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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1196 OF 2012

The State of Maharashtra
(Through Anti-Corruption Bureau Nashik,
Through Bhadrakali Police Station,
Nashik, District : Nashik.) **...Appellant**
(Original Complainant)

Versus

Prakash Pandharinath Rajput
Age : Nil, Occupation : Police Sub-Inspector,
Ozar Police Station, District : Nashik,
Residing at : Deolgaon, Taluka : Chopda, **...Respondent**
District : Jalgaon. **(Original Accused)**

Mr.H.J.Dedhia:-	APP for Appellant – State.
Mr.Chetan Mali i/b.Mr.C.P. Sengaonkar:-	Advocates for Respondent.

CORAM : S. M. MODAK, J.
RESERVED ON : 6th SEPTEMBER 2024
PRONOUNCED ON : 22nd OCTOBER 2024

JUDGMENT :-

1. This Appeal involves correctness of the judgment of acquittal passed by the Court of Additional Sessions Judge – Nashik dated 19th May 2012. The Respondent – PSI is attached to Ozar Police Station –

Nashik. He was investigating an offence registered at Ozar Police Station under Section 420 of the Indian Penal Code, 1860 (“**IPC**”) and under Sections 32B, 33 of the Maharashtra Money Lending (Regulation) Act, 2014 (“**MMLR Act**”). The said offence is registered against the *de facto* Complainant Sanjay Vasant Desai. The Special Case was filed by the Anti-Corruption Bureau – Nashik in respect of a demand of an illegal gratification made by the Respondent and acceptance of Rs.3,500/- (Rupees Three Thousand Five Hundred) on 27th December 2006. The offences are under Sections 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 (“**PC Act**”).

2. The trial Court acquitted the Respondent as **demand and acceptance evidence is not trustworthy. The trial Court found, sanction for prosecuting the PSI was given by the Special Inspector General of Police and he was competent.**

3. I have heard learned APP Shri.Dedhia for the Appellant – State and learned Advocates Shri.Sengaonkar and Shri.Mali for the Respondent. In fact, the findings on the point of sanction are acceptable. But, I am unable to upset the findings on the point of demand and acceptance. **So, I have no alternative but to dismiss the Appeal.**

Prosecution evidence

4. As usual, there were four (4) witnesses examined by the prosecution. They are as follows:-

- (i) PW No.1–Sanjay Vasant Desai–De facto Complainant.
- (ii) PW No.2–Bhatu Vithhal Pawar–Panch Witness.
- (iii) PW No.3–Manoj Dhondiram Pagare–Investigating Officer.
- (iv) PW No.4–Surya Pratap Gupta–Sanctioning Authority.

5. The facts which are deciphered from their evidence are as follows:-

- (a) Mr.Desai, the *de facto* Complainant has lent the amounts to various persons. They have not returned it. Instead, they filed the Complaint against Mr.Desai on 26th July 2006 and an offence was registered.
- (b) The Respondent – Prakash Rajput is a PSI attached to Ozar Police Station. He visited and searched the house of Mr.Desai on 24th July 2006.
- (c) Mr.Desai visited the Police Station after two days. PSI – Rajput demanded Rs.15,000/- (Rupees Fifteen Thousand) for reducing the Sections.
- (d) On 13th December 2006, PSI – Rajput visited the house of Mr.Desai and took him to the Police Station. He accepted Rs.3,000/- (Rupees Three Thousand) on 15th December

2006 and PSI–Rajput has decided to accept Rs.7,000/- (Rupees Seven Thousand) on 27th December 2006. That is how, Mr.Desai lodged a Complaint on 27th December 2006 with Anti-Corruption Bureau – Nashik (Exhibit-14).

