

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 03 OF 2008.

Padmakar s/o. Warlu Alliwar
 Age about 38 years, Occ. Service Extension
 Officer, Panchayat Samiti, Chimur,
 Tahsil Chimur, District Chandrapur.
(Dead) Thr. LR's

- 1) Harshatai wd/o. Padmakar Alliwar,
Aged 45 years, Occ.: Housewife,
- 2) Pawan s/o. Padmakar Alliwar,
Aged 27 years, Occ.: Self-employed,
- 3) Amol s/o. Padmakar Alliwar,
Aged 25 years, Occ.: Student,
- 4) Nilesh s/o. Padmakar Alliwar,
Aged 21 years, Occ.: Student,
All R/o. At Post Chimor,
Near Balaji Temple, Gandhiwad,
Tah.: Chimor, Dist. : Chandrapur.
**(Amended as per Court's Order dated
 15.07.2019)**

... APPELLANTS

----- VERSUS -----

State of Maharashtra
 Through Deputy Superintendent of Police,
 Anti Corruption Bureau, Chandrapur.

... RESPONDENT

Ms D. Joshi, Advocate h/f Mr. S. V. Sirpurkar, Advocate for the Appellant.
 Shri A. M. Kadukar, A.P P. for the Respondent/State.

CORAM : MRS.VRUSHALI V. JOSHI, J.
RESERVED ON : 07.12.2022.
PRONOUNCED ON : 23.01.2023.

JUDGMENT :

1. Heard.

2. The appellant/accused has challenged the judgment passed by the learned Trial Court as the appellant is convicted in Special Case No.5/1994 for the offences punishable under Sections 7, 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the said Act”). The appellant/accused was convicted and sentenced to suffer six months rigorous imprisonment and to pay a fine of Rs.1000, in default to suffer simple imprisonment for one month for the offence punishable under Section 7 of the said Act and also to suffer rigorous imprisonment for one year and to pay a fine of Rs.1000 in default to suffer simple imprisonment for one month for the offence punishable under Section 13(1)(d) of the said Act.

3. The case of the prosecution is that, the appellant/accused is Gram Sewak/clerk in Grampanchayat, Palasgaon. The complainant was in need of resolution of Grampanchayat, Palasgaon, therefore, he went there and applied for the certified copy of the said resolution. The appellant/accused asked him to come on 10.09.1993. On 10.09.1993, the appellant/accused asked him to pay an amount of Rs.205/-. When the complainant asked him about the charges, he told him that Rs.5/- for supply of the copy and Rs.200/- for his labour (मेहनताना). When he demanded Rs.200/- extra, the complainant asked him to give him some time to pay

Rs.200/-. Therefore, the appellant/accused asked him to come on 13.09.1993 with Rs.205/-. On 13.09.1993 the complainant went to his office, at that time also he asked him to pay Rs.205/-. That time he gave Rs.5/- to the appellant/accused. The appellant/accused asked him for the amount of Rs.200/- and stated that he will not supply the copy of resolution unless he paid the amount of Rs.200/-. Therefore, the complainant asked him for some time. The appellant/accused asked him to come on 15.09.1993 at Grampanchayat. On 15.09.1993 he could not contact the accused. Therefore, on 16.09.1993 the complainant went to the house of the appellant/accused and again accused asked him for Rs.200/-. The complainant told him that he is not having said amount. Though the accused was having the copy of resolution, he asked him to come on 17.09.1993 with Rs.200/-. The informant had agreed to pay the amount and he went to Anti Corruption Bureau office and lodged the complaint.

4. On the complaint lodged by the complainant, the panch witnesses were called and trap was arranged. It was decided that after demand and after acceptance of the amount, the complainant will move the handkerchief on his face and then raiding party will reach there and caught the accused. Accordingly, the panch witnesses along with complainant went to the house of the accused. Initially, the accused was not at home.

Thereafter, they wait for him outside the house. After some time, accused came there. Thereafter, he went there and the accused has accepted the amount. After acceptance of the amount he gave signal to the raiding party and the raiding party entered the house and seized the amount which was given by the complainant and was applied with the phenolphthalein powder. The amount was seized from the kitchen platform from the house of the accused. Thereafter, the crime was registered and the accused was arrested. The seizure panchanama was conducted and after completion of the investigation, charge-sheet was filed.

