**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 728 OF 1998**

Damu Ramu Avhad,
Age 43 years, Police Sub-Inspector,
Yeola Taluka Police Station,
Taluka – Yeola, Dist – Nashik. ... Appellant

Versus

The State of Maharashtra
(Dy. S.P., A.C. B., Nashik). ... Respondent

.....

Mr. Ganesh Gole a/w Viraj Shelatkar, for the Appellant.
Smt.S.V. Sonavane, APP, for the State-Respondent.

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**CORAM : V. G. BISHT, J.**

**RESERVED ON : 29th April, 2022.**
**PRONOUNCED ON : 30th June, 2022**

**JUDGMENT:**

1. This is an appeal under Section 374(2) of the Code of Criminal Procedure, 1973 against the conviction recorded under Section 5(2) read with Sections 5(i)(d) of the Prevention of Corruption Act, 1947 (' PC Act of 1947' for short) and sentencing the appellant to undergo imprisonment for one year and to pay fine of Rs.500/-, in

default, to undergo further simple imprisonment for one month and under Section 161 of Indian Penal Code ('IPC' for short) and sentencing imprisonment for six months and pay fine of Rs.200/- and in default, to undergo simple imprisonment for 15 days in Special Case No. 01 of 1989 by learned Special Judge, Nashik vide Judgment and Order dated 29th August, 1998.

2. In short, the case of the prosecution is that, the complainant, namely, Karbhari Madhav Aher and his younger brother Bhausaheb Madhav Aher are the resident of village Erandgaon-Budruk, Tahasil- Yeola, District-Nashik. According to complainant, on 07/03/1988 his said younger brother had gone to Kopargaon to attend marriage ceremony. On the same day, at about 6:00 to 6:30 p.m., PSI Avhad (appellant) and other police staff carried out prohibition raid in the village. They also visited the complainant's house and asked whereabouts of the complainant's younger brother. They also told that his brother had fled away after throwing the liquor and further asked to bring him to the police station on the next day.

3. According to complainant, on 09/03/1988, his younger brother met him when he narrated the incident of prohibition raid dated 07/03/1988. The complainant's younger brother told him that he had been to Kopargaon. In the afternoon, the complainant visited Police Station, Yeola and met PSI Avhad. PSI Avhad again asked the complainant to bring his brother and also Rs.500/- for bail along with surety on the next day. The complainant pleaded that the amount of Rs.500/- was exorbitant and therefore, said PSI Avhad reduced the said amount to Rs.350/- and accordingly asked him to come along with his brother on 11/03/1988 and get his brother released on bail.

4. The complainant on 10/03/1988 approached the office of the Anti Corruption Bureau and complained about the demand made by PSI Avhad. He also informed that neither he had financial transaction with PSI Avhad nor any personal enmity.

5. On the basis of said complaint, Dy.S.P. Anti Corruption Bureau, Nashik summoned two panch witnesses and after briefing them as to the anti corruption raid to be carried out visited the office of PSI Avhad on 11/03/1988. A pre-trap panchanama was also prepared in the office of Anti Corruption Bureau.

6. Later on, the complainant, his brother and one shadow panch witness, namely, Sahebrao Giridhar Patil were asked to proceed police station, Yeola. Dy.S.P., Anti Corruption Bureau, Nashik along with other staff members also proceeded towards the police station on a vehicle. At about 11:15 a.m. the complainant gave a predetermined signal and therefore, Dy. S.P. and other staff members of the raid party along with another panch witness entered into the room of Police Station Officer. The complainant informed that Police Havildar Pawar had accepted the monies. An amount of Rs.350/- was recovered from his possession. The traces of anthracin powder were also found in his right hand and on the right pocket of his payjama. Meantime, PSI Avhad also came there. A

detailed panchanama was prepared on the spot.

7. This led to initiation of the prosecution of the appellant and co-accused Police Havildar Pawar under Section 5(2) read with Sections 5(i)(d) of the PC Act, 1947 and Sections 161 and 165-A of the IPC. The prosecution examined their witnesses to prove the charges framed again both the accused.

