2025:BHC-AUG:34597

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.856 OF 2005

Radha w/o Vitthal Bedwal,
Age: 45 years, Occu: Service,
R/o Radha Nivas, Plot No.58,
Gajanannagar, Garkheda,
Aurangabad ….APPELLANT

VERSUS

The State of Maharashtra ….RESPONDENT

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Mr Nilesh S. Ghanekar, Advocate for Appellant
Mr C. V. Bhadane, APP for Respondent/State

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CORAM : SUSHIL M. GHODESWAR, J.

RESERVED ON : 20 NOVEMBER 2025
PRONOUNCED ON : 11 DECEMBER 2025

JUDGMENT :-

1. By this appeal, the appellant (accused) prays for quashing and setting aside the judgment and order of conviction and sentence dated 14/12/2005, passed by the learned Special Judge, Aurangabad in Special Case No.01/2004, convicting him for the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for shot ‘the said Act’).

2. The prosecution case in brief is as under :-

Complainant Rahul Ashok Ghule was in business of sale of plastic articles. For the purpose of business, he was in need of loan of Rs.1,00,000/-. Therefore, complainant and his mother accepted loan of Rs.1,00,000/- from the Bank by executing equitable mortgage of house. However, complainant was again in need of Rs.1,00,000/-. At that time, the Bank had asked him to execute a registered document of mortgage of his house towards security of loan. Accordingly, complainant and his mother executed registered documents of mortgage in the name of Bank. Out of additional sanctioned amount of Rs.1,00,000/-, Bank immediately delivered Rs.50,000/- to him, however, for remaining Rs.50,000/-, the Bank asked the complainant to bring copy of P.R. Card of his house from City Survey Office with the entry of charge of loan advanced by the Bank. The Bank had also handed over a letter in the name of City Survey Officer for carrying out entry of charge of the house in City Survey office record. Complainant delivered the said letter to the area officer of City Survey office and obtained acknowledgment. Thereafter, complainant continuously pursuing said matter for recording entry of charge of loan in P.R. Card of house. However, later on he came to know that task of carrying out such entry is entrusted to the appellant/accused. When he met the appellant/accused, she demanded Rs.1,000/- from him as a bribe for doing said work immediately. The accused/appellant alleged to have informed the complainant that the said Rs.1000/- is not prescribed fees of Government for doing work, but is for herself and if he want to get his work done at the earliest, he will have to pay Rs.1000/- for the said purpose. Thereafter, one day prior to lodging of complaint i.e. on 14/10/2003, complainant met appellant in her office. The complainant however, informed the accused that he is unable to pay Rs.1,000/-, and therefore, he asked her to reduce the amount. The accused thereafter gave him Form No.9 and asked him to bring signature of his mother and also of himself on that form. After obtaining signature of his mother and putting his own signature on the said form, he handed over said document at about 4.00 p.m. After negotiation, the accused informed the complainant to bring Rs.700/- as bribe.

3. Since complainant was not willing to pay bribe, he visited the Anti-Corruption Bureau (ACB) Office on 14/10/2003 and gave the complaint against appellant. After completing the formalities, the officer of the ACB office arranged for trap. Each and every members were given requisite instructions. Complainant brought 7 currency

notes of denomination of Rs.100/-. Anthracene powder was applied to said 7 currency notes of Rs.100/- by noting down their numbers. Accordingly, the raiding team including complainant, his friend Nilesh and panch witnesses proceeded towards the accused. Other staff members of raiding team were following them. When the complainant made enquiry about his work with the appellant, appellant/accused demanded bribe. Accordingly, complainant handed over the currency notes to the appellant/accused, who alleged to have kept the same in her purse. Thereafter, the appellant proceeded towards Setu Suvidha Kendra in same campus. After pre-determined signal given by the complainant, raiding team rushed towards the spot and caught the accused. The hands of the accused and currency notes of bribe amount were checked in the light of ultra violate lamp, which were shining bluish. The notes of numbers found tallied with the numbers noted down in pre-trap panchnama.