- (e) The Police Inspector–Manoj Pagare recorded the Complaint. He carried out pre-trap Panchnama on 27th December 2006. (Exhibit-17). Mr.Desai also produced tainted currency notes of Rs.7,000/- (Rupees Seven Thousand) (14 notes of Rs.500/- denomination). One of the Panch Witnesses was PW No.2–Bhatu Pawar.
- (f) The trap was organised at Ozar Police Station. PSI–Rajput was not available.
- (g) However, PSI–Rajput called Mr.Desai first to Nashik, then to near Bela Petrol Pump near Dwarka Circle–Nashik.
- (h) Even though, Mr.Desai met PSI–Rajput near Bela Petrol Pump, he has not accepted the bribe at that place. But, Mr.Desai was asked to sit in the jeep occupied by PSI–Rajput. All went near Sharda Girls High School. Mr.Desai got down from the jeep and then, gave a bribe of Rs.3,500/- (Rupees Three Thousand Five Hundred) to PSI–Rajput.
- (i) PW No.2–Panch was not allowed to sit in the jeep occupied by PSI–Rajput. He sat in the jeep occupied by PI–Pagare. They chased PSI–Rajput.
- (j) After accepting bribe, PSI–Rajput in his jeep, tried to proceed further. But, he was stopped by PI–Pagare near

Parshuram Natyagruha. He was found with tainted currency notes of Rs.3,500/- (Rupees Three Thousand Five Hundred).

6. PI–Pagare prepared Panchnama and lodged FIR against the PSI – Rajput. The trial Court found the prosecution evidence unreliable.

Findings of the trial Court

The trial Court gave following findings:-

- (a) The trial Court considered the **Complaint** lodged by Mr.Desai to the Commissioner of Police on 30th August 2006. It is at Exhibit-15. It was not clearly legible. However, he admits, he has not referred about demand of Rs.15,000/- (Rupees Fifteen Thousand) made by PSI–Rajput. (Para No.2 of cross-examination).
- (b) The trial Court referred **about not approaching Anti-Corruption Bureau** by Mr.Desai when demand was made in the month of July-2006.
- (c) The trial Court referred the **Anticipatory Bail Application** filed by Mr.Desai on 29th December 2006. Its copy is there on Page No.114 of the paper-book. The trial Court referred about “*absence of allegations of payment of Rs.3,000/- (Rupees Three Thousand) to PSI–Rajput on 15th December 2006 and agreed to accept Rs.7,000/- (Rupees Seven Thousand) on 27th December 2006*”. (Para No.29 of the judgment).

- (d) The trial Court discarded the evidence **about previous demand of Rs.15,000/-** (Rupees Fifteen Thousand) and acceptance of part gratification of Rs.3,000/- (Rupees Three Thousand). (Para No.30 of the judgment).

7. Learned APP tried his best to convince me about this part of evidence. One is, oral evidence of PW No.1 and his Complaint dated 27th December 2006 filed with Anti-Corruption Bureau. On the other hand, we have got documentary evidence of Complaint at Exhibit-15 filed on 15th December 2006 and Anticipatory Bail Application filed on 29th December 2006. The incident of “*demand of Rs.15,000/-, payment of Rs.3,000/- and offering Rs.3,000/- on 27th December 2006*”, all are absent. Mr.Desai is author of these documents. I agree with the trial Court. His evidence on the point of complaint, demand and payment of Rs.3,000/- cannot be accepted.

Evidence about acceptance

8. Though, the trap was arranged at Ozar Police Station, when the raiding party went there on 27th June 2006, PSI-Rajput was not available. Mr.Desai contacted him on telephone. PSI-Rajput instructed him to come to Nashik. After reaching Nashik, Mr.Desai again called him. They came near Adgaon Check Post. PSI-Rajput told him to

come in front of Bela Petrol Pump near Dwarka Circle. Mr.Desai received a phone message from PSI-Rajput that he was sitting in a Police jeep near Auto Rickshaw Stand near Dwarka Circle. Whereas, according to the Panch Witness, it was not a message but mobile phone call from PSI-Rajput.

9. Mr.Desai and Panch Witness, PW No.2 went near the jeep. The incident at that place has got two significance. According to the prosecution, at this stage, there was a reiteration of demand by PSI-Rajput. Secondly, PSI-Rajput missing about the identity of a person accompanying Mr.Desai. Mr.Desai introduced him as a surety. On both these aspects, the evidence of these witnesses is consistent. Even, the trial Court agrees to this. (Internal Page No.23 at the bottom).

