

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.678 OF 2021

BASSAPPA

APPELLANT(S)

VERSUS

THE STATE OF KARNATAKA & ANR.

RESPONDENT(S)

WITH

CRIMINAL APPEAL NO.1490/2021

O R D E R

These appeals take exception to the common judgment dated 01.01.2013 passed by the Special Court under the Prevention of Corruption Act, 1988 (for short, 'the P.C. Act') in Special Case No.5/2009 and confirmation thereof by the High Court vide impugned judgment dated 08.09.2020 passed in Criminal Appeal No.3508/2013.

2. We have heard the learned counsel for the parties and perused the material placed on record.

3. The appellant in Criminal Appeal No.678 of 2021 is a public servant, who is the accused No.1. The appellant in Criminal Appeal No.1490 of 2021, who is the accused No.2, is admittedly not a public servant.

4. PW-1 is the complainant. A loan of Rs.1,55,000/- (Rupees One Lakh Fifty Five thousand) was sanctioned to his mother-in-law under S.G.S.Y. Scheme for lift irrigation. Out of the said loan amount, 50% of the loan amount was to come from the Gram Panchayat by way of subsidy. At the relevant time, the accused No.1 was the Secretary of the Gram Panchayat. Allegation in the complaint made by the complainant to the Lokayukta Police was that for releasing the cheque of subsidy amount, the accused No.1 demanded illegal gratification of the amount equivalent to 10% of the cheque amount. Thereafter, there were negotiations in which ultimately the accused No.1 agreed to accept Rs.4,000/- for releasing the cheque. As per his instructions, the cash amount was to be given to accused No.2. That is how, according to the prosecution case, the complainant firstly went to Lokayukta office and thereafter to the Lokayukta police where his complaint was recorded.

5. A trap was laid. PW-2, Prashant Kumar, was the shadow witness. According to the prosecution case, the trap was successful and the accused No.2 was caught while accepting the illegal

gratification of Rs.4,000/-.

6. The complainant-PW-1 did not support the prosecution and did not depose about the demand of gratification by the accused No.1. As noted by the High Court, PW-2 could not hear as to what transpired between the complainant and the accused No.2 when the alleged bribe amount was handed over. Thus, even the shadow witness did not depose to any demand made by the accused No.2.

7. The submission of the learned senior counsel appearing for the appellant is that the prosecution has miserably failed to prove the demand made by the accused No.1. He further submitted that there is no evidence of the alleged demand made by the accused No.1. However, the Courts and, in particular, the High Court have relied upon the contents of the complaint filed by PW-1 to the Lokayukta police. He also submitted that after PW-1 was declared as hostile, he was not confronted with the contents of the complaint, including his prior statement regarding the demand made by accused No.1.

8. The learned counsel appearing for the accused No.2 urged that admittedly the said accused

is not a public servant and, therefore, he could not have been convicted for the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the P.C. Act. He also submitted that, in any event, the allegation is that the demand was made only by the accused No.1.

9. The learned counsel appearing for the State submitted that in view of the decision of the Constitution Bench in the case of *Neeraj Dutta vs. State (Govt. of N.C.T. of Delhi)*¹, in absence of positive testimony by the complainant and/or the shadow witness, the demand can be established even by circumstantial evidence. His submission is that PW-1-complainant, accepted that the complaint was duly signed by him. Apart from contending that the complaint clearly describes the demand made by the accused No.1, he relied upon the trap panchanama and submitted that even the trap panchanama records that PW-1 stated that it was the accused No.1, who made a demand. His submission is that the said panchanama has been proved in evidence. Thus, his submission is that the contents of the complaint and panchanama prove the factum of demand. He also submitted that the fact that gratification amount

of Rs.4,000/- was accepted by the accused No.2 on behalf of the accused No.1 has been established. That is how there is a circumstantial evidence on the basis of which the demand was proved.

