IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 302 OF 2004

The State of Maharashtra,
Through,
P. S. Gangapur, District Aurangabad **... Appellant.**
(Orig. Informant)

Versus

Smt. Manik Gopalrao Deshpande,
Age : 39 years, Occ. : Service,
R/o. Aurangabad, at present R/o.
Ganpati Galli, Gangapur,
Tq. Gangapur, Dist. Aurangabad. **... Respondent.**
(Orig. Accused)

...
Mr. S. M. Ganachari, APP for Appellant – State
Mr. C. P. Sengaonkar & Mr. R. N. Chavan, Advocate for Respondent
...

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 04th JANUARY, 2024
PRONOUNCED ON : 09th JANUARY, 2024

JUDGMENT :

1. By invoking section 378(1)(3) of the Code of Criminal Procedure (Cr.P.C.), State has come up in appeal, thereby questioning the maintainability and sustainability of judgment and order passed by Special Judge, Aurangabad dated 04.02.2004 in Special Case No. 22 of 1999, thereby acquitting present respondent from charges under sections 7, 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988 (for short, “P. C. Act”).

2. In brief, prosecution was launched by Gangapur Police Station, alleging that, respondent herein was serving as a Senior Clerk in supply division of Tahsil Office, Gangapur. Informant Asaram Deokar, who ran fair price shop, was required to seek signature of respondent on the challans. Allegations are made that, respondent used to demand money to cause her signature. On 24.11.1998, when informant visited the office of respondent, she demanded Rs.50/- towards last month as well as Rs.50/- for current month and thereby demanded Rs.100/-. As informant was not willing to pay bribe, he lodged report (Exh.14) with Anti Corruption Bureau, Aurangabad. Said department laid trap on 25.11.1998 and accordingly, respondent was apprehended after accepting bribe and was duly arrested. After investigation, respondent was charge-sheeted and tried by Special Judge, Aurangabad, who refused to accept the prosecution case and thereby acquitted respondent by passing judgment and order on 04.02.2004. Hence, the appeal.

3. Learned APP for State would appraise this court about the nature of charge, status of the parties and would submit that, respondent was charge-sheeted for commission of offence under P.C. Act. He took us through the testimonies of prosecution witnesses, more particularly that of informant, shadow pancha,

Investigating Officer and would submit that, charges were cogently proved. There was demand by respondent and therefore, informant had approached Anti Corruption Department by lodging report and in consequence with trap was laid by arranging panchas and it was also successful. Amount which was demanded was accepted by respondent. The currency was seized from her possession. Therefore, he submits that, prosecution evidence ought to have been accepted, but the learned trial Court failed to consider and appreciate the same. He pointed out that there is no challenge to the act of demand and acceptance of gratification. Independent witnesses like shadow pancha have with stood cross examination and nothing fatal to the prosecution could be elicited from the prosecution witnesses. While acting as a public servant, respondent had sought gratification and thereby, had committed offence. She was found to be in possession of tainted notes. Immediate panchanama was drawn. Her involvement was proved beyond reasonable doubt, but learned trial court failed to accept the prosecution evidence and erred in acquitting the accused. Hence, he seeks indulgence of this court for overturning the judgment by allowing the appeal.

4. Learned counsel for respondent supported the judgment of trial court by pointing out that, there is correct

appreciation of evidence. Law has been correctly applied and according to him, as prosecution miserably failed to establish the charges, learned trial court committed no error whatsoever in acquitting the accused. He prays to maintain and uphold the judgment by dismissing the appeal.

5. On going through the evidence adduced by prosecution in trial court, it is emerging that, in all four witnesses have been examined by prosecution i.e. **PW1** Ekbalsingh Chal - Sanctioning Authority; **PW2** Asaram - informant; **PW3** Kisanrao – pancha and **PW4** PI Mendke – Investigating Officer. Their evidence are required to be re-examined, re-analyzed and re-appreciated to ascertain whether as claimed by appellant the judgment is erroneous and perverse.

6. The sum and substance of evidence of **PW1** Ekbalsingh Chal is that, being Collector of Aurangabad he was empowered to appoint and remove the accused respondent, a senior clerk. He claims that, he scrutinized the investigation papers and then accorded sanction to prosecute her and accordingly, he identified the sanction at Exh.11.

In cross, he answered that he has received draft sanction order.

