REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1053 OF 2005

Sayyed Shabiralli Hafizali …..Appellant

Versus

State of Maharashtra ...Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a learned Single of the Bombay High Court, Aurangabad Bench upholding the conviction of the appellant for offence punishable under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 (in short the 'Act'). The learned Special Judge, Ahmednagar, had found the accused-appellant guilty and convicted him as aforenoted and to suffer imprisonment for one year and to pay a fine of Rs.1,000/- with default stipulation.

2. Background facts in a nutshell are as follows:

The complainant Mhatardeo Dagadu Dahale, resident of Dule (Chandgaon) was running a tailoring shop by name 'Surekha Ladies Tailors' at Pathardi. The land bearing S.No.92/1 situated at village Dule (Chandgaon) was owned by complainant's father. He wanted to install electric pump set on the well situated in the said land. For that purpose, he had made an application to the office of Maharashtra State Electricity Board (in short 'M.S.E.B.'), Pathardi. However, the M.S.E.B. did not take any cognizance of the said application. Complainant's father, therefore, submitted another application in the year 1980. Thereafter survey of the land and in particular the place where the electric motor was to be installed was carried out and the complainant was asked to carryout the preliminary requirements and to submit the test report. Accordingly, the complainant had submitted the test report on 12.11.1986. As the complainant's father was of old age, complainant was in fact attending all the work in connection with the agriculture operations and allied work. As per the Rules of the M.S.E.B., it was necessary for the complainant to deposit certain charges for receiving the material required for the installation and connection of the electric motor. The complainant, therefore, deposited Rs.610/- in A.D.C.C. Bank, Ahmednagar on 26.12.1984. In spite of such compliance on the part of the complainant and his father, the M.S.E.B. had not provided the necessary material and connection. For getting the material released from the M.S.E.B. store, it was necessary to issue gate pass. For that purpose, the complainant had met the accused, who was then working as Sub-Engineer in the office of M.S.E.B., Rural Sub Division, Pathardi and the accused had told him that he would be sending one Channe, Wireman. However, nobody turned up till 19.11.1986. Hence, the complainant contracted the accused on that day. However, even on that day, the gate pass was not issued in favour of the complainant. On 26.11.1986, the accused went to the shop of the complainant and told him that he would issue the gate pass, but for that purpose, the complainant will have to pay Rs.100/- to the accused. The complainant told him that he had not that much amount to pay at that time and that he would collect the amount and give him within a short period. Thereafter on 02.12.1986, the complainant went to the house of the accused at about 9.00 to 9.30 p.m., at that time also, the accused told him that on the next day, while going to his house for meals from the office, he would hand over the gate pass to him and that he should pay him Rs.100/- at that time. The complainant thereafter went to the office of Anti Corruption Bureau at Ahmednagar and narrated the entire incident to Mr. Joshi, Deputy Superintendent of Anti Corruption Bureau and lodged a complaint wherein he specifically stated that the accused demanded bribe of Rs.100/- for issuing gate pass in favour of the complainant and that he would come to his shop the next day in the afternoon to collect the amount and to hand over the gate pass. The complainant was, therefore, asked to come to the Anti Corruption Bureau on the next day. Accordingly, the complainant went to the said office on the next day. At that time, the police called two panchas by names Vavhal and Godbole. The search of the complainant was taken in the presence of panchas and at that time, complainant handed over an amount of Rs.100/- to which police applied anthracene powder and gave necessary instructions to the complainant as well as to the panchas. Except that amount of Rs.100/- and another sum of Rs.18/-, nothing was kept on the person of the complainant. Then the police, panchas and complainant proceeded in a Jeep to Pathardi. They halted the Jeep at a distance of about 1 km. from the complainant's shop and then pancha witness Vavhal and complainant went to his shop. They waited there till about 3/3.30 p.m. However, the accused did not turn up. They, therefore, informed this fact to Deputy Superintendent of Anti Corruption Bureau, Mr. Joshi. With his permission, the complainant and the pancha witness Vavhal then went to the office of M.S.E.B., Pathardi to find out as to whether the accused was there. However, the accused was not found there but they were informed that accused would be coming within 15/20 minutes. Hence, both of them sat on the 'Ota', which was in front of the said office. At about 5.30 p.m., complainant's father went to that place and informed the complainant that Sayyedsaheb i.e. the accused has come to his shop. The complainant and pancha witness Vivhal therefore went to the shop of the complainant. The accused was sitting in the complainant’s shop. After reaching there, complainant asked the accused, whether he has done his work. The accused answered in the affirmative and asked the complainant as to what about him. On that, the complainant answered in the affirmative. Then the accused took out a folded chit, which is proved to be the gate pass, (Exhibit-21) and handed over the same to the complainant. Complainant took out the marked currency note of Rs.50, two currency notes of Rs.20/- and one currency note of Rs.10, in all Rs.100/- to which anthracene powder was applied, and gave them to the accused. The accused put the said amount in the pocket of his Manila. The complainant put Ext.21 in the pocket of the Manila in which initially he had kept the marked currency notes. The complainant then immediately went out of the shop and gave signal. Thereupon the police constables and Deputy Superintendent Mr. Joshi entered the shop. The police Constables held the hands of the accused and Deputy Superintendent Mr. Joshi asked the accused as to where the bribe amount was. Thereupon, the accused handed over the amount of Rs.100/- put by him in his pocket. Police then carried out the post-trap panchanama in which it was noted that the numbers of the marked currency notes mentioned in the pre-trap panchanama and post-trap panchanama were the same. Besides this, anthracene powder was noticed at the fingertips of the accused so also at some portion of the Manila of the accused. The police also attached the gate pass, Exhibit-21. The copy of the panchanama was handed over to the accused and accused signed the same for having received the copy. Thereafter, Mr. Joshi, Deputy Superintendent recorded the statements of complainant and some other witnesses and after obtaining necessary sanction for prosecution and on completing the investigation submitted charge sheet against the accused in the Court of Special Judge, Ahmednagar.

