IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.910 OF 2002

Prakash Vasudeo Chavan	]	..	Appellant
vs.			
State of Maharashtra	]	..	Respondent

Mr.Meghshyam Kocharekar, for the Appellant.
Mr.Y.M. Nakhwa, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 31st August, 2023.

P.C.

1] The Appellant stands convicted in Special Case No.40/1994 for committing an offence punishable under Section 7 of the Prevention of Corruption Act, 1998 and is sentenced to suffer RI for 6 months and to pay fine of Rs.2000/-.

By the same Order and Judgment, he is convicted for offence punishable under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act and sentenced to suffer RI for one year and to pay fine of Rs.3000/-.

Being aggrieved by the impugned Judgment dated 21.06.2002, the Appellant has preferred this Appeal.

2] The Appeal is admitted on 20.08.2002 and the Appellant was directed to be released on bail and sentence imposed against him, came to be suspended during the pendency of the Appeal, though the Appellant has paid the fine amount.

3] The Appellant was attached to 'D' Ward of BMC as 'Ward Inspector' on the establishment of Assistant Assessor and Collector 'D' Ward, for collection of property taxes from the prescribed area of Altamound Road, Carmichael Road, Peddar Road etc.

He faced the accusation that, while discharging his duty of a public servant, he attempted to obtain a sum of Rs.45,000/- as bribe and thereafter a sum of Rs.10,000/- per year as Hapta for himself, from one Iqbal Umar Tejabwala, as gratification other than legal remuneration as a motive or reward for doing or forbearing to do official acts and by showing favour to him in the matter of reducing assessment charges of "Kamal Beauty Parlour' a shop, situated in Navjeevan Kutir CHS, Altamount Road, Mumbai, an act punishable under Section 7 of the Prevention of Corruption Act.

By this act, he was accused of obtaining pecuniary advantage as he received a sum of Rs.5000/- as bribe, a part of the 'Demand' raised for the purpose of reducing the assessment charges. It was also alleged that he abused his position as a public servant and hence he is guilty of committing misconduct.

Charge was framed by the Special Judge on 23.04.2002 and additional charge came to be framed on 04.06.2002, when he was accused of agreeing to obtain a sum of Rs.5,000/- as first installment for himself as gratification, other than legal remuneration from Iqbal Umar Tejabwala.

4] The accused pleaded not guilty and hence was tried in the special case at the hands of the Sessions Court, Greater Mumbai.

In order to prove its case, the prosecution examined 7 witnesses. The complainant examined himself as PW 1, whereas the shadow witness was examined as PW 2, to prove the success of the trap. The Assistant Collector was examined as PW 3 and the Sanctioning Authority i.e. the Commissioner of Greater Mumbai was examined as PW 6. Mr.Kamal Cooper, who was running the beauty parlour in the shop rented out to her by the Complainant, was examined as PW 5. The Investigating Officer stepped into witness box as PW 7, to prove the charge levelled against the Accused.

5] As per the prosecution, the complainant, a businessman had two shops, one being located at Altamount road where Mrs.Kamal Cooper was running a beauty parlor, under the name and style as “Kamal International” and, this shop was given to her by the complainant on Leave and License basis, for a monthly license fee of Rs.4,000/- which was revised to Rs.5000/-.

As per the complainant, who stepped into witness box as PW 1, the Appellant, working as Inspector, Assessment Department in BMC, ‘D’ Ward visited his shop on 10.02.1993 and made enquiries about his shop at Altamount Road and the necessary details were provided to him, by informing that the shop is let out to Mrs.Kamal Cooper for running a beauty parlour.

As per the complainant, he was informed that since the shop is yielding rent for last three years, nearly Rs.60,000/- per year, the shop is liable for assessment and for the period of 3 years the assessment tax was Rs.1,53,900/- and the amount was demanded. The complainant was taken by surprise by the hefty demand and therefore he made enquiry as to what is the actual amount of assessment tax, which has accrued on the shop and upon this, the accused gave a proposal for settlement, though no exact figure was disclosed.

As per PW 1, once again on 24.03.1993, the Accused visited his shop and this time demanded the sum of Rs.45,000/-, so as to close the file of assessment tax as regards the shop at Altamount Road.

