



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 32 OF 2011

The State of Maharashtra
Through Anti Corruption Bureau,
District Jalgaon.

....Appellant
(Ori. Complainant)

Versus

Vijay Pandurang Jogi
Age: 55 years, Occu.: Service,
Asst. Engineer, M.S.E.D. Company,
Chopda, Dist.Jalgaon.

.....Respondent
(Ori. Accused)

.....

APP for Appellant : Mr.N.D.Batule
Advocate for Respondent : Mr. Joydeep Chatterji

.....

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 02 APRIL, 2024
PRONOUNCED ON : 08 APRIL, 2024**

JUDGMENT :-

1. State is hereby questioning the judgment and order dated 30-11-2009 passed by learned Ad-hoc Additional Sessions Judge, Amalner, acquitting present respondent from offence under Sections 7, 13(1)(d), 13(2) of the Prevention of Corruption Act (PC Act).

PROSECUTION CASE IN TRIAL COURT

2. Complainant, Madhukar Kankhare, an agriculturist, alongwith

other agriculturists approached accused, an Assistant Engineer, posted in the then MSEB Office in Chopda, with a request to erect D.P. as they were experiencing shortage of electricity supply. Accused assured to sanction new D.P. but on payment of Rs.25,000/-. Complainant and others raised Rs.25,000/- by way of contribution. Complainant paid initial amount of Rs.15,000/-. D.P. was erected but electricity supply had not started and therefore, when they again approached accused, he demanded remaining amount of Rs.10,000/-. After which, complainant approached Anti Corruption Bureau (ACB) authorities and lodged complaint with PW4 Dattatray, who summoned pancha, got pre-trap verification done and planned trap. On 09-10-2007 PW1 Madhukar, complainant and PW2 Ravindra, shadow pancha visited office of accused and on demand, paid Rs.10,000/-. Predetermined signal was relayed and raiding party, which was waiting in lay, apprehended accused and further procedure of investigation was undertaken by PW4 Dattatray.

After obtaining due sanction, accused was chargesheeted and tried by learned Ad-hoc Additional Sessions Judge, Amalner. Said Court conducted trial by examining in all four witnesses and by appreciating oral and documentary evidence reached to a finding that prosecution had failed to establish the charges, hence by judgment

and order dated 30-11-2009, acquitted the accused.

3. Feeling aggrieved by above order of acquittal, State has come up in appeal primarily on following grounds :

GROUND

Firstly, there is improper appreciation of evidence both oral and documentary.

Secondly, prosecution had established demand as well as acceptance and as such offence was complete.

Thirdly, testimony of complainant and shadow pancha was consistent and lending support to each other.

Fourthly, sanctioning authority has accorded sanction after due application of mind.

Lastly, inspite of availability of essential ingredients to attract the charges, there is improper appreciation of evidence as well as law and erroneous conclusion has been reached at, which needs to be rectified by re-appreciation of evidence in appeal.

4. In answer to above, learned counsel for accused pointed out that prosecution has miserably failed to bring home the charges. The gist of his argument is that at the threshold accused was in no way

incharge or responsible for getting work of complainant done. He was neither holding jurisdiction to erect D.P. nor was an authority to accord sanction for the same. Further according to him, here prosecution, at the outset, failed to establish very demand, which is *sine qua non* in cases of such nature. Taking this Court through the testimonies of PW1 Madhukar and PW2 Ravindra, it is his submission that it is evident from their testimonies that complainant was himself persuading accused to get the work done and was hotly pursuing accused by approaching him repeatedly. Learned Counsel for accused pointed out that evidence of PW1 Madhukar and PW2 Ravindra clearly shows that there is no acceptance of any bribe, rather it is a case of thrusting or planting of amount for deliberate implication. Complainant had not touched planted currency and as such no offence has at all been committed as there is neither demand nor acceptance. He also questions the validity of sanction by inviting attention of this court to the cross-examination faced by Sanctioning Authority PW3 Narayan. Lastly he submitted that accused had no concern with the work related to D.P. and therefore, there was no question of demanding bribe. That accused has offered plausible explanation without delay probalizing his case of false implication and therefore, he prays to dismiss the appeal for want of merits. He

seeks reliance on the ruling of Hon'ble Apex Court in the case *T. Subramanian v. State T.N. (2006) 1 SCC 401*; *Punjabrao v. State of Maharashtra, AIR 2002 SC 486*; *Suraj Mal v. The State (Delhi Administration), AIR 1979 SC 1408*.

**GIST OF THE EVIDENCE ON BEHALF OF PROSECUTION
IN TRIAL COURT**

5. **PW1** Madhukar Chindu Kankhare at exh.13 deposed that he has landed property in Shivar of Kamalgaon. There is no electricity D.P. near his landed property. Consequently, he was getting less electricity supply and was so incurring losses. His neighbours were also facing same difficulty. According to him, he and other agriculturists consequently decided to approach MSEB office for installation of D.P. In the year 2006, he himself and others visited MSEB Office in Chopda, met accused and put up demand to install D.P. Accused informed that he will get it sanctioned for them but they would incur expenses to the tune of Rs.25,000/-. They agreed and seven agriculturists collected Rs.21,000/-, complainant himself contributed Rs.4,000/-. According to him, again in the year 2006, he, Balu Tayade, Laxman Tayade visited MSEB Office and at that time accused informed that he would send proposal for installation.

