 in Special Case No.7 of 2003 pending before the Court of Special Judge, Solapur. Accused No.1 was one Dnyaneshwar Jadhav – a lineman working in M.S.E.B. Whereas, present Respondent was a Junior Engineer. Accused No.1 was convicted for demanding and accepting a bribe, however, he expired during pendency of Criminal Appeal filed by him bearing No.1175 of 2006.

3. All the allegations of demand and acceptance are against the convicted Accused No.1. Whereas, at certain places, there is reference of

utterances by Accused No.1 that certain amount is to be paid to present Respondent. There was a charge framed against both of them under Section 7 read with 120(b) and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (49 of 1988) [“*P.C.Act*”] and under Section 120(b) of the Indian Penal Code, 1860 (45 of 1860) [“*IPC*”]. The Accused No.1 was convicted for the offence punishable under Sections 7 and 13(2) of the P.C. Act. Whereas, present Respondent-Accused was acquitted for all the offences. Accused No.1 was also acquitted for the offence punishable under Section 120(b) of IPC.

4. So, the short point involved in this Appeal is ; whether the findings given by the trial Court about non proof of any of the offence by Respondent No.2 is erroneous and requires interference. Learned APP for the Appellant-State invited my attention to the oral evidence of four witnesses and the proved documents. Whereas, according to learned Advocate for Respondent, the findings are correct and it does not require interference. Admittedly, there is no evidence that present Respondent-Accused demanded any amount from the complainant. At the most, what he has said is “comply the terms as per directions of lineman”. (Para No.3 of his evidence). Furthermore, my attention is invited to certain reference from the evidence of complainant Anwar. Present Respondent told him “not to think about fees and I would say lineman to visit your floor mill”. The prosecution wants to suggest that present Respondent was in fact, interested the complainant to pay illegal gratification instead of legal fees.

5. It would be material to consider the utterances of both the Accused as deposed by the complainant. They are as follows :-

- (i) Present Respondent told him from time to time that meter is not available and would be changed on availability (Para No.2).
- (ii) “not to think about fees and I would sent lineman. To comply the terms as directed by lineman”.
- (iii) “Accused No.1 demanded Rs.1500/- and when complainant said that it was excessive, Accused No.1 shown disinclination to reduce it as some of the amount is to be given to present Respondent”.
- (iv) Accused No.1 told complainant that some amount has to be paid to Nalawade Saheb.

6. Admittedly, present Respondent was not present when Accused No.1 accepted the amount. The trial Court considered above evidence inadequate for convicting the present Respondent. My attention is invited to the observations in Para Nos. 81 to 86. Though, this Respondent said to complainant to act as per the directions of Accused No.1, there are no utterances that money is to be paid by complainant as directed by Accused No.1. So, whatever utterances attributed to the Respondent No.1 so as to connect present Respondent are concerned ; whether it falls within the purview of Sections, 7, 13(1)(d) of P.C. Act and under Section 120(b) of the IPC. Already Accused No.1 is acquitted for the offence under Section 120(b) of the IPC.

7. Present Respondent has neither demanded nor accepted any illegal gratification. For proving the criminal conspiracy, there has to be evidence. Though, there is a reference of Section 12 of P.C. Act in the sanction dated 13th May, 2003 granted by Joint Secretary, Technical Mumbai of M.A.C.B. - Anil Deshkar – PW No.1, there is no charge for that offence.

8. Section 12 of the P.C.Act says about abetment of any offence under this Act. Whether the offence is committed or not in pursuance to that abetment is immaterial. As there is no charge under Section 12 of the P.C. Act, there is no question of considering ; whether the above said evidence falls under Section 12 of P.C. Act. So, when the evidence of witnesses are considered, I find the findings regarding acquittal of this Respondent is proper. It cannot be said to be erroneous. Merely saying to act as per the terms of Accused No.1 – Lineman and merely saying not to pay the fees of the meter does not attract the provisions of Sections 7 and 13 of the P.C. Act. During interaction with complainant, Accused No.1 can very well say that amount has to be paid to this Respondent, it cannot be considered unless there is some corroborating material. Unfortunately, it is not there. So, the findings cannot be interfered with.

9. There is no merit in the Appeal. Hence, it is dismissed.

(S. M. MODAK, J.)