Apart from this amount, the demand of Rs.10,000/- as Hapta was also raised for not paying the assessment tax to the Corporation. He was asked to come after 2-3 days as he wanted to consult his brother.

PW 1 told him not to visit the shop, instead he would be visiting his office and therefore, on the next day, PW 1 visited the office of 'D' Ward of the BMC and made a request to reduce the sum of Rs.45,000/-, but the accused flatly refused and is alleged to have told the complainant to pay the amount of Rs.5,000/- as first installment, on the next day. PW 1, therefore, told the accused to visit the shop on 02.04.1993 for collecting the first installment.

Since PW 1 was not willing to pay the bribe amount as demanded, he lodged a complaint with the ACB and a trap was laid, by the complainant bringing sum of Rs.5,000/-, to be offered to the accused as bribe amount and he was given necessary instructions to pass on the bribe amount when, the demand is raised, on the accused visiting his shop. Accordingly, the trap was laid when the accused visited his shop and asked whether the amount of Rs.5000/- is ready, an enquiry was also made by him about the next installment to be paid and the money was taken from him and placed in a brief case which was code locked.

On the necessary signal being given, the Investigating Officer arrived at the spot and thereafter, the necessary procedure was followed and there was identification of notes that were recovered, from the possession of the accused.

6] This version of the PW 1 is corroborated by PW 2 who had participated in the trap and he corroborate the case of the prosecution on material aspect of the happenings, which preceded the amount of Rs.5000/- being handed over by the complainant to the accused. He also corroborate the complainant who had made enquiries with the accused whether he had brought the Agreement and it was responded by stating that after receiving the remaining amount the Agreement would be returned and that was a Gentleman's promise.

The prosecution has also placed on record the trap Pachanama, which has recorded the details of the proceedings conducted by the ACB, during which the money was recovered from the accused.

7] PW 1 was subjected to cross-examination and he admit that he had purchased a shop at Altamount Road situated in Navjeevan Kutir CHS from one Neeta Sethia and prior to being converted as a shop, it was a garrage. He produced photocopy of the Agreement, by which he had purchased the shop.

In his cross-examination, the witness gives a specific admission which is recorded by the learned Judge to the following effect :

> *" It is true that before lodging the FIR, I had a knowledge that I was not required to pay the amount of Rs,1,53,900/- as Assessment tax of three years of the shop to BMC. I do not know whether the accused had given one Assessment form Under sec. 155 of BMC Act to the Secretary of the Society to get particulars of the shop. The accused had brought two receipts i.e. Ex. 12 and Ex.12A and the Agreement Ex. 11 from the Accountant of the society".*

Another significant aspect has come on record through his cross-examination, which is to the following effect :

> "I run a Provision Shop in Crawford Market. I keep Jam Jelly and tinned stuff. Till now I have lodged three cases with Anti Corruption Bureau. Besides this case, I have lodged two Complaints with the ACB. I have lodged the Complaint against one Police Officer Mr.Lotankar with Anti Corruption Bureau. However, the trap was not materialsed as Mr.Lotankar did not turn up. I have lodged another Complaint with the ACB i.e. against Police Prosecutor one Mr.Pawar in Mazgaon Court. That matter is still pending."

PW 1 also admit that no license was obtained under the Shops and Establishment Act for running the beauty parlour.

Another categorical admission extracted from the complainant and it is to the following effect :

> "It is true that I was not required to pay any amount to the accused."

The photocopy of the Agreement of Tenancy entered between the Accused and M/s. Kamal International, a partnership firm as regards the shop at Altamout Road was executed through the said witness as Exhibit 11.

Apart from this, the rent receipts are also proved through the witness and marked as Exhibit 12 and 12A.

8] Another relevant witness examined by the prosecution is PW 3, the Assistant Assessor and Collector of K(West) Municipal Office at

Andheri, who at the relevant time was working as Superintended in 'D' Ward, Nana Chowk.

It is under him, 28 Ward Inspectors were discharging their duties, who were assigned the field work to inspect the buildings and if found that the tax is not paid, then remind the defaulters about the same and further initiate action.

PW 3 deposed that the accused was working as Inspector under him and he was assigned area of Pedder Road and Altamount Road, for the purpose of inspection of buildings and he was authorized to accept tax money, from the defaulters after issuing receipt from the BMC office.

