

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

CRIMINAL APPEAL NO. 357 OF 2000.

Raosaheb s/o Yeshwant Bange.
Age : 52 Years, Occ.: Service.
Lineman, Telephone Exchange,
Gangapur, District : Aurangabad. .. **Appellant.**

VERSUS

The State of Maharashtra. .. **Respondent.**

Appearance =>

Mr. Joydeep Chatterji, Advocate for the Appellant.

Mr. V.P. Kadam, Assistant Public Prosecutor for the State of Maharashtra.

CORAM : M.T. Joshi, J.

Reserved On : 1st September, 2015.

Pronounced On : 23rd September, 2015.

JUDGMENT :-

Being aggrieved by the Judgment and Order dated 11th August, 2000 passed by the learned Special Judge (A.C.), Aurangabad District – Aurangabad in Special Case No.14 Of 1995 thereby, convicting the Appellant for the offence punishable under Section/s 12 read with Section 7 of the Prevention of Corruption Act, 1988 and sentencing him to suffer rigorous imprisonment for one year and to pay fine of Rs.200/- and in default of payment of fine, to suffer

further rigorous imprisonment for two months, present Criminal Appeal is preferred by the Appellant.

[2] Prosecution case, in short, is as under :-

That, the present appellant alongwith original accused No.2 Karbhari Ramji Gaikwad were serving as lineman and Sub Inspector, respectively in the Telephone Exchange, Gangapur, District – Aurangabad. In the year 1995, the complainant's father, being freedom fighter was allotted telephone connection. After some persuasion, the telephone was installed at his place on 14th January, 1995 by both the accused. At that time, present appellant made a demand of Rs.1000/- to the complainant to see that there would be unobstructed function of the telephone. After bargaining, the accused became ready to accept Rs.500/-. The complainant however told that he would see the same in future. In the circumstances, the complainant started to avoid the accused persons. However, on many occasions, telephone connection remained faulty.

In the meantime, the complainant received the telephone bill of Rs.105/- dated 01.02.1995. Thereafter he went to the telephone exchange, Gangapur and enquired about the procedure to pay the telephone bill. That time, the appellant by his own hand additionally put Rs.268/- in the computerized telephone bill of the complainant and asked the complainant to deposit that much amount. The complainant questioned as to how the amount of telephone bill is increased. Thereupon, the appellant told that, as he failed to pay amount of Rs.500/-, he has made such correction in the telephone bill. On 27th April, 1995, accused No.2 Karbhari Gaikwad approached

the complainant and reminded that money is required to be paid and the appellant has asked him about the same. He, therefore, told that even money can be paid to him. At that time, the complainant avoided to pay the money by saying that he was in hurry to unload the ice cream for his hotel. Therefore, accused No.2 Karbhari stated that the complainant may come to the office either on next day or a day thereafter but, he should not disappoint both the accused.

In the circumstances, the complainant approached the office of Anti Corruption Bureau and filed his complaint on 28th April, 1995 Exhibit – 22.

[3] The Investigating Officer PW No.7 Hanumant Panditrao Kulkarni, Dy.S.P., Anti Corruption Bureau carried the investigation. Two panch witnesses including PW No.6 Sitaram Dhondiram Kolte were collected. The complaint was read over to them. Demonstration of application of anthracene powder was given. Said powder was applied to the decoy money, brought by the complainant. Thereafter, raiding party proceeded to Gangapur Telephone Exchange. The complainant and the shadow panch witness went in the office.

[4] At that time, present appellant alongwith PW No. 5 Ashok Gyanrao Kanthale, Telecoms Technical Assistant and others were present there. During the talk, the appellant told that the complainant was merely giving the promises and was not paying the money, upon that, PW No. 5 Ashok Kanthale, stated to them that they should not have any chit-chatting in the office and he should be allowed to do the work and, therefore, they should go away. Upon that, the appellant told the complainant that since on next day, there would be

holiday, he would come to the Ice Cream Parlour of the complainant either at 9.00 a.m. or 12.00 in the noon.

As appellant did not accept the amount at that time, due to presence of PW No. 5 Ashok Kanthale, who objected even for chit chatting, raid was aborted.

[5] Next raid was organized on 13th April, 1995 from 8.55 a.m., as the appellant has told that he would come to the Ice Cream Parlour of the complainant at 9.00 a.m. or 12 in the noon. The decoy money was again kept in the chest pocket of the complainant. By 8.45 a.m. the complainant sat behind the counter of Ice Cream Parlour, while shadow panch witness sat on the chair in front of the counter.

By 12.05 in noon, both the accused came to Ice Cream Parlour of the complainant. Rest of the members of raiding party remained in different coupe of the Ice Cream Parlour. After some talk, the complainant, shadow panch witness and both the appellant went to one coupe. Thereafter, ice cream was served to all of them. During the talk present appellant asked the complainant to pay amount of Rs.500/- to Accused No.2 Karbhari Gaikwad. Upon that, the complainant produced decoy money before accused No.2. Accused No.2 Karbhari Gaikwad however, in turn, stated that amount should be handed over to the appellant himself. Accordingly, same was produced before the appellant. He accepted the same by his right hand and kept the same in his left chest pocket. Pre-determined signal was given by the complainant. Raiding party arrived. Hands of the appellant were apprehended. Thereafter, regular exercise of examining the relevant part of the body and the clothes of the

accused persons and thereafter of the complainant was started. This exercise confirmed the fact of transfer of decoy money from the complainant to the present appellant. Panchnama of all these activities was recorded.