4. After obtaining sanction for prosecuting the accused from the competent authority PW/1, crime came to be registered against appellant/accused for the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. After completion of investigation, charge-sheet was filed in the

Court. As the appellant pleaded not guilty, she came to be tried. The charges came to be framed at Exh.14.

5. During the trial, the prosecution had examined five witnesses. PW-1/Narayan Dhanna Sable, Deputy Director of Land Record, Aurangabad, who accorded sanction and issued sanction order for prosecution of accused was examined at Exhibit-16. PW-2/Rahul Ashok Ghule, complainant was examined at Exhibit-33. PW-3/Nilesh Bansi Prashad Mishra, friend of PW-2/complainant, who was accompanied with complainant at the time of giving amount of bribe to accused also came to be examined at Exhibit 39. PW-4/ Balwant Gajendrarao Galande, panch witness No.1 of trap came to be examined at Exhibit 41. PW-5 Mandar Vasudeo Naik, Deputy Superintendent of Police, who was Investigating Officer came to be examined at Exhibit 48. The defence also examined D.W.-1/appellant at Exhibit 58.

6. After recording the evidence and hearing the Advocates for the parties at length, learned Special Judge, Aurangabad vide the judgment and order dated 14/12/2005 in Special Case No.01/2004 convicted appellant/accused for the offence punishable under Sections 7 of the said Act and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.1,000/-, in default to pay fine, to suffer

simple imprisonment for one month. She was further convicted for the offence punishable under Section 13 the said Act and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.1,000/-, in default to pay fine, to suffer simple imprisonment for one month. Both the sentences of imprisonment were directed to be run concurrently. Being aggrieved by the said impugned judgment and order of conviction, the appellant has approached this Court in the present appeal praying for quashing and setting aside the same.

7. Heard learned Advocate Mr Ghanekar for appellant and learned APP Mr Bhadane for respondent/State.

8. Learned Advocate Mr Ghanekar for appellant submits that the learned Sessions Court has committed a grave mistake in convicting the appellant without considering the material evidence available on record as regards demand and acceptance. He then submits that the prosecution has failed to establish its case as per the charges framed against appellant and to prove the necessary ingredients of Sections 7 and 13(1)(d), 13(2) of the Prevention of Corruption Act. According to him, there is no sufficient and corroborating evidence on record as regards demand, motive and acceptance of bribe. He then submits that the Trial Court failed to

consider that the evidence before it was from interested witnesses. According to him, the prosecution has virtually failed to prove its case beyond reasonable doubt by not proving the demand and acceptance. He submits that the prosecution case is itself not clear on account of demand. The complainant, at one point of time, admits that he had been to the ACB office on 14/10/2003 for lodging complaint, but at another point of time, he states that he had approached the ACB office initially on 13/10/2003 and was called on the next date. According to learned Advocate for the appellant, therefore, the prosecution story would not sure as to when pre-trap panchnama was executed and on which date, the trap was arranged. He thus submits that the prosecution had suppressed the complaint made on 13/10/2003 and therefore, vehemently argued that the complaint made by PW-2/ complainant on 14/10/2003 was fabricated one. He also submits that there is no demand verification panchnama and trap came to be laid directly on the basis of complaint. In such cases, according to him, the demand becomes suspicious, and therefore, conviction cannot be based on such a case, in which demand itself becomes suspicious. He further submits that the prosecution witnesses have not supported with each other on point of demand and acceptance. There is variance in the deposition made by the prosecution witnesses as regards location of the spot in relation to demand and acceptance is concerned. According to PW-2/complainant, money was demanded and accepted on stairs and thereafter, he had gone to give pre-determined signal to ACB staff. However, PW-3/Nilesh, friend of complainant and PW-4/Balwant Galande, panch of trap, who were present at the time of trap, stated that transaction took place in open place downstairs. He further submits that, no witnesses have stated that accused was caught in Setu Suvidha Kendra as projected by the prosecution. He then submits that the shadow witnesses i.e. PW-3 and PW-4 have in clear terms stated that they could not hear the conversation took place between appellant/accused and complainant on the staircase. Thus, according to him the acceptance and recovery of amount of bribe is doubtful. He further submits that, it is not clear from the deposition of prosecution witnesses, as to who removed currency notes from purse of appellant. According to complainant, the ACB officer had removed tainted currency notes from purse of appellant. PW-3 who is friend of complainant, on the contrary, stated that panch witness had removed the tainted currency notes from purse of appellant. However, PW-4, who is shadow panch stated that panch No.2 (who is not examined) had removed the tainted notes from the purse of appellant. According to him, in such a situation, it is very difficult to assume that who had removed the tainted currency notes from purse of appellant. He then submits that the purse from which tainted currency notes have been recovered or removed was not at all been seized by the prosecution. It is also tried to be emphasized that no prosecution witnesses ever tell the Court, as to how appellant accepted the money by using which hand and how said amount came in purse of appellant. Only evidence is coming forth through the Investigating Officer in respect of same is that the said purse was in armpit of the appellant, which nobody had stated accordingly. According to defence, the appellant in fact at that time had gone to Setu Suvidha Kendra for obtaining Domicile Certificate and at the relevant time, she had kept her purse open on adjoining table and at the relevant time, she had also talked with two ladies, to whom she was knowing. He further states that according to defence, complainant might have easily thrusted the tainted currency notes in the open purse without her knowledge.

