

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 91 OF 2009

Anilkumar Uttareshwar Nilakhe .. Appellant
Versus
The State of Maharashtra .. Respondent

WITH

CRIMINAL APPEAL NO. 94 OF 2009

Chandrakant Gulab Nimse .. Appellant
Versus
The State of Maharashtra .. Respondent

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Mr.Raviraj R. Parmane for the appellant in Appeal No.91/2009.
Mr.Satyavrat Joshi for the appellant in Appeal No.94/2009.
Mr.S.R.Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 20th APRIL, 2023

JUDGMENT:-

1 Two separate Appeals are filed by the two appellants on being convicted in Special Case No.20/2000 by the Special Judge under the Prevention of Corruption Act, 1988, (for short 'the P.C Act') on 15/12/2008.

The appellant in Appeal No.91/2009, being a public servant stand convicted for committing an offence punishable u/s.7 of the P.C. Act, and is sentenced to suffer RI for six months and to pay fine of Rs.6,000/-. Accused nos.1 and 2 are convicted for committing an offence punishable u/s.13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988, (for short 'P.C.Act') and also under Section 109 of IPC and each of them is sentenced to suffer RI for one year. Accused no.1 is imposed with a fine of Rs.6,000/-, whereas accused no.2 is sentenced to pay fine of Rs.3,000/-. Accused no.2 stand convicted for the offence punishable u/s.7 r/w Section 12 of P.C. Act and is sentenced to suffer RI for six months and to pay fine of Rs.3,000/- in default to suffer RI for 15 days.

Both the substantive sentences are directed to run concurrently.

It is this judgment of conviction and imposition of sentence which is assailed by the two appellants in the Appeals presented before this Court.

2 Heard Advocate Raviraj Parmane for the appellant/ accused no.1 (Appeal No.91/2009) and Advocate Satyavrat Joshi for accused no.2 (Appeal No.94/2009). I have also heard the learned APP Mr.Agarkar for the State and also perused the Record and Proceedings placed before me.

3 Accused no.1, working as Junior Engineer in Building Department of 'L' Ward, Brihan Mumbai Mahanagar Palika, the public servant within the meaning of Section 2(c) of the Prevention of Corruption Act, was charged for attempting to obtain Rs.6,000/- on or about 24/6/1999 from the complainant Sanjay Kanade, as illegal gratification other than the legal remuneration as a motive or reward for showing favour to the complainant by not demolishing the unauthorised structure of his mezzanine floor of the printing press situated at Shop No.3, Kurla, Mumbai. He was charged for committing an offence punishable u/s.7 of the P.C. Act for attempting to obtain illegal gratification on 3/5/1999 and 4/5/1999.

 Accused no.2 came to be charged under Section 7 and 12 of the P.C. Act for accepting the amount on behalf of the accused no.1, and for knowingly and willfully aiding and abetting the offence.

4 In order to establish the charge framed, to which they pleaded not guilty, the prosecution examined four witnesses.

 PW 1, is the complainant who was engaged in printing press business in the premises situated at Halav Pool Municipal Plot, shop no.3, Kurla (West), Mumbai. The premises admeasuring 13 x 7 ft, was standing in the name of his mother and the shop was constructed by him where the printing press business was being conducted by obtaining necessary licence.

In the said premises, a mezzanine floor was constructed without requisite permission of the Corporation and the justification is offered by the complainant, that since the shop owners of both the sides increased the height of the construction by 4 ft, the rain water started entering into his shop premises and therefore, he also increased the height by about 4 ft.

5 As per the case of the complainant, on 26th of one month in the year 1999, the Officers of the Corporation visited his shop for pulling down the construction, and on being asked by his brother to come on the spot, he found a group of 15 – 20 persons who informed him that they had come from 'L' Ward. When he questioned them about the activity, since no show cause notice was issued to him, he was told to meet their Engineer Mr.Nilakhe, accused no.1, who was also present amongst the other persons.

When he met the accused no.1 and asked him to stop the demolition, he was informed that many complaints were received by him. However, an offer was given by Mr.Nilakhe to pay Rs.6,000/- to the action. However, at that time, some portion of his construction was already pulled down.

Nilakhe asked him to visit his office in the evening and assured him that if the bribe amount of Rs.6,000/- is paid, the construction shall not be pulled down. However, as the

complainant was not in a position to pay the amount, he told the accused that he would visit his office.

