IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 358 OF 2009

The State of Maharashtra
(Through Bund Garden Police Station
Pune) ...Appellant
vs.
Sunil Macchindra Borate
Age 33 years, Occup. Service,
R/o. 15, Queen's Garden,
Government Quarters,
'V' Building, ground floor,
Pune – 1. ...Respondent

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Mr. H. J. Dedhia - APP for the State
Mr. Shailesh Chavan i/by Mr. Milind Deshmukh - Advocate for the Respondent

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CORAM : S. M. MODAK, J.

DATE : 03rd JANUARY, 2023

JUDGMENT :-

1. Heard learned APP Shri Dedhia for the Appellant and learned Advocate Shri Shailesh Chavan instructed by Shri Milind Deshmukh for the Respondent-accused.

2. The Respondent-accused was working as a Clerk in a treasury office Pune. He was prosecuted by the Anti Corruption Bureau on the complaint of the Complainant – P.W. No. 1- Deepak

Shelar for demanding illegal gratification of Rs. 500/-. The demand was made for the purpose of transferring the pension standing in the name of Sopan Shelar, father of the complainant in the name of his mother. On his complaint, there was a trap laid in the treasury office and the accused was caught while accepting illegal gratification of Rs. 200/-. The offence came to be registered under Section 7 and Section 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act. P.W. No. 2- Balu Baburao Thite was a Treasury Officer and he gave sanction and, accordingly, the charge-sheet was filed.

3. As the accused has denied committing any offence, the charge was framed against him and he was tried for above offences. There were four prosecution witnesses examined. They are as follows:-

- P.W. No. 1 – Deepak Shelar – Complainant
- P.W. No. 2 – Balu Baburao Thite – Treasury Officer – Sanctioning authority
- P.W. No. 3 – Madhav Govind Bhandare – Trap Panch Witness
- P.W. No. 4 – Sou. Radhika Sunil Phadke – Investigating Officer.

4. A learned Special Judge acquitted the Respondent-accused mainly for the reason that there is variance in the avernments made by the Complainant in his complaint and evidence produced before the Court. Furthermore, there are variances in between the testimonies of P.W. No. 1 and P.W. No. 3 – Panch witness. The trial court also found certain inconsistencies in between preparing the pre-trap panchnama that is to say prior to registration of the complaint or afterwards. The trial court also considered the fact that the job of preparing the cheque was already done by the accused. There is one more reason and that is non-examination of the mother of the complainant.

5. During arguments learned APP submitted that these variances cannot be said to be major variances and they are normal variances. He also explained procedure followed after recording the complaint including securing the presence of the panchas, carrying out pre-trap panchanama, also effecting a trap on the same date only. He prayed for reversal of the decision. As against this, learned Advocate Shri Chavan submitted that these variances are not the normal variances but they goes to the route of the matter. On the point of the scope of the appeal against the decision of the acquittal, he relied upon the judgment delivered by this Court (Coram : K. R.

Shriram) in the case of the ***State of Maharashtra Vs. Eknath Rajaram Pawar and Others***, in Criminal Appeal No. 147 of 2009, decided on 22/01/2021 and in the case of ***TOTA Singh and Anr. Vs. State of Punjab***[1].

6. Sopan Shelar, father of the complainant was working as Health Assistant in Primary Health Centre at Bhongawali, Taluka Bhor. He was getting a pension. He expired on 19/09/2005. After death, the pension has to be transferred in the name of the mother and that is why the complainant was complying with the necessary formalities. The accused was working in treasury office as a Junior Clerk and he was one of the staff involved in that process.

7. It is true that the demand and acceptance of illegal gratification are the two main ingredients for the offence under Section 7 and 13 (1)(d) of the Prevention of Corruption Act. It is also true that the complainant/bribe giver has to be considered as an accomplice and, as such rule of prudence requires corroboration to his evidence.

8. We have got corroboration in the form of an independent panch witness on the point of offer of money and acceptance of

1 (1987) 2 Supreme Court Cases 529

illegal gratification but so far as the demand is concerned, there may be witnesses available or may not be available. It depends on the facts of each case. In this case, even though it has come during cross-examination of the first informant that his mother-Leelabai was present on 18/10/2005 and on following date alongwith the complainant, she was not examined. There is no explanation was offered.

