



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 646 OF 2005

1. The State of Maharashtra
Through ACB, Jalna

... APPELLANT
(Ori. Complainant)

VERSUS

1. Manoj Laxminarayan Madhekar
Age : 35 years, Occ. : Service,
R/o. : Indiranagar, new Baijipura,
Galli No.32, Aurangabad,
Tq. & Dist. Aurangabad

... RESPONDENT
(Ori. Accused)

...

Mr. Dnyaneshwar J. Patil – APP for Appellant, State
Mr. Nilesh S. Ghanekar – Advocate for sole Respondent

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CORAM : SANDIPKUMAR C. MORE, J.
DATE : 27.02.2025

JUDGMENT :

1. The appellant/State has challenged the acquittal of respondent/accused – Manoj Laxminarayan Madhekar from the offence under Section 7, 13 (1)(d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (*for short “the Act”*) recorded by the Special Judge at Jalna (*hereinafter referred to as “the learned Trial Court”*) in Special Case (PCA) No.9 of 2001 under the judgment and order dated 07.05.2005.

2. As per the prosecution case, complainant Nagsen Bankar has purchased Gala No.208 belonging to Maharashtra Housing & Area Development Authority (MHADA) unit Jalna from one Ku. Vandana Vijayanand Kasar in the year 1999 for amount of Rs.95,000/-. Certain outstanding in respect of monthly installments was due against the said Gala. Accordingly, the complainant wanted to transfer the said Gala in his name and it was alleged that the present respondent/accused demanded bribe of Rs.5,000/- from the complainant for transferring the said Gala to his name. Accordingly, on 30.05.2001 trap was set up and the respondent/accused was caught with bribe amount. After completion of investigation the respondent/accused was charge-sheeted for the aforesaid offences. However, the learned Trial Court had acquitted the respondent/accused. Hence, this appeal.

3. Learned A.P.P. submits that the learned Trial Court definitely erred in acquitting the respondent/accused by ignoring the fact that he was found with bribe amount which he had accepted from the complainant at the time of trap. He therefore, submitted that the learned Trial Court should have been convicted by applying the necessary presumption under Section 20 of the Act.

4. On the contrary, learned Counsel for the respondent/accused pointed out various admissions given by the complainant himself showing that the respondent/accused had in fact asked the complainant to deposit the amount of installments and that the respondent/accused had in fact accepted the alleged amount of bribe as an installment towards the said Gala which was to be transferred in the name of complainant. He further pointed out that, the respondent/accused immediately given statement after the trap that he had accepted the amount of Rs.5,000/- as an installment. As such, according to the learned Counsel for respondent/accused no ingredients of the offence such as demand and acceptance are established by the prosecution beyond all the reasonable doubts. Thus, he prayed for dismissal of the appeal.

5. Heard rival submissions and also perused the documents alongwith the impugned judgment.

6. It is the case of prosecution that the respondent/accused demanded bribe of Rs.5,000/- from the complainant for transferring the disputed Gala in his name. However, it is the defence of respondent/accused that he did not demand any bribe

as aforesaid but in fact accepted the said amount as an installment towards the said Gala. It is significant note that the complainant had given vital admissions in his cross-examination such as total amount more than Rs.25,000/- was to be deposited to MHADA at the relevant time for completing the transfer of the disputed Gala in his name. Further, he has also admitted that he had given undertaking to MHADA for paying all the aforesaid amount towards the installments. It is also admitted by him that at the time of trap there was campaign taken out by the MHADA for recovery of installments from all the purchasers of concerned Galas of MHADA. He further admitted that the respondent-accused had told him that on 31.05.2001 he has to visit houses of concerned persons for recovery of installments. Further it is important to note that the respondent/accused is also having receipt book at the time of trap. The complainant was aware that unless all the installments were paid, it was not possible for MHADA to transfer the disputed Gala in his name.

7. Further, it is significant to note that the P.W. 5 – Investigating Officer has also admitted in his cross-examination that just after the trap the respondent/accused had immediately given explanation that he had received the amount of Rs.5,000/-

from the complainant not as a bribe towards the installment of disputed Gala No.208. It is to be noted here that the learned Trial Court in the impugned judgment has observed that the allegedly accepted bribe amount was in fact amount of installment which was due from the complainant. Further, if the cross-examination of complainant is perused carefully then it reveals that there was no demand of the said amount of Rs.5,000/- by the respondent/accused from the complainant but on the contrary, it appears that the complainant himself told the accused that he had arranged the amount of Rs.5,000/- and then handed it over to the accused. It is extremely important to note that there was no demand verification by the Investigating Officer at pre-trap stage, which is essential for recording conviction against the accused for the offence under Section 7 of the Act. Further, it is also settled that mere recovery of the bribe amount from the accused cannot be taken as proof as acceptance of bribe amount unless there is satisfactory evidence on record as regards the demand.

8. On going through the entire evidence on record and the vital admissions given by complainant as well as Panch No. 1 and the Investigating Officer it is evident that the prosecution has not satisfactorily established the aspect of demand and acceptance.

On the contrary, it appears that the respondent/accused must have received the amount of Rs.5,000/- from the complainant at the time of trap not as bribe amount but as an installment of the Gala No.208. Thus, the learned Trial Court has rightly given the benefit of doubt to the present respondent/accused and acquitted him of the charges leveled against him. In view of the same, no interference is required in the impugned judgment and the appeal is hereby dismissed.

[SANDIPKUMAR C. MORE]
JUDGE

Pooja Kale