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**(2013) 12 BOM CK 0162**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 495 of 2008**

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| Manik                    | Vs | APPELLANT  |
| The State of Maharashtra |    | RESPONDENT |

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**Date of Decision :** 19-12-2013

**Acts Referred:**

**Citation :** (2013) 12 BOM CK 0162

**Hon'ble Judges :** M.L. Tahaliyani, J

**Bench :** Single Bench

**Advocate :** S.V. Kotwal assisted with Mr. Ashish Sudhakar, for the Appellant;  
S.S. Pednekar, Assistant Public Prosecutor, for the Respondent

**Final Decision :** Allowed

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## Judgement

M.L. Tahaliyani, J.—The present Appeal impugns the judgment and order passed by the Special Judge in Special Case No. 40 of 2001 of Greater Bombay on 30th April 2008. The Appellant was working as Police Officer attached to Nehru Nagar Police Station, Mumbai. The Complainant was staying at Rahul Nagar, Chunabhatti No. 2, Mumbai 400 020. The Complainant's sister namely Smt. Poshamma had met with an accident, and therefore, the complainant wanted to file an accident claim in the Motor Accident Claims Tribunal (MACT). He required certain documents for enclosing the same to the application for compensation before the Motor Accident Claims Tribunal. Some of the documents were handed over to him by the Appellant after accepting Rs. 500/- as a bribe amount. However, some of the documents which were still required to be placed before the MACT were in custody of the Police. The Complainant had therefore again approached the Appellant. The Appellant had demanded another Rs. 500/-. The Complainant went to his Advocate Dua and informed him that the Appellant had been demanding Rs. 500/- for handing over the rest of the documents. Advocate Dua himself tried to speak to the Appellant on phone, but there was no response. The Appellant was therefore taken to the office of Anti Corruption Bureau by the said Advocate. The complaint of the Complainant was recorded and it was

decided that a trap should be laid to apprehend the Appellant while accepting the bribe amount of Rs. 500/- The Complainant had produced five notes of Rs. 100/- denomination before the Investigating Officer. The said notes were smeared with anthracene powder and were kept in the pocket of the Complainant. The Complainant was directed to hand over the said amount to the Appellant only on demand. After making all necessary arrangements for the trap, the Police officers, the Complainant and the panch witnesses proceeded to Nehru Nagar Police Station. One of the panch witnesses (PW-2) was directed to accompany the Complainant (PW-1) and second panch was directed to be with the raiding party.

2. PW-1 visited the office of the Appellant. The Appellant was on wireless duty and was therefore not available at the Police Station. PW-1 and PW-2 both waited for the Appellant to arrive. The Appellant arrived after some time and went to his office room. The PW-1 and PW-2 both followed him. PW-1 entered the room and PW-2 was standing outside the Police station near Sai Baba temple. It is the case of the prosecution that as soon as money was handed over to the Appellant by PW-1, a predetermined signal was given to the Police party who came on the spot and caught the Appellant raid handed. The tainted money was recovered from wallet of the Appellant. A pre-trap panchanama was drawn earlier and before proceeding to the police station a post-trap panchanama was drawn after completion of search and seizure.

3. The learned Trial Court believed the evidence of PW-1 and PW-2 and convicted the Appellant for the offences punishable under Sections- 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act.

4. The case of the Respondent was mainly based on the evidence of PW-1 and PW-2, and therefore, it is necessary to evaluate their evidence to find out whether the evidence could substantiate the charges leveled against the Appellant.

5. In the first place, it may be noted here that PW-2 himself had not entered the office of the Appellant and he had not seen the Appellant collecting money from PW-1. Secondly, the demand was made only in presence of PW-1. There was no verification of the demand and directly a trap was laid. Therefore, as far as demand is concerned, the whole case is based on evidence of PW-1 and rest of the case pertaining to misconduct u/s 13(1)(d) of the Act is based on the evidence of PW-1 and PW-2.

