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SMT. MEENA

v.

STATE OF MAHARASHTRA

APRIL 17, 2000

B

[DR. A.S. ANAND, CJI, R.C. LAHOTI AND DORAISWAMY RAJU, JJ.]

C

Indian Penal Code, 1860—Section 161—Prevention of Corruption Act, 1947—Section 5(1)(d) rw/S. 5(2)—Offence under—Requirements of—Charge of acceptance of bribe by Revenue Record Keeper—Trap case—Recovery of currency note lying on pad on the table—Whether can be held to be sufficient proof of acceptance of bribe—Held, No, in the facts and circumstances of the case—Defence case that currency note fell on the table in process of accused pushing it away with her hand when attempted to be thrust into her hand, held, acceptable.

D

Constitution of India—Art. 136—Appeal—Scope—Concurrent findings suffer from serious infirmities and manifest errors—Obligation of judicial conscience to correct errors, where the same are manifest—Prevention of Corruption Act, 1947—Section 5(1)(d) read with section 5(2)—Indian Penal Code, 1860—Section 161.

E

The appellant, working as Revenue Record Keeper in the Collectorate was charged of the offences punishable under Section 161 of the Indian Penal Code and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947, for demanding and accepting a sum of Rs. 20 from PW-1, as gratification other than legal remuneration for doing an official act of sending the relevant records to the copying section for providing copies of maps and khasra patrak, applied for by him. A trap was laid down. The currency note of denomination of Rs. 20 was found on the pad on the table and seized from that place when the trap party arrived. The lady constable immediately held both the hands of the accused and when the accused dipped her hands in the glass tumbler containing solution of sodium carbonate, the colour of the solution turned to purple. The Special Judge held the charges proved and sentenced the appellant. On appeal, the High Court affirmed the finding recorded by the Trial Judge. Hence this appeal by special leave.

H

The appellant contended that necessary and essential ingredients to

constitute offences could not be held to have been provided; that the controversy in respect of the manner of handing over the currency and its receipt sufficiently proved the defence case that PW-1 only attempted to thrust the currency into the hands of the appellant and when she refused the same by pushing with her hand, not only the currency note came into contact with her hand but in the process fall on the pad on the table from where only it was taken and seized and that the non-examination of the lady constable, who first searched the spot after the alleged acceptance of the amount rendered the case of the prosecution self condemned.

The counsel for the State contended that the concurrent findings of the Courts below did not suffer from any infirmities or irregularities, to call for an interference in this appeal.

Allowing the appeal, the Court

HELD : 1.1. The currency note in question was not recovered from the person or from the table drawer, but when the trap party arrived the note was found only on the pad on the table and seized from that place only. PW-2, one of the panch witnesses, who accompanied PW-1, as a shadow witness when he tried to give the bribe, did not support the prosecution case. He has been treated hostile and his evidence eschewed from consideration by the courts below. The lady Constable, another shadow witness, who first arrived on the spot after the signal was given by PW-1, was not examined at the trial. Law has always favoured the presence and importance of a shadow witness in the trap party, not only to facilitate such witness to see but also overhear what happens and how it happens also. In this case, the role of lady Constable was to enter first and hold the hand of the accused immediately after the acceptance of the bribe amount and she was stated to have done that as planned. For reasons best known, such a vital and important witness has been withheld by the prosecution, from being examined. One J who scribed the application dated 13.8.1986 for getting copies and who admittedly was all along with PW-1 and gave even the idea of lodging a compliant with the Anti-Corruption Bureau, has also been withheld from being examined. The other person, who was present at the place of occurrence though cited initially as witness, was not examined by the prosecution but later examined as DW-1 and evidence of this person completely belies the prosecution story. The corroboration essential in a case like this for what actually transpired at the time of the alleged occurrence and acceptance of bribe is very much wanting in this case. Even the

A other panch witness, PW-5, categorically admitted that even as the Inspector of Police PW-6 arrived, the appellant gave the same version that PW-1 tried to force into her hands the currency note which she turned down by pushing it away, and his evidence also does not lend credibility to the case of the prosecution. The contradictory version of PW-1 of the very incident
B in this case untrustworthy. PW-3 the Head Copyist seems to be the brain behind all these and PW-1 as well as J appear to be working as a group in this affairs and despite the blunt denial by PW-3, his closeness to PW-1 and J stand well substantiated. All these relevant aspects of the case seem to have been completely overlooked by the Courts below. [19-C-H; 20-A-B]

C
D 1.2. Mere recovery of the currency note of Rs. 20 denomination, that too lying on the pad on the table, by itself cannot be held to be proper or sufficient proof of the acceptance of the bribe, in the peculiar circumstances of this case which lend credence to the case of the appellant that it fell on the table in the process of the appellant pushing it away with her hands when attempted to be thrust into her hands by PW-1. The results of phenolphthalein test, viewed in the context that the appellant could have also come into contact with the currency note when she pushed it away with her hands cannot by itself be considered to be of any relevance to prove that the appellant really accepted the bribe amount. With such perfunctory nature
E of materials and the prevaricating type of evidence of PW-1 and PW-3, who seem to have strong prejudice against the appellant, it would be not only unsafe but dangerous to rest conviction upon their testimony. PW-1 if really keen on getting the copy of the record urgently, could have made an urgent application to have them delivered within 3 days instead of making
F an ordinary application and going on such an errand, which makes it even reasonable to assume that the trio of PW-1, PW-3 and J were attempting to weave a web around the appellant to somehow get her into trouble and victimise her. [20-C-F]

G 1.3. The fact that the judgments of the courts below were rendered concurrently cannot dissuade this Court from interfering in a case like this where such findings and conviction have been recorded on mere conjectures and erratic evaluation of the evidence on record. Consistency for the mere sake of it is no virtue. It is an obligation of judicial conscience to correct errors, where the same are manifest. The judgments of the courts below
H suffer from serious infirmities and manifest errors on account of unwar-

ranted inferences liberally drawn by the Courts below against the appellant, overlooking the fundamental principle of presumption of innocence of an accused till the charge levelled and his guilt is established beyond all reasonable doubt. The courts below have failed to consider the adverse impact on the prosecution case from the evidence of PW-2 and the withholding of the lady constable and J, the two material witnesses. The appellant cannot be, on the basis of available evidence, held to have tacitly accepted the illegal gratification as alleged. The materials on record in this case are not sufficient to bring home the guilt of the appellant. [20-G-H; 21-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 449 of 1995.

From the Judgment and Order dated 18.10.94 of the Bombay High Court in Crl. A. No. 411 of 1993.

U.N. Bachawat, R.B. Masodkar, K.L. Taneja and Alok Bachawat for the Appellant.

A.S. Bhasme, V.B. Joshi and S.V. Deshpande for the Respondent.

The Judgment of the Court was delivered by

RAJU, J. The appellant in this appeal, who was working as Revenue Record Keeper (Senior Clerk) in the Collectorate at Wardha District, was charged before the Special Judge, Wardha, of the offences punishable under Section 161, IPC, and Sections 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 [hereinafter referred to as "The Act"]. The case of the prosecution was that the appellant demanded and accepted on 20.8.1986 a sum of Rs.20 from one Magorao Tarale (PW-1), as gratification other than legal remuneration for doing an official act of sending the relevant records to the copying section for providing copies of maps and Khasra Patrak, applied for by him. The appellant pleaded not guilty and sought for trial.

The prosecution examined PWs 1 to 7 and marked several documents in support of the charges. The appellant denied the charges and asserted that she was falsely implicated on the machinations of PW-3, PW-1 and one Jagdish Bokade, Shri Devanand was examined as DW-1. The crux of the prosecution case, leaving aside the unnecessary details is that PW-1 made an application on 13.8.86 for copies of records relating to lands held by his grand father and on the suggestion of PW-3, the Head Copyist, he approached the

A accused and requested her to make available the relevant record for preparation of copies. The accused, allegedly demanded Rs.20 for making available the records. PW-1 was not prepared to pay the money and he sought the advise of one Jagdish Bokade who gave the idea of complaining to the Anti-Corruption Bureau. On receipt of a complaint from PW-1, orally PW-6 reduced the same in writing. Then Inspector, PW-6 called for two panchas PWs 2 and 5 from the Forest Department as well as a lady constable named Victoria. A pre-trap panchnama was stated to have been drawn after explaining the details of the trap and the characteristics of phenolphthalein powder as well as its use in a trap. PW-1, the complainant was said to have produced a currency note of the denomination of Rs. 20 before PW-6 who applied the chemical powder on either side of the currency note and made it kept in the side pocket of the trouser of the complainant. PW-1 was instructed not to touch the currency note till the accused makes the demand and only thereafter give it to her. PW-2, one of the panch witnesses, was instructed to accompany the complainant and not only hear the conversation between the accused and the complainant but also keep a watch as to where the accused keeps the amount, after receiving the same. The other panch witness, PW-5 and the lady constable Victoria were instructed to remain present nearby the side of the record room and rush to the spot on receipt of the signal from the complainant. The lady constable was instructed to immediately catch the hands of the accused and the rest of the trap party would follow them by remaining at a distance.

