



Judgment

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

CRIMINAL APPEAL NO.16 OF 2020

State of Maharashtra,
through Dy.S.P (A.C.B.)
Chandrapur, tahsil and
district Chandrapur.

..... **Appellant.**

:: VERSUS ::

Ravindra s/o Jairam Randive,
aged 56 years,
Sana No.13, Gadchandur,
taluka Korpana, district Chandrapur.

..... **Respondent.**

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Shri M.J.Khan, Additional Public Prosecutor for the
Appellant/State.

Shri S.V.Sirpurkar, Counsel for the Respondent/Accused.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 13/06/2024

PRONOUNCED ON : 25/06/2024

JUDGMENT

1. By this appeal, the appellant (the State) has challenged judgment and order dated 27.4.2019 passed by learned Judge, Special Court, Chandrapur (learned Judge of the trial court) in Special (ACB Case No.1/2006) whereby the respondent (the accused) is acquitted of offences punishable under Sections 7,

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13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (the said Act).

2. The case of the prosecution, in brief, is that, complainant Manohar Domaji Kaurase, was residing at Gadchandur. In the year 1994, he purchased a plot admeasuring 4018 square meters in Deshpande layout at Gadchandur. He also paid property tax in the year 2002. On 20.1.2005, he moved an application in the office of Talathi for obtaining 7/12 extract. At the relevant time, the accused was serving as Talathi. The complainant requested the accused for issuing 7/12 extract and the accused asked him to visit after 10 days as his application was not filed along with index. On 8.6.2005, the complainant again met the accused. At the relevant time, as per allegation, the accused demanded Rs.1700/- and after a negotiation, shown his readiness to accept Rs.1500/-. The accused further informed him that the property tax of that year would be adjusted in the amount of Rs.1500/- and asked him to come on 10.6.2005. As the complainant was not desiring to give

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the payment, he approached the Anti Corruption Bureau at Chandrapur (the office of the bureau) and lodged a complaint.

3. After receipt of the complaint, officer of the bureau called two panchas and decided to lay a trap. Accordingly, formalities of pre-trap panchanama was carried out. The complainant had produced three currencies of Rs.500/-. The demonstration as to phenolphthalein powder and sodium carbonate was shown. After applying the said solution on the said notes, the notes were kept in shirt pocket of the complainant. Necessary instructions were given to the complainant as well as panchas and, thereafter, the complainant and pancha No.1 proceeded towards the office of the accused. During communication, the accused prepared receipt of Rs.344/- and, thereafter, made a gesture by his right hand asking money and the complainant handed over the amount to him. On giving a signal, trap officer and other raiding party members caught the accused. The amount was seized from the accused. Accordingly, post-trap panchanama was drawn. The accused was arrested. The articles seized were forwarded to the Chemical Analyzer.

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After completion of the investigation, chargesheet was filed against the accused.

4. Learned Judge of the trial court framed against the accused vide Exhibit-9. In support of the prosecution case, the the prosecution examined in all five witnesses namely Manohar Domaji Kaurase vide Exhibit-25 (PW1), the complainant; Shrikant Daiwalkar vide Exhibit-43 (PW2), the shadow pancha; Charandas Namdeorao Selokar vide Exhibit-52 (PW3), pancha No.2; Vinod Karkande vide Exhibit-59 (PW4), the Sanctioning Authority; and Dinkar Asaram Thosare vide Exhibit-64 (PW5), the Trap Officer.

5. Besides the oral evidence, the prosecution placed reliance on the complaint Exhibit-26, Village Form- 9A Exhibit-29, application by the complainant for 7/12 extract Exhibit-33, certified copy of index Exhibit-34, extract of register of mutation Exhibits-35 to 40, pre-trap panchanama, Exhibit-45, seizure memos Exhibits-46 and 47, map Exhibit-48, seizure memo Exhibit-53, sanction order Exhibit-61, report Exhibit-84, First

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Information Report Exhibit-85, and letter to Chemical Analyzer Exhibit-88.

6. After considering the evidence adduced during the trial, learned Judge of the trial court observed that there was no valid sanction as well as the evidence as to the demand, which is *sine qua non*, is not established by the prosecution and acquitted the accused.

7. Being aggrieved with the same, the present appeal is preferred by the State on ground that learned Judge of the trial court failed to observe that the accused accepted the gratification amount while discharging his official duty. The evidence of complainant PW1 Manohar Kaurase and Shadow Pancha PW2 Shrikant Daiwalkar sufficiently shows that there was a demand and the amount was accepted. Thus, the prosecution has proved the demand as well as the acceptance. The amount recovered from the accused sufficiently proves the acceptance. The presumption under Section 20 of the said Act is attracted, which is not rebutted and, therefore, the judgment impugned deserves to be set aside.