This is the first demand raised by the accused to the complainant as per the case of the prosecution.

6 As per the complainant, the squad left the site, and at 4.30 p.m on the same day, he went to the office of Nilakhe and met him. Nilakhe reiterated his demand and asked the complainant to pay the amount else, the remaining structure would be pulled down. He was advised to visit the office on the next day.

On the next day, i.e. 27th April, once again he visited the office, but Mr.Nilakhe was not available. Thereafter, he went to office on 3rd of next month (May), when he was present, but was informed by the complainant that he is unable to pay the amount. Upon insistence of Nilakhe, the complainant agreed to pay the amount on the next day. Nilakhe gave his mobile number to the complainant in writing, so that contact can be established on the said number, to ascertain where the amount was to be paid.

7 Since the complainant was not willing to pay the amount, he approached ACB office, Worli on the next day and narrated the incident to Vasant Shinde (PW 4). This complaint was reduced in writing under his signature (Exhibit-14), where he requested to take action against Nilakhe, who has demanded bribe from him.

Upon the complaint being filed, two panch witnesses were arranged, and on carrying out the necessary formalities which were recorded in the pre-trap panchnama prepared on 4/5/1999 in the presence of panch witness Yashwant (PW 3), the trap was laid.

8 PW 3 accompanied the complainant to 'L' Ward office of the Corporation situated on 1st floor of the building. They met accused no.1 Nilakhe in his office, where two to three persons were sitting and after they left, the complainant requested accused no.1 not to demolish the construction. Thereupon, Nilakhe questioned him whether he has done his work and the complainant said that he has come prepared for that. Thereafter, he called a person by name, accused no.2 was the said person, who escorted the complainant and PW 3 outside and accused no.2 demanded money from the complainant, and on being offered by his right hand, it was accepted by him.

On the signal being given, accused no.2 was apprehended and he was taken into the cabin of accused no.1. After carrying out the necessary procedure, which is recorded in the post trap panchnama, currency notes came to be seized.

9 The above case of the prosecution suffer from gross inconsistencies, omission and improvement, is the submission of Mr.Raviraj Parmane.

The learned counsel would submit that the complainant himself has admitted that his unauthorised construction, which is a 4 ft wall was demolished, and therefore, there is no question of demand being raised by accused no.1, as the unauthorized structure was demolished. Apart from this, the learned counsel would submit that from 26/4/1999 to 4/5/1999, there was no verification of demand and the trap is alleged to have succeeded on the fourth occasion. According to Mr.Parmane, it is surprising that on the very first day, the complainant went with the money and offered it to accused no.2 with whom he was acquainted, since he was his college mate. The submission of the learned counsel is, the demolition was to be carried out by the Ward Officer, and this is also admitted by the sanctioning authority, but he was only the member of the squad and therefore, there was no propriety in the bribe amount being demanded by him, as alleged, or it being accepted by him for stopping the work of demolition.

It is the submission on behalf of the accused, that the whole case of the prosecution is doubtful, since the construction of mezzanine floor, which is accepted by the complainant to be unauthorized has been pulled down by the demolition squad and therefore, there was no question of accepting any illegal gratification, as there was no application for regularizing the structure ever made by the complainant. According to Mr.Parmane, the prosecution has failed to prove its case and the

huge loopholes in its case, went unnoticed by the Special Judge, when he recorded a finding of guilt in the impugned judgment.

10 Mr.Joshi, learned counsel for the accused, who is a private person would adopt the argument of Mr.Parmane and would vehemently submit that the charge of Section 7 could not have been framed against him, since Section 7 is applicable to a public servant who accept the gratification other then legal remuneration in respect of an official act. Apart from this, Section 13 which relate to a criminal misconduct also cannot be invoked against him. According to Mr.Joshi, what remains is only the charge u/s.12, which prescribe punishment for abetment of any offence punishable under the Act.

Per contra, the learned APP would justify the impugned judgment, as he would submit that the accused persons are found to be guilty of commission of serious offence and on considering the evidence on record, the learned Judge has rightly appreciated the same and imposed a sentence befitting their respective act.

11 In order to establish the charge of attempting to obtain an amount of Rs.6,000/- from the complainant as illegal gratification other than illegal remuneration as motive or reward for showing favour to the complainant by not demolishing the unauthorized construction of mezzanine floor, the prosecution has examined four witnesses.

