IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 28TH DAY OF JUNE 2011

BEFORE

THE HON'BLE MR.JUSTICE A. S. PACHHAPURE

CRIMINAL APPEAL No.1500/2007

BETWEEN:

1. Shri Vithal S/o Ramarao Kunte,
Age: 54 years, Occ: II Divisional Assistant,
R/o: Ashok Nagar,
Tal & District: Belgaum.

2. Shri Hamajesab,
S/o Davalsab Vante,
Age: 48 years, Occ: Peon,
R/o. Vishveshwaraya Nagar,
Tal & District: Belgaum.

... APPELLANTS

[By Sri Santosh B. Malagoudar, Advocate]

AND:

The State of Karnataka,
(Reptd through Police Inspector B.O.I.,
Karnataka Lokayukta, Belgaum)

... RESPONDENT

[By M.B.Gundawade, Advocate]

This Criminal Appeal is filed under Section 374 (2) of Cr.P.C. against the judgment dated 29.08.2007 passed by the Special Judge (Prl. SJ.,) Belgaum in Special Judge (Principal Sessions Judge) Belgaum in

Special Case (P.C.Act) No.82/1996 convicting the appellants/accused Nos.1 & 2 for the offence punishable under Sections 7, 13 (1) (d) R/W Section 13(2) of the Prevention of Corruption Act, 1988 and sentencing them to undergo rigorous imprisonment for 6 months and pay fine of Rs.300/- each, and in default of payment of fine to further undergo simple imprisonment for one month, for the offence punishable under Section 7 of the P.C.Act, 1988 and etc.

This appeal coming on for hearing this day, the Court delivered the following:

JUDGMENT

The appellants have challenged their conviction and sentence for the offence punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988, (herein after called as 'the P.C.Act, 1988' for short), on a trial held by the Special Judge, Belgaum.

2. Sans unnecessary details, the prosecution version unfolded during the trial is as under:

PW.1 Suresh was working as an Assistant Lineman in Electrical Section of Public Works Department and for his need, he had applied for loan from KGID by pledging the insurance polices. His

application for loan was received by the office on 17.8.1995. Thereafter, he had approached the accused No.1 i.e. the 1st appellant herein on 3 to 4 occasions requesting for sanction of loan and the 1st accused had demanded bribe for the sanction of the loan. But. PW.1 had no mind to pay the bribe. That on 10.10.1995 at 10.30 a.m. when PW.1 approached the 1st accused to inquire about the sanction of the loan, the 1st accused again demanded the bribe. Ultimately, he approached PW.6-Police Inspector and submitted his complaint Ex.P.1 alleging demand of bribe by accused no.1 to do the official favour of sanctioning the loan.

3. PW.6 recorded the complaint, made preparations to lay the trap and gave PW.1-complainant Rs.300/- (Rs.100x1, Rs.50x2 denomination) treated with phenolphthalein powder and an entrustment mahazar was held as per Ex.P.2. PW.3 counted the notes and noted their numbers and returned to PW.1. The handwash of PW.3 was taken to test the conversion of Sodium Carbonate liquid to pink colour and seized

the solution in a bottle. PW.2 was instructed to be shadow witness and to follow PW.1.

Thereafter, at 3.20 p.m. the raiding party went to the K.G.I.D. office of accused No.1-the Second Division Assistant. The accused No.1 after seeing the complainant-PW.1, asked as to whether he has brought the bribe money. The complainant took out the notes to pay the same to accused No.1, but, accused No.1 instructed accused No.2- the peon in the said office, to receive the money from the complainant. Thereafter, the accused No.2 accompanied by PW.1 went to a nearby canteen and after having tea, they came outside and accused No.2 received the bribe amount of Rs.300/- from the hands of PW.1. They went in the Office. Immediately, a trap was laid, hand-wash of both the hands of accused No.2 was taken in the Sodium Carbonate liquid. It turned to pink colour and the same was seized in 2 bottles and sealed.

4. The shirt of accused No.2 was seized and so also the bribe amount. Thereafter a trap mahazar as per Ex.P.3 was held in the presence of the witnesses and other officials. Sanction for prosecution of accused was obtained and PW.6 recorded statements of the witnesses, and sent the seized material objects for the opinion of the Forensic Science Laboratory and Ex.P.13- the report was obtained. After collecting the required documents charge sheet came to be filed against the accused for the aforesaid offences.

5. During trial, the prosecution examined PWs.1 to 6 and in their evidence got marked Exhibts.P1 to P.15 and MO.1 to MO.5. The statement of the accused were recorded under Section 313 Cr.P.C. They have taken the defence of total denial. They have not led any defence evidence.

