

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

CRIMINAL APPEAL NO. 407 OF 2000

Karbhari S/o Vithoba Tupe

Age : 52 Yrs., Occ. Service,

R/o : Nandrabad, Tal.

Khultabad, Dist. Aurangabad.

.... APPELLANT/

[ORI. ACCUSED NO.1]

V E R S U S

The State of Maharashtra

.... RESPONDENT

.....

Mr. Joydeep Chatterji, Advocate for Appellant.

Mrs. V.A.Shinde, A.P.P. for Resp.- State.

.....

WITH

CRIMINAL APPEAL NO. 404 OF 2000

Prabhulal S/o Chandanlal Jaiswal

Age : 60 Yrs., Occ. Business,

R/o : Padampura, Aurangabad.

.... APPELLANT/

[ORI. ACCUSED NO.2]

V E R S U S

The State of Maharashtra

.... RESPONDENT

.....
Mr. M.N.Navandar, Advocate for Appellant.

Mrs. V.A.Shinde, A.P.P. for Resp.- State.

.....
CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 7th APRIL, 2015
.....

JUDGMENT :

1. Both these Appeals are decided by this common Judgment.

2. Criminal Appeal No. 407 of 2000 is filed by Karbhari S/o Vithoba Tupe, accused No. 1 before the trial Court. Criminal Appeal No. 404 of 2000 is filed by Prabhulal S/o Chandanlal Jaiswal, accused No. 2 before the trial Court. The appellants will be referred by their original position before the trial Court in the present Judgment.

3. By Judgment and Order of conviction, learned Special Judge [A.C.], Aurangabad in Special Case No. 10/1995 dated 21/09/2000 convicted accused No. 1 for the offence punishable u/s 7, 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988.

Accused No. 1 is sentenced to suffer rigorous imprisonment for one year and to pay fine of ₹ 200/- [Rupees Two Hundred], in default, rigorous imprisonment for two months on account of his conviction u/s 7 of the Prevention of Corruption Act.

He is also sentenced to suffer rigorous imprisonment for two years and to pay fine of ₹ 300/- [Rupees Three Hundred], in default, rigorous imprisonment for three months on account of his conviction u/s 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act.

Accused No. 2 is convicted for the offence punishable u/s 12 read with 7 of the Prevention of Corruption Act and sentenced to suffer simple imprisonment for six months and to pay fine of ₹ 200/- [Rupees Two Hundred], in default, simple imprisonment for two months.

4. Prosecution case is as under :

On 31/08/1995, Sk. Ibrahim s/o Raj Mohammad [P.W.1] submitted complaint to the Anti Corruption Bureau, Aurangabad. The complaint is at Exh. 28.

It is alleged in the complaint that on 12/07/1994, complainant purchased a plot admeasuring 1200 Sq.Ft. