

(2020) 10 BOM CK 0058
In the Bombay High Court
Case No : Criminal Appeal No. 1256 Of 2012

State Of Maharashtra

APPELLANT

Vs

Shridhar Madhavrao Murti

RESPONDENT

Date of Decision : 23-10-2020

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13(1)(d), 13(2), 19, 20
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2020) 10 BOM CK 0058

Hon'ble Judges : A.S. Gadkari, J

Bench : Single Bench

Advocate : S. S. Hulke, Ameeta Kuttikrishnan, Sanskar Marathe

Final Decision : Dismissed

Judgement

1. The appellant-State has questioned correctness of the Judgment and Order dated 3rd June 2011 passed by the learned Special Judge, Sindhudurg at Oros in Special Case No.13 of 2009, acquitting the respondent from the offence punishable under Sections 7 and 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the P.C. Act').

2. Heard Mr. Hulke, learned A.P.P. for the appellant-State and Ms.Ameeta Kuttikrishnan, learned counsel for respondent. Perused entire record.

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

(i) Shri Narendra N. Deshpande (PW-1) was proprietor of a firm namely 'Akshay Enterprises'. He used to take work on contract basis from Telephone Company for laying down underground cables, giving new connections and also used to give vehicles on hire basis to the Company. In the year 2006, a contract was awarded to Shri Narendra Deshpande (PW-1) on the basis of his tender approved by the concerned Government department. In pursuance of the said tender, PW-1 had received a contract for laying down underground cables at Malwan. After completion of the said work, PW-1 had submitted his bill to the Malwan Sub

Division. After due verification of the bill in the said Sub Division, by various Officers as per the hierarchy and procedure prescribed, the said bill was sent to Head Office at Sawantwadi where it was cleared by the Junior Engineer (Planning). It is alleged that, the said bill was thereafter sent to the respondent who was holding charge as Sub-Divisional Engineer (Planning) for his verification. The said bill was pending with the respondent for many days, and therefore PW-1 requested the respondent to pass the said bill at the earliest, as PW-1 was required to pay hand-loan taken by him from various creditors and was also to repay the loan amount to his banker. The said amount was to be repaid before 31st March, 2006.

(ii) It is the further prosecution case that, the said bill submitted by PW-1 was not cleared even by 31st March and therefore PW-1 approached the respondent in his office on 3rd April, 2006, between 2 to 3 p.m. and again requested him to clear his bill by narrating his various difficulties. As the respondent did not clear bill of PW-1 till 6th April, 2006, PW-1 again met respondent in his office, wherein the respondent told him that his bill would be cleared if he pays Rs.25,000/-. After negotiation, the said amount was reduced to Rs.10,000/- which was agreed to be paid within a period of 4 days from 6th April 2006. PW-1 was not willing to pay the said illegal gratification to the respondent and therefore he approached the office of the Anti-Corruption Bureau on 7th April 2006 and submitted his written complaint (Exh.21).

(iii) After complying with necessary formalities including drawing of pre-trap panchanama (Exh.24), the Investigating Agency decided to lay a trap on 10th April 2006. Further legal formalities were complied and the raiding party including the panch witness Mr. Sudhir Jangale (PW-2) proceeded to the office of the respondent. When PW-1 and panch witness (PW-2) initially went to the cabin of the respondent, he was busy speaking on telephone with somebody. PW-1 and PW-2 therefore came out of the cabin and after about 10 minutes, again went to the cabin of the respondent. PW-1 enquired with the respondent as to whether he had received any fax message from Malwan office relating to his bill, to which respondent answered in negative. PW-1 thereafter requested the respondent to come with him to have cold drink and accordingly the respondent went along with PW-1 and PW-2 i.e. panch witness Mr. Jangale to the cold drink house which was situated across the road. The respondent, PW-1 and PW-2 had cold drinks at the said cold drink house. PW-1 paid Rs.60/- towards bill of the said restaurant and came out.

(iv) It is alleged that, after coming out of the cold drink house, the respondent winked his eyes thereby asking PW-1 for payment of money. PW-1 accordingly took out currency notes from his left hand side pocket of shirt and gave it to the respondent who accepted it and kept it in his right hand side trouser's pocket. After receipt of pre-determined signal, the raiding party accosted respondent and found tainted notes in his possession. On completion of investigation and after receipt of sanction under Section 19 of the P.C. Act from the Sanctioning

Authority (PW-4), the Investigating Agency submitted charge-sheet before the Trial Court.

(v) The Trial Court framed charge below Exhibit-15 under Sections 7 and 13(1) (d) read with Section 13(2) of the P.C. Act. The said charge was read over and explained to the respondent to which, he pleaded not guilty and claimed to be tried. The defence of the respondent was of total denial. The respondent also filed his written statement below Exhibit-39 in his defence at the time of recording of his statement under Section 313 of Cr.P.C. The respondent denied of having demanded any amount as bribe from Shri Narendra Deshpande (PW-1) for passing any bill. According to respondent, he was only authorized to verify the bill sent to his office from Malwan Office and therefore, after verification he had noted objections therein on the note sheet and returned the said bill to the Malwan office for removal of the said objections. The said bill was not returned from Malwan office till 10th April 2006 nor any fax or report was received there from. The respondent was not authorized to grant or pass the said bill and to pay any amount to anybody. The respondent had no idea that the bill was returned to his office from Malwan office.

That, on 10th April 2006, the informant Shri Narendra Deshpande (PW-1) along with one person had been to his office and at the request of PW-1 the respondent went to the said cold drink house but before that, the PW-1 had enquired with him as to whether any fax was received from Malwan office in respect of his bill. Afterwards, while coming out of the said cold drink house, the informant (PW-1) by taking advantage of the crowd, planted tainted money in his pocket and at that time the raiding party accosted him and took him to the office where the post trap panchnama was prepared.

