



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 817 OF 2006

The State of Maharashtra
Through
Mr. M.S.Joshi, PI, ACB,
Ahmednagar.

....Appellant

Versus

Bhausahab Keshav Pund
Age: 44 years, Occu.: Police Head
Constable, B.No.1069, R/o. Near
Karandikar Hospital, Ahmednagar.

....Respondent
(Ori. Accused)

...

APP for Appellant : Mr.S.M.Ganachari
Advocate for Respondent : Mr.Satej S. Jadhav

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 13 FEBRUARY, 2024

PRONOUNCED ON : 21 FEBRUARY, 2024

JUDGMENT :-

1. State is aggrieved by judgment and order passed by the Special Court, Ahmednagar in Special Case no.6 of 2000 on 05-09-2006 i.e. acquitting present respondent from offence under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.
2. Present respondent was chargesheeted on the allegations that while he was working as Police Constable, he demanded hafta from

complainant, a hotelier, to not to prosecute for sale of liquor without permit / licence.

3. Complainant approached ACB authorities as he was not ready to pay hafta of Rs.1000/-, upon which trap was planned and laid and accused was apprehended on accepting demand of bribe in the form of hafta.

4. On being chargesheeted for above offence, he was tried before Judge, Special Court, Ahmednagar, who on appreciating the evidence, held that prosecution has failed to establish the case and gave accused benefit of doubt vide judgment and order dated 05-09-2006, which is now questioned here.

SUBMISSIONS

On behalf of State :

5. Learned APP questioning legality and maintainability of the impugned judgment submitted that here accused was a Police Constable, his job was not to verify availability of liquor permit, rather it was job of Excise Department, however, accused intercepted complainant while he was in possession of liquor bottles and to prevent action, he demanded hafta of Rs.1,000/-. That complainant

promptly reported demand to Anti Corruption Bureau (ACB), who laid trap by arranging Pancha.

That pancha, who accompanied complainant as planned, is party to the episode of demand of hafta. Accused has accepted the tainted currency and was thus apprehended for accepting bribe amount. However, inspite of complainant and pancha being consistent in their evidence, their testimony has not been properly appreciated. According to learned APP, accused himself has admitted about receiving the amount but false defence is taken that dues from one Sanjay Kale was accepted by him through complainant and as such there was no demand of any hafta. According to learned APP, such weak, false and afterthought defence has been accepted by the learned trial Judge and therefore, he prays to set aside the said judgment by allowing the appeal.

On behalf of respondent :

6. Per contra, learned Counsel for respondent - accused would submit that prosecution has miserably failed to establish the charges. According to him, though demand is shown, but it was not towards bribe or illegal gratification. According to him, there was transaction of purchase of sand from DW1 Sanjay Kale and such person was to

repay Rs.1,000/-. That it was conveyed that amount would be paid through complainant regarding which there is admission in the cross-examination by very complainant. That the due amount was accepted and not any hafta as alleged by complainant or prosecution. He invited attention of the Court to the evidence of the complainant as well as pancha witness. According to him, accused is merely expected to probabilize his defence. He has done so here not merely by taking any plea but has also adduced evidence of said witness. Such testimony has remained intact. That accused succeeded in probabilizing defence and so according to him, benefit of doubt so extended by learned trial Court cannot be faulted at. Hence, for above reasons, he prays to dismiss the appeal.

ANALYSIS

7. On evaluation of evidence, it is emerging that **PW1** Suryabhan Shankar Gavkhare, who is complainant, at exh.16, deposed that he runs hotel namely Simla Dhaba after obtaining licence from Excise Dept. According to him, in the year 2000, he was caught by accused while he was carrying beer bottles and liquor bottles at **Swastik chowk**. He was asked licence and was taken to Kotwali Police Station and even case was filed against him. Further according to him, four

days thereafter, accused visited the hotel, conducted search but as no liquor was found, accused allegedly told him that if he wants to run the hotel, he should pay Rs.1,000/- to him, therefore, complainant approached ACB on 13-03-2000 and lodged complaint exh.17. On 14-03-2000, he was introduced to panchas, who signed his complaint. He handed over Rs.1,000/- to ACB, who applied powder to it and further handed it back to him to be paid on demand to the accused. When he and pancha no.1 reached Kotwali Police Station, accused asked him whether he brought amount and accused after affirming, suggested to go to sugarcane juice stall. Again demand was made and so he handed over the amount, which was accepted by the accused and was apprehended by ACB authorities.

