IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1215 OF 2004

MAHESH SUBASHCHANDRA SINDAGI .... APPELLANTS

VERSUS

STATE OF GOA & ANR. ..... RESPONDENTS

O R D E R

1. Appellant at the relevant time was posted as Junior Telecom Officer at the Calangute Telephone Exchange Goa and according to the prosecution PW.1, Francis M. D'Souza (hereinafter referred to as the 'complainant') had applied on 6th April, 1999 for shifting of his telephone connection from his old residence at House No.445 at Saligaon to his new residential premises at Calangute. The Commercial Officer, Goa Telecom Division issued Advice Note dated 4th May, 1999 for shifting of

the telephone connection from his old residence to the new residence. The said Advice Note for shifting the telephone connection was marked to the appellant on 5th May, 1999. The complainant handed over those papers to one Mrs. Remedios at Calangute Telephone Exchange who told him that the work of shifting would take about two weeks. The complainant pleaded that he needs shifting of the telephone connection urgently whereupon said Mrs. Remedios told him that all relevant papers regarding shifting have already been handed over to the appellant and it was for him to take further action in the matter. The complainant thereafter contacted the appellant who told him that there were no spare lines to provide connection but promised to do his best to shift his telephone connection as early as possible.

2. Further case of the prosecution is that on 25th June, 1999 complainant contacted the appellant for shifting of the telephone connection and he came to the complainant's house at about 1 P.M. The complainant took the appellant for lunch and at that time appellant told him that in case he was paid a sum of Rs.3,000/- in addition to Rs.150/- to Rs.200/- to be

paid to the Lineman he would give the connection on 28^{th} June, 1999. The amount was later on reduced to Rs.2,000/-. As the connection was not given on 28^{th} June, 1999, complainant spoke to the appellant over telephone and he replied that there being no additional line and further due to the shortage of the staff the work had not been executed. In order to verify the explanation given by the appellant complainant contacted the local Lineman who told him that additional lines were available and it was for the appellant to get work executed. Complainant being aggrieved by the delay in shifting of the telephone connection and demand of illegal gratification by the appellant met the Deputy Superintendent of Police of the Central Bureau of Investigation and gave his complaint. After following the necessary procedure a raid was organized and complainant along with PW.2, Anand Naik came to the house of the complainant where the appellant had promised to come at 1.30 P.M. on 29^{th} June, 1999. However, the appellant did not turn up on the said day and when contacted by the complainant he told him that he was held up but promised to come on the next day at about 1 P.M. Therefore according to the prosecution, the complainant along with the raiding party returned to the office of Central Bureau of Investigation and returned the amount of Rs.2,000/- which was kept ready to be paid to the appellant.

3. Further case of the prosecution is that on 30th June, 1999 the complainant spoke to the appellant from the shop of one Alfran and the conversations between them have been tape-recorded and after having come to know that the appellant would come to the house of the complainant the Central Bureau of Investigation arranged to have audio and video recording. The prosecution has further alleged that the appellant came to the residence of the complainant between 1.30 P.M. to 2 P.M. and as soon as he was spotted near the compound gate the audio and video systems were switched on and the members of the raiding party concealed themselves in the bedroom of the complainant. The complainant introduced PW.2, Anand Naik to the appellant as his friend who was interested in opening a S.T.D. booth in the name of his wife. Complainant asked the appellant as to whether he would get telephone connection soon to which the appellant replied in the affirmative and on demand made by the appellant the complainant handed over a sum of Rs.2,000/- to the appellant.

The appellant accepted the money and thereafter signal was given whereupon the raiding party came out from the bedroom and caught hold of the appellant and the amount was recovered from him. Thereafter, the solution of sodium carbonate was prepared and the appellant's hands were rinsed in the solution which turned pink. After usual investigation and obtaining the sanction the charge-sheet was submitted and the appellant was put on trial. He denied to have committed the offence and claimed to be tried.

4. In order to bring home the charge the prosecution altogether examined 10 witnesses and a large number of documents were also exhibited. In his examination under Section 313 of the Criminal Procedure Code the appellant denied the case of the prosecution and his plea was that he had neither demanded nor accepted any illegal gratification. His further plea was that he was on leave from 30th May, 1999 to 14th June, 1999 and went to Sholapur and collected Rs.41,000/- to purchase a motorcycle, whereas its cost was Rs.46,000/-. According to him when he met the complainant, he enquired about the purpose of leave and on being told that

he had gone for collecting loan for purchasing a motorcycle and short of money, volunteered to give him Rs.3,000/-. According to the appellant he was avoiding to take the loan but was repeatedly asked by the complainant to come to his residence and collect the loan.

5. The trial court on appraisal of evidence came to the conclusion that the appellant demanded a sum of Rs.2,000/- and accepted the same as illegal gratification and accordingly convicted and sentenced the appellant under Section 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act'). A sentence to suffer rigorous imprisonment for six months and fine of Rs.1,000/-, in default to suffer simple imprisonment for one month was inflicted under Section 7 of the Act whereas a sentence to suffer rigorous imprisonment for one year and a fine of Rs.2,000/-, in default to suffer simple imprisonment for two months was inflicted under Section 13(2) of the Act. On appeal the High Court by the impugned order had maintained his conviction and sentence.

6. Hence, appeal.

7. Mr. S.U.K. Sagar, learned Counsel appearing on behalf of the appellant submits that the amount of Rs.2,000/- received by the appellant cannot be said to be an illegal gratification and on this ground alone the conviction of the appellant is fit to be set aside. In this connection Mr. Sagar has drawn our attention to the evidence of the complainant in the cross-examination wherein he had stated that on four occasions the appellant wanted to return the money by stating that he should pay later on.

8. Mr. P.K. Dey, learned Counsel appearing on behalf of the respondents submits that there is overwhelming evidence on record that the appellant demanded the illegal gratification for shifting the telephone connection to the complainant's new residence and in fact accepted the same. He points out that the evidence of the complainant has not only been supported by the Panch witnesses but also fortified from the sodium carbonate test.

9. Having appreciated the rival submissions we do not find any substance in the submission of Mr. Sagar. The complainant had categorically stated in his evidence that the

appellant initially demanded a sum of Rs.3,000/- for shifting the telephone connection which was reduced to Rs.2,000/-. He has also stated that to collect the illegal gratification appellant came to his residence and the said amount was paid to him. PW.2, Anand Naik is a Panch witness who had supported the case of the prosecution. True it is that in the cross-examination the complainant had stated that the appellant wanted to return the money but this itself would not mean that he did not accept the illegal gratification. In the cross-examination the complainant had denied the suggestion that he has ever shown any willingness to the appellant to give the loan. He also denied the suggestion that the amount of Rs.2,000/- which was paid to the appellant was never demanded by him.

10. In view of the aforesaid, we are of the opinion that the prosecution has been able to prove beyond all reasonable doubt that the appellant had demanded and accepted the illegal gratification for shifting of the telephone connection and the trial court rightly held him guilty of the charges framed against him and the High Court was right in upholding his conviction

and sentence.

11. In the result, we do not find any merit in this appeal and it is dismissed accordingly. Appellant is on bail, his bail bonds stand cancelled and he is directed to surrender to serve out the sentence.

....J
[HARJIT SINGH BEDI]

....J
[CHANDRAMAULI KR. PRASAD]

NEW DELHI
OCTOBER 06, 2010.