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

CRIMINAL APPEAL NO.640 OF 2015

AMBADAS DEVRAM CHAVAN

..APPELLANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Pawan Mali for the appellant.

Mr. A. R. Patil, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 22, 2024

ORAL JUDGMENT :

1. Heard learned counsel for the appellant and learned APP for the State. Perused the paper-book and notes of evidence.

2. This is an appeal filed by the appellant-accused No.2. The accused No.2 was convicted by the Special Judge (Anti-Corruption) Pune for an offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (hereafter "P.C. Act", for short) and sentenced to suffer rigorous imprisonment for six months and pay fine of Rs.3,000/-, in default to suffer further rigorous imprisonment for one

month. Along with the accused No.1, the appellant was also convicted for an offence punishable under Sections 13(1)(d) read with 13(2) of the P.C. Act and sentenced to suffer rigorous imprisonment for one year and pay fine of Rs.5,000/, in default to suffer further rigorous imprisonment for three months.

3. PW-1 – Pramod Roopchand Solanki is the complainant. The appellant-accused No.2 was working as a Senior Clerk in Food Distribution Office. PW-1 filed the complaint at Exhibit- 11. Santoshi Roopchand Solanki is the real sister of PW-1. She is having a fair price shop in her name. Once during the investigation, as a result of some alleged irregularities her license was cancelled. In appeal the cancellation order was set aside. A request was made by PW-1 to Mr. Dnyaneshwar Jawanjal, Deputy Commissioner, Pune for processing the renewal of the license in view of PW-1's sister having succeeded in the appeal. PW-1 deposed that Mr. Jawanjal demanded bribe amount of Rs.2,00,000/-. Mr. Jawanjal asked PW-1 to meet Mr. Patki (accused No.1) who was working as a Junior Clerk in the

office. After negotiation the amount was reduced to Rs.1,00,000/-.

4. PW-1 met Mr. Jawanjal and offered to pay part payment in the sum of Rs.50,000/- within 2 to 3 months. Mr. Jawanjal however was not ready to grant this long a time. The accused No.1 informed PW-1 that the amount will have to be arranged within eight days. A complaint dated 29.10.2012 at Exhibit-11 came to be recorded in the Anti-Corruption Bureau office (hereafter "A.C.B.", for short). A.C.B. officials decided to verify the demand. A.C.B. officials hid a voice recorder on the person of PW-1. PW-1 and panch witness Mr. Gunjal were sent to meet accused No.1. Accused No.1 asked PW-1 whether the amount was ready. PW-1 informed that the amount was ready whereupon accused No.1 told him that he would meet Mr. Jawanjal and request him to sign the order. Accused No.1 entered the cabin of Mr. Jawanjal and asked PW-1 to bring the amount. The transcript of the recorded conversation was prepared in the office of the A.C.B.

5. On 31.10.2012, PW-1 and panch witnesses again

visited the A.C.B. office. A.C.B. officials sent PW-1 and panch witness to meet Mr. Jawanjal. Again voice recorder was planted on the person of PW-1. They met accused No.1. PW-1 entered the cabin of Mr. Jawanjal. Mr. Jawanjal asked PW-1 to meet accused No.1-Patki and act as per his say. Accused No.1 assured PW-1 that he will obtain the signature of Mr. Jawanjal and bring the order. PW-1 enquired as regards the procedure to be followed for renewal of the license. Accused No.1 informed PW-1 that he will have to get a challan made of Rs.10,000/- and that PW-1 will have to deposit the challan in the treasury office.

6. After reaching the office of A.C.B., PW-1 was called upon to bring the amount of Rs.60,000/-. The amount of Rs.60,000/- consisting 120 currency notes in the denomination of Rs.500/- was treated with anthracene powder. A.C.B. officials kept an amount of Rs.50,000/- in the pant pocket of PW-1. An amount of Rs.10,000/- was kept in his shirt pocket. PW-1 was instructed to give a missed call as soon as accused No.1 accepted the bribe amount.

7. PW-1 and panch witness entered the office of the accused No.1. PW-1 enquired with the accused No.1 whether Mr. Jawanjal had signed the order. Accused No.1 went in the cabin of Mr. Jawanjal and obtained the signature on the order and came back. Accused No.1 handed over the order and obtained the signature of PW-1 on office copy of the order. Accused No.1 told the complainant to go to one table and deposit fine amount of Rs.10,000/- by way of challan. It is in the evidence of PW-1 that as the bank had closed by then, the amount of Rs.10,000/- was handed over to the person sitting at the table where the challan was to be issued. The said person (appellant) asked him to come the next day and collect the receipt of payment. PW-1 then went to the table of accused No.1 and informed him that he had brought an amount of Rs.50,000/- in order to give it to Mr. Jawanjal. PW-1 asked accused No.1 whether the amount is to be paid to Mr. Jawanjal or accused No.1. Accused No.1 asked PW-1 to handover the amount to him. PW-1 took out the amount from his pant pocket and kept it on the table in front of accused No.1. Accused No.1 picked up that amount

and kept it in the drawer of his table. PW-1 requested the accused No.1 to handover the amount to Mr. Jawanjal. After Mr. Jawanjal came out of his cabin, PW-1 gave missed call to the A.C.B. officials. PW-1 told them that an amount of Rs.50,000/- is in the drawer of accused No.1 and an amount of Rs.10,000/- was at the challan table.