PW 3 in his deposition before the Court highlight the nature of duty assigned to the Tax Inspector and on being confronted with the Register maintained by the Accused for his inspection work, which recorded the visit of the Accused to Navjeevan Kutir CHS when he served the returns on the Secretary of the Society and the rent chits on the owners of the shop.

9] In the cross-examination PW 3 specifically narrate the procedure of imposition of assessment tax and its recovery, which is recorded as under :

> *" It is correct that after the rent chits are issued then it is required for the Ward Inspector to show the concerned premises to his immediately Superior Officer. In the year 1992-93, the immediate Superior of the accused was Dy. Superintendent Mr.Badresa i.e. PW 4. After issuance of the rent chit, we collect the information of the compliance from the concerned party. If no much difference is found in the tax then we don't go for the revision and in the event of*

difference in the tax, we call upon the party to put up its say. If there is a increase in Assessment Tax, then before sending the notice to the party for hearing, we make a tabulated Ward Report (TWR). Before sending a notice, the Sanction of Higher Authority of the rank of Deputy Assessor and Collector and also the Joint Assessor and Collector and Assessor and Collector is obtained. These notices are issued under Section 167 of the Bombay Municipal Act in current year. If the notices sent for the increase in Assessment Tax for the next year then that is sent under Section 162 (2) of Bombay Municipal Corporation Act. The party has to give his say within 15 days from the date of the receipt of the notice. Under Sec. 164 of BMC Act, the notice is served for hearing and audience is given. Under Section 165, decision is given on merits. The Addl. Chief Small Causes Court sits in Appeal against the Orders passed under Section 165 of the Bombay Municipal Corporation Act. It is true that the accused had no authority to take decision in respect of increase in the assessment tax in the property especially on the impugned shop."

10] A specific admission comes from the PW 3 that the Accused had no authority to take decision in respect of increase or decrease in the assessment tax and specially in the impugned shop.

When confronted with the notice at Exhibit 20, the witness specifically deposed that the amount was not revised. He was also confronted with the inspection book, on the basis of which he deposed that the assessment tax of the property i.e Navjeevan Kurit CHS was revised in the year 1980-81 to the tune of Rs.34,675/- per year and on being confronted with Exhibit 30 and 31, he also stated as under :-

> *"On the basis of Ex.30 and Ex.31, I say that there is a entry of Rs.82.50 paise and it shows that the Assessment Tax of one Garrage/Beauty Parlour was revised. It must have been revised in the year 1980-81. If one wanted to file a revision against the notice dt. 06.11.1992 (Ex.20) then it should have been filed on or before 31.03.1993."*

11] Exhibit 30, is extract of register of inspection from the Assessment and Collection Department as regards Navjeevan Kutir CHS and it clearly reflect that the assessment tax was levied on the Society which comprised of various shops, which included the shop belonging to the complainant and the assessment amount due against each shop, based on the monthly rent, is also clearly provided for. Ultimately the Assistant Assessor and Collector, 'D' Ward assessed the Society to a sum of Rs.34,675/- payable towards the assessment tax, which clearly reflect that the tax was paid by the Society and the the share of the shop owner in the building was minuscule and on contributing it to the Society, the Society collectively made the payment of the Assessment Tax.

The tax was levied at different rates on the residential premises and the non residential premises. The shop of the complainant shown as 'beauty parlour', being described as garage situated on ground floor was assessed by taking the monthly rent, to Rs.82.50 and categorized as non resident category.

12] The accused being a public servant, PW 6 granted sanction for his prosecution and I am not satisfied with the submission advanced on behalf of the learned counsel for the Appellant, about the sanction being granted without application of mind, as the learned counsel would submit that the sanction was sought limited to the purpose of initiation of departmental enquiry. The said submission is referred, only to be rejected.

The Investigating Officer came to be examined as PW 7 and was subjected to extensive cross-examination.

13] Section 7 of the PC Act, 1988 categorically contemplate an act of a public servant, taking gratification other than legal remuneration in respect of an official act.

A demand or solicitation, by a public servant amounts to commission of the offence, but the necessary ingredient of the above commission, contemplate acceptance or an agreement to accept or an attempt to obtain from any person, for himself or for any other person any gratification, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in exercise of his official function, favour or disfavour to any person or for rendering or attempting to render any service or dis-service with the Central Government or State Government or the legislature, local authority etc. and such an act shall invite the penalty under Section 7.