10. PSI-Rajput became angry and instructed Mr.Desai to come alone. PSI-Rajput also told him that Mr.Desai will not be released at Nashik but bail will be allowed tomorrow at Pimpalgaon. Both these witnesses have deposed the same fact. **However, the trial Court doubted the prosecution case on this aspect.** In the original Complaint, reason for demand was **deletion of sections** whereas, at the spot, there were conversation about when Mr.Desai will be released on bail. The trial Court observed:-

*“Therefore, it is seen that there exist a **different object** of demanding of illegal gratification on the basis of story of the prosecution. It means that the prosecution **is not firm** for which purpose the demand was made. There **exist a variance** in respect of object of the demand which is sufficient to draw inference under section 114 of the Evidence Act to say that **the case of prosecution is not true**”.*

I do not agree to this reasoning. As per the original case, money was not demanded for grant of bail. It is a matter of record that Mr.Desai has applied for anticipatory bail. It is a matter of record that Mr.Desai could not be arrested even though PSI–Rajput visited his house on more than one occasion. At the most, it can be said that furnishing a bail is the procedural formality. This cannot be considered as a reason for demand.

11. Sometime, it happens that different things happen at the spot from the original plan. These destinations at Nashik, Bela Petrol Pump, Sharda High School were never agreed. Ultimately, it depends upon the wish of bribe taker. He may accept a bribe at a place originally decided or he may change the place. This may be due to things take place on that day depending upon the official commitments of a public servant or the original plan changed at the instance of a bribe giver

considering his experience gathered while working as a Police Officer. A clever bribe taker may also change a place at the last moment so as to give a go-bye to the raiding party.

12. In this case, it is not known why the place is changed from the Police Station and shifted to Nashik. Even, in the Complaint at Exhibit-14 dated 27th December 2006, there is no mention about the place at which, an amount of Rs.7,000/- (Rupees Seven Thousand) was agreed to be paid. But, if the place is changed, certainly it affects the trap organised by the Investigating Officer. The *de facto* Complainant and the Panch Witness are required to act as per the instructions of a bribe giver. It is also true that an Investigating Officer is not expected to give each and every instruction to the raiding party about precautions to be taken at the time of trap. Which Investigating Officer may like a Panch Witness not to accompany the *de facto* Complainant at the time of offering money. But, it is a fact that when PSI–Rajput inquired with Mr.Desai about bringing the amount, PW No.2 was very much present there.

13. From Bela Petrol Pump to Sharda High School journey, Mr.Desai and PW No.2 have sat in two jeeps. Mr.Desai was with Mr.Rajput–PSI whereas, Panch Witness was with PI–Pagare in the

official jeep. It has come in the evidence that Mr.Desai sat on the back seat in the jeep of PSI-Rajput. There is an emphasis about not paying the cash to PSI-Rajput during the said journey. **It is the fact also.** The jeep was stopped near Sharda High School. **It is interesting to consider, how Mr.Desai offered Rs.3,500/-** (Rupees Three Thousand Five Hundred). He got down from the jeep and came near PSI-Rajput and offered him Rs.3,500/-. It was accepted. PSI-Rajput was sitting in the jeep on the front side. There was a distance of 50 feet in between the Police jeep and jeep of PSI-Rajput.

14. **It is interesting** that PW No.2 got down from the Police jeep and went near the jeep of PSI-Rajput and he witnessed handing over the amount to PSI-Rajput. Even, this was witnessed by PI-Pagare. The trial Court has not believed PI-Pagare on this issue. The fact deposed by PI-Pagare,

“he saw Mr.Desai getting down from backside of the jeep and then handing over the amount to PSI-Rajput”

was not stated by him when he lodged the FIR at Exhibit-31 after the trap. (Para 40 of the judgment). I have read the second page of FIR dated 27th December 2006 at Exhibit-31. It was lodged at Bhadrakali Police Station. It is true above fact does not find place in the same. It is

very well true that FIR cannot be an encyclopedia of all the events. **There are two aspects.** One, how PW No.2 got down from the jeep, that is to say, from which door and second, PW No.2 went near the jeep of PSI-Rajput and witnessed offering the money. This Court feels, the first part is minor **but second part is important.**

