

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 103 OF 2010

Harishchandra Mahadeo Pawar,
Age : 52 years,
Occu.: Police Head Constable,
R/o Hari Niwas,
Sadguru Nagar, Latur

.. Appellant
(Orig. Accused)

VERSUS

The State of Maharashtra

.. Respondent

Mr. Rajendra S. Deshmukh, Advocate for the appellant
Mr. B.A. Shinde, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.
RESERVED ON : 26/10/2015
PRONOUNCED ON : 05/12/2015

JUDGMENT :

Heard both sides.

2. Aggrieved by the recording of conviction by the learned Adhoc Additional Sessions Judge-2 cum Special Judge, Latur in Special Case (ACB) No. 6 of 2007 dated 24/2/2010 for the offences punishable under section 7 and 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988, the present appeal is preferred.

. The appellant was sentenced to suffer rigorous imprisonment for two years respectively, on each count and to pay a fine of Rs.1,000/- on each of the counts.

3. The prosecution case in short is as under:-

. That PW1 – Mohammed Yusuf Abdul Gaffar Patel was carrying a business of cycle repairing at Latur underneath one overbridge at AUSA Road, Latur. His house was situated near Hanuman Mandir of Latur. He had certain dispute with his neighbour Dastgir Chand Shaikh. In the situation, when the complainant started to make construction in his area, Dastgir Shaikh questioned him and, thereafter, abused him. Thereafter, Dastgir Shaikh lodged a complaint with the Police Station.

. In the situation, the present appellant visited the complainant on the next day. He asked him to visit the Police Station and told that one Dastgir Shaikh had filed a complaint of beating against him. The appellant took the complainant to

Police Station and stated that if an amount of Rs.3000/- is not paid to him, he would put the complainant behind bar. The complainant earlier had experience of the "Police Procedure" earlier on 2-3 occasions. He therefore agreed to pay an amount of Rs.2000/- to the appellant and relieved himself from the Police Station.

. After two days, the appellant again visited him and again made the demand of money and, threatened that if the payment is not made, the complainant would be put behind the bar.

. On the date of filing the complaint i.e. on 26/4/2007 also, the appellant visited him and made the similar demand by enquiring about payment of the money. In the circumstances, the complainant filed his complaint with the Anti Corruption Bureau, Latur on the same day.

. PW5 - the then Deputy Superintendent of Police of Anti Corruption Bureau, Latur Mr. Mukund Hatote conducted the investigation. He collected two panch witnesses including PW2 - Mr. Subhash Swami, an

employee of Industrial Training Institute at Latur. FIR was read over to them. Thereafter, demonstration of application of anthracene powder was given. Decoy money brought by the complainant was smeared with anthracene powder and the trap was arranged at Hotel Nandini at Ambajogai road on 26/4/2007 in the night at 8.20 pm.

. The shadow panch witness Mr. Swami as well as the complainant earlier met the appellant at the Police Station. At the Police Station, the complainant offered to have tea in the hotel. After the preliminaries were over in the hotel, the appellant enquired as to whether the money was brought. Thereafter outside the hotel, near pan-stall, the complainant handed over the amount to the appellant. Upon counting, the appellant questioned that while he had demanded Rs.3000/-, only an amount of Rs.2000/- was paid. The complainant pleaded that he could arrange only that much amount. Thereupon, the appellant kept the decoy money in his hip pocket of the trouser. At that time, the complainant gave the predetermined signal to the raiding party.

Thereafter, the raiding party arrived at the spot. The appellant was apprehended. Thereafter, necessary exercise of examining the hands and clothes of the appellant and, thereafter, of the complainant was carried, which confirmed the above activities.

. The Investigating Officer thereafter carried further investigation. Statement of the witnesses were recorded. Upon requisition, the then Superintendent of Police, Latur i.e. PW 6 Mr. Sanjay Lathkar accorded sanction to prosecute the appellant vide Exhibit 50 and, thereafter, the chargesheet came to be filed by the next of the Investigating Officer i.e. PW7 – Mr. Suryakant Patil.

4. Before the learned Special Judge, besides the above referred witnesses, PI - Pandit Mundhe of Nanded Police Station was examined to prove the proceedings in the Police Station. Besides him, the owner of the hotel PW4 – Sudhakar Hugle was also examined. Evidence of PW4 – Hugle is only to the effect that three persons arrived in his hotel, took the tea and went away. He deposed that he had not

seen as to what happened near the pan stall.

5. The defence of the appellant was that number of crimes were registered against the complainant and this was the fresh offence, which was being investigated by the appellant against the complainant. The complainant however wanted that no action should be taken against him in the offence and, therefore, at the time of trap, he has forcibly thrust the decoy money in his pocket.

. The shadow panch witness, though styled as independent witness, is a habitual panch witness, who was formally collected by the Investigating Officer to suit the prosecution case. Hence, he claimed acquittal.

6. Before the learned Special Judge, complainant PW1 – Patel Mohd. Yusuf Abdul Gaffar partly supported the prosecution case. He however deposed that during the trap, he himself has thrust the currency notes in the pocket of the appellant. He was therefore declared hostile by the prosecution.

7. The learned Special Judge held that even if the complainant has turned hostile to some extent, still, his evidence, where there is material corroboration, can be accepted. In the circumstances, the learned Special Judge heavily relied on the testimony of the shadow panch witness PW2 – Subhash Swami and convicted the appellant. Hence, the present appeal.

