STATE OF MAHARASHTRA

v.

DNYANESHWAR LAXMAN RAO WANKHEDE

(Criminal Appeal No. 1350 of 2009)

JULY 29, 2009

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Prevention of Corruption Act, 1988 – s. 7(1) – Conviction under, of head constable for demand of illegal gratification – However, acquittal by High Court – Justification of – Held: Justified – Prosecution failed to prove its case – Sole surviving panch witness was not witness of demand and was disbelieved; and was also declared hostile – High Court considered the legal implication of s. 20 and did not place too much reliance on the minor inconsistencies in the statements of prosecution witnesses.

Criminal law – Appeal against acquittal – Interference with – Held: When two views are possible, one in favour of prosecution and other in favour of accused, the court shall not interfere with a judgment of acquittal.

The question which arose for consideration in this appeal is whether the High Court was justified in acquitting the respondent-head constable for commission of offence of demand of illegal gratification under section 20 of the Prevention of Corruption Act, 1988.

Dismissing the appeal, the Court

HELD: 1.1. The demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Prevention of Corruption Act, 1988. For arriving at the conclusion as to whether all the ingredients

A of an offence - demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, the presumptive evidence, as is laid B down in section 20 must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-à-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how C the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of section 20, the court is required to consider the explanation offered by the accused, if any, only on the D touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. [Para 16] [520-G-H; 521-A, B]

Noor Aga v. State of Punjab 2008 (9) SCALE 691; *Jayendra Vishnu Thakur v. State of Maharashtra and Anr.* E 2009 (7) SCALE 757, referred to.

1.2. The complainant took with him two panch witnesses. One of them was a witness in respect of the alleged demand of illegal gratification on the part of the F respondent. He having died during pendency of the matter before the Special Judge, no other independent witness was available to prove the prosecution case in that behalf. The second panch witness was not a witness of demand. Despite the said fact, the prosecution sought G to prove the demand purported to have been made by the respondent through him. It is of some significance to notice that although by the said process PW-1 did not support the accused, he was declared hostile and permission to cross-examine him was sought for by the prosecution. [Para 17] [521-C-E]

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1.3. Initially, an amount of Rs. 2000/- was demanded. A sum of Rs. 1800/- was said to have been paid against the said demand. Another criminal case was instituted on 14.07.1995. An amount of Rs. 1500/- was said to have been demanded on 31.07.1995. Only a very small part of the said amount had been paid, viz., Rs. 100/- and Rs. 200/- on two different occasions. Keeping in view the fact that the respondent enquired about the correctness or otherwise of the FIR lodged by the complainant and his mother after a long time, it is doubtful that the respondent had been coming to the village again and again. Even complaint was made only on 8.08.1995. Indisputably, at least two attempts have been made, one on that date and another later on. The entire procedure for making a raid was repeated on 22.08.1995. This itself casts a serious doubt about the prosecution case. The complainant with the witness went to the police station. Then, they went to their residence. If the respondent intended to take the amount, he would have accepted the same in his house itself and there was no reason to ask the complainant and the witness to meet him at a public place, i.e., near the Hospital. Even the details of the said purported raid, viz., time of the complainant's visit to the police station, the residence of the respondent and Hospital, have not been disclosed. Therefore, it is highly doubtful that the version of the complainant was true. It is in the said backdrop only the evidence of DW-1 is to be considered. Even otherwise, the prosecution failed to prove its case. It is, therefore, not a case where the High Court, has failed to take into consideration the legal implication of the provisions of s. 20 of the Act and/or placed too much reliance on the minor inconsistencies in the statements of the prosecution witnesses. [Paras 18 and 19] [521-F-H; 522-A-D]

2. While dealing with a judgment of acquittal, it is absolutely essential to keep in mind that in the event two

A **views are possible to be taken, one in favour of prosecution and other in favour of accused this Court shall not interfere with a judgment of acquittal. There cannot be any doubt that in the event, having regard to the materials brought on record, the court comes to the**
B **conclusion on the basis thereof that only one view is possible, a judgment of acquittal may be interfered with. [Paras 15 and 21] [520-D, E; 522-G]**

Shivappa and Ors. v. State of Karnataka **(2008) 11 SCC 337;** *State of Maharashtra v. Rashid B. Mulani* **(2006) 1 SCC**
C **407;** *State through Inspector of Police, A.P. v. K. Narasimhachary* **(2005) 8 SCC 364;** *Dilip and Anr. v. State of M.P.* **(2007) 1 SCC 450 and** *Gagan Kanojia and Anr. v. State of Punjab* **(2006) 13 SCC 516, relied on.**

D **Case Law Reference:**

(2008) 11 SCC 337	**Relied on**	**Para 15**
(2006) 1 SCC 407	**Relied on**	**Para 15**
(2005) 8 SCC 364	**Relied on**	**Para 15**
2008 (9) SCALE 691	**Relied on**	**Para 20**
2009 (7) SCALE 757	**Relied on**	**Para 20**
(2007) 1 SCC 450	**Relied on**	**Para 21**
(2006) 13 SCC 516	**Relied on**	**Para 21**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1350 of 2009.