15. After offering the money, the things have not stopped. PSI-Rajput tried to move ahead. PI-Pagare chased him and stopped his jeep and then, he was inspected. Tainted currency notes were found with him. The jeep was stopped near Parshuram Natyagruha. On one aspect, the trial Court has doubted the testimony of PW No.3-PI-Pagare. After interception, PW No.3-Pagare asked Mr.Desai who accepted the money. The trial Court opined why, Mr.Pagare did not ask the Panch Witness. This is illogical. I do not think, there is anything wrong in asking Mr.Desai. (Para No.39).

16. The trial Court emphasised on the conduct of Mr.Desai in avoiding the arrest of cheating offence registered against him. The discussion find place in Para No.43. I am not discussing the documents referred by the trial Court in detail. But, fact remains, PSI-Rajput has visited the house of Mr.Desai firstly on 24th July 2006. Thereafter, in the month of December-2006. In the meantime, he was busy in

investigation of Malegaon Bomb Blast Case. It is but natural for Mr.Desai to approach the Court seeking protection from arrest. But, we cannot forget one fact, Mr.Desai was apprehending an arrest and for some reason or other, he has avoided the arrest.

17. The evidence on the point of demand has to be scrutinised on the basis of oral evidence of the *de facto* Complainant and its veracity has to be tested along with other circumstances. No doubt, it is true that the tainted currency notes were found with PSI-Rajput. This evidence of recovery can be believed only when the evidence on the point of demand is satisfactory.

18. In this case, there are circumstances to doubt the prosecution case of demand. The reasons are already quoted in earlier part of this judgment. There are few more reasons to doubt the case of demand. They are:-

- (a) Even though, firstly money was demanded in the month of July-2006, no attempt was made to approach the Anti-Corruption Bureau.
- (b) Mr.Desai is conscious of his rights and that is why, he has approached the Commissioner of Police-Nashik through complaint at Exhibit-15.
- (c) The fact of demand of money and payment of Rs.3,500/-

(Rupees Three Thousand Five Hundred) is absent in the said complaint.

- (d) Even, when Rs.3,000/- (Rupees Three Thousand) was paid on 15th December 2006, further payment was to be made on 27th December 2006.
- (e) During this period, he has not approached the Anti-Corruption Bureau.
- (f) Though, he has referred about making phone calls and receiving phone calls from PSI-Rajput, no Call Detail Records (“**CDRs**”) are produced.
- (g) It is surprising, why money was not paid when PW No.1 travelled with PSI-Rajput from Dwarka Circle to Sharda High School.

All the events have taken place in such a manner which are not free from suspicion. The prosecution could have cleared the doubts by explaining all these events at great length about the distance in between two vehicles and whether it is possible to witness offering of money by sitting in the Police jeep. The prosecution has lost their opportunity. For the above added reasons, **I agree to the finding of the trial Court that evidence on the point of demand is not satisfactory. I confirm those findings.**

Sanction

19. Mr.Sengaonkar and Mr.Mali have made every attempt to convince me that the sanction **by the Special Inspector General of Police is defective**. The trial Court has not accepted their grievance.

Their submission is:-

- (a) PSI–Rajput was working as a Police Sub Inspector.
- (b) According to them, it is the Director General of Police who is the Competent Authority.
- (c) Whereas, PW No.4–Suryapratap Gupta was the Special Inspector General of Police.

Mr.Dedhia has supported those findings. For deciding, whether the Sanctioning Authority is competent to grant a sanction, the following provisions are relevant:-

- (a) The provisions of Section 19(1)(b) of the PC Act.
- (b) The provisions of Article 311 of the Constitution of India.
- (c) The provisions of the Maharashtra Police Act, 1951 and
- (d) the Bombay Police Manual, 1951.