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8. Heard learned Additional Public Prosecutor Shri M.J.Khan for the State and learned counsel Shri S.V.Sirpurkar for the accused.

9. Learned Additional Public Prosecutor for the State submitted that the prosecution has proved the sanction by examining Sanctioning Authority PW4 Vinod Karkande, which shows that there was valid sanction. The evidence of complainant PW1 Manohar Kaurase and Shadow Pancha PW2 Shrikant Daiwalkar establishes that the accused demanded the amount by gesture and accepted the same. The amount is recovered from the accused. Thus, the evidence is sufficient to show that the accused demanded the amount and accepted the same.

10. *Per contra*, learned counsel for the accused submitted that learned Judge of the trial court considered the entire evidence and by assigning reasons observed that there is no proof of demand as the exact gesture by the accused is not established. He further submitted that proof of demand is *sine qua non* for proving charge which the prosecution failed to

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prove. Mere recovery of the amount itself is not sufficient. Learned Judge of the trial court rightly considered that foundational facts are not proved and, therefore, question of rebuttal of presumption by the accused does not arise. He further submitted that in an appeal against acquittal, principles stated are that where two views are possible, on the basis of evidence on record, one taken by the trial in favour of accused should not be disturbed by the Appellate court unless there is perversity.

11. In support of his contentions, learned counsel for the accused placed reliance, as under:

- 1. Chandrappa and ors vs. State of Karnataka¹;**
- 2. CBI vs. Menino D'souza and anr²;**
- 3. State of Maharashtra vs. Saheb Bardan Pande³;**
- 4. Criminal Appeal No.354/2002 (Madan Pundlik More vs. State of Maharashtra) decided by this court on 28.4.2016, and**
- 5. Criminal Appeal NO.319/2000 (Dattatraya s/o Udaji Warkad vs. State of Maharashtra, thr.ACB Office,**

1 2007(4) SCC 415

2 2021 SCC OnLine Bom 382

3 2016 SCC OnLine Bom 7496

Buldhana, taluka and district Buldhana) decided by this court on 7.9.2017.

12. Learned Additional Public Prosecutor for the State submitted that learned Judge of the trial court erroneously held that the demand and acceptance is not proved. On the basis of the evidence, he submitted that PW1 Manohar Kaurase, in his evidence, specifically testified that he along with Shadow Pancha PW2 Shrikant Daiwalkar went to the office of the accused. He enquired with the accused about his work and, thereafter, the accused asked his colleague to take out files. He calculated the tax and prepared receipts of Rs.344/- and made a gesture by his right hand fingers asking for money. On his enquiry, how much amount is to paid, the accused replied, "as decided earlier". He stated that this evidence is not shattered during the cross examination. This evidence is corroborated by Shadow Pancha PW2 Shrikant Daiwalkar, who has also testified that the amount was demanded by gesture by his hands.

Thus, there is consistent evidence as to the demand, which is corroborated.

The acceptance is proved by PW3 Charandas Selokar and Trap Officer PW5 Dinkar Thosare.

PW3 Charandas Selokar, has recovered the amount from the accused in presence of Trap Officer PW5 Dinkar Thosare.

Thus, the prosecution has established the demand as well as acceptance, which is *sine qua non*. On establishing the demand and acceptance, the presumption under Section 20 of the said Act would come into play and there is no rebuttal by the accused.

13. Learned counsel for the accused submitted that from the judgment impugned in the appeal as well as the evidence adduced submitted that the evidence as to the demand by gesture adduced by examining PW1 Manohar Kaurase and Shadow Pancha PW2 Shrikant Daiwalkar is contradictory.

As per the complainant, the accused made a gesture by his fingers. Whereas, the Shadow Pancha only stated that the gesture was by hand.

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The exact gesture is not mentioned in the post-trap panchanama. Learned Judge of the trial court has observed that there is no evidence as to the exact gesture. The defence is more probable that the accused was under impression that only one note of Rs.500 was given to the pay the tax.

PW3 Charandas Selokar, has also stated that three notes of Rs.500 were struck to each other.

In the light of the same, the defence is more probable.

The Chemical Analyzer Report was not filed before the trial court.

From the decision of learned Single Bench of this court, he pointed out that a conclusive and definite demand must be proved beyond any reasonable doubt for constituting an offence punishable under the said Act.

Thus, learned counsel for the accused submitted that in the light of inconsistent evidence, learned Judge of the trial court has taken a view in favour of the accused.

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It is well settled that when two views are possible, one, which is in favour of accused, will prevail.