The complainant stepped into the witness box as PW 1 and he deposed that in lieu of his old shop, located in Jagwani Chawl, which was acquired for a road widening purpose, his mother was allotted a plot at Halav Pool and permanent construction was made on the said plot in the year 1987. The new construction had a mezzanine floor and the business of printing press was started in this premises by obtaining a licence under the Shop and Establishment Act.

PW 1 admitted that no permission was obtained for construction of mezzanine floor and no plan was approved by the Corporation. He has specifically stated that though an application was made for approval of the mezzanine floor to the Corporation, the Corporation did not respond and the fact that the other shops had increased their height, constrained him to raise his floor by 4 ft.

The complainant referred to an incident of 26/4/1999 when the demolition squad reached his premises to demolish the unauthorized construction, and according to him, the demand of Rs.6,000/- was raised by Mr.Nilakhe for the first time in order to avoid pulling down of the structure. However, he admit that when the demand was raised, some portion of his construction was already pulled down. There is no verification of the first demand as alleged by the complainant. The most important aspect about the demand being made for not pulling down the construction, is an omission and proved through the

Investigating Officer – PW 4. The second demand on the very same day, being alleged to have been made when the complainant reached the office of Nilakhe, is also an omission.

On the next day, the complainant visited the office of accused no.1, but he was not found to be present and therefore, the amount could not be offered. Thereafter, only on the third day of the next month, he visited the accused no.1, when it is alleged that he raised a demand and a promise was given to make the payment on the next day.

12 In order to establish the contact, PW 1 has asserted that Nilakhe gave his mobile number by writing the same on a chit, but he admitted that this chit was not handed over to the police, nor did he remember the mobile number given by Nilakhe for the purpose of contacting him and for informing about the place where the amount was to be given.

PW 1 went to the ACB office and surprisingly along with the currency notes, to be offered by way of bribe in the trap to be laid by ACB. According to him, after taking the currency notes, he along with the panch witnesses went to a room and the exercise of applying Anthracin powder to the currency notes, was carried out in the room by Mr. Shinde, the Investigating Officer. PW 3, the panch was asked to accompany PW 1, who contacted Nilakhe by using his landline, and informed him that he had arranged for Rs.6,000/-. Mr.Nilakhe told him that he was present

in the office and he should reach there. According to PW 1, the conversation was heard by Shinde and both the panchas.

13 The version of PW 1 as to what transpired when he reached the office of Nilakhe, is contradicting the version of the panch witnesses who is examined as PW 3.

According to PW 1, after the phone call was made by him from his press, they walked to the office of 'L' Ward of Corporation and took 15-20 minutes to reach there. As per PW 3, from the ACB Office, they left for 'L' Ward, Kurla in two vehicles and PW 3, along with Mr. Kanade, the complainant, walked towards 'L' ward office situated on the first floor of the building. PW 1 deposed that when he entered into the room where Nilakhe was sitting, there was one person with whom Nilakhe was talking. As per PW 3, two to three persons were sitting there and therefore, they did not strike any conversation.

14 There is inconsistency in the version of the two witnesses about the demand.

PW 1 has deposed that Nilakhe asked whether the amount was brought by the complainant and he answered in the affirmative. Thereafter, Nilakhe inquired about the person accompanying the complainant and he gave call to accused no.2 by calling 'Nimse, Nimse'.

As per PW 3, the panch, the complainant said to Nilakhe that he should not demolish the construction and

thereafter, Nilakhe asked what has happened about the work, and the complainant responded by stating that he had come prepared, and thereafter, accused no.1 called a person by repeating the name 'Chandrakant' two times.

15 PW 3 state that accused no.1 asked the complainant to talk with that person and to give the amount to him. The said person (accused no.2), took them towards the office of the Corporator and he demanded money from the complainant, who handed over it to him. As per version of PW 1, Nilakhe asked to hand over money to 'Nimse' and Nimse was talking on mobile phone and he asked the complainant to accompany. He was taken near the lift and Nimse uttered that Nilakhe had asked to collect Rs.6,000/- and when he disclosed that he had brought the amount, Nimse said that he was man of Nilakhe and the amount should be handed over to him and thereafter, tainted notes were handed over to Nimse, who was holding his mobile handset and he started counting the notes by use of his both hands. On the signal being given, the officers of ACB rushed to the spot.