“A motive or reward for doing” is explained by means of an explanation appended to the Section and it contemplate that the person who receives a gratification as a motive or reward for doing what do no not intend or is not in a position to do or has not done, would be covered within the expression.

14] A public servant may have the power to do certain acts in his official capacity by virtue of the rank he holds as a public servant. When he exercise this power, his act is official. Section 7 contemplates acceptance of gratification other than legal remuneration in respect of an official act and this act must necessarily be projected as a motive or reward for doing or forbearing him to discharge his official duty/act in exercise of his official duty, which would show any favour or disfavour or render or attempt to render any service or dis-service to any person.

It is, thus, an essential ingredient of Section 7 that a public servant has accepted the gratification as a motive or reward for discharge of the official act or failure to discharge his official duty, which he is expected to discharge, to show a favour or render service to any person or to dis-favour.

15] It is the case of the prosecution that the accused demanded the amount to close the file of assessment tax, of the shop of the complainant at Altamount Road and PW 1 reported that accused demanded Rs.45,000/- from him for the said purpose, but agreed to accept the amount in installment and Rs.5000/- was agreed to be the first installment.

In the cross-examination, PW 1 clearly admit that at the time of recording the FIR, he was aware that he was not required to pay assessment tax to BMC directly for the shop, but it was the duty of the Society to pay assessment taxes to the Corporation and the Society in which the shop was located was regularly paying the assessment taxes of his shop.

In the cross-examination, he has clearly admitted that he was not required to pay any amount to the Accused and in the wake of the aforesaid admission, the case of the prosecution, that the accused accepted the bribe amount as a motive for closing the assessment file, cannot be said to have been established. If the complainant/PW 1 was aware that the assessment taxes were borne by the Society, and he was not under any obligation to pay the same, even for his shop, in that case there was no question of the accused demanding bribe, to close the file of assessment tax.

16] The prosecution has brought on record the Assessment sheet for the relevant year for the Navjeevan Kutir CHS and from the same it is apparent that the assessment tax was paid by the Society on the portions occupied, in proportion to their rent and there is clear indication for the year 1992-93 and 1993-94. The document placed at Exhibit 30 contain various endorsements and entries in respect of the premises in form of shops which are comprised in the said building, based on the rateable value. The assessment was carried out and the order clearly identified the amount payable by individual house/shop, located in the building and this document bear the signature of the Assistant Assessor and Collector 'D' Ward, who had categorically deposed that the accused was not competent to revise the tax levied and he was only authorized to collect the tax directly.

17] In the wake of aforesaid evidence, it is evident that the accused had no reason to accept the amount for closing the Assessment file and the complainant while lodging the complaint was aware of this aspect and as such, there is no reason in he agreeing to satisfy the demand of the accused,. for closing his Assessment file. Merely because the amount is accepted, would not lead to any inference that it is a gratification accepted by the accused as he was not in a capacity to benefit the complainant/PW 1, in discharge of his official duty, as he could not have, either determined the assessment tax or was capable of varying the same.

In the wake of a above, since the prosecution has failed to prove the necessary ingredients of Section 7, the conviction under Section 7 alongwith the sentence imposed cannot be sustained and deserve to be set aside.

18] As far as Section 13(1)(d) and 13(2) are concerned, which contemplate certain acts, which are liable to be construed as criminal misconduct by a public servant, it contemplate the the following :

> **13. Criminal misconduct by a public servant – (1) A public servant is said to commit the offene of criminal misconduct** -
> ……
> (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

The aforesaid provision necessarily contemplate abuse of the position and obtaining any valuable thing or pecuniary advantage for himself or for another person, which is not at all proved by the prosecution.

19] In the wake of above, since the Special Judge has failed to take into consideration this important aspect, being the ingredients of Section 7 and 13(1)(d) not being made out by the prosecution, the conviction and sentence imposed upon the Appellant, under the impugned Judgment and order dated 21.06.2002, deserve to be quashed and set aside.

By setting aside the impugned Judgment, the Appellant stands acquitted of the charges levelled against him.

Criminal Appeal is allowed in the aforesaid terms.

[BHARATI DANGRE, J]