8. Mr. Rajendra Deshmukh, learned counsel for the appellant took me through the record and submitted that the defence of the appellant, as detailed supra has been clearly established. He submitted that the learned Special Judge however was carried away by the fact that the complainant has turned hostile and, therefore, relying on the unreliable testimony of the shadow panch witness has wrongly convicted the appellant.

9. On the other hand, learned A.P.P. Mr. B.A. Shinde submitted that no fault can be found with the reasoning of the learned Special Judge that even part of the testimony of hostile witness can be

relied, if it is otherwise found to be trustworthy. In the circumstances, he submits that no interference in the reasoning or the impugned judgment and order is warranted.

10. On the basis of this material, following points arise for my determination:-

I) Whether the prosecution has proved that the present appellant has made a demand of Rs.3000/- in the month of April, 2007 for not arresting the complainant in a criminal case at Latur ?

II) Whether the prosecution has further proved that on 26/4/2007 at about 8:30 pm, the appellant again made a demand of the illegal gratification and accepted an amount of Rs.2000/- towards the same and also obtained pecuniary advantage by using his official position by corrupt and illegal means ?

My findings to both the above points are in the negative. The appeal is therefore allowed and the appellant is acquitted of all the offences for the reasons to follow.

R E A S O N S

11. The FIR filed by the complainant would itself show that the complainant had taste of "Police procedure", as he had the same experience on 2-3 occasions earlier. Presently also, he was facing investigation in a case of assaulting the neighbour. The defence has also filed on record the copies of the criminal cases, which were faced by the complainant. Considering this background, the evidence of the complainant was required to be appreciated by the learned Special Judge.

12. Though the complainant did not support the prosecution case that the appellant on his own accepted the decoy money but he thrust the same, the learned Special Judge found his another part of testimony as reliable, as the same has been corroborated by PW2 – Subhash Swami, the shadow panch witness.

13. PW2 – Subhash, during the relevant period

was working as an employee with Industrial Training Institute at Latur. His demeanor, as recorded by the learned Special Judge himself would show that this witness was under some pressure and was not ready to speak beyond the scope of some papers, which were already in his custody and which he used to refer during his deposition. Atleast twice, the learned Special Judge has recorded this demeanor of this witness.

. Further, the witness admitted that previously in two cases also, he was made the shadow panch witness.

. Exhibit 31 is the requisition from the Investigating Officer to the Principal of Industrial Training Institute, Latur for sending two panch witnesses. The form of Exhibit 31 would show that below the requisition, the employer – in the present case, the Principal of the Industrial Training Institute, Latur was supposed to make endorsement about the names of the employees deputed by him to the Anti Corruption Bureau for the purposes of trap.

This endorsement shows that Mr. Swami and one another Kure were deputed for the purpose of trap by the Principal.

. Most glaring fact is that the names of these two panch witnesses are admittedly written in the handwriting of the Investigating Officer and not the Principal. Thus, the deputation was not by the Principal but by the Investigating Officer. When this panch witness was already a shadow panch witness in two earlier cases, what prompted the Investigating Officer to direct the Principal of Industrial Training Institute, Latur to send specifically the present shadow panch witness Mr. Swami to be the panch witness, is an enigma.

14. Mr. Rajendra Deshmukh, learned counsel for the appellant filed on record the true copy of the judgment passed by this Court in Criminal Appeal No. 255 of 2000 dated 26th August 2015. The said appeal has arisen out of similar conviction recorded by another learned Special Judge at Latur for the

similar offences against one Suresh S/o Daderao Suryawanshi. Observations made by this Court in paragraph no.13 and 14 of the aforesaid judgment would show that the Investigating Officer therein from Latur has admitted that continuously for two years, the panch witnesses used to be called from only one institute i.e. present Industrial Training Institute at Latur. No doubt, the period is different in the present case.

15. The fact however remains that PW2, who was previously made shadow panch witness in two earlier cases was specifically asked by the Investigating Officer to be the shadow panch witness in the present case also and the Principal of the Industrial Training Institute, Latur obliged for the same.

. Demeanor of this witness noted by the learned Special Judge himself on two occasions during the same cross-examination would show that this witness was not ready to speak beyond the written papers in his hand to make any statement.

. It was further recorded by the learned

Special Judge that the witness was consuming much time to give answers if something beyond the papers was put to him. It is thus clear that the panch witness was not giving any voluntary statement in the Court. He was under certain pressure. In those circumstances, the learned Special Judge has wrongly used his testimony for the purposes of corroboration to some part of the testimony of the complainant – PW1, who has partly turned hostile to the prosecution case, and particularly when his antecedents were rather doubtful, as detailed supra.

16. In my view therefore, the learned Special Judge ought to have extended benefit of reasonable doubt in the present case to the appellant. In the circumstances, the following order:-

17. Criminal Appeal is hereby allowed.

18. Impugned judgment and order dated 24/02/2010 passed by the learned Adhoc Additional Sessions Judge-2 cum Special Judge, Latur in Special Case (ACB) No. 6 of 2007, convicting the present appellant for the offences punishable under section 7 and 13(1)

(d) r/w. 13(2) of the Prevention of Corruption Act, 1988, is hereby set aside.

. Instead, the appellant is acquitted of all the offences. His bail bonds shall stand cancelled.

. Fine amount, if any, deposited by him be refunded to him after a period of 90 days from the date of passing of the present judgment.

19. Criminal Appeal stands disposed of accordingly.

[M.T. JOSHI]
JUDGE

arp/