9. Learned Advocate for the appellant then submits that the sanctioning order for prosecution of appellant/accused is issued in a mechanical manner. Bare perusal of sanction order discloses that the same is issued without application of mind. There is no specific words as to which documents the sanctioning authority has perused, and

therefore, on the aspect of sanction order also, the impugned order is incorrect and therefore, appellant deserves to be acquitted. With all these submissions, learned Advocate for the appellant submits that the prosecution has failed to prove the guilt against the appellant beyond reasonable doubt, and thus, prays for allowing of the present appeal.

10. *Per contra*, learned APP Mr Bhadane appearing for the respondent/State has strenuously supported the impugned judgment and order passed by learned Special Judge. According to him, learned Special Judge, after analyzing evidence brought on record in proper perspective, has rightly delivered the impugned judgment and order and has rightly convicted the appellant. There is no scope of interference in the impugned judgment. He, therefore, prays for dismissal of the present appeal.

11. After hearing learned advocates for the parties and after going through the details of the prosecution case as well as record and proceedings minutely, it would be very relevant first to consider the sanction order for prosecuting the appellant, which is at Exhibit 17/C by PW-1 Narayan Dhanna Sable, Sanctioning Officer. The sanction order was issued on 07/01/2004. The said sanction order is in typical form and in just two sentences, it has been stated that, after going

through the documents, the sanctioning authority is satisfied that the appellant, by misusing her position, has received illegal gratification, and therefore, in the very next paragraph sanction was accorded. In whole sanction order, it is nowhere mentioned that the sanctioning authority had received which documents for sanction and on the basis of which documents it had accorded sanction. It is also silent as regards expressing to its substantive satisfaction. It is also clearly indicates that, while according sanction, no mind came to be applied and the same is issued in a very casual and mechanical manner. On this ground itself, the prosecution case gets vitiated.

12. Further, aspect as regards demand and acceptance is also equally required to be considered. The prosecution has examined PW-3/Nilesh Bansi Prashad Mishra, friend of PW-2/complainant. Though this witness was alongwith complainant whenever complainant used to attend office of accused, his evidence does not corroborated to the evidence as regards earlier demand of Rs.1,000/- made by appellant. According to PW-2/complainant, appellant/accused had earlier demanded Rs.1000/-. The said fact therefore is not clearly established by the prosecution. On the contrary, the case of prosecution, on this point also gets destroyed. By

examining PW-3/independent witness, who is a friend of PW-2/complainant, who despite being alongwith complainant on every occasion, had not supported said initial demand of Rs.1000/-. Complainant initially stated that he had approached the ACB office on 13/10/2003, and thereafter, he was called on next day. However, on another occasion, complainant stated that complaint at Exhibit 34 was submitted on 14/10/2003 on which day the trap was arranged. In such circumstances, the demand made by the accused becomes suspicious. There was no demand verification panchnama and trap came to be laid directly on complaint of complainant without verification. In such cases, though verification of demand is not mandatory requirement however, the absence of same makes demand doubtful. The prosecution in order to establish its case beyond reasonable doubt is required to establish that procedures adopted by it while laying trap was free from doubts and therefore, in such cases, the demand becomes suspicious.