The complainant was said to have gone ahead with PW-2, while the other members of the trap party took position outside the room waiting for the agreed signal from the complainant by rubbing his mouth with his handkerchief. The further case of the prosecution is that things happened the way it was planned and the complainant not only paid the amount by handing over the currency note on a demand then made by the accused but he came out of the room and made the signal for the trap party to play their respective and allotted roles. The lady constable was said to have arrived first, immediately and held both the hands of the accused who by then seems to have thrown the currency note from her hands on the table. Thereafter, PW- 6 prepared a solution of sodium carbonate in a glass tumbler and when the accused dipped her hands in the glass tumbler containing the solution the colour of the solution was said to have turned to purple and the collection of the same was sealed for being sent to chemical analyser. The solution of sodium carbonate when sprinkled on the currency note and the pad on the table on which the currency

note has been thrown purple colour appeared on both and they were duly seized under a mahazar, for further action. Immediately, thereafter, PW-6 was said to have lodged a report against the accused at Police Station, Wardha, and thereafter carried on the investigation which resulted in laying of the charge against the accused.

The Special Judge, after considering the materials on record, held the charges proved and sentenced the appellant to undergo rigorous imprisonment for a period of one week and to pay a fine of Rs. 200, in default of which to suffer further rigorous imprisonment for fifteen days for the offence under Section 161, IPC. For the offence under Section 5(1)(d) read with Section 5(2) of the Act, the appellant was sentenced to suffer rigorous imprisonment for a period of one month and to pay a fine of Rs. 500, and in default to suffer further rigorous imprisonment for three weeks. Both the sentences were ordered to run concurrently, on 30.10.1993.

On an appeal filed before the High Court at Mumbai, a learned Single Judge also affirmed the findings recorded by the Trial Judge. On the question of sentence also, the learned Judge in the High Court was of the view that leniency had already been shown by the Trial Judge and there was no further scope for interference. The appeal came to be rejected on 18.10.1994 resulting in filing of this appeal by special leave.

The learned counsel appearing for the appellant strenuously contended that the courts below committed grave errors of law in returning a finding of guilt on the perfunctory materials on record and that no court expected to objectively analyse and evaluate evidence reasonably and rationally could have held the charges proved. It was urged that necessary and essential ingredients to constitute offences as statutorily defined could not be held to have been proved. The non-examination of the lady Constable, who first reached the spot after the alleged acceptance of the amount as well as of Jagdish Bokade, who had played a pivotal role in the trap alongwith PW-1 and PW-3, renders the case of the prosecution self-condemned.

The learned counsel, at length, took us through the evidence of PW-1, PW-3, PW-4, PW-5 and DW-1 to substantiate the grievance of the appellant. Reading the evidence of PW-1, it was endeavoured to show that he had spoken altogether a different version in the departmental proceedings against the appellant where he deposed in respect of the very incident earlier on 30.9.1987 rendering him totally an unreliable witness and his evidence uncreditworthy.

A The controversy in respect of the manner of handing over the currency and its receipt was said to have been belittled and ignored when, according to the learned counsel, it cuts at the very root of the vital ingredient of acceptance of the money itself and on the other hand sufficiently proved the claim that PW-1 only attempted to thrust the currency into the hands of the appellant and when the appellant refused the same by pushing with her hand, not only the currency note came into contact with her hand but in the process fell on the pad on the table from where only it was taken and seized. The several admissions made by PW-1 and PW-3 were said to substantiate the position that they and one Jagdish Bokade, who was the author of the application submitted on 13.8.1986 and who was with PW-1 all through, were in hand in glove in this venture to harass the appellant since the staff in the Collectorate, particularly PW-3, did not like the appellant to be in the Collectorate and that they were offended on account of the refusal of the appellant to participate in the periodical liquor parties held by them by making contribution, as desired. Finally, it was submitted that the materials on record are not safe to be relied upon or sufficient in law to condemn the appellant of the offences of the nature levelled against her.

The learned counsel for the respondent-State, while strongly placing reliance upon the judgments of the courts below, contended that the concurrent findings of the courts below, recorded on a proper appreciation of the evidence, do not suffer from any infirmities or irregularities, to call for an interference in this appeal and that, therefore, the appeal does not merit our acceptance. Our attention has been drawn to such findings of the trial court, which were in extenso quoted and approved by the learned judge in the High Court also, in support of his stand.

F The essential ingredients to be established to indict a person of an offence under Section 5(1)(d) of the Act are that he should have been a public servant; that he should have used corrupt or illegal means or otherwise abused his position as such public servant, and that he should have obtained a valuable thing or pecuniary advantage for himself or any other person. Likewise, Section 161, IPC, requires that the person accepting the gratification should be a public servant; that he should accept the gratification for himself and the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person. Like any other criminal offence, the prosecution has to prove the charge beyond reasonable doubt and accused

should be considered innocent, till it is established otherwise by proper proof of acceptance of the illegal gratification, the vital ingredient, necessary to be established to procure a conviction for the offences under consideration.

