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

CRIMINAL APPEAL NO.1351 OF 2008

The State of Maharashtra

...Appellant

Vs.

Shamrao Ramji Patil
R/o A/7, Rajanigandha,
Sinhgarh Road, Behind
Hotel Chaitanya, Manikbaug,
Pune

...Respondent

Mr. N. B. Patil APP for the Appellant-State.

Mr. Nikhil G. Hire with Mr. Soham Powar i/b Mr. K. S. Patil for
the Respondent.

CORAM : S. M. MODAK, J.

DATED : 3RD MARCH 2023

JUDGMENT :

1. Sometimes it happens that the complainant does not support the case of the prosecution openly while giving evidence before the Court. He used to admit some of the facts but when it comes to issue of narrating facts showing involvement of the

accused, he used to withdraw himself. But rarely we come across a case when it can be said that the complainant neither fully supported the case of prosecution neither fully disowned his version before the police. Similar thing has happened in this case. There is every reason to say so. I will give reasons for forming this opinion.

2. The case before the trial Court involves prosecution of the Sub-Divisional Officer working in BSNL, Government Undertaking at Pune office. He was dealing with work of sanctioning of STD booth. The complainant-Guruling Shivrudra Swami was in need of STD booth. He applied for PCO connection in the office of BSNL, Daund. When he learnt that his proposal is sanctioned he came for enquiry at Pune office. As per demand note, he deposited Rs.600/- on 4th September 2001, however, he could not get that PCO connection. For follow up purpose he went to office and met the Respondent-accused. The Respondent refused to do any work unless an amount of Rs.1,000/- is paid. Though this figure is mentioned in the complaint lodged before

the Anti Corruption Bureau office on 19th September 2001,
before the Court the complainant-PW 1 is silent about this
amount. This is one reason whey I say that the complainant has
decided not to support the prosecution case.

3. On being annoyed, he approached Anti Corruption Bureau on 19th September 2001, and lodged the complaint. PW 3- Sampatrao Patil, Police Inspector recorded the complaint Exhibit-24 and arranged the services of Government employees as panchas and completed pre-trap formalities. The trap was arranged on 19th September 2001, in the commercial office, Rural CTO compound, Pune. It was at about 1 pm. The trap was successful. The tainted currency notes of Rs.700/- was recovered from left side pant pocket of the Respondent-accused. At this juncture also the complainant has stated differently that tainted notes were kept in pant pocket by the Respondent-accused. The complainant said that the Respondent-accused kept in the drawer of table. On examination anthracene powder was also noticed. Then FIR was lodged by Sampatrao Patil, PI on 19th September

2021, at Exhibit-31. The Respondent-accused was charge-sheeted and charge was framed for the offence punishable under sections 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act. There are four witnesses are as under :

- (a) PW 1 – Guruling Shivrudra Swami - complainant
- (b) PW 2 – Surendra Shankar Bhalerao - panch witness
- (c) PW 3 – PI Sampatrao Pandurang Patil - Investigating Officer,
- (d) PW 4 - Puran Kumar Chanda - Sanctioning Authority.

4. With the assistance of both sides, I have perused evidence and the judgment. Neither the evidence of demand was found satisfactory nor evidence on the point of acceptance of illegal gratification. There was variance in between testimony of PW 1 and PW 2. On all counts, the offences were not proved. It resulted in acquittal. The Respondent-State has challenged the said judgment.

5. I do not think that case for interference is made out. There

is no perversity in the findings. If the complainant will depose differently from what is stated in the complaint, the trial Court is bound to disbelieve the complainant. The variance in testimony of PW 1 and PW 2 were on material aspects. It is not just like the tainted notes were kept in right side or left side and that too pant or shirt but place for keeping currency notes is totally changed by the complainant.

Demand and Acceptance

6. In the evidence PW 1 – complainant said that the Respondent-accused kept tainted notes in the drawer of his table. They were taken from the drawer by Anti Corruption Bureau officer whereas panch witness PW 2 – Sameer Bhalerao has stick to the contents of trap panchnama. The currency notes were accepted by right hand and kept in left pocket of the pant. This can be said to be clever way of complainant of changing from reality.

7. There is one more aspect. When the complainant and

panch witness went to office, the Respondent-accused was not present in the cabin, whereas he came after 15-20 minutes. This is version stated by the complainant whereas panch witness stated that when they reached in front of the cabin of the Respondent-accused, one lady was present in the cabin. The panch and complainant went inside the cabin and lady left the cabin. If both the witnesses have witnessed the incident at the same time, how can there be variance in their version. As stated above, it seems that the complainant has decided to support the prosecution case but in his own way. There are circumstances which shows that tainted currency notes were taken out from pant pocket of the Respondent-accused but these are circumstances, after money was given. There is no consistency in between testimony of PW 1 and PW 2 in respect of events that took place after money was accepted by Respondent-accused.

8. It is true that the Court can believe the panch witness even though the complainant has not supported, this could have also be done but the evidence on point of demand is also not

satisfactory, unless it is done, evidence on the point of acceptance cannot be considered.

9. Before the Court, the complainant has stated certain different facts. In the complaint he said :

“Initially, he met one lady on 4th September 2001 and she instructed to pay Rs.600/- as per the demand note. On 19th September 2001, he again visited the office along with receipt of Rs.600/-, on this occasion he met the Respondent-accused. The Respondent-accused demanded Rs.1,000/-, if connection has to be started urgently. On being annoyed, the complainant approached Anti Corruption Bureau. So there is reference of demand only of 19th September 2001.”

10. Whereas before the Court he has omitted to make reference about his visit on 4th September 2001, and instructions given by one lady. Whatever has happened is on 19th September 2001, and it is deposed by the complainant before the Court and the instructions to deposit Rs.600/- was given by the Respondent-

accused only. When receipt is shown the Respondent-accused demanded the amount, however, he has chosen not to mention the amount. That's why there is variance. If the Court has to deal with such witness, who has not deposed about exact amount of demand but also changed sequences of events, it is difficult to believe such witness. The trial Court that's why not accepted his testimony and evidence on the point of demand.

Sanction

11. The Respondent-accused was working as the Sub-Divisional Officer. The sanction is given by PW 4 – Puran Chanda. He is Member (Services) Department of Telecommunication. Whereas the Appointing Authority for the Sub-Divisional Engineer is the Director. The trial Court considered the sanction as defective. The prosecution ought to have clarified designation as Member (Services) and Director. So also the connection between BSNL and the Department of Telecommunication ought to have been clarified.

12. Lastly, the complainant was sanctioned PCO booth and he has deposited amount as per rules. The trial Court considered that no work was pending with the Respondent-accused.

13. For the above discussion I do not find any reason to interfere in the decision of the trial Court. The trial Court was left with no alternative but to give the Respondent-accused benefit of doubt. Hence, the Appeal is dismissed.

[S. M. MODAK, J.]