8. By judgment dated 29th August, 1998 the learned Special Judge found appellant to be guilty of the charges under section 5(2) read with section 5(i)(b) of the PC Act of 1947 and section 161 of the IPC. It is against this conviction and sentence, the present appeal is preferred by the appellant.

9. Mr. Gole, learned Counsel for the appellant, while assailing the legality and correctness of the impugned judgment and order mainly argued two points. In the first place, the learned Counsel submits that although, according to the complainant, there was demand of monies from him so as to facilitate release of his brother

on bail but the said alleged demand was never verified by the officials of the Anti Corruption Bureau. In the second place, learned Counsel submits that there was no clear and specific demand of a bribe from the appellant. Even at the time of alleged trap, except the complainant, nobody else was present inasmuch as, according to PW-1 - panch witness, he was asked to go out of the room and whatever he claims that he heard appellant saying that monies be given to Hawaldar Pawar (acquitted accused No.2.), was without any corroboration. Learned Counsel also invited my attention to the evidence of this witness and pointed out that witness is not reliable.

10. Besides, learned Counsel also took me through the cross-examination of the complainant and pointed out material portion wherein the complainant admitted that there was no specific demand of bribe. Learned Counsel also invited my attention to the statement of acquitted accused Gambhir Hari Pawar wherein answer to question No.9 shows that he did receive the amount of Rs. 350/- from the complainant but it was the amount of surety. This

being so, there is improper appreciation of evidence and the findings of guilt recorded erroneously, the same is liable to be set aside, argued learned Counsel.

11. Learned Counsel has also placed reliance on the decisions in **Dashrath Singh Chauhan Vs. Central Bureau of Investigation[1], Mangat Ram Vs. State of Punjab[2]** and **Rajendra Nivruti Gaikwad & Anr. V/s. State of Maharashtra[3].**

12. In the case of **Dashrath Singh Chauhan** *(supra),* learned Counsel for the appellant has placed reliance on the following paragraphs :

> *"25. In our considered opinion, when the charge against both the Accused in relation to conspiracy was not held proved and both the Accused were acquitted from the said charge which, in turn, resulted in clean acquittal of Rajinder Kumar from all the charges under the PC Act, a fortiori, the Appellant too was entitled for his clean acquittal from the charges under the PC Act.*
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> *26. It is not the case of the prosecution that the Appellant had conspired with another person and even though the identity of the other person was not*

1 (2019) 17 SCC 509
2 Criminal Appeal No. 222-SB of 1991 dated 3rd March, 2004 of High Court of Punjab and Haryana
3 Criminal Appeal No. 929 of 2010 dated 23rd February, 2021 of Bombay High Court

*established, yet the Appellant held guilty for the offence Under Section 120-B Indian Penal Code. On the contrary, we find that the case of the prosecution was that the Appellant conspired with one Rajinder Kumar to accept the sum of Rs. 4000/- as illegal gratification from Arun Kumar- the complainant.*

*27. Once Rajinder Kumar so also the Appellant stood acquitted in respect of the charge of conspiracy and further Rajinder Kumar- co-accused was also acquitted from the charges under the PC Act, the charges against the Appellant must also necessarily fall on the ground. (**See Para 15 Bhagat Ram V. State of Rajasthan** MANU/SC/0090/1972 : (1972) 2 SCC 466).*

*28. Even assuming that despite the Appellant being acquitted of the charge relating to conspiracy and notwithstanding the clean acquittal of Rajinder Kumar from all the charges, the prosecution failed to prove the charge against the Appellant Under Sections 7, 13 (2) read with Section 13 (1) (d) of the PC Act.*

*29. It is for the reason that in order to prove a case against the Appellant, it was necessary for the prosecution to prove the twin requirement of "demand and the acceptance of the bribe amount by the Appellant". As mentioned above, it was the case of the prosecution in the charge that the Appellant did not accept the bribe money but the money was accepted and recovered from the possession of Rajinder Kumar- co-accused (A-1)".*