7. **PW2** Asaram informant deposed about he running a fair price shop, which fell within the jurisdiction of Gangapur Tahsil office. He claimed to be knowing accused, who was serving as clerk in the office of Naib Tahsildar, Gangapur, whose duty was to supply quota of rice, wheat, oil, salt and dal to all fair price shop owners. She used to fill the challan in three sets and shop owners used to deposit amount as per challan having signature of accused. According to him, accused used to collect the amount of Rs.50 to Rs.100 from shop owners to cause signature on the challan. According to him, he had paid Rs.50/- while collecting the grain for the month of September and August 1998, but again she demanded Rs.50/- for collecting grain for the month of October 1998 and he assured to pay next month. He deposed that, on 24.11.1998, he submitted challans to collect the stock of wheat to the accused, but she demanded Rs.50/- towards last month and Rs.50/- for current month and thereby demanded total Rs.100/-. When he assured to pay afterwards, she refused to sign on the challan and returned it back to him and asked him to come up later on. According to him, accused never signed until amount was received. Further according to him, he was not ready to pay Rs.100/-, and therefore, he lodged report with Anti Corruption Bureau, which he identified to be at Exh.14 along with three copies of challans.

He further deposed that, on 25.11.1998, PW4 PI Mendke introduced him to panchas, namely, Rao and Chandekar, who were appraised about the report. He claimed to have produced two currencies of Rs.50/- each for the purpose of trap. Numbers of the notes were recorded on panchanama. Head Constable Dinapurkar demonstrated the use and characteristic of anthracene powder in ultraviolet (UV) rays, smeared currency notes with that powder and kept in left pocket of this witness and directed to transmit signal after acceptance. After reaching respondent accused, he claims that, he met her and told her regarding bringing Rs.100/- as per yesterdays demand and further produced copies of challan and notebook, which she caught hold the copies of challan in left hand. Then, he took out the tainted notes and held before her, which she collected in the right hand and put it with the challan in the drawer of the table and then caused signature on the copies of challan, which he claims to have kept in his pocket and gave signal, PW4 PI Mendke and others came and accused was caught. After 45 minutes, this witness was subjected to test of ultra violet (UV) light, in which his right hand fingers as well as inner portion of shirt pocket of his shirt revealed the blue shining. Challans were seized by drawing panchanama.

8. **PW3** Kisanrao a pancha, who deposed at Exh.15 that,

he was called to ACB office and introduced to PW4 PI Mendke and he agreed to act as a pancha and was introduced to informant. He also deposed that, informant produced currency notes for trap money, details of which were noted in panchanama and about Head Constable Dinapurkar applying anthracene powder to the currencies and keeping in the pocket of informant and he was told to accompany informant. Panchanama of all this event was drawn, which he identified to be at Exh.16. He further deposed that, while he was accompanying informant, he approached accused and told her about money being brought. He further deposed that, informant told accused that he has to spend for bus fair daily, upon which accused told him not to get disturbed in the morning hours and that she would pay for his bus fair. He further deposed that, informant procured three copies of challan before accused and collected the challans in her left hand. Informant held the tainted notes before accused. She collected those notes and put it in right drawer of her table, then caused signature on the challans and handed over the same to informant with further directed to deposit the amount. Witness stated that, he stood there itself while informant left and thereafter, PW4 PI Mendke and others came and respondent was asked about the tainted notes and she pointed towards the right drawer. PW4 PI Mendke inspected the drawer and found documents, copies of challan, amount of Rs.1798/- and two tainted notes in the driver. PW4 PI Mendke examined the palms of the members of squad and nobody was carrying residue of anthracene powder, but on examination of hands of accused, the fingers of right hand reflected the blue shining in ultra violet light. PW4 PI Mendke then examined the tainted notes in the said light and the same was also reflected blue shining anthracene powder. Numbers of the currency tallied with the details noted in trap panachanam, and therefore, the same was attached along with copies of challan. He stated that, during the search of left drawer, amount of Rs.330/- was found and accused gave explanation of only Rs.180/- and also the said amount was returned, whereas remaining amount was attached and kept in envelop and panchanama being drawn by PW4 PI Mendke. He further deposed that, when he came to Police Station Gangapur, PW4 PI Mendke lodged report and arrested accused.

9. **PW4** PI Mendke is the Investigating Officer, who also deposed about informant approaching, lodging report of demand of gratification, trap being arranged after arranging panchas, informant handing over two currencies of Rs.50/- each, on which anthracene powder were applied and handed back to the informant to be paid to accused on demand and accordingly on 25.11.1998 informant and PW3 Kisanrao visiting office of accused and on

signal being received, accused apprehended and copies of challan and currencies seized from the drawer of the table occupied by her. He deposed about arresting accused and carrying out investigation and filing charge-sheet.