As per Section 19(1)(b), the **sanction of the State Government** is required for those employees who can be removed from the service. As the PSI–Rajput was working in Home Department, the sanction of the

State Government was required. It is true that there are various departments of the Government. It is also true that there are different Rules and Acts dealing with the functioning of that department. The Maharashtra Police Act, Rules and Police Manual are relevant.

20. Learned Advocate Mr.Sengaonkar relied upon the following judgments:-

- (i) *P. Satyanarayana Murthy v/s. District Inspector of Police, State of Andhra Pradesh and Another*¹
- (ii) *State of Kerala v/s. P. Muhammed Noushad*² (It is on the point of powers of the Appellate Court).
- (iii) *The Special Inspector General of Police Kolhapur Range, Kolhapur & Ors. v/s. Shri Ambadas Hariba Yadav*³
- (iv) *Vijay s/o Namdeorao Mithpalle v/s. The State of Maharashtra*⁴

21. In case of *Vijay* (supra), the facts:-

- (a) The Accused was serving as PSI.
- (b) He was appointed by the Director General of Police.
- (c) Entry in service-book was produced. In this case, there is nothing on record to show who has appointed / promoted

1 (2015) 10 Supreme Court Cases 152

2 (2016) 14 Supreme Court Cases 318

3 Writ Petition No.4050 of 2009 : 6th October 2009 : Bombay High Court

4 Criminal Appeal No.296 of 2013 : 31st March 2022 : Bombay High Court (Bench at Aurangabad)

PSI-Rajput.

- (d) In that case, sanction was granted by the Inspector General of Police.

Learned Single Judge held sanction defective. The relevant observations are as follows:-

*“As against the constitutional provision, a reliance by the learned A.P.P. on Section 25 of the Police Act would be inconsequential. Reference to Section 25 is also misconceived since sub-section (3)(b) of Section 25 reads that, nothing in sub-section (1)(1-a) and (2) shall entitle any authority subordinate to that by which the police officer was appointed, to dismiss or remove him. As such, the **authority competent to remove the appellant was D.G. and none else.** The sanction, therefore, ought to have been accorded by D.G. himself. The investigating officer has rightly made a communication with the office of D.G. to obtain sanction for prosecution. The D.G., however, forwarded the said communication to the I.G., Nanded to do the needful. The I.G. in turn accorded the sanction. **Since the I.G. was not the appointing authority of the appellant, the sanction accorded by him is invalid.**”*

22. Whereas, in case of ***Ambadas Hariba Yadav*** (supra), the Division Bench dealt with the correctness of the order passed by the Maharashtra Administrative Tribunal. The facts are:-

- (a) By the said order, the order of dismissing the Respondent from the post of Sub Inspector was set aside.
- (b) The Division Bench dismissed the Writ Petition.
- (c) The Respondent was appointed by the Deputy Inspector General of Police. **The Division Bench observed:-**

“The test of determining who is the appointing authority cannot be the signatory of the appointment letter, as the appointment letter can also be issued on behalf of the appointing authority...”

- (d) The order of dismissal was issued by an Officer lower in rank than the Appointing Authority and that is why, it was not interfered with.

However, it is important to note that this decision was challenged by the Special Inspector General of Police in Hon’ble Supreme Court by way of Civil Appeal No.10831 of 2010 and **the decision was set aside.**

The Hon’ble Supreme Court referred provisions of Section 25(2)(a) of the Maharashtra Police Act. However, Mr.Sengaonkar for any reason has quoted before me the Division Bench judgment which was overlooked by the Hon’ble Supreme Court. He and Mr.Mali tried to convince me that those provisions are applicable only when there is a disciplinary action and not when there is a prosecution under the provisions of PC Act. **This argument is fallacious.** Even, learned Single

Judge while setting aside the conviction in case of **Vijay** (supra), has referred about these provisions. In the context of the present facts, those provisions need to be looked into.

The Maharashtra Police Act / Rules

23. Section 25 of the Maharashtra Police Act, 1951 lays down punishment for the members of subordinating ranks of Police Force.

Sub-section 1 lays down:-

various types of punishments. Clause (e) and (f) deal with removal without disqualification and dismissal having the effect of disqualification.