The incident witnessed by the complainant and PW 3, panch witness, vary on several aspects and the inconsistency of the two versions make the prosecution case, doubtful.

PW 1, in his cross-examination, admit that prior too 26/4/1999, when he paid the amount to Nimse, he knew him as he was his classmate in school. This admission makes the

prosecution case extremely doubtful, as if this man was known to the complainant, there is a possibility of acquaintance being shown on their meeting, but surprisingly, it is not so.

16 PW 1 admit that the construction was pulled down as it was unauthorized and he specifically admit that only the mezzanine portion of the height of 4 ft was demolished. In the cross-examination, he is confronted with his statement given to the police and he admit that the statement made before the Court that after making the demand on the spot, the accused no.1 asked him to bring an amount in the office on that evening and uttered that if demand is met with, he would not pull down the constructions, has not been recorded in the statement given to the police. The alleged demand at 4.30 p.m in the office of Nilakhe is also an omission. His statement that he was asked by Nilakhe to come to the office on the next date at 4.30 p.m, is also not stated in the police report and has been proved to be an omission.

In the cross-examination, PW 1 has admitted that when he saw Nimse, he realized that once upon a time, he was his classmate. He admit that he had no talk with Nimse with regard to conversation with Nilakhe and after seeing Nimse, he had not informed Nilakhe that he knew him. An omission is proved as regards the statement that near the lift, Nimse told him that Nilakhe had asked him to collect the money.

PW 3, panch witness deny the suggestion that the demonstration was carried out in other room as stated by PW 1.

He admit that other employees of the Corporation were sitting in the hall where Nilakhe was sitting and he had no separate cabin and the other staff was sitting at a distance of about 10 ft at the table of Nilakhe. An omission is proved as regards the demand by Nilakhe "I do not remember as to whether there was other conversation between the conversation, when inquiry was made about me and the conversation in which Nilakhe asked about the proposed demolition of construction. I cannot assign any reason as to why in Exhibit-25 it is not mentioned that Nilakhe asked to the complainant as to what was done about the work"

PW 3 admit that complainant did not tell Nilakhe that he knew Chandrakant/Nimse. He has also admitted that in the passage, the persons were coming and going and it was a thoroughfare. He further deposed that Chandrakant did not ask anything about the money to the complainant and the complainant did not tell anything to Chandrakant about the work.

17 With the inconsistencies in the version of the two witnesses, the prosecution case has weakened and since it has come on record that after one month, when the alleged demand was made, the construction of the complainant which was unauthorized was already demolished, the prosecution has failed to establish that the amount was demanded for showing the favour of not bringing down the structure.

The necessary ingredient of Section 7, being the demand of gratification other than the legal remuneration, as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show, in exercise of the official function any favour or disfavour for rendering or attempting to render any service or dis-service by a public servant. In this case, when the demolition of the structure was already carried out, the prosecution has failed to establish that the demand was raised by the accused no.1 for not carrying the demolition of the unauthorized structure.

The Sanctioning Authority has categorically admitted that the demolition is carried out by the Ward Officer and the accused no.1 was only a Member of the squad, and it was not within his powers either to regularize or to demolish an unauthorized construction. The prosecution, has therefore, failed to prove its charge against the accused no.1 for committing an offence punishable u/s.7 of the Prevention of Corruption Act. The conviction of accused no.1 u/s.13(1)(d) r/w Section 13(2) of P.C. Act, must also fail for the very same reason.

As far as accused no.2 is concerned, he stand convicted for committing an offence punishable u/s.13(1)(d) r/w Section 13(2) of the P.C. Act, which deserve to be set aside, since the said Section can be invoked only against the public servant, who is alleged to have committed an offence of criminal misconduct. Admittedly, the accused no.2, appellant in Appeal

No.94/2009 is not a public servant and therefore, he could not have been convicted u/s.13(1)(d) r/w Section 13(2) of the P.C. Act and his conviction and the sentence imposed must necessarily be set aside.

18 The conviction of the accused u/s.12 also deserve to be set aside, as the necessary ingredients of abetting an offence are not proved as the demand which is the essential feature of Section 7 by the public servant itself has not been proved by the prosecution. As a result, the impugned judgment dated 15/12/2008 is set aside. Both the appellants stand acquitted of the charges levelled against them.

Appeals stand allowed in the aforesaid terms.

(SMT. BHARATI DANGRE, J.)