13. The basic requirement of demand is required to be proved beyond all reasonable doubt. In order to prove the charges for the offence punishable under Section 13(1)(d) r/w Section 13(2) of the PC Act, the proof of demand of illegal gratification is absolutely necessary

as it is *sine qua non* of the offence. If the prosecution fails to prove this demand of illegal gratification, the charge against the appellant therefore, for the aforesaid offences would fail. It is clearly established in several judgments delivered by the Hon'ble Supreme Court including the judgment in ***Neeraj Dutta vs. State (Govt. of NCT of Delhi) reported in (2023) 18 SCC 251***, that mere possession and recovery of currency notes from the possession of the accused without proof of demand would not establish the offence under under Section 13(1)(d) r/w Section 13(2) of the P.C. Act. In absence of proof of demand and illegal gratification and use of corrupt or illegal means to obtain any valuable or pecuniary advantage, it cannot be said that the offence of taking bribe is proved. Thus, the proof of demand has been held to be indispensable ingredient. Therefore, failure on the part of prosecution to prove demand and illegal gratification, would be fatal and mere recovery of the amount from the appellant/accused would not entail his conviction for the said offences.

14. It is settled law that the statutory presumption under Section 20 of the said Act can arise only after the prosecution proves the foundational fact of 'demand'. In the present case, as the testimonies of prosecution witnesses do not establish any demand of

illegal gratification by the accused, the presumption under Section 20 cannot be invoked. This legal position is laid down in ***B. Jayaraj v. State of A.P.*** **(2014) 13 SCC 55,** ***P. Satyanarayana Murthy v. D.I.G. of Police*** **(2015) 10 SCC 152,** ***N. Vijayakumar v. State of T.N.*** **(2021) 3 SCC 687** and recently in ***Neeraj Dutta v. State*** **(2023) 18 SCC 251**. Therefore, mere recovery of tainted currency notes is insufficient to sustain conviction.

15. Though the prosecution is required to prove its case beyond reasonable doubt by leading concrete evidence before the learned Trial Court, such evidence is required to be very firm and corroborative with other witnesses. However, the case in hand discloses as regards the location of the spot of the demand and acceptance. The prosecution witnesses are not supporting with each other. The Complainant states in his evidence that demand and acceptance was made by accused on the stairs and thereafter, he went to give pre-determined signal to ACB staff. However, PW-3 and PW-4 have stated that the transaction took place in open place and there was no evidence to give signal.

16. The evidence of shadow panch witness which relied upon by prosecution also does not support their case for the reason that he

had admitted that he had not heard the talks between the accused and complainant. There is also another important aspect highlighted by the learned counsel for the appellant that the prosecution itself is not sure as to who had recovered the tainted currency notes from purse of the appellant. Complainant has clearly stated that ACB officer removed the said currency notes, however, PW-3/ friend of complainant had stated that panch witness had removed the said currency notes. However, there was different version submitted by PW-4/ shadow panch, who stated that another panch No.2 removed the said currency notes. Fact remains that said panch has not examined by the prosecution to prove its case of recovery of the tainted notes from the possession of appellant/accused. In such eventualities, the prosecution case gets destroyed on the vital aspect of the matter. The prosecution witnesses are not supporting their case. Another significant factor which cannot be skipped is that the purse in which, the appellant/accused alleged to have kept the tainted notes is at all not seized by the prosecution.

17. In view of the foregoing discussion, I am of the view that the prosecution has failed to establish the ingredients of offences against the appellant beyond reasonable doubt. Consequently, **this**

Criminal Appeal is allowed and the impugned judgment and order is quashed and set aside. The appellant/ accused is acquitted for the said offence. As the appellant is on bail, he need not surrender. The bail bond stands cancelled. Surety, if any, stands discharged. Fine amount, if deposited, be refunded. The record and proceedings be sent back to the concerned Court.

[SUSHIL M. GHODESWAR, J.]

sjk