Accused called them to his house. He deposed that this happened six months prior to lodging of complaint. At the house of accused, they gave amount of Rs.15,000/- to the accused and they informed accused that they will give Rs.10,000/- later on. He deposed that they also told accused that they will give remaining amount of Rs.10,000/- after D.P gets functional. Accused did not complete the work and so complainant approached accused and thereafter, work of installation of D.P commenced and in the year 2007 D.P was installed, but there was no supply of electricity from the D.P. When they approached accused, he asked them to pay remaining Rs.10,000/- and thereafter, supply of electricity would start. Accused asked them to bring amount of Rs.10,000/- in his office after two days. Therefore, on 08-10-2007, complainant went to ACB office and lodged complaint exh.14.

6. On 09-10-2007, he and shadow pancha were explained the procedure and made to carry tainted currency. After reaching office of accused, he and shadow pancha approached him and again requested to start the electricity supply, upon which accused demanded remaining amount of Rs.10,000/- and that thereafter, he would start electricity supply. Complainant took out tainted currency

and thereafter, accused asked him to keep the amount on the table. Accused placed tray over it and complainant went out and gave predetermined signal followed by raid and apprehension of accused.

7. **PW2** Ravindra Pralhad Patil, who acted as shadow pancha, deposed about visiting ACB office, meeting complainant, coming to know about complaint, its contents, demonstration and procedure of application of anthracene powder being given and he being accompanied complainant to the office of accused. According to him, complainant requested accused to start D.P., who thereafter, asked complainant whether remaining amount has been brought and further directed complainant to keep Rs.10,000/- on the table. Accordingly, complainant kept Rs.10,000/- on the table, upon which accused kept plastic tray on currency. Thereafter, complainant went and gave predetermined signal and thereafter, raiding party came and apprehended accused.

8. **PW3** Narayan Genu Misal, Chief General Manager, deposed that he received papers from Chopda City Police Station, he personally perused and examined the papers and thereafter, issued sanction to launch prosecution.

9. **PW4** Dattatray Karbhari Ghuge, Investigating Officer, who narrated all steps taken by him since receipt of complaint till apprehending accused, completing investigation, obtaining sanction and thereafter, chargesheeting accused.

ANALYSIS

10. Prosecution has been launched on the premise that complainant and other agriculturists approached accused, Assistant Engineer, MSEB with a request to install D.P for want of sufficient electric supply. According to prosecution, accused demanded illegal gratification of Rs.25,000/-. Initially, he accepted Rs.15,000/- and subsequently while accepting remaining Rs.10,000/-, he was apprehended.

11. Considering the nature of charge, obviously, testimony of PW1 Madhukar, complainant and PW2 Ravindra, shadow pancha is of relevance and significance. Therefore, such evidence is carefully sifted. On doing so, it is noticed that according to PW1 Madhukar, complainant, he and other seven agriculturists decided to approach MSEB Office. In substantive evidence, he does not give the exact date when they all visited office of accused at Chopda, rather he is merely found to be deposing about going to the MSEB office in the

year 2006. According to him, hearing their request for D.P, accused said that he will sanction the D.P for them and for that they will have to incur expenses. On enquiring about quantum, accused allegedly told that Rs.25,000/- would be required. He further deposed that when accused informed them about expenditure of Rs.25,000/- for D.P, they all agreed and even raised Rs.25,000/- by contribution. Further according to him, when he, one Balu Tayade, Laxman Tayade, approached accused to enquire about the proposal of installation, he allegedly called them at his house. According to him, all this happened six months prior to lodging of complaint (i.e. 08-10-2007). This suggests that second visit to accused might have taken place on 08-04-2007. According to him, they gave Rs.15,000/- to accused and assured to pay Rs.10,000/- after D.P went functional. D.P was installed in 2007 but there was no electricity supply and on being asked to that extent, accused allegedly demanded remaining amount of Rs.10,000/- and hence, complaint.

12. From above discussion, it is emerging that exact dates on which complainant approached accused has not come on record. His visit alongwith other agriculturists are said to be in 2006. D.P is said to be installed in 2007. Thereafter, as there was no electricity

supply, he again approached accused, but even dates of such visits are not stated inspite of claiming to have paid Rs.15,000/- in the house of accused. Apparently no complaint is lodged prior to paying Rs.15,000/- at the house of accused. Complainant himself speaks of paying remaining amount of Rs.10,000/- after electricity supply commences.

What can be gathered from above material is that infact there is no demand from accused side to do the work. Inspite of other agriculturists raising amount by contribution and were said to be accompanying complainant for their joint work, only PW1 Madhukar alone has approached ACB authorities on 08-10-2007 and has lodged complaint. Even so called other agriculturists are not examined by prosecution to fortify above assertion of demand of Rs.25,000/- or part payment of Rs.15,000/- being made and further retaining Rs.10,000/- to be paid later on supply of electricity. His testimony shows that he and shadow pancha visited office of accused on 09-10-2007.