G From the Judgment & Order dated 19.7.2005 of the High Court of Judicature at Bombay, Nagpur Bench in Criminal Appeal No. 155 of 2000.

Madhavi Divan and Ravindra Keshavrao for the

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Appellants. A

Manish Pitale and Chander Shekhar Ashri for the Respondents.

The Judgment of the Court was delivered by B

S.B. SINHA, J. 1. Leave granted.

2. The State is before us being aggrieved by and dissatisfied with a judgment and order dated 19.07.2005 passed by a learned Single Judge of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur whereby and whereunder a judgment of acquittal was recorded in favour of the respondent herein who was convicted by the Special Judge, Wardha in Special Case No. 4 of 1996 under Section 7(1) of the Prevention of Corruption Act, 1988 (for short "the Act"). C D

3. Respondent was, at all material times, serving as a Head Constable in Police Station, Karanja in the District of Wardha. Madhukar Dhote, hereinafter referred to as the complainant, was a resident of village Taroda in the Tehsil of Karanja (Ghadge). He had lodged a report against Dhanaraj Mohod and his servant Sudhkar Borkar for allegedly allowing their cattle to graze orange plants. Sudhkar Borkar's mother, however, lodged a report against the complainant that he had assaulted her son. In his capacity as a Head Constable, the respondent visited the village for making an enquiry. E F

4. Respondent informed that having regard to the complaint made by the mother of Sudhakar Borkar, he and his three brothers were to be proceeded for commission of an offence under Section 448 of the Indian Penal Code. He allegedly demanded a sum of Rs. 2,000/- for releasing him on bail. G

5. On or about 14.07.1995, Ramesh Dhote, brother of the complainant and his servant had taken the cow of Dhanraj Mohod to the cattle - pound as the cow had damaged the crops H

A in the complainant's field. On 31.07.1995, the respondent is said to have again demanded a sum of Rs. 1500/- for releasing Ramesh Dhote and his servant on bail in the aforementioned matter. Allegedly, a sum of Rs. 100/- and thereafter a sum of Rs. 200/- was paid to him.

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6. The complainant thereafter on the premise that he was unwilling to pay the balance sum of Rs. 1200/- to the respondent lodged an oral report before the Anti Corruption Bureau against the respondent on or about 8.08.1995. A raid was conducted but allegedly the same was not successful. On 21.08.1995, the C complainant lodged additional report stating that the respondent told that he should come to Karanja on 22.08.1995 with remaining amount of Rs. 1200/-. The entire procedure was repeated again on 22.08.1995. Complainant and one panch witness Ashok Waghade went to the police station. Respondent D was not present at the police station. Then they went to his house. He is said to have again demanded the amount and asked them to come near the Veterinary hospital. Allegedly, nearabout the Veterinary Hospital, on demand of the amount of bribe by the respondent, the same was paid. He was E apprehended by the raiding party. Upon obtaining sanction for the prosecution of the respondent, a case under Sections 7 and 13(1)(d) was initiated against him.

7. Respondent entered the plea of innocence. Charges F were framed against him. Ashok Waghade, panch witness No. 1, died during pendency of the said proceeding. The other panch witness Gajanan Ambatkar although was not present when the respondent purported to have made a demand of the amount of gratification, deposed to the said effect. He was G declared hostile and was permitted to be cross-examined by the prosecution. The complainant, however, examined himself as a prosecution witness and supported the prosecution case.

8. Respondent, on his part, examined a defence witness, Ramesh Kinkar who was an autorickshaw driver. According to H the said witness, the complainant and a person accompanying

him stopped his autorickshaw and the former allegedly requested the respondent to see a buffalo which was brought near the hospital in an injured condition. Respondent got down from his autorickshaw. Complainant is said to have thrust the amount in question on the left hand of the accused whereafter the raid was conducted by the official of the Anti Corruption Bureau.

9. The learned Special Judge held the respondent guilty of commission of the said offence and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1000/- in default whereof he was sentenced to undergo further rigorous imprisonment of two months.

10. Aggrieved by and dissatisfied with the said judgment of conviction and sentence, the respondent preferred an appeal before the High Court, which was marked as Criminal Appeal No. 155 of 2000. Inter alia on a finding that the prosecution has failed to prove any demand on the part of the accused as also payment thereof and opining that the recovery of the purported amount of bribe was not sufficient to bring home the charge under Section 7(1) of the Act reversed the said judgment of conviction and sentence recorded by the learned Special Judge and, thus, allowed the appeal of the respondent.