As the accused pleaded innocence, trial was held. Four witnesses were examined including the complainant, panch witness, Assistant Engineer and Deputy Superintendent of Police, Anti Corruption Bureau. The accused examined his wife as a defence witness. His stand was that his wife had given clothes for stitching to the complainant and he had gone to his shop to collect the money for the lost cloth. After considering the evidence, the trial Court concluded that the prosecution has fully established the demand of bribe. An appeal was preferred before the Bombay High Court.

Stand of the accused before the High Court was that since money was not given by the complainant to the accused in the office but at the shop of the complainant, it proves that the defence version is correct. The High Court noted that admittedly the complainant was running a tailoring shop and complainant's father had submitted an application for getting electricity connection. The necessary test report was filed on 12.11.1986 and the necessary charges had been deposited on 26.12.1984 but the necessary gate pass was not given. The complainant's version that as regards demand of bribe was not shaken or shattered in cross examination the same was fully corroborated by the complaint filed on 2.12.1986. The evidence of Deputy Superintendent of Police, Anti Corruption Bureau fully established the same as the High Court noted that the sanction order, pre trap panchnama of the place of offence and gate passé were produced.

Referring to Section 4 of the Act the High Court held that the prosecution version was established and, therefore, there was no merit in the appeal.

3. Learned counsel for the appellant submitted that the defence version was more probable. This is a case where the complainant had not gone to the office of the accused to hand over the money but the accused had gone at the shop of the complainant, this itself creates a doubt about the version of the prosecution.

4. Learned counsel for the respondent-State supported the judgment.

5. It is of significance that in the complaint dated 2.12.1986 the complainant had specifically stated that the accused shall be coming for handing over the gate pass and for taking the money i.e. bribe amount on 3.12.1986 in the afternoon. Therefore, as rightly noted by the High Court if really the complainant had issued any receipt or chit in respect of the cloth and had told the accused to bring that chit or receipt, it is only after obtaining the said chit he would pay amount of Rs.100/-. Then he would not have lodged the complaint because at that time he had no idea as to what to do in the situation on 3.12.1986. Admittedly, when the post trap panchnama was drawn the accused was present there. So also the panch witness Sayajirao was present. After drawing the panchnama a copy of the same was immediately given to the accused. Not only that, he made endorsement on the original panchnama for having received a copy. If really the accused had handed over the receipt of the cloth to the complainant and accepted Rs.100/- as a price of the

lost cloth, he would have told panchas as well as to the police that that the receipt has been handed over to him and the said fact be mentioned in the panchanama but this has not happened. There was no mention about the accused having stated to have brought the chit of the cloth.

6. Section 4 of the Act reads as follows:

"Section 4. Presumption where public servant accepts gratification other than legal remuneration –

(1) Where in any trial of an offence punishable under Section 161 or section 165 of the Indian Penal Code, or of an offence referred to in clause (a) or clause (b) of sub-sec. (1) of S.5 of this Act, punishable under sub-section (2) thereof, it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification, other than legal remuneration or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trail of an offence punishable under Section 165A of the Indian Penal Code or under clause (ii) sub-section (3) of Section 5 of this Act, it is proved that any gratification or any valuable thing has been given or offered to be given or attempted to be given by an. accused person, it shall be presumed unless the contrary is proved that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward, such as is mentioned in Section 161 of the Indian Penal Code or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in subsection (1) and (2), the Court may decline to draw the presumption referred to in either of the said sub-section, if the gratification or thing, aforesaid is, in its opinion, so trivial that no inference or corruption may fairly be drawn."

7. In State of Assam v. Krishna Rao and Ors. (AIR 1973 SC 28) it was observed as follows:

"Where it is proved that a gratification has been accepted the presumption under Section 4 of the Prevention of Corruption Act shall at once arise, it is a presumption of law and it is obligatory on the Court to raise it in every case brought under Section 4. The words, "unless the contrary is proved" mean that the presumption raised by Section 4 has to be rebutted by proof and not by bare explanation which may be merely plausible. The required proof need not be such as is expected for sustaining a criminal conviction, it needs only to establish a high degree of probability."

8. The evidence on record has clearly established the accusations and the trial Court and the High Court have rightly relied on the same.

9. In the instant case the occurrence took place on December 2, 1986. At that point of time

it cannot be said that the gratification was a trivial thing as referred to under Section 4.

10. Above being the position, there is no merit in this appeal which is accordingly dismissed.

……………………………….J.
(Dr. ARIJIT PASAYAT)

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J.

(HARJIT SINGH BEDI)

……………………………….J.
(ASOK KUMAR GANGULY)

New Delhi,
May 04, 2009