13. It is also worth noting that, complainant speaks about approaching accused in 2007 after which D.P. was said to be installed, but when exactly accused was approached has not been

specified by him. He merely speaks of requesting connection of electricity supply and accused making demand of remaining Rs.10,000/-. He directly speaks about approaching ACB on 08-10-2007 and visiting office of accused on 09-10-2007. His testimony is silent about accused asking him to visit his office with remaining amount on 09-10-2007.

14. Further interesting feature of his evidence is that, tainted currency was allegedly asked to be kept on table and there is no act of accepting the currency and pocketing it or keeping it in his own possession or drawer. Apparently amount is kept by complainant on the table only. Role attributed to accused is that he placed plastic tray over it. But there is no physical contact with tainted currency to assume acceptance.

15. In cross-examination faced by complainant, he admitted that the area in which D.P. was to be installed, was falling in the jurisdiction of one Adavad Unit and Choudhari was Jr. Engineer of Adavat Unit. He claims ignorance about D.P. already sanctioned one year prior to lodgement of complaint. He admits about workers of Pioneer Company installing D.P. prior to lodging complaint on

08-10-2007. With such answers, it is doubtful whether accused was authorized to sanction and get D.P installed in a jurisdiction, which fell in the domain of other Officers. Moreover, he has categorically admitted in cross-examination that he had talked with accused after work of installation of D.P and connection of wire was completed. He admits that during first visit when accused quoted amount of Rs.25,000/-, he realized that it was illegal and it was demanded as bribe and further admitted that still he did not lodge complaint with ACB at that juncture. Surprisingly he further answered in cross-examination that at the relevant time of giving amount of Rs.15,000/- to accused, they were not knowing that the amount given was bribe. Therefore, complainant is contradicting himself. Rather he candidly admitted that they felt that they were giving amount for D.P work and it was official amount. He is also unable to give exact dates on which visits were paid to the Office of accused. He also admitted that he himself had not talked with other agriculturists, who were also interested in D.P regarding lodging of complaint at ACB office. He admitted that on the day of complaint, amount collected by contribution from other agriculturists was with him only. He admitted that ACB authority instructed that amount has to be given at any cost otherwise trap would fail. Such answers

shows that complainant was keen in paying bribe even when his evidence is silent about demand being made by accused towards bribe.

16. On reanalyzing evidence of PW2 Ravindra, shadow pancha, it is emerging that after visiting office of accused on 09-10-2007, accused was not present. This also shows that visit by PW1 Madhukar and PW2 Ravindra was not on calling of accused to the office. He deposed that while in the Office, accused asked complainant to pay remaining amount and to keep it on the table which was duly kept by complainant over which accused allegedly kept plastic tray. His examination-in-chief shows that raiding party merely seized currency from the table and table cloth, plastic tray which was allegedly placed by accused on tainted currency is apparently not seized. Had it been a case that plastic tray was kept over tainted currency, definitely there would have been traces of anthracene to such part of the tray, which had come in contact of currency. But evidence of shadow pancha does not show that tray was also seized. Even otherwise, his evidence shows that accused had not touched, accepted or pocketed the tainted currency. It is apparently lying on the table at the time of seizure also.

PW2 Ravindra, Pancha witness in cross-examination has admitted that after complainant went out of the cabin, accused did not touch the currency note, rather accused was simply sitting on chair. Therefore, in strict sense, apart from no demand, there cannot be said to be acceptance of bribe. Seizure of tainted currency is apparently not from possession of accused. Both PW1 Madhukar and PW2 Ravindra do not speak about accused touching the currency or counting the currency. Learned Counsel for accused pointed out that it is a case of either thrusting of planting bribe amount. Circumstances at spot lean in such direction.

17. It is fairly settled that there is fundamental burden on prosecution to prove both demand of illegal gratification as well as acceptance. Law has gone to the extent of holding that mere demand and possession is not sufficient and it is further expected of prosecution to demonstrate or substantiate that the amount was towards only and only illegal gratification for doing official work. Here prosecution's own witness speaks about work of installation of D.P to be with other Officers and not accused.

SUMMATION

18. To sum up, complainant's evidence is silent about date of visit

to accused or date of demand and exact date of payment of part amount. Visits are paid in 2006 and complaint is lodged in 2007. Complainant admits that part amount paid was not towards bribe but was towards expenditure. Inspite of bribe amount having share of other agriculturists, they are not party to the complaint. Therefore, such circumstances and above discussed quality of evidence, render case of prosecution weak.

19. Perused the judgment under challenge. Learned trial Court has appreciated entire prosecution evidence i.e. substantive evidence of both crucial witnesses i.e. PW1 Madhukar, complainant and PW2 Ravindra, shadow pancha. The view taken by learned trial Court is the possible view that could emerge on appreciation of such quality of evidence. No illegality or perversity is brought to the notice of this Court in the impugned judgment. No case being made out on merits to interfere, I proceed to pass following order :

ORDER

Criminal Appeal No.32 of 2011 stands dismissed.

(ABHAY S. WAGHWASE)
JUDGE