11. The State is, thus, before us.

12. Ms. Madhavi Divan, learned counsel appearing on behalf of the appellant, would contend that keeping in view the materials brought on record by the prosecution, the High Court committed a serious error in opining that all the three ingredients of commission of an offence under Section 7 of the Act have not been proved. It was urged that having regard to the provisions of Section 20 of the Act, the burden of proof was on the accused and he having failed to explain as to how the amount of Rs. 1200/- was found in his pocket, the High Court ought not to have recorded a judgment of acquittal in his favour.

A 13. The learned counsel furthermore would contend that the discrepancies in the depositions of the prosecution witness were not sufficient to record the judgment of acquittal.

14. Mr. Manish Pitale, learned counsel appearing on behalf of the respondent, on the other hand, would contend that the B sole-surviving panch witness PW-1 having been disbelieved and in fact having been declared hostile, no reliance could be placed on his evidence. It was pointed out that the prosecution had earlier made several raids and at least two other incidents have been brought on record, it is improbable that the C respondent had demanded any amount by way of bribe or otherwise.

15. Before embarking on the rival contentions raised before us, it is our duty to remind ourselves that we are dealing D with a judgment of acquittal and, thus, it is absolutely essential to keep in mind the well-settled principles of law that in the event two views are possible to be taken, this Court shall not interfere with a judgment of acquittal. There cannot be any doubt that in the event, having regard to the materials brought on record, the E court comes to the conclusion on the basis thereof that only one view is possible, a judgment of acquittal may be interfered with. [See *Shivappa and Ors. v. State of Karnataka* (2008) 11 SCC 337, *State of Maharashtra v. Rashid B. Mulani* (2006) 1 SCC 407 and *State through Inspector of Police, A.P. v. K.* F *Narasimhachary* (2005) 8 SCC 364]

16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and G recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into H consideration but then in respect thereof, it is trite, the standard

of burden of proof on the accused vis-à-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.

17. Indisputably, the complainant took with him two panch witnesses. One of them Ashok Waghade was a witness in respect of the alleged demand of illegal gratification on the part of the respondent. He having died during pendency of the matter before the learned Special Judge, no other independent witness was available to prove the prosecution case in that behalf. The second panch witness was not a witness of demand. Despite the said fact, the prosecution sought to prove the demand purported to have been made by the respondent through him. It is of some significance to notice that although by the said process PW-1 did not support the accused, he was declared hostile and permission to cross-examine him was sought for by the prosecution.

18. Initially, an amount of Rs. 2000/- was demanded. A sum of Rs. 1800/- was said to have been paid against the aforementioned demand. Another criminal case was instituted on 14.07.1995. An amount of Rs. 1500/- was said to have been demanded on 31.07.1995. Only a very small part of the said amount had been paid, viz., Rs. 100/- and Rs. 200/- on two different occasions. Keeping in view the fact that the respondent enquired about the correctness or otherwise of the First Information Reports lodged by the complainant and the mother of said Sudhakar Borkar after a long time, it is doubtful that the respondent had been coming to the village again and again. Even complaint was made only on 8.08.1995. Indisputably, at least two attempts have been made, one on that date and another later on. The entire procedure for making a

A raid was repeated on 22.08.1995. This itself casts a serious doubt about the prosecution case. The matter does not end here. Complainant with Ashok Waghade went to the police station. Then, they went to their residence. If the respondent intended to take the amount, he would have accepted the same
B in his house itself and there was no reason to ask the complainant and the witness to meet him at a public place, i.e., near the Veterinary Hospital. Even the details of the said purported raid, viz., time of the complainant's visit to the police station, the residence of the respondent and Veterinary
C Hospital, have not been disclosed.

19. It is, therefore, highly doubtful that the version of the complainant was true. It is in the aforementioned backdrop only the evidence of DW-1 is to be considered. Even otherwise, in our opinion, the prosecution has failed to prove its case. It is,
D therefore, not a case where the High Court, as has been contended by Ms. Divan, has failed to take into consideration the legal implication of the provisions of Section 20 of the Act and/ or placed too much reliance on the minor inconsistencies in the statements of the prosecution witnesses.

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20. Even in a case where the burden is on the accused, it is well-known, the prosecution must prove the foundational facts. [See *Noor Aga v. State of Punjab* 2008 (9) SCALE 691 and *Jayendra Vishnu Thakur v. State of Maharashtra and Anr.*
F 2009 (7) SCALE 757]

21. It is also a well-settled principle of law that where it is possible to have both the views, one in favour of the prosecution and the other in favour of the accused, the latter should prevail. [See *Dilip and Another v. State of M.P.* (2007) 1 SCC 450
G and *Gagan Kanojia and Another v. State of Punjab* (2006) 13 SCC 516]

22. For the reasons aforementioned, there is no merit in this appeal, which is dismissed accordingly.

H N.J. Appeal dismissed.