13. Similarly, in the case of **Rajendra Nivruti Gaikwad** *(supra)***,** the learned Counsel has placed reliance on the following paragraph :

> *"11. It is not prosecution case that, while accused no.1 demanded Rs. 50/-, accused no. 2 was present. It is also not prosecution case that, accused no.1 at the time of demanding Rs. 50/- told the complainant that, he would hand over the license to accused no.2, which he may collect from him after paying Rs 50/-. In the circumstances and in absence of any evidence on record of such understanding and arrangement made known to the complainant, the recovery of tainted money from accused no.2, would not, ipso-facto, establish that it was accepted by accused no.1 through accused no.2 as illegal gratification. Thus, prosecution has not proved, that accused no.1 attempted to obtain undue advantage through accused no.2. In the case of* ***Sadashiv V/s. State of Maharashtra, SCC 299,*** *tainted money was recovered from the co-accused on the allegation that, it was accepted by him on behalf of the co-accused. The conviction impugned in the cited judgment was set aside by the Hon'ble Supreme Court, after noting that, at the time of demanding the alleged bribe of Rs. 100/-, the accused from whom the money was recovered was not present. On this premise, it was held, accused no.2 was not a party to demand and therefore he could not have been convicted".*

14. Smt. Sonavane, learned APP, on the other hand, vehemently opposes the submissions and supported the reasons and conclusion arrived at by learned Special Judge. Learned APP submits that there is no evidence to show that the amount was taken towards bail. Even the conduct of appellant is questionable when he asked panch witness to go out of his office. Thus, no case for interference in the impugned judgment is made out and hence, the appeal be dismissed.

15. Having heard the learned Counsel for the parties and on perusal of the record of the case, I find force and merit in the submissions of the learned Counsel for the appellant.

16. It is well settled that demand of illegal gratification is sine-qua-non for constituting the offence under the PC Act of 1947. Mere recovery of tainted money is not sufficient to convict the accused. Mere receipt of amount by the accused is not sufficient to fasten the guilt in absence of

any evidence with regard to ‘demand’ and ‘acceptance’ of the amount as illegal gratification, as held by the Hon’ble Apex Court in the case of **State of Punjab V/s. Madan Mohanlal Verma[4].**

17. Keeping the above enunciation and proposition in the requirement for considering the offence under the PC Act of 1947, it is desirable to go through the evidence of prosecution witnesses.

18. I would like to go through the evidence of PW-2 Complainant, namely, Karbhari Mahadev Aher (Exhibit 29), on whose instance the Anti Corruption Bureau machinery was set into motion.

19. To summarize his evidence, it may be noted from the record that since the appellant was looking for younger brother of the complainant and, according to him, he was involved in illicit liquor business, he had asked the complainant to bring his brother to the police station alongwith surety amount of Rs. 500/- so as to release his

4 2013 (14) SCC 153

younger brother on bail. The amount of Rs. 500/- on negotiation was reduced to Rs. 350/-. It is his further evidence that on 10th March, 1988, he approached the office of the Anti Corruption Bureau and met PW-5, namely, Pratapsinha Devla Chavan and complained about the demand made by the appellant. His complaint is at Exhibit 30.

20. It is his further evidence that PW-5, informant-cum-investigating officer asked the complainant to come on 11th March, 1988 alongwith cash amount of Rs. 350/-. In the presence of panchas, he gave demonstration after applying anthracin powder on the currency notes and how the said amount is to be given to the appellant on demand. Thereafter, the complainant alongwith his brother and PW-1 visited the office of appellant. The appellant asked complainant as to who was a third person i.e. PW-1 with them. The complainant replied that he is his relative. The appellant then asked PW-1 to go out. The appellant then called Havaldar Pawar and asked him to get money from the complainant and release Bhausaheb

i.e. brother of complainant on bail.