6. PW-1 in his evidence stated that he had handed over tainted money to the Appellant when PW-2 was sitting outside. The Appellant took money from PW-1 and removed his wallet from the right side back pant pocket and thereafter put tainted money in the said wallet. The Appellant put the said wallet in his pant pocket again and thereafter he proceeded to leave the office. It is at this juncture that PW-1 gave predetermined signal to the raiding party. The members of raiding party immediately reached there and caught hold of the Appellant. The

PW-1 was not part of the post-trap panchanama. He was called after completion of post-trap panchanama. His hands were examined under ultra violet rays. It is stated by PW-1 that his right hand had glittered under ultra violet rays.

7. PW-2, as stated earlier, did not accompany PW-1 when PW-1 had visited the office of the Appellant. He had seen the Appellant and PW-1 entering one of the office rooms together and coming out of the said room after five minutes. He has not been able to identify the Appellant. He has described the police officer as a person who was in uniform. He has specifically stated in his evidence that he would not be able to identify the Appellant due to lapse of time. According to this witness, shirt and tainted money were taken charge of under the post trap panchanama.

8. It appears from the record that one Mr. Bhope was Investigating Officer in this case. He died in the year 2006. Therefore PW- 4 Sanjay Divadkar, Senior Police Inspector of traffic control who was attached to Anti Corruption Bureau in the year 2002-2003 was examined as one of the members of raiding party. This witness had reached the scene of offence after sometime when Appellant was already caught hold of by the two constables. According to this witness hands and clothes of Appellant were examined under ultra violet rays. Both the hands had glittered under ultra violet rays. The part of pant had also glittered under ultra violet rays. According to this witness, one currency note of Rs. 500/- was seized from the wallet of the Appellant and that the Police Officer Mr. Bhope compared the Serial Number of the said note with the Serial Numbers recorded in the pre-trap panchanama. It is stated that Serial Number tallied with the numbers mentioned in the pre-trap panchanama. The note was taken charge of by Mr. Bhope.

9. A careful examination of the evidence of these three witnesses would show that there are glaring discrepancies and contradictions in the evidence of these three witnesses. PW-1 has stated that there were five currency notes of Rs. 100/- denomination. The PW-2 has stated that there were two bundles of currency notes of Rs. 500/- denomination and PW-4 had stated that only one currency note of Rs. 500/- was removed from the wallet. What is further pertinent to note is that though the pant of the Appellant glittered under ultra violet rays, the other articles found in the wallet did not glitter. This part of evidence cannot be believed in as much as if currency note or notes were kept in the wallet they must have come into contact with other currency notes or papers in the wallet. Therefore, the other articles also should have glittered. However, according to the PW-4 the other articles did not glitter. As such it is abundantly clear that the Court could not have relied upon such type of shaky evidence given by the witnesses. It is difficult to get from the evidence of PW-1, PW-2 and PW-4 as to whether there was one note or more than one note. Apart from this, PW-2 had not accompanied the PW-1 when PW-1 had visited the office of the Appellant. There was no verification of the complaint made by PW-1. In the absence of verification of the complaint, it was incumbent on the part of the

prosecution to prove by sufficiently strong and cogent evidence that there was demand on the part of the Appellant. Considering the nature of evidence adduced by prosecution, it is difficult to believe that prosecution has been able to prove the demand of bribe money on the part of the Appellant. The evidence in respect of acceptance of bribe money has been discussed in detail and it is very obvious that such type of evidence cannot be accepted in a criminal prosecution. Therefore, to my mind, neither the demand nor acceptance is proved by the prosecution. A charge u/s 7 as well as charge of misconduct punishable u/s 13(2) of the Act, also must fail. Hence, I pass the following order:-

I. Appeal is allowed.

II. The Judgment and Order passed by the learned Special Judge dated 30 April 2008 in Special Case No. 40 of 2001 convicting the Appellant for the offences punishable u/s 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act 1988, is set aside.

III. The Appellant is acquitted of the said offences.

IV. His bail bonds shall stand cancelled.

V. Fine, if any, paid by the Appellant shall be refunded to him.