Whereas, Sub-section 1(a) lays down:-

other punishments (which can be treated as minor punishment).

Whereas, clause (a) of Sub-section 2 to Section 25:-

empowers following Officers to punish the Inspector or member of the subordinate rank:-

- (a) Director General and Inspector General;
- (b) Additional Director General;
- (c) Special Inspector General;
- (d) Commissioner including Joint, Additional and
- (e) Deputy Inspector General.

24. It is true that as per clause (b) of Sub-section 3, protection is granted to an employee from removal by an Officer subordinate to the Appointing Authority. Learned Single Judge in case of **Vijay** (supra) has referred about two factual aspects. They are:-

- (a) appointment by Director General of Police and
 - (b) granting of sanction by Special Inspector General of Police
- (Para 7).

On the basis of the provisions of Sub-section 3(b) of Section 25, **the learned Single Judge held:-**

“Sanction is invalid because it was granted by Special Inspector General of Police who is subordinate to the Director General of Police.”

Whereas, in case of **Ambadas Hariba Yadav** (supra), the Hon’ble Supreme Court was dealing with the correctness of the order of dismissal passed by the Special Inspector General of Police.

Appointing Authority for PSI

25. On this background, it will be material to see who is the Appointing Authority for PSI. Admittedly, there is nothing on record to show who has appointed / promoted PSI–Rajput on the post of PSI. Even though, it may be absent, this Court can certainly look the

provisions of the Act / Rules. **Section 12A** of the Maharashtra Police Act empowers the Director General and Inspector General to appoint an Inspector. There is no provision in the Police Act relating to the appointment of Police Sub Inspector. **Rule 33** of the Maharashtra Police Manual prescribes who are the Appointing Authorities in the **Greater Bombay** and **outside Greater Bombay**. Outside Greater Bombay, **following are the Appointing Authorities:-**

- (a) It is the **Inspector General of Police** for **Inspector of Police** and
- (b) it is the **Deputy Inspector General of Police** for **Sub Inspector**.

So, Director General of Police is not the Appointing Authority.

Disciplinary Rules

26. There are Bombay Police (Punishments and Appeals) Rules, 1956. They are framed as per Section 25(2)(a) of the Maharashtra Police Act. The punishments are prescribed in Rule 3(1). **Dismissal is one of them.** Whereas, **Column (1) of Schedule I** to these Rules prescribes the Officers who can inflict the punishments. These Rules are applicable to the Police Officers below the rank of Inspectors. **As per Entry No.2** of the Schedule I, the Deputy Inspector General of

Police can impose all the punishments (subject to restrictions specified in column (4). **Column 4 mentions removal or dismissal can be by Appointing Authority only.** As said above, the Appointing Authority for Sub Inspector is the Deputy Inspector General of Police or by an Officer higher in rank. **Learned Single Judge in case of Vijay (supra) has not considered these provisions.** In this case, PW No.4–Mr.Gupta was the Special Inspector General of Police. Certainly, he is higher in rank than the Deputy Inspector General of Police. **So, the contentions of Mr.Sengaonkar and Mr.Mali on the point of validity of sanction are rejected.**

27. Learned trial Judge while upholding the sanction has referred about the Government Resolution dated 3rd April 2000. The learned trial Judge has upheld sanction for the reason:-

“Accused has not shown as to how the Special Inspector General of Police is not competent to grant sanction”. (Para No.24, running Page No.24).

This reasoning is not sound reasoning. There is no burden on the Accused to show how the Authority is not competent. It is for the prosecution to show it. The Resolution dated 3rd April 2000 is in respect of Gazetted and Non Gazetted Officers. **There is no reference**

of Police Officers. More than the Resolution, the provisions of Act, Rules and Manual are important.

28. For the above discussion, **I hold that the sanction is valid.** Even though, the sanction is held as valid, the demand is not proved. The findings on the point of demand and acceptance are reasonable findings. They are given after appreciation of evidence. They are not perverse. I do not accept the contention of learned APP. He is unable to convince me to reverse those findings. Hence, I am dismissing this Appeal.

[S. M. MODAK, J.]