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

CRIMINAL APPEAL NO. 1239 OF 2012

The State of Maharashtra

...Appellant

vs.

Vasudeo Liladhar Bhirud

Age 40 years,

Occ: Executive Engineer, PWD,

Sawantwadi Sub Division

Sawantwadi

...Respondent

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

Mr. Rohan Nahar, Advocate for the Respondent.

CORAM : S. M. MODAK, J.

DATED : 21ST JULY 2023

JUDGMENT :

1. Heard learned Advocate Mr. Dedhia, for the Appellant-State and learned Advocate Mr. Rohan Nahar for the Respondent-Accused.
2. The correctness of the judgment delivered by the Special Court, Sindhudurg on 27th December, 2011 is under challenge. The Respondent was acquitted for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act.
3. The learned trial Judge acquitted the Respondent mainly on following grounds :-

- (a) The evidence of complainant on the point of demand was not satisfactory. It relates to pre-trap demand and demand at the time of trap.
- (b) There was inconsistency between evidence of *defacto* complainant P.W.1 and pre-trap panch P.W.2.
- (c) The sanction was found defective as it was given by Incompetent Officer.
- (d) The conduct of Investigating Officer was found doubtful.

4. With the assistance of learned APP Mr. Dedhia for the Appellant-State and learned Advocate Mr. Rohan Nahar for the Respondent-accused, I have gone through entire evidence. It is true that the judgment of acquittal can be reversed only when the findings are perverse. That is to say, they are arrived at by ignoring materials or ignoring the provisions of law. Just because two views are possible, there is no scope for interference in the Appeal.

5. I think in this case, there is no room for interference. I do not find that the findings are perverse. I will give reasons for my conclusion hereinafter.

6. The prosecution examined the following witnesses :-

P.W.1	Waman Dattaram Parab-Defacto complainant (page 67)
P.W.2	Chandrakant Haribhau Wankhde-Trap panch (page 89)
P.W.3	Vithoba Vasudeo Bobhate-Sanctioning Authority (page 109)
P.W.4	Pundlik Govind Satose-Investigating Officer (page 127)
P.W.5	Vitthal Aanna Jadhav-Investigating Officer (page 146)

7. The prosecution case is as follows :-

- (a) The respondent is working as an Executive Engineer in the Public Works Department, Sawantwadi, whereas, *defacto* complainant is working as the contractor and he undertakes work under the scheme of Educated unemployed persons. There is a committee constituted for sanctioning such tenders.
- (b) The department had undertaken the work of digging gutter in respect of road passing from village Kankavali to village Matond. The Respondent received work order in the month of March 2006.
- (c) The Respondent demanded Rs.4,000/- at the time of issuance of work order in the month of March 2006. *Defacto* complainant paid Rs.2,000/- towards illegal gratification, whereas, it has come in the evidence that this amount was paid as one of the term of the work order.

- (d) The Respondent further demanded Rs.13,000/-, out of which defacto complainant complied partial demand by paying Rs.7,000. This second demand was made at the time of issuance of a cheque which was to the tune of Rs. 3,85,602. It was on 25th August, 2006.
- (e) Defacto complainant approached the office of Anti Corruption Bureau at Ratnagiri on 29th September, 2006 (complaint Exhibit-46, Page 84). There is serious challenge to the conduct of defacto complainant in approaching Ratnagiri office because the office of Executive Engineer of the Respondent is situated at Sawantwadi, which comes within Sindhudurg District. This complaint was lodged on the basis of last demand of money on 28th September, 2006 which was conveyed to the defacto complainant through the employees from Vengurla office. Unwillingly, he has agreed to pay Rs.5,000/-.
- (f) Deputy Superintendent of Police Mr. Satose recorded the complaint and initiated action. He requested Sindhudurg Collector to make available services of two officers. It is vide letter dated 29th September, 2006 (Exhibit-59, Page 145). Trap was laid on 29th September, 2006 itself. In fact, it was arranged

at Sawantwadi office but it was changed and arranged at Vengurla office. There is no explanation for this act.

- (g) There is a letter written by Collector, Sindhudurg addressed to two officers thereby asking them to coordinate with the Deputy Superintendent. It is dated 30th September, 2006 (Exhibit-50, Page 97). After the trap is conducted on 29th September, 2006, how can there be letter dated 30th September, 2006. This lacuna gains significance as the panch witness P.W.2, has also said during the cross-examination, that he has signed on all the documents two days after the trap (page 95).
- (h) The trap was arranged in the office of the Deputy Engineer at Vengurla, one Mr. Navkhandkar was the Deputy Engineer. There were two persons sitting in the cabin. After they left, *defacto* complainant and trap panch went inside the cabin. The Respondent was very much there. After initial talks, *defacto* complainant offered Rs.5,000/- towards illegal gratification. There is variance in between testimony of P.W.1 and P.W.2 in respect of manner of offering this amount.
- (i) According to *defacto* complainant, he gave the amount and the

Respondent accepted it by his right hand and kept it in his left hand shirt's pocket (page 72), whereas the panch witness on page 91 has said that *defacto* complainant took out the amount and kept it on the table in front of the accused and thereafter, the accused kept it in left hand side shirt's pocket. So prior to keeping it in shirt pocket, the amount was kept on the table. This fact is not stated by the defacto complainant. The Trial Court has emphasized on this aspect. This cannot be said to be variance on minor particulars.

- (j) Thereafter, pre-arranged signal was given and the Investigating Officer and other members went inside the cabin and other formalities were completed. The complaint was lodged by Deputy Superintendent of Police at Vengurla police station. It is at Exhibit-58 (page 139).