Thus, there is no perversity in the judgment and, therefore, the appeal is devoid of merits and liable to be dismissed.

14. It is well settled that while exercising appellate powers, especially while dealing with appeals against acquittal, cardinal principle to be kept in mind is that there is a presumption of innocence in favour of accused unless the accused is proved guilty. The presumption continues and finally culminates into a fact when the case ends in acquittal. The possibility of two views in criminal cases is not an extraordinary phenomenon while considering appeals against acquittal. A fact cannot lose sight of the same. The trial court has appreciated the entire evidence and reversal of an order of acquittal is not to be based on mere existence of different views or mere difference of opinion. Normally, while exercising the appellate jurisdiction, it is the duty of the appellate court to see, whether decision is correct or incorrect on law and facts. While dealing with

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appeals against acquittal, the court cannot examine the impugned judgment only to find out whether the view taken was correct or incorrect. After re-appreciating oral and documentary evidence, the Appellate Court must first decide whether the Trial Court's view was a possible view. The Appellate Court cannot overturn acquittal only on the ground that after re-appreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt.

15. Learned counsel for the accused pointed out from the evidence adduced that the demand and acceptance require to be proved. Proof of demand is *sine qua non* to establish the offence. Mere recovery of money itself is not sufficient to establish guilty of the accused. The evidence as to the demand by gesture is contradictory. There is no corroboration to the evidence of complainant PW1 Manohar Kaurase and Shadow Pancha PW2 Shrikant Daiwalkar. This evidence is to be appreciated in the light of the cross examination of the complainant. As far as the previous demand is concerned, there is no corroboration. On the contrary, it shows that the accused

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asked him to pay the tax amount before obtaining 7/12 extract. As far as the demand on the day of the trap is concerned, the evidence shows that the accused demanded the amount by making gesture, but the exact gesture was not narrated by the complainant. The evidence further shows that when the complainant approached the accused, many persons were sitting there and one of them was enquired Trap Officer PW5 Dinkar Thosare to ascertain genuineness of the demand.

16. To corroborate the version of complainant PW1 Manohar Kaurase, the prosecution examined Shadow Pancha PW2 Shrikant Daiwalkar, who has not corroborated regarding manner in which the gesture was made. He only stated that the accused demanded the amount by gesture. However, what was the exact gesture, neither the same is stated by the Shadow Pancha nor mentioned in the post-trap panchanama.

17. Thus, the manner in which the gesture was made itself is not established by the prosecution.

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18. In view of the settled legal position, conclusive and definite demand must be proved beyond any reasonable doubt for constituting offence under the said Act.

19. The alleged gesture, which is not described with any particularity to constitute the demand, the submission of learned Additional Public Prosecutor, is not sustainable.

20. The Honourable Apex Court, in the case of **N.Vijaykumar vs. State of Tamil Nadu**⁴, as *cited* by learned counsel for the accused, dealt with expression “erroneous” which means “wrong” and “incorrect” and observed that It will be necessary for us to emphasize that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The

4 (2021)3 SCC 687

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fundamental distinction between the two situations have to be kept in mind.

21. By applying the aforesaid principle and the evidence on record in the case in hand, I am of a considered view that the view taken by learned Judge of the trial court, in the absence of specific evidence regarding the gesture, is a possible view and the prosecution failed to establish the charge.

22. As far as applicability of presumption is concerned, the Honourable Apex Court in the case of **Neeraj Dutta vs. State (Govt. of NCT of Delhi)**⁵ held that 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

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or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

23. In the instant case, as observed earlier, prior demand by the accused is not proved by the prosecution. Insofar as the demand on the day of the trap is concerned, no independent witness is examined to corroborate the version. As far as the demand, on the evidence of PW1 Manohar Kaurase and Shadow Pancha PW2 Shrikant Daiwalkar, is not consistent and corroborating. Mere recovery of the currency notes from the accused without proof of demand would not be sufficient to prove offences under Sections 7 and 13(1)(d) of the said Act. The complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars has to be insisted upon.

24. After appreciating the evidence on record, I do not find any error committed by learned Judge of the trial court. The appreciation of the evidence is on the basis of sifting and weighing of material facts and on that ground, the appeal of the State deserves to be dismissed. The judgment impugned in the

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appeal appears to be legal and correct and nothing is on record to arrive at a finding to show that the judgment impugned is perverse or illegal. The view taken by learned Judge of the trial court is a possible view and, therefore, no interference, in the judgment passed by learned Judge of the trial court, is called for.

25. In the light of the above, as the appeal is devoid of merits, the same is **dismissed**.

The appeal stands **disposed of** accordingly.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!