6. The trial Court after hearing and on appreciation of material on record, held the accused

guilty for the offence punishable under Sections 7 and 13(2) of the P.C. Act, 1988.

7. Aggrieved by the conviction and sentence, the present appeal has been filed.

8. I have heard the learned Counsel for the appellants and also the Special Public Prosecutor for the respondent.

9. It is the submission of the learned Counsel for the appellants that there are discrepancies in the evidence of PW.1 and PW.2 and the prosecution has failed to prove the demand and acceptance and so far as accused No.2 is concerned, it is his contention that the trial Court could have framed a charge under Section 8 of the P.C. Act, 1988, and in the absence of charge and any material against accused No.2, the order of conviction and sentence is erroneous in law. So also he contends that accused No.2 received the bribe amount, at the most, to give it to accused No.1 and there was no demand on his part and therefore, his conviction for the

offence punishable under Section 7 and 13(2) of the P.C. Act,1988, is erroneous and illegal. On these grounds he has sought for setting aside the conviction and sentence.

10. Per contra, the learned Special Public Prosecutor for the respondent has supported the judgment and order of conviction and sentence. He contends that there is consistent version of PWs.1 and 2 - the complainant and the shadow witness, who have stated about the demand made and also the acceptance of money by accused No.2 and he further claims that accused No.2 having knowledge of the fact that it is bribe amount, has received the same on behalf of accused No.1 and as such, he is also liable for the offence punishable under Section 7 and 13(2) of the P.C. Act, 1988.

11. The scrutiny of the evidence of the complainant reveals that he had approached the 1st accused on 3 or 4 occasions after submitting his

application for sanction of loan which was received by the office of KGID on 17.8.1995, and he further states, that accused No.1 was working then as the Second Division Assistant in the said office, demanded bribe amount of Rs.300/- to do official favour by sanctioning the loan and this fact has been spoken to by PW.1 and even in the complaint-Ex.P.1 there is such a mention. As PW.1 was not willing to pay the bribe, even on the day of trap he had approached the accused no.1 in the morning and at that time as well, the accused No.1 demanded the bribe amount of Rs.300/- and having no other way, PW.1 approached PW.6 with the complaint Ex.P.1.

12. Thereafter, entrustment mahazar Ex.P.2 was drawn. The test of conversion of Sodium Carbonate to pink colour was done during the mahazar Ex.P.1 and Rs.300/- i.e. Rs.100x1, Rs.50x4, duly treated with phenolphthalein powder were given to PW.1 with instruction to give the money only whenever it is demanded by the accused no.1, and to give signal after

having paid the money to the accused no.1. But, when PW.1 went to the office and approached accused No.1, he instead of receiving the amount, instructed accused no.2- a peon in the said office, to receive the money on his behalf. It is in these circumstances that PW.1 and accused No.2 went to the nearby canteen. They were followed by PW.2 and after they had the tea and came outside the canteen, PW.1 paid the amount of Rs.300/- (Rs.100x1,Rs.50x4) to the hands of accused No.2, and immediately thereafter trap was done.

13. So far as payment of amount is concerned, there is consistent version in the evidence of PWs.1 and 2 and so also with regard to the instruction given by accused No.1 to accused No.2 to receive the money on his behalf. There is consistent version of these two witnesses. The evidence of PW.1 has been corroborated by the evidence of PW.2- the shadow witness. It is after receipt of money by accused No.2 that the trap was laid in the office and handwash of accused No.2 was taken. The test was found to be positive as the liquid turned to

pink colour and the bottles were seized as MO.2 & MO.3 under the seizure Mahazar Ex.P.3. This chemical test also corroborates the evidence of PWs.1 and 2. The seized bottles MO.1 to 5 were sent to the opinion of the chemical analyst and he has issued the certificate as per Ex.P.13.

14. The examination of the contents of the liquid and also the examination of the currency notes and the shirt sent for the chemical test, gave a positive report and the chemical examiner has certified that the presence of sodium carbonate in the articles at MO.1 to 3 and phenolphthalein powder was detected in the articles MO.4 & MO.5 i.e. the currency notes and the shirt of accused No.2. So, as could be seen from the evidence of these two witnesses, in addition to the chemical examination and the report that has been submitted by the chemical analyst, there is clinching material on record to prove that on the demand of accused No.1 it is accused No.2 who received the money for payment of the same to accused No.1. Therefore, as

could be seen from the material on record so far as 1st accused is concerned, the demand and acceptance on his behalf has been proved satisfactorily by the prosecution.