5. The prosecution had examined total seven witnesses they are PW-1 the first informant, PW-2 the Panch witness, PW-3 is the constable, who has registered the complaint, PW-4 is carrier of Muddemal to C.A., PW-5 is the Sanctioning Authority, PW-6 is the carrier who brought the Muddemal from C.A. and PW-7 is the Investigating Officer. The defence has examined one witness i.e. wife of the accused.

6. The complainant had deposed before the Court as per the complaint. On perusal of the evidence of PW-1 the complainant, it appears that the accused has brought on record the entire procedure of trap how he went there and amount was given to him. The complainant has stated that he has gone

through the complaint before giving evidence. It is brought on record that he asked accused not to give said copy of resolution to any of his family members. He admitted during the cross-examination that he used to visit Court frequently and knows the legal procedure. The accused has admitted the demand during cross-examination. By giving suggestions how raid was conducted and amount was given is brought on record. The hand wash after touching solution was taken for once stated by him, which is contrary to his own statement and procedure.

7. The prosecution has examined PW-2 to corroborate the evidence of the complainant. He was with the complainant. Though he has stated during the examination-in-chief that hand wash of accused was collected and it turned purple, he contradicted his own statement by stating that it was not turned purple and shirt also had no stains of said colour. It is brought on record that he is a regular panch. Some improvements are brought on record in his evidence. The evidence of this witness creates doubt about his version.

8. Though the sanction is obtained and the Sanctioning Authority is examined as PW-5, the witness has stated that he has not verified the documents before giving sanction. The statement made by the responsible person as Sanctioning

Authority is sufficient to create doubt about the credibility of his evidence.

9. PW-4 and PW-6 are the carriers of the muddemal. PW-4 has carried the muddemal to Chemical Analysis and PW-6 has brought the muddemal from Chemical Analyser.

10. Though the Trial Court has come to the conclusion that the evidence of all the witnesses is consistent and therefore, the offence is proved, from the evidence of all the witnesses, it appears that the complainant has stated as per the complaint but has admitted that he has gone through it before deposing before the Court. He was aware about the Court procedure and used to attend the Court regularly. Except the evidence of complainant there is no other evidence which supports the statement of the complainant. The appellant relied on the judgment of the Hon'ble Supreme Court in the case of ***Panlal Damodar Rathi Vs. State of Maharashtra*** reported in ***(1979) 4 SCC 526***, wherein it is held that, "*on facts, there was no corroboration of the testimony of the complainant regarding the demand for money by the appellant. On this crucial aspect, therefore, it has to be found that the version of the complainant is not corroborated and, therefore, the evidence of the complainant on this aspect cannot be relied on*". Though the trap was conducted, the pre-trap for demand is not conducted. The complainant on his own went to

the house of the accused. He went along with panch witnesses. Though it is mentioned that the amount was seized from the platform of kitchen, the panch witness has stated that the accused was found near the bath-room.

11. As the pre-trap panchanama was not conducted, the demand is not proved. The panch witness has stated in his evidence that though the solution was applied to the currency notes, the colour was not changed. The panch witness has also stated that the hand wash of the accused has also not turned purple. Though the entire procedure is brought on record during cross-examination of the complainant, the evidence of complainant is not sufficient to convict the accused. The quality of material is not produced nor their proper evaluation is done which could be held sufficient to convince the judicial conscience. The currency notes in question were not recovered from the person or where the complainant has given to accused, when the trap party arrived, it was found only on the kitchen platform. The accused has relied on the judgment of the Hon'ble Supreme Court in the case of ***Meena (Smt) W/o. Balwant Hemke Vs. State of Maharashtra*** reported in ***(2000) 5 SCC 21***, wherein it is held that "*like any other criminal offence, the prosecution has to prove the charge beyond reasonable doubt and the accused should be considered innocent, till it is established otherwise by*

proper proof of acceptance of the illegal gratification, the vital ingredient, necessary to be established to procure a conviction for the offences under consideration". The evidence of panch witness is not reliable. Sanction was granted very casually. The prosecution has failed to prove the offence beyond reasonable doubt. Therefore, the benefit of doubt is required to be given to the accused. During the pendency of the appeal the appellant died. The legal heir of the appellant proceeded with the appeal. Hence, I pass the following order :

ORDER

- I] The appeal is allowed.
- II] The judgment and order passed by the Trial Court in Special Case No.5/1994 convicting the appellant/accused for the offences punishable under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 is set aside.

(MRS. VRUSHALI V. JOSHI, J.)