10. On critical re-appreciation and analysis of the above evidence, the considered opinion of this court that, here, prosecution has failed to establish the charges beyond reasonable doubt. Accused is said to be a senior clerk in the supply department of Tahsil office. Her duty was said to be of causing signatures on challans for lifting grain stock. Informant a fair price shop owner himself at relevant time was said to be the Secretary of Union / Association of fair price shop owners. In chief he claims that, on 24.11.1998, he approached accused with copies of challan to seek her signature, but according to him, accused demanded Rs.50/- as a graft. That, she also demanded dues of previous month and therefore, he himself agreed to pay her Rs.100/-, but later on. He claims that, at such time, other 2-3 shop owners were present. In cross, he is unable to name them, in spite of being claiming to be Secretary. Even these persons are not examined as witnesses. Though he has approached PW4 PI Mendke Investigating Officer and made report, surprisingly, no verification panchanama was drawn. Further, on close scrutiny of testimony of informant, it is

emerging that, on 25.11.1998, he himself has offered amount to accused without she making any demand. It is fairly settled that, demand is *sine quo non* in order to establish guilt for commission of offence under sections 7, 13(1)(d) and 13(2) of the P. C. Act. Law to that extent is fairly settled in the cases of ***B. Jayaraj v. State of Andhra Pradesh, (2014) 13 SCC 55; P. Satyanarayana Murthy v. D. Inspector of Police, State of A.P., (2015) 10 SCC 152*** with the decision in ***M. Narsinga Rao v. State of A.P. (2001) 1 SCC 691***.

11. On close scrutiny of the evidence, it is also revealed that, apart from several persons surrounding the table of accused at relevant time, accused had for some time left her place to visit Tahsildar. In cross PW3 Kisanrao also has admitted that, many persons were in hurry to get the work done and accused had gone to the Tahsildar, when they were near her table. He further admitted that, accused had also given some amount from the same drawer to the peon to bring permit. Therefore, such material indicates that, there were other currencies in the drawer and there was handling of the same to give to the peon. At such time, possibility of hands of accused must have come in contact with tainted currencies. Equally, when PW3 Kisanrao has admitted that, accused left the place to meet Tahsildar, as such there was scope for thrusting or stuffing currency notes in her drawer.

12. It is also surprising as to why and how informant was in possession of challan on earlier day i.e. on 24.11.1998, which he had handed over to Investigating Officer and were subsequently used on the next day. PW2 Asaram informant in his cross has admitted that, previously his license was cancelled and all his attempts to restore the licences by filing appeals had failed. He was also found to be charging more price for the grain, never passing receipts and even misappropriated the grains. He candidly admitted that there was discontent between him and accused. Therefore, it is also apparent that, he was already annoyed with accused. Resultantly, there is possibility of false implication in view of the sequence of events narrated by PW2 Asaram informant and PW3 Kisanrao shadow witness. Investigating Officer has not recorded statements of other shop owners, who were present near accused even when at the time of alleged incident they were in the company of accused.

13. Consequently, on mere testimony of shadow witness charges cannot be said to be proved, more particularly, when prosecution had miserably failed to establish very demand.

14. Learned APP has submitted that, Investigating Officer

did not examine other shop owners as they might have feared action at the hands of accused. However, there is no substance in such argument. He also placed reliance on the ruling of Hon'ble Apex Court in the case of ***Neeraj Dutta v. State (Govt. of N.C.T. of Delhi)***, ***(2023) 4 SCC 731***, which was a case upon reference in view of conflicting view of two previous judgments. In that case, there was elaborate discussion on the terminology of "case of acceptance" and "case of obtainment".

In para 68 of the Judgment, the Hon'ble Apex Court has summarized certain principles which are as under :

> ***(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt*** *of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.*
>
> ***(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification*** *and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.*
>
> *(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.*
>
> *(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:*
>
> > *(i) if there is an* ***offer to pay by the bribe giver without*** *there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is* ***a case of acceptance*** *as per Section 7 of the Act. In such a case, there need not be* ***a prior demand*** *by the public servant.*

> *(ii) On the other hand,* ***if the public servant makes a demand*** *and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is* ***a case of obtainment****. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.*
>
> *(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13(1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and inturn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the Act."*

15. Bearing above settled legal position in mind, at the cost of repetition, here, very demand has not been proved. Verification panchanama prior to trap has not been apparently drawn by investigating machinery and proved by prosecution. Even it cannot be said to be a case of acceptance in view of above ruling, because attending circumstances in the case in hand go to show that informant was himself upset with accused as he was required to expend for journey, upon which accused herself allegedly offered to bear the expenses. He himself has not on his own offered the bribe, rather he lodged complaint regarding demand being put up, but on 25.11.1998, when alleged trap was laid, accused has not

raised any demand as is claimed by the complainant. Even, as discussed above, apart from tainted currencies and said challans, there were other documents as well as other currencies in the drawer, which were handled by accused. Other persons present at the time of demand are not examined for the reasons best known to the prosecution. Therefore, such attending circumstance of the case renders the case of prosecution weak. Case has not been proved beyond reasonable doubt. Even there are no strong, cogent and reliable evidence or circumstances to fasten the guilt. Hence, no fault could be found in the findings reached at by the learned trial court. Resultantly, no case being made out, I proceed to pass following order :-

ORDER

(i) Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

Tandale