8. It is thus seen from the deposition of PW-1 that the demand of the bribe was made by Mr. Jawanjal, Deputy Commissioner from the complainant. Mr. Jawanjal had asked the accused No.1 who was working as a Junior Clerk at Food Distribution Office to co-ordinate with the complainant. The bribe amount of Rs.50,000/- was accepted by the accused No.1 on behalf of Mr. Jawanjal. It is pertinent to mention that in the deposition itself in paragraph 1 PW-1 has specifically said that penalty of Rs.10,000/- was imposed by the Appellate Authority towards fine. Even according to PW-1 accused No.1 had stated that he would give him a challan of Rs.10,000/- and the amount had to be deposited in the treasury office. PW-1 does not even disclose the identity of the person to whom

this amount of Rs.10,000/- towards payment of the challan was handed over. The deposition of PW-1 would reveal that there was no demand of bribe amount by the present appellant-accused No.2 at any point of time. It is the accused No.1 who had asked PW-1 to deposit the amount of Rs.10,000/- for preparing a challan purportedly with the appellant. Since the banking hours were over, the said amount was kept in the drawer of the appellant as per PW-1. It is pertinent to note that PW-1 has not been declared hostile but the prosecution is relying on the evidence of PW-1 to prove the case against the present appellant. When it is the specific version of PW-1 that the bribe amount was demanded by Mr. Jawanjal, Deputy Commissioner, which amount was accepted by accused No.1 on behalf of Mr. Jawanjal, it is surprising as to why Mr. Jawanjal is not made an accused.

9. Having regard to the evidence of PW-1-the complainant, I would have had no hesitation in observing that demand made by the appellant-accused No.2 is not proved. Furthermore, the evidence on record clearly reveals

that the accused No.1 had asked PW-1 to pay the amount of Rs.10,000/- towards preparing a challan which amount was to be deposited in the treasury office. From the evidence of PW-1 it clearly reveals that a penalty of Rs.10,000/- was imposed by the Appellate Authority for restoring the license of the fair price shop the formalities consequent thereto were to be completed by Mr. Jawanjal for which work the bribe amount of Rs.50,000/- was demanded. From the evidence of PW-1 it cannot be said with certainty that the amount of Rs.10,000/- which was handed over by him to the appellant was towards illegal gratification or bribe. The evidence of PW-1 is not sufficient to establish beyond reasonable doubt that the amount of Rs.10,000/- which was handed over to the accused No.2 was a bribe amount as it is probable that the said amount was towards the fine amount of Rs.10,000/- which was to be deposited in the treasury office by way of challan towards the fine imposed by the Appellate Authority.

10. However, learned APP heavily relied on the evidence of PW-2 – Sachin Indrasen Gunjal who is the shadow witness

for the verification of the demand as well as acceptance. Learned APP submitted that the fact of demand and acceptance of the bribe amount of Rs.10,000/- by the accused No.2 can be clearly established from the evidence of PW-2 and that of the Investigating Officer – PW-3. The submission of learned APP that the presumption in law under Section 20 of the Act would apply is without any merit as it is well settled that the presumption in law under Section 20 of the Act would apply only if the fact of demand and acceptance of illegal gratification, as the case may be, is proved.

11. It is pertinent to note that only three witnesses are examined by the prosecution. Let me examine the evidence of PW-2 in the context of the submission made by learned APP. It is in the evidence of PW-2 i.e. the shadow witness that accused No.1 told the complainant that he will have to pay some amount to the present appellant. It is then deposed by PW-2 that he and the complainant went to the table of the appellant when the demand of Rs.10,000/- towards the bribe was made. The appellant told them that

he will prepare a challan so as to pay the fine. This version of PW-2 about the demand made by the accused No.2 of Rs.10,000/- is at complete variance with that of the deposition of the complainant. The complainant has not deposed about the demand of the bribe amount by the present appellant but in fact has categorically deposed that the payment of Rs.10,000/- to be made to the present appellant as per the say of the accused No.1 was towards preparation of the challan for payment of fine. There is complete variance in the version of PW-1 and PW-2.