21. The evidence of complainant further shows that the said Havaldar Pawar accepted the amount. The complainant then gave a predetermined signal and PW-5 investigating officer alongwith others rushed, examined person of Havaldar Pawar and as also complainant.

22. From the examination-in-chief of complainant, it is clear that the complainant, PW-1 panch witness and the brother of complainant had been to the office of appellant. The appellant had asked PW-1 panch witness to go out of the office thereby leaving complainant, his brother and the appellant in the office only. It is also clear from the version of complainant that the appellant then called Havaldar Pawar i.e. acquitted accused and asked him to take money from the complainant and release his brother on bail. Thus, except the complainant's version, as of now, there is no independent corroboration.

23. As far as PW-1 panch witness is concerned, I would like to take up his evidence immediately hereinafter but the fact remains that the complainant being a bribe giver, he should be treated as an accomplice. There are other reasons to question the case of complainant and the reason being is his cross-examination.

24. In the cross-examination, PW-2 complainant admits that on 9th March, 1988, PSI i.e. appellant had not said that he wanted the bribe money and admits that on 10th March, 1988 as the PSI was asking money for releasing his brother on bail, he felt that the appellant was asking that money as a bribe and therefore, he lodged his complaint with the Anti Corruption Bureau. He further admits that none of the accused ever asked him money as a bribe money. This candid admission make it abundantly clear that since he was asked to give money in order to release his brother on bail, he drew inferences that the appellant was seeking illegal gratification in order to facilitate release of his younger brother on bail.

25. I presume that the said demand of money was towards gratification, then it becomes necessary, as already noted by me, to know whether there is any independent corroboration to the trap carried out by PW-5 investigating officer. Since it is the case of prosecution that as the trap was carried out with the help of PW-1 Sahebrao Girdhar Patil (Exhibit 19), panch witness, it becomes more necessary for me to go through his evidence.

26. PW-1 panch witness stated in his evidence that after reaching the office of appellant, the complainant told appellant that as per his direction, he has brought his brother. The appellant then enquired about him with the complainant and the complainant replied that he is his relative. The appellant then asked this witness to wait outside.

27. It is his further evidence that he went to the door of the office and waited there. According to him, PSI Avhad

i.e., appellant then pressed the button of bell and called saying ‘Havaldar Pawar’. Then one black person wearing white trouser came there. The appellant asked complainant whether he had brought money, to which complainant replied in the affirmative. The complainant then told that he should give money to Havaldar Pawar and get his brother released on bail. The complainant, his brother and Havaldar Pawar then came out. He saw Havaldar Pawar accepting Rs. 350/- from the complainant.

28. From the above piece of evidence, it is quite clear that not only this witness was asked to wait outside but he went outside and waited there.

29. What is pertinent to note from his evidence is that he deposed very minutely as if he was looking inside the office of the appellant from the outside though was not so deposed specifically. It is also clear from his evidence that there was no specific demand of monies in the specific amount from the appellant.

30. Now, if the cross-examination of this witness is to be read carefully and, more particularly paragraph 22, then it would be seen that he was standing near left side of the door. A question was therefore posed to him whether it would be correct to say that, that time the inner side of the office was not visible, to which he answered in the affirmative and admitted so.

31. It is also not clear from the case of the prosecution that the distance between the door of the office of appellant and the place where the appellant alongwith complainant's brother were standing was in the audible range of panch witness. Equally important aspect of his evidence is that the appellant had neither demanded the bribe amount nor had accepted the same in the very presence of this witness. This is a very serious infirmity which affects the prosecution case.

32. Another striking feature of the cross-examination of this witness is that, after the raid was carried out, the

hands of Karbhari i.e. complainant were inspected from both sides and anthracin powder was not found on the wrist and dorsal of Karbhari's right hand. He does not clearly states that some stains of anthracin powder were seen on the hands of the complainant, whereas, the evidence of complainant shows that when his hands were examined in the battery light, his right hand emitted glow, that is to say the anthracin powder was detected on his hands. The evidence of this witness is not in conformity with the evidence of PW-2 complainant. Therefore, for the aforesaid reasons, I am not satisfied with the evidence of panch witness as to the alleged demand and acceptance of money by the appellant.