[6] Thereafter, PW No. 7 Dy.S.P Hanumant Panditrao Kulkarni filed his own complaint with Police Station, Gangapur, District – Aurangabad. He gave wireless message of the case to the concerned Director of C.B.I. and accordingly, investigation was handed to PW No.8 Police Inspector, C.B.I. - Sudhakar Raghobhaji Thakare.

[7] PW No.8 P.I. Sudhakar Thakare carried rest of the investigation by recording the statement of the relevant witnesses. He collected the concerned telephone bill, as referred in the First Information Report. Necessary documents were collected from the office of telephone exchange. Sanction to prosecute both the accused was obtained from the concerned appointing authority and, thereafter, charge sheet came to be filed.

[8] Before the learned Special Judge, in all nine witnesses were examined I.e. PW No.1 Dr. Kalyan Vasantrao Salunke- Complainant, PW No.2 Anant Padmanatha Bhat - shadow panch witness, PW No.3 Digambar Kacharuji More - the then Sub Divisional Engineer, Phones (Rural), Aurangabad, Sanctioning Authority, PW No.4 Badala Hanumanrao Venkatraigdu - the then Chief Account Officer in Telephone Office, Aurangabad-Sanctioning Authority, PW No.5 Ashok Gyanrao Kanthale - Telecoms Technical Assistant in Sub Divisional Engineer Office for Rural, Aurangabad, PW No. 6 Sitaram Dhondiram Kolte - Clerk in the office of Divisional Joint Registrar Co-

Operative (Audit), Aurangabad. PW No.7 Vasant Gangadhar Salunke - father of the Complainant, PW No.8 Sudhakar Raghobhaji Thakare - Police Inspector, C.B.I., Investigating Officer and PW No.9 Hanumant Panditrao Kulkarni. Dy.S.P, Anti Corruption Bureau - Investigating Officer, as detailed supra.

[9] Defence of both the accused was that the complainant is a Journalist at Gangapur and he used to get published false reports against government officials and used to extort money from them. He wanted to extort the money from both the accused, therefore, false complaint was filed against them. The Investigating Officer in collusion with the shadow panch witness showed the alleged raid as successful one and falsely implicated them in the case.

[10] The the learned Special Judge however found that the prosecution has proved its case beyond reasonable doubt as against both the accused and convicted both the accused, as detailed supra.

[11] Mr. Joydeep Chatterji, learned counsel for the appellant submitted that, to his knowledge, accused No.2 Karbhari Gaikwad has not challenged the order of conviction and sentence recorded against him.

He further submitted that, evidence on record would show that, in fact, amount of Rs.168/- added in the telephone bill by the appellant, was the immediate reason for filing of the complaint. Had appellant added this amount wrongly, the complainant who was admittedly a Journalist and social activist as claimed by him, he would not have failed to file complaint against the appellant with his superior. He further submitted that, the prosecution case would show

that time and place of acceptance of the amount was not at all decided and, therefore just by flake, raid was organized. He further took me through the evidence and submitted that the complainant and shadow panch witness had made many improvements in their versions. Sanction granted by the sanctioning authority is without application of mind and hence, he submitted that, Appeal be allowed.

On the other hand, the learned Assistant Public Prosecutor submitted that the evidence on record would clearly show that prosecution has proved its case beyond reasonable doubt, therefore, he prays that Appeal be dismissed.

[12] On the basis of this material, following points arise for my determination :-

Points.

(1) Whether prosecution has proved that, present Appellant being lineman with Telephone Exchange, Gangapur, District – Aurangabad had made demand of Rs.1000/- towards the remuneration, other than legal remuneration and agreed to accept Rs.500/- for smooth function of the telephone of the complainant's father.?

(2) Whether the prosecution has further proved that on 13th April, 1995 present appellant accepted amount of Rs.500/- by way of abetment to accused No.2 towards the gratification other than legal remuneration.?

(3) What Order.?

My findings to all above points are in the affirmative. The Appeal is dismissed and sentence is modified for the reasons to follow :-

REASONS

[13] Mr. Joydeep Chatterji, learned counsel for the appellant submitted that as per the prosecution case itself, time and place of acceptance of amount was not fixed and, therefore, case of the prosecution that raid was organized, cannot be believed.

It should however be noted that, in the complaint itself, it is clarified that, accused No.2 told the complainant that complainant should either come on the next day or subsequent day to his office to pay the amount. In the circumstances, raid was organized at the office of the accused on the next day. However, at that time, due to annoyance expressed by PW No.5 Ashok, who happened to visit the said office i.e. Telephone Exchange, Gangapur from Aurangabad for certain technical work, the appellant himself fixed the next venue and time.