15. So far as accused No.2 is concerned, it is contended by the learned Counsel for the appellants that the charge could have been framed under Section 8 of the Act of 1988. His submission appears to be reasonable. It is relevant to note that there was no demand of bribe by accused No.2 at any time till he was instructed by accused no.1 to receive the money on his behalf. So in the absence of any demand the mere acceptance of bribe money on behalf of accused No.1, in my considered opinion, does not fall within the purview of section 7 and 13(2) of the Act. The trial Court ought to have framed a charge for the offence under Section 8 of the said Act, as against accused No.2. It is necessary for the prosecution to establish that accused no.2 obtained the amount as gratification as a motive or reward to do the official favour and in case, if the

accused no.2 is aware of these circumstances and the demand made was by accused no.2, then only he could be responsible for the offence punishable under Section 8 of the P.C.Act,1988.

16. As could be seen from the evidence of PW.1, he states in his evidence that after accused No.1 gave instructions to accused No.2 to receive the money on his behalf, accused No.2 took PW.1 to the canteen and after having tea they came outside and PW.1 paid the amount of Rs.300/- in the hands of accused No.2. This conduct of accused No.2 is, in fact, in a casual way of collecting the money, was to pay the same to accused No.1. Accused No.2 was not aware of the demand made by accused No.1 at the time when he received the money on behalf of accused No.1. So, the prosecution has failed to establish the knowledge of accused No.2 that the amount which he was receiving on behalf of accused No.1 was the bribe amount to do some official favour.

17. On this aspect of the matter, the learned Counsel for the appellants relied on the decision of the Apex Court reported in **2008 Crl.L.J. 345 (K.Subba Reddy Vs. State of Andhra Pradesh)**, wherein money was demanded by the Excise Sub-Inspector from the complainant for return of Stock Register and the complainant was asked to pay the amount to the accused-home guard in case the Sub-Inspector was not present in the office, and as he was not present in the office the tainted money was paid to the accused and recovered from the said accused. There was no evidence to show that the accused had any knowledge that the money paid was bribe money. Accused there in was a home guard he had no role to play in the return of Stock Register. In the circumstances, it was held that evidence was insufficient and the accused is not responsible for the offence under Section 7 or Section 13(2) of the Act, 1988.

18. The learned Counsel for the appellants also relied on the decision reported in **1990 Crl.L.J. 600** =

AIR 1990 S.C. 287 (Sadashiv & Gajanan Vs. State of Maharashtra) wherein the apex court in similar circumstances has held as under:

> "11. As regards accused No.2 merely because he was entrusted with some money to be passed on to accused No.1 it could not be held that he was guilty of anyone of these offences unless it is established that he was a party to the arrangement and the arrangement arrived at was that the money would be handed over to accused No.2 to be given over to accused No.1. Apparently accused No.2 was not expected to help the complainant. The assurance to the complainant to settle the matter, according to the prosecution was given by accused No.1 and according to the prosecution's own case and the evidence of complainant Pandurang this arrangement was finally settled on 29.11.1975 at the house of accused No.1. Admittedly, accused No.2 was not there nor it is alleged that he had any knowledge about this settlement. The incident of 29-11-75 is said to be between accused No.1 and Pandurang alone and the only evidence is that of Pandurang. Under

these circumstances it could not be held that accused No.2 accepted this amount for any purpose. At best as the complainant told him to pass this money on to accused No.1 he accepted it but on that basis it could not be held that he was sharing the intention with accused No.1 or was acting on his behalf."

So the perusal of the principles laid down by the Apex Court in the context of the circumstances stated above, the facts in the present case would reveal that accused No.2 had no knowledge that the amount which was being paid by PW.1 was the bribe amount, but he received it as per the directions of accused No.1, only to see that it is paid to the accused No.1. So, it cannot be held that there was demand and acceptance of the bribe amount by accused No.2 to do the official favour. The evidence adduced by the prosecution is insufficient to prove the guilt of the accused no.2 beyond reasonable doubt.

19. So far as accused No.1 is concerned, there is consistent and cogent version of PW.1 and PW.2 so far as the demand of bribe amount of Rs.300/- by accused No.1 and the same was accepted by accused no.2 on his behalf, and when both the demand and receipt are proved, a presumption could be raised under Section 20 of the P.C.Act, 1988. Considering this presumption and the material placed on record, I am of the opinion that so far as accused No.1 (appellant No. 1 herein) is concerned, the trial Court has justified in awarding conviction and sentence.

20. In that view of the matter, I proceed to pass the following:

ORDER

The appeal is allowed in part. The conviction of appellant No.2(accused No.2) for the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C. Act, 1988 and the sentence thereon is set aside. He is acquitted of the said charge.

The conviction and sentence ordered by the court below so far as accused No.1 (appellant no.1 herein) is concerned, the same is confirmed. His bail bonds are cancelled. The trial Court is directed to secure the presence of accused no.1 to undergo the sentence.

Sd/-
JUDGE

Sub/