33. PW-5 Pratapsinha Devla Chavan is an informant-cum-investigating officer. His evidence (Exhibit 43) broadly corroborates the version of PW-1 panch witness and that of PW-2 as far as their visit to the office of the appellant and acquitted accused having been found in possession of alleged bribe amount of Rs. 350/- are concerned.

Although this witness also says that after the raid, the hands of the complainant were examined in ultra violet light and his right hand fingers emitted whitish bluish glow but I have already noted from the evidence of PW-1 panch witness that no stains of anthracin powder were found on the hands of complainant.

34. It is also clear from the evidence of PW-5 investigating officer that the appellant came on the scene only after the raid was carried out which significantly signifies that at the time of raid and acceptance of amount by acquitted accused, the appellant was nowhere in the picture.

35. As far as the first point, during the course of argument, raised by learned Counsel for the appellant is that no verification of alleged demand of monies was done by the office of the Anti Corruption Bureau before carrying out the raid is concerned, this witness admitted in his cross-examination that he, on 10th March, 1988, did not make an inquiry regarding truth in the complaint given by complainant Karbhari.

36. In normal course and, more particularly, in such kind of cases, the prosecution always confirms and verifies whether indeed a demand of gratification has been made by the accused or not. No such thing was done by the office of the Anti Corruption Bureau.

37. Be that as it may, having regard to the material on record, I hold that there is no evidence to prove that the appellant had made any specific demand of gratification and directly accepted the money from the complainant.

38. Now, if the finding of learned Special Judge is seen from the impugned judgment and order, then it would be seen that point no. 6 is answered in the affirmative while point no. 8 is answered in the negative. Point no. 6 is to the effect that whether the prosecution has proved that on 11th March, 1988, accused No.2 had accepted Rs. 350/- from the complainant Karbhari for and on behalf of accused No.1. Point no. 8, on the other hand, is to the effect that whether the prosecution has proved that

accused No.2 has abetted the commission of offence punishable under Section 5 (2) of the PC Act of 1947 committed by accused No.1 or expected to be committed by accused No.1.

39. Point no. 8 having been answered in negative implies that the acquitted accused was not aware of the commission of offence punishable under Section 5 (2) of the PC Act of 1947 or that the said offence was expected to be committed by accused No.1. If the answer was in negative, then point no. 6 could not have been answered in affirmative.

40. In such circumstances and in view of the finding given in point no. 8, the appellant could not have been held responsible for demand and acceptance of the bribe money inasmuch as that could not have amounted to a conspiracy between the appellant and acquitted accused.

41. For the same reasons, it cannot be held that the amount of Rs. 350/- recovered from the possession of

acquitted accused was as a fact the bribe money meant for the appellant for holding him guilty for the offences punishable under Sections 5(2) read with 5(i)(d) of the PC Act of 1947. It is more so when the benefit of acquittal was given to co-accused but was not given to the appellant.

42. In my view, the prosecution therefore has failed to prove the factum of acceptance of bribe money of Rs. 350/- by the appellant from the complainant on 11th March, 1988 as per the charges framed against him.

43. It was necessary for the prosecution to prove the twin requirements of ‘demand’ and ‘acceptance’ of the bribe amount by the appellant. I have already found from the evidence that the appellant was not present when the amount of Rs. 350/- came to be recovered from the possession of acquitted accused. On this count also, the appellant could not have been convicted by the learned Special Judge.

44. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned judgment and order is set aside. The conviction and the sentence awarded to the appellant under Sections 5(2) read with 5(i)(d) of the PC Act of 1947 by the Court below are set aside and the appellant is set free from the said charges. The fine amount, if any, paid be returned to the appellant. The appeal is disposed of.

**(V. G. BISHT, J.)**