8. Learned trial Judge has emphasized on the conduct of P.W.1. He found the variances. The fact is, it creates doubt in his testimony. There are as follows :-

- (i) Though *defacto* complainant deposed about payment of Rs. 2,000/- in pursuance to demand by the Respondent, it has

come in the evidence that it was paid as one of the condition of the work order. This was stated by the *defacto* complainant, even he has said about issuance of acknowledgment receipt for that payment (para 8, page 74).

- (ii) Furthermore, there is demand of Rs.13,000/-, however, Rs.7,000/- was paid. The complainant during cross-examination has answered that he did not met the Respondent four days prior to Ganesh Chaturthi and then how demand was made (para 13, page 78).
- (iii) There was no reason for the Respondent to demand illegal gratification because the work of issuance of a cheque was already completed. The work already done by the *defacto* complainant was inspected by Junior Engineer Mr.Jamadar and Deputy Engineer Mr.Navkhandkar by vising the site. The measurement of the work was done and signed by the *defacto* complainant. Even Vengurla Sub-Divisional Office prepared the bill and forwarded it to Sawantwadi Sub-Divisional Office. It is for purpose of signatures of the Respondent. Bills are passed in the month of June, 2006 itself (para 9, page 74, of *defacto* complainant's evidence).

- (iv) The Respondent has already signed on those bills on 21st August, 2006 and sent it to treasury (para 10).
- (v) The *defacto* complainant even received the cheque on 25th August 2006, (para 11).
- (vi) The complainant tried to give an explanation that as his one more bill was pending, he has paid the amount of illegal gratification and also for purpose of getting future contracts (para 5 of the evidence). Whereas, during cross-examination he has answered that “there is no reference in complaint at Exhibit-46 that accused demanded the amount as the work was pending and so also he may not get future work. He has agreed to pay the amount”. (para 15).
- (vii) There is background for lodging of the complaint. On 28th September 2006, *defacto* complainant received messages from Sub-Divisional Office, Vengurla asking him to pay balance amount of Rs.6,000/- (page 4). It is true that in complaint, he has not stated the names of persons, who has given those messages, whereas during cross-examination, he has disclosed their names as Gadekar, Narvekar, Aaroskar. (para 12).
- (viii) The Investigating Officer has admitted that though the names

are not told to him at the time of lodging of complaint, even though those names had come during cross-examination. Admittedly, they are not told at the time of complaint and as such, no investigation was carried on that line, and resultantly, there is no investigation. The fact remains that there is no corroboration to the story of receiving messages to pay the amount.

For the above reasons, the trial Court has not found this evidence reliable and trustworthy.

9. So far as the evidence of PW-2 is concerned, I have already said that he has improved the story about manner of offering illegal gratification. It is not the prosecution case that money was kept on the table and then accepted by the Respondent. It is by way of improvement and not accepted by the trial Court. Admittedly, the trap was laid on 29th September 2006 and the letters issued by the collector is on 30th September 2006. It also creates doubt about attending the trap by P.W.2.

10. Furthermore, the panch witness has said that the Respondent has not demanded the amount at the time of trap (page 95). Even though *defacto* complainant has said about this fact, unfortunately,

there is no corroboration from panch witness. He is independent witness. The law requires corroboration with the testimony of the complainant.

11. So merely because there is acceptance of illegal gratification, it cannot be accepted, unless there is reliable and trustworthy evidence in the form of demand. Unfortunately it is not there.

Evidence on the point of sanction

12. The Respondent was working as the Executive Engineer and P.W.3 is the Sanctioning Authority. He worked as the Deputy Secretary in the PWD Department. There is committee formed by the Government as per Government Resolution dated 7th November 1997, and 3rd April 2000. Who can be the Sanctioning Authority depends upon the pay scale of delinquent employee. If the salary is above Rs.10,600/-, it requires sanction by the Chief Minister. It is true that on sanction, the witness has signed as the Deputy Secretary to the Government. He is not the Competent Officer to grant sanction, neither he has signed on behalf of the Government. The trial Court has emphasized on these aspects. I fully concur with them.

13. The Sanctioning Authority has taken care in verifying the log

book of the vehicle used by the Respondent. He found that on 25th August 2006, he was not in the office. So it creates doubt. It is on this date, demand of Rs.13,000/- was made and Rs.7,000/- was paid. A person may lie, but not the document. The Respondent was not there in the office. Contention is that the Sanctioning Authority prior to according sanction, ought to have considered these facts. It shows non-application of mind. I agree to the findings given by the trial Court.

Conduct of Investigating Officer

14. Deputy Superintendent of Police Mr.Satose was attached to the office of Anti Corruption Bureau at Ratnagiri. He laid trap in the adjoining District of Sindhudurg. There are two contentions raised on behalf of the Respondent before the trial Court. They were accepted too. One is how can he arrange trap in the adjoining district without permission. The witness claims that there was oral permission. Secondly, the Respondent contend that one Mr. Nazir Shaikh has got role to play in arranging this trap by Deputy Superintendent of Police. Mr. Satose has admitted that he knows Nazir Shaikh because he has acted as a panch witness in another case. It was also suggested that the Respondent has not cleared the

dues of Mr. Nazir Shaikh in respect of another bill. These facts were denied. The fact remains that there was only oral permission. So, it creates doubt about entire trap exercise.

15. For the above discussion, I do not find that there is merit in the Appeal. The trial Court has acquitted the Respondent by giving detail reasons. I do not consider those findings as perverse. No interference is warranted.

16. Appeal is dismissed.

[S. M. MODAK, J.]