Evidence of complainant

9. When this Court has perused the complaint, it finds that he had gone to the treasury office on 18/10/2005 for the first time. Accused issued him necessary forms for the transfer of pension. At that time, there was no demand for money. However, when first informant again visited treasury office on 16/11/2005 and submitted the forms, at that time on first occasion, there was a demand of Rs. 500/- from the accused and it was complied in part by paying Rs. 300/- and by assuring to pay Rs. 200/-. As the Complainant was not happy, after an initial telephonic conversation with the accused he filed a complaint on 29/11/2005. This is the sum and substance of what is stated in the complaint.

10. As against this, what is said before the Court is that the demand of Rs. 500/- was made by the accused only when he issued the form to the Complainant. The money of Rs. 300/- was also paid at the same time. It means before the Court, he has not mentioned about two visits that is to say on 18/10/2005 and 16/11/2005 separately. He has clubbed both these events in one visit that is to say on the date of getting the forms. In fact as per the complaint after getting form, after few days he visited the office of the treasury and at that time demand was made. He was also thoroughly cross-examined. At that time, he had clarified that first visit was on 18/10/2005 and at that time, letter was given by the accused to the State Bank of India, Bhor Branch for calling back the cheque sent in the name of the deceased father. He has further explained about his second visit after 10 to 15 days and at that time he submitted the documents.

11. It is material to mention that he was there alongwith his mother till 4 pm in the treasury office and at that time the accused has done all his calculations of the pension amount and submitted it before the treasury office. When the complainant has clubbed both the events which in fact not stated in the complaint, the certain clarification could have been sought from the complainant as to whether these two events have taken place on the same date or on different dates. It has not happened. So certainly there is confusion as to whether the demand of money was made at the time of issuance of form or at the time of submitting the forms. The trial court has considered this ambiguity. I agree to that findings. In fact this cannot be considered to be a minor variance. It is complainant only who can say how the events have taken place and actually when demand of illegal gratification was made. There was a suggestion given to the complainant during cross-examination, there were certain altercation on 18/11/2005 in the office. It was denied.

12. The trial court has also considered other variances. It includes as to exactly when pre-trap panchnama was prepared i.e. to say after registering the complaint or afterwards. The time as per panchnama was 2.10 p.m. to 3.15 p.m. on 29/11/2005. The trial Court has considered the events stated by the complainant and events stated by the panch witnesses – p.w. no. 3 that finds place in para nos. 26 to 28 of the judgment. After considering those timings, the trial Court concluded that prior to recording the complaint at Exh. '6' writing of the pre-trap panchnama has started. This can't be because pre-trap panchnama has to be started after a complaint is recorded.

13. There is one more variance noted by the trial Court about happening of the incidents on the date of the trap. Along with P.W. No. 1 and 3 entered treasury office on 29/11/2005. There is variance on the point of interaction of P.W. No. 1 and the accused. P.W. No. 1 and P.W. No. 3 have stated different interactions. That is noted in para no. 30 of the judgment.

> *"P.W. No. 1- Shelar asked accused as to whether cheque is ready and it was answered in the affirmative".*
> *"Then accused asked P.W. No. 1-Shelar about bringing of the amount" and Shelar replied in the "affirmative".*

14. This version given is by the P.W. No. 3. Whereas as per version of P.W. No. 1, he never asked the accused whether cheque is ready. There is minor variance of giving of signal that is recorded in para no. 31. Lastly, there is major variance on the point of the place of carrying out spot panchnama that is to say whether it is carried out in the treasury office or whether it is carried out in the office of the Anti Corruption Bureau. <u>As per P.W. No. 3</u>, the panchnama was prepared in the treasury office itself and all raiding party members were there in the office upto 5 p.m.. Whereas <u>as per investigating officer- P.W. No. 4,</u> panchnama was prepared by sitting in the office of the Anti Corruption Bureau, in view of the heavy rush of the people in the treasury office. That justification may be correct also, but panch witness need to tell the same thing. It creates doubt.

15. On the point of the sanction, there are no findings recorded against the prosecution. So also on the point of the acceptance of the amount, there are no findings recorded against the prosecution. However, in view of the above variances, it cannot be said that the offence is proved beyond reasonable doubt. I do not find that the findings are erroneous. Hence, there is no merit in the appeal.

16. Hence appeal is dismissed.

[S. M. MODAK, J.]