We have bestowed our careful thought to the submissions made on either side, in the light of the evidence on record. We are of the view that neither the quality of the materials produced nor their proper evaluation could, in this case, be held sufficient to convince or satisfy the judicial conscience of any adjudicating Authority to record a verdict of guilt, on such slender evidence. Indisputably, the currency note in question was not recovered from the person or from the table drawer, but when the trap party arrived was found only on the pad on the table and seized from that place only. The question is as to whether the appellant accepted it and placed it on the table or that the currency note fell on the pad on the table in the process of the appellant refusing to receive the same by pushing away the hands of PW-1 and the currency, when attempted to be thrust into her hands. PW-2, one of the panch witnesses, who accompanied PW-1, as a shadow witness, when he tried to give the bribe, did not support the prosecution case. He has been treated hostile and his evidence eschewed from consideration by the courts below. The lady Constable, Victoria, another shadow witness, who first arrived on the spot after the signal was given by PW-1, was not examined at the trial. Law has always favoured the presence and importance of a shadow witness in the trap party, not only to facilitate such witness to see but also overhear what happens and how it happens also. In this case, the role of Victoria was to enter first and hold the hands of the accused immediately after the acceptance of the bribe amount and she was stated to have done that, as planned. For reasons best known, such a vital and important witness has been withheld by the prosecution, from being examined. Jagdish Bokade, who scribed the application dated 13.8.1986 for getting copies and who admittedly was all along with PW-1 and gave even the idea of lodging a complaint with the Anti-Corruption Bureau, has also been withheld from being examined. The other person, who was present at the place of occurrence though cited initially as witness, was not examined by the prosecution but later was got examined as DW-1 and evidence of this person completely belies the prosecution story. The corroboration essential in a case like this for what actually transpired at the time of the alleged occurrence and acceptance of bribe is very much wanting in this case. Even the other panch witness, PW-5, categorically admitted that even as the Inspector of Police, PW-6, arrived, the appellant gave the same version that PW-1 tried to force into her hands the currency note which she turned down

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of the prosecution. The contradictory version of PW-1 of the very incident
when earlier examined in departmental proceedings renders his testimony in
this case untrustworthy. PW-3, the Head Copyist, seems to be the brain behind
all these and that PW-1 as well as Jagdish Bokade appear to be working as
B a group in this affair and despite the blunt denial by PW-3, his closeness to
PW-1 and Jagdish Bokade stand well substantiated. All these relevant aspects
of the case seem to have been completely overlooked by the courts below.

The learned Judge in the High Court seems to have mechanically affixed
his approval to the findings recorded by the trial Judge by profusely extracting
C such findings. Mere recovery of the currency note of Rs. 20 denomination, and
that too lying on the pad on the table, by itself cannot be held to be proper
or sufficient proof of the acceptance of the bribe, in the peculiar circumstances
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D on the table in the process of the appellant pushing it away with her hands
when attempted to be thrust into her hands by PW-1. The results of
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appellant really accepted the bribe amount. With such perfunctory nature of
E materials and the prevaricating type of evidence of PW- 1 and PW-3, who
seem to have strong prejudice against the appellant, it would be not only
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was keen on getting the copy of the record urgently, could have made an
urgent application to have them delivered within 3 days instead of making an
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F reasonable to assume that the trio of PW-1, PW- 3 and Jagdish Bokade were
attempting to weave a web around the appellant to somehow get her into
trouble and victimise her.

The fact that the judgments of the courts below were rendered concur-
rently cannot dissuade us from interfering in a case like this where such
G findings and conviction have been recorded on mere conjectures and erratic
evaluation of the evidence on record. Consistency for the mere sake of it is
no virtue. It is an obligation of judicial conscience to correct errors, where the
same are manifest. The judgments of the courts below suffer from serious
infirmities and manifest errors on account of unwarranted inferences liberally
H drawn by the courts below against the appellant, overlooking the fundamental

principle of presumption of innocence of an accused till the charge levelled and his guilt is established beyond all reasonable doubt. The courts below have failed to consider the adverse impact on the prosecution case from the evidence of PW-2 and the withholding of the lady Constable and Jagdish Bokade, two material witnesses. The appellant cannot be, on the basis of available evidence, held to have tacitly accepted the illegal gratification as alleged. The materials on record in this case are not sufficient to bring home the guilt of the appellant. Consequently, the appeal is allowed. The conviction and sentence of the appellant is set aside and the fine, if any, paid shall be refunded to the appellant.

R.A.

Appeal allowed.