[14] PW No.5 Ashok deposed that on 29th April, 1995 his senior had directed him to visit the Telephone Exchange, Gangapur and install three channel system. Accordingly, he was carrying out the said work in the telephone exchange. At that time, the appellant was assisting him in the said work. That time, two strangers came there and all three started certain talk on private matter. He was therefore, disturbed and he told all of them to go away and let him do the work.

Thus, case of the prosecution that first raid was organized at the telephone exchange has been proved by this witness by deposing that two strangers had come in the telephone exchange and had a chit chat with the appellant.

[15] It is true that, the prosecution did not take efforts to present the complainant and panch to confirm that the strangers were none other than the complainant and the shadow panch witness. The prosecution case, however, of their visit has been materially corroborated by this third witness, besides the independent shadow panch witness.

[16] Mr. Joydeep Chatterji, learned counsel further pointed out towards the statement of PW No.2 Anant i.e. shadow panch witness that the complainant told him in the telephone exchange that accused No.2 Karbhari Gaikwad had asked him to give Rs.500/-. However, such statement is not made by the complainant.

[17] However, sum and substance of the conversation as given by both these witnesses is one and the same. Incident had occurred in the month of April, 1995 and the witnesses were deposing about the fact in the year 2000 i.e. after a gap of five years. In the circumstances, if certain omissions had occurred in their statements, regarding the details of the incident, same would not take us to disbelieve the testimony in entirety.

[18] Mr. Joydeep Chatterji, learned counsel for the appellant further pointed that this shadow panch witness did not depose that the complaint was read over to the panch witness, by pointing out

from the cross-examination of the panch witness that the copy of the complaint was not given to the witness on that day.

However, in the examination-in-chief said panch witness has deposed that, after introduction with the complainant, the complainant had orally narrated the complaint and both the panch witnesses verified his narration by reading his written complaint. Thus, merely because the copy of the complaint was not given to the panch witness, that would not cast any suspicion on the prosecution case.

[19] As regards both the sanctions, it is true that the sanctioning authorities had used the proforma supplied by the Investigating Officer. PW No.3 Digambaer More has scored the name of accused No.2 and kept the name of the appellant. However, sum and substance of evidence of PW No.3 Digambaer More would show that after application of his mind, he has accorded the sanction to prosecute accused No.1.

It was further argued that, PW No.3 Digambaer More, Sanctioning Officer who has given sanction to prosecute the present appellant, got sanction order typed from his clerk. He read it and signed it.

It should be noted that, according to PW No.3 Digambaer More, firstly he read the prosecution papers and thereafter he found that, prima facie case is made out. Thereafter, he directed his clerk to type the sanction order as per the draft. Thereafter he read it and lastly signed the same. Thus, it cannot be said that, there is non application of mind, while granting the sanction to prosecute the appellant.

[20] Mr. Joydeep Chatterji, learned counsel for the appellant submitted that, evidence of PW No. 5 Ashok Kanthale would show that, he did not know as to what was the topic of conversation between the accused and two strangers and, therefore, it cannot be held that, during the said incident, again demand of money was made.

However, it is pertinent to note that PW No. 5 Ashok Kanthale was disturbed due to conversation between the accused and two strangers. He was not interested in their conversation, which caused disturbance in his work of installation of three channel system. Thus, his statement that he did not know the topic of conversation is a natural statement.

[21] In view of the above evidence, I do not find any infirmity in the reasoning forwarded by the learned Special Judge. The conviction of the appellant, therefore, cannot be set aside.

[22] Mr. Joydeep Chatterji, learned counsel for the appellant in the alternative, submitted that the learned Special Judge has awarded the sentence of rigorous imprisonment for one year and fine of Rs.200/-. Present appellant is now 66 years old. He has already lost his job, therefore, minimum punishment of six months be awarded to him. The learned Assistant Public Prosecutor opposed the said plea. In the circumstances, as detailed by Mr. Joydeep Chatterji, learned counsel for the appellant, I find that, the submission is just. In the circumstances, I pass the following order :-

ORDER

(i) Criminal Appeal is hereby dismissed as regards conviction of the present appellant for the offence punishable under Section 12 read with Section 7 of the Prevention of Corruption Act, 1988.

(ii) However, the impugned order sentencing the present appellant to suffer rigorous imprisonment for one year and to pay fine of Rs.200/- and in default of payment of fine, to suffer further rigorous imprisonment for two months is hereby set aside.

Instead, it is hereby directed that appellant – Raosaheb Yeshwanta Bange shall suffer rigorous imprisonment for six months and to pay fine of Rs.200/- and in default of payment of fine amount, to suffer further rigorous imprisonment for 15 days, for the offence punishable under Section 12 read with Section 7 of the Prevention of Corruption Act, 1988.

(iii) Bail bonds of the appellant shall stand cancelled.

(iv) The learned Special Judge, Aurangabad to take steps for securing presence of the present appellant for serving the sentences now awarded by this Court.

(v) Disposal of the property on the line of directions already issued by the learned Special Judge (A.C.), Aurangabad District – Aurangabad.

(M.T. JOSHI, J.)