10. We have given careful consideration to the submissions. In view of the decision of the Constitution Bench in the case of *Neeraj Dutta* (supra), now it is well settled that a demand for the gratification can be proved even on the basis of circumstantial evidence. However, in the same case of *Neeraj Datta*, while deciding the appeal finally², this Court held that the Constitution Bench has not dispensed with or diluted the requirement of the proof beyond a reasonable doubt when prosecution seeks to prove the demand on the basis of circumstantial evidence.

11. PW-1 has not supported the prosecution. It is true that PW-1 accepted the signature on his complaint recorded in writing by the Lokayukta police. It is also true that in the complaint, he has described how the demand was made by the accused No.1. Merely because prosecution proved the fact that the complaint bears the signature of PW-1, what is stated in the complaint cannot be held

as proved. In fact, after PW-1 was declared hostile, it was the duty of the prosecutor to confront PW-1 with the relevant part of the complaint where he had narrated how the demand was made by the accused No.1 and, thereafter an attempt could have been made to prove that portion of the complaint used to contradict PW-1 through the police officer who had recorded the complaint. However, that was not done.

12. The statements of the accused No.2 recorded in the panchanama drawn at the time of trap cannot be the evidence of the fact that it was the accused No.1, who had demanded gratification from PW-1. Therefore, the panchanama cannot be read as a substantive evidence of any demand made by the accused No.1 to the complainant. There is no other evidence of the alleged demand.

13. Therefore, in our considered view, the allegation of the demand of illegal gratification by the accused No.1 from PW-1 has not been proved either by direct evidence or by circumstantial evidence. Thus, it follows that the conviction of the accused No.1 cannot be sustained as far as the offence under Section 7 of the P.C. Act is

concerned. As the offence under Section 7 of the P.C. Act is not proved, obviously, the offence under Section 13(1)(d) of the P.C. Act is also not proved.

14. Though, admittedly, the accused No.2 is not a public servant, he has been also convicted for the offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the P.C. Act.

15. We are surprised to note that the accused No.2 was not charged with offence of abetment under Section 12 of the P.C. Act. However, that is not relevant as now what transpires is that the factum of demand made by the accused No.1 has not been established.

16. Before we part with the judgment, we must make a reference to portion of the trap panchanama which allegedly records the statement of the accused No.2. The statement indicates that a direction was issued to him by the President and Secretary of the Panchayat to take money from the complainant.

17. Since the respondent-State is relying upon this panchnama, we are surprised to note that only the accused No.1, who is the Secretary, has been

implicated and not the Chairman of the Panchayat.

18. We, therefore, set aside the judgments of both the Courts and acquit the appellants of the charges levelled against them. Their bail-bonds are cancelled.

19. Cash amount of Rs.4,000/-, if lying deposited with the Special Court along with interest, if any, shall be paid to the State Government.

20. The appeals are, accordingly, allowed.

21. Pending applications also stand disposed of.

....., J.
(ABHAY S. OKA)

....., J.
(RAJESH BINDAL)

NEW DELHI
MARCH 23, 2023

ITEM NO.103+104

COURT NO.16

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 678/2021

BASSAPPA

Appellant(s)

VERSUS

THE STATE OF KARNATAKA & ANR.

Respondent(s)

WITH

Criminal Appeal No(s). 1490/2021

Date : 23-03-2023 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE RAJESH BINDAL

For Parties

Mr. Basavaprabhu S. Patil, Sr. Adv.
Mr. Anirudh Sanganeria, AOR
Mr. Geet Ahuja, Adv.Mr. Ashok Bannidinni, AOR
Mr. Mallikarjun S. Mylar, Adv.
Mr. Sujeet Kumar, Adv.Mr. Shubhranshu Padhi, AOR
Mr. Vishal Banshal, Adv.
Mr. Niroop Sukirithy, Adv.UPON hearing the counsel the Court made the following
O R D E RThe appeals are allowed in terms of the
signed order.

Pending applications also stand disposed of.

(NEETU KHAJURIA)
ASTT. REGISTRAR-cum-PS(AVGV RAMU)
COURT MASTER

(Signed order is placed on the file.)