8. In **cross-examination** he admitted that he had no permission to sell liquor. He answered that he has no criminal case against him. He also denied that he was found in possession of 12 bottles and denied drawing any panchanama to that extent. He admitted that his hotel comes under jurisdiction of Nagar Taluka Police Station and he admitted that accused worked in Kotwali Police Station and his hotel does not come in the jurisdiction of Kotwali Police Station. He also admitted that without hearing him, accused filed criminal case

against him and he was chargesheeted and so he was angry.

9. In paragraph 11, complainant has admitted that Sanjay Rabhaji Kale (DW1) is his relative and he is in business of supply of sand and further admitted that accused gave him message to tell said Sanjay to pay Rs.1,000/- about their transaction and he gave said message and further admitted that Sanjay had given amount to pay it to accused. Rest is all denial.

10. **PW2** Suhas Haribhau Gobare, shadow pancha, deposed that he was called to ACB Office, he introduced to PW1 Suryabhan, he read complaint exh.17, regarding application of anthracene powder to currency, thereafter it being handed over to accused with instructions to pay on demand and this witness asked to watch the proceedings, pre-tra panchanama exh.19 being drawn. He further deposed that he and complainant reached Kotwali Police Station and they went to sugarcane juice stall, accused ordered juice and asked complainant whether he brought the amount and complainant immediately handed over the amount, which was accepted by accused and on signal, raiding party arrived and apprehended accused and further procedural formalities being completed like post trap panchanama, statement of accused etc.

11. Relevant cross-examination is in paragraph 8 wherein above witness has answered that complainant was instructed to open topic of hotel but complainant never discussed about it. He admitted that no discussion took place in his presence between complainant and accused for what purpose amount was paid and for what purpose it was accepted. He also admitted that accused told Police that he had not demanded bribe amount. He admitted that accused, when was taken to Police Station, was confused.

12. **PW3** Ajit Vasantrao Patil is sanctioning authority.

PW4 Manohar Shankar Joshi, is Investigating Officer, who narrated all steps since receipt of complaint till filing of chargesheet.

13. Here record shows that accused has also adduced evidence of defence witness DW1 Sanjay Rabhaji Kale at exh.42. **DW1** Sanjay deposed about conducting business of sand supply, knowing complainant Suryabhan, who is his relative as well as knowing accused. He deposed that accused placed order for supply of sand for construction of his house and about amount of Rs.1,000/- due towards him after settling the accounts. He stated that accused told him to pay the amount through complainant. In March 2000, complainant told him that accused is demanding Rs.1,000/- for his

transaction and so he paid Rs.1,000/- to complainant to be further paid to accused.

While under **cross-examination**, he answered that there is no evidence about he running sand business nor he maintained accounts of supply of sand to accused. Rest is all denial about Rs.1,000/- dues, amount not sent through complainant and that there was no transaction.

14. On analyzing above evidence, here complainant is a hotelier i.e. running a Dhaba. His evidence shows that he admitted that he did not have licence to sell liquor. He has admitted that he was booked and criminal cases were filed and as such he was upset. In cross-examination, he has candidly admitted that accused gave him message to tell DW1 Sanjay to pay 1,000/- toward transaction and he passed said message and he also admitted that DW1 Sanjay had given amount to be paid to the accused. Even PW2 Suhas, shadow pancha, while under cross-examination admitted that there was no specific discussion between complainant and accused at sugarcane juice center for what purpose amount was demanded and paid.

15. It is also pertinent to note that accused is from Police Department and was at that time posted at Kotwali Police Station

whereas alleged hotel run by complainant is not in jurisdiction of Kotwali Police Station, therefore, case set up about demanding hafta is rendered doubtful.

16. Neither complainant nor shadow pancha are found to be deposing about accused making demand for not taking action. Complainant has admitted that he has already been booked and chargesheeted and therefore, question of demanding bribe for not taking action or by way of hafta also becomes doubtful.

17. Here defence has not only set up case of due amount from defence witness to be paid to him via complainant, complainant has himself admitted about receiving message from DW1 Sanjay about demand towards due transaction at the hands of DW1 Sanjay and he taking said amount from DW1 Sanjay to be paid to accused. Therefore, defence not only probablized but has also substantiated his defence by examining DW1 Sanjay.

CONCLUSION

18. Resultantly, here on taking close scrutiny of prosecution evidence, answers given by complainant and his cross-examination, case of prosecution cannot be said to be proved beyond reasonable

doubt that illegal gratification / bribe / hafta was demanded and even accepted. Hence, with such evidence, view taken by learned trial Judge is the most possible view that could emerge even on re-appreciation of evidence. No case being made out on merits to upset or interfere in the findings of the learned trial Court, appeal deserves to be dismissed. Accordingly, I proceed to pass following order :

ORDER

Criminal Appeal No.817 of 2006 is dismissed

(ABHAY S. WAGHWASE)
JUDGE