12. Moreover, in the evidence of PW-2 it is stated that after treating the amount of Rs.60,000/- with anthracene powder, the bundle of Rs.50,000/- as well as that of Rs.10,000/- was kept by PW-1 in the right side pant pocket. This again is at the variance of with the version of PW-1 who says that the amount of Rs.50,000/- was kept in the right side pant pocket and whereas the amount of Rs.10,000/- was kept in the shirt pocket. It is again important to note that PW-1 in his evidence has stated that amount of Rs.10,000/- was paid to the present appellant

prior in point of time and thereafter the amount of Rs.50,000/- to be paid to Mr. Jawanjal was handed over to the accused No.1. This is contrary to the version of PW-2 when he says that the amount of Rs.50,000/- was first paid to the accused No.1 and thereafter the complainant paid the amount of Rs.10,000/- to the present appellant.

13. It is pertinent to note that PW-1 in his evidence has deposed that an amount of Rs.10,000/- was paid for the purpose of preparing a challan to accused No.2 when he was sitting at his table and so also the amount of Rs.50,000/- was then paid to accused No.1 in his office which amount he kept it on his table. It needs to be noted that there is variance in the evidence of PW-1 and that of PW-2 over the place at which the amount was paid. It is in the evidence of PW-2 that the complainant and accused No.1 had come out of the office and proceeded towards a neem tree in the compound under which the amount of Rs.50,000/- was paid by the complainant to the accused No.1. It is further in the evidence of PW-2 that thereafter the complainant and the present appellant came out of the

office and the bribe amount of Rs.10,000/- was paid by the complainant to the present appellant under the same neem tree. This version of PW-2 about the place where the bribe amount was accepted is also at complete variance with that of PW-1. So far as PW-3 – Investigating Officer is concerned, it is in his evidence that the bribe amount was accepted under the neem tree, however, PW-3 in his deposition has stated that some unknown persons accompanied PW-1-complainant for acceptance of the bribe amount under the neem tree.

14. The trial Court relied upon the evidence of PW-2 and PW-3 to arrive at a finding that the prosecution has proved demand and acceptance. According to learned Special Judge, as the PW-1 has not wholeheartedly supported the case of the prosecution, the evidence of PW-2 and PW-3 can be looked into to prove the prosecution case.

15. In the absence of any other evidence, there is no reason why the evidence of PW-2 and PW-3 can be considered. But when the PW-1 is examined as a prosecution witness it is necessary to test whether the

evidence of PW-2 is corroborated in all material particulars.

The evidence of PW-1 cannot be ignored.

16. The principles summarised by the Hon'ble Supreme Court in **Neeraj Dutta Vs. State (Government of NCT of Delhi)**¹ needs to be borne in mind while deciding this appeal. Paragraph 88 which is important reads thus :-

“**88.** What emerges from the aforesaid discussion is summarised as under:

88.1. (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 Section 7 and [3 \(1\)\(d\) \(i\)](#) and (ii) of the Act.

88.2. (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.

88.3. (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.

88.4. (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

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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 in turn 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.

88.5. (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

88.6. (f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the

prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

88.7. (g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13 (1)(d)(i) and (ii) of the Act.

88.8. (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature."

17. Applying the aforesaid principles, I have no hesitation in concluding that the prosecution has failed to prove demand and acceptance qua the appellant.

18. In my opinion, the order passed by the Special Judge convicting the appellant calls for interference. It is not as if PW-1 has turned hostile. PW-1-the complainant has been examined as a prosecution witness. The evidence of PW-1 is completely at variance with that of PW-2 on material aspects as discussed hereinabove. Moreover, it has come in the evidence of PW-1 that the Appellate Authority has imposed a fine of Rs.10,000/- and it is towards the payment

of the fine amount of Rs.10,000/- that the accused No.1 directed PW-1 to pay the said amount to the appellant for the purpose of preparing the challan. According to me the demand of Rs.10,000/- was towards an illegal gratification has not been established by the prosecution. On the basis of evidence of PW-1, the demand as well as acceptance of the amount as a bribe amount cannot be established. In such view of the matter, to arrive at a conclusion that the demand and acceptance of the bribe amount as against the present appellant is proved only on the basis of the evidence of the shadow witness will be highly unsafe. Having regard to the material variance in the evidence of PW-1 and PW-2, the benefit thereof will have to be given to the appellant. I find from the evidence of PW-2 as regards the demand made by the present appellant is only a vague statement. When it is the prosecution case that there was a demand made by the appellant, it was for the prosecution to prove the demand which it has failed.

19. In this view of the matter, I have no hesitation in holding that the prosecution has failed to prove the charge

against the present appellant under Sections 7, 13(1)(d) and 13(2) of the P.C. Act. The impugned order of the Special Judge (Anti-Corruption), Pune dated 03.06.2015 passed in Special Case No.36 of 2013 convicting the appellant is quashed and set aside. The appellant is acquitted of the charges against him in Special Case No.36 of 2013. The fine amount which has been paid be refunded to the appellant.

20. The appeal is allowed in the above terms.

(M. S. KARNIK, J.)