(vi) The prosecution in support of its case has examined in all four witnesses, namely, Shri Narendra N. Deshpande (PW-1), the complainant; Shri Sudhir T. Jangale (PW-2), panch witness to the trap; Shri Vitthal A. Jadhav (PW-3), Dy.S.P., the Investigating Officer and Shri Gopaldas R. Vishwakarma (PW-4), Sanctioning Authority. The Trial Court after recording evidence and hearing the respective parties was pleased to acquit respondent from the charges framed against him by the impugned Judgment and Order dated 03rd June 2011.

4. Record discloses that, the telephone company used to assign a contract after acceptance of tender of a contractor. Bills were required to be submitted to the concerned Sub Division at Sindhudurg out of the seven Sub Divisions in respect of the work carried out by the contractor as per the contract awarded to him. After submission of the bill, it used to be initially verified by Junior Engineer, then it was sent to the Sub-Divisional Engineer for his verification and thereafter it was to be sent to the Divisional Engineer for his verification. After the Divisional Engineer used to verify the said bill, it used to be sent to the head office of the telephone company at Sawantwadi, where it initially went to the table of Junior Engineer (Planning) and thereafter to the table of the Sub-Divisional Engineer (Planning) and afterwards the said bill was sent to the Junior Accounts Officer

(Works) and thereafter to the Account Officer (Works). As per the procedure, the said bill was thereafter to be sent to Divisional Engineer (Planning) and later on to the Accounts Officer. Finally the bill was sent to the Telephone District Manager who was the final authority for passing the bill for the said contract work.

As noted earlier, the respondent was working as Sub-Divisional Engineer (Planning) at Sindhudurg. It is thus clear that, the respondent who was working as Sub-Divisional Engineer (Planning) was not having authority as per procedure prescribed by the Telephone Company to pass the bill and make payment towards it.

5. This leads me to deal with the crucial point involved in the present Appeal i.e. demand made by the respondent for illegal gratification of Rs.10,000/-. Minute perusal of evidence of the informant (PW-1) would clearly reveal that, it is totally silent on the aspect of demand on 10th April 2006. The panch witness (PW-2) in his testimony though has stated that, the respondent by winking his eyes to the PW-1 indicated demand of bribe amount. The said version of PW-2 is not at all corroborated by the prime witness i.e informant (PW-1). The evidence on record is also absolutely silent about verification of pre-trap demand by the respondent on 6th April 2006.

6. It is a well-settled position of law that, demand of illegal gratification is a sine qua non for the offences under Sections 7 and 13(1)(d). Conversely, in the absence of proof of demand of illegal gratification, the offences under Sections 7 and 13(1)(d) cannot be made out.

The Hon'ble Supreme Court in the case of B. Jayaraj Vs. State of Andhra Pradesh, reported in (2014) 13 SCC 55, in para No.7 has held as under :-

"Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma Vs. State of A.P. [(2010) 15 SCC 1 : (2013) 2 SCC (Cri) 89] and C.M. Girish Babu Vs. C.B.I. [(2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1]."

The said view is reiterated by the Hon'ble Supreme Court in the cases of (i) T.K. Ramesh Kumar Vs. State Through Police Inspector, Bangalore, reported in (2015) 15 SCC 629, (ii) Khaleel Ahmed Vs. State of Karnataka, reported in (2015) 16 SCC 350 and (iii) N. Sunkanna Vs. State of Andhra Pradesh, reported in (2016) 1 SCC 713.

It is thus clear that, demand is sine-qua non in the case of bribery i.e. acceptance of illegal gratification. Unless there is proof of demand of illegal gratification, proof of acceptance or mere finding of tainted amount of bribe with

the accused will not follow.

7. In this background, the defence adopted by the respondent appears to be more probable. It has come on record that, on 10th April 2006 when the PW-1 along with PW-2 went to the office of the respondent, PW-1 asked the respondent whether any fax message or reply has been received from Malwan office about passing of his bill, to which the respondent replied in the negative. PW-1 thereafter requested the respondent to join him to have cold drink at Kaweri cold drink house which was just across the road and thereafter the respondent, PW-1 and panch witness (PW-2) went to the said cold drink house. PW-1 made payment of the said cold drinks and after coming out of the said cold drink house, by taking undue advantage of the crowd thereof, the informant thrust the tainted amount in the pocket of the respondent.

8. The Hon'ble Supreme Court in the case of B. Jayaraj Vs. State of Andhra Pradesh (supra), in para No.9 has held that :-

"Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."

As noted earlier, the respondent was not the final authority in sanctioning the bill submitted by the PW-1. The respondent while performing his duty had already raised objections pertaining to the bill submitted by PW-1 and the said bills were forwarded to the Malwan office and therefore there was no reason for respondent even to demand bribe from PW-1. It appears that, as the respondent had raised objections in the bill submitted by the complainant (PW-1), he had grudge against the respondent about the same and therefore had every reason to plant tainted money on the person of respondent. The respondent was thus successful in rebutting the presumption under Section 20 of the P.C. Act.

9. After perusing the entire evidence available on record and the impugned Judgment and Order, this Court is of the view that, the Trial Court has not committed any error either in law or on facts while acquitting respondent by its impugned Judgment and Order dated 3rd June 2011.

Appeal being dehors of merits, is accordingly dismissed.

10. This Judgment will be digitally signed by the Personal Assistant of this Court. All the concerned will act on production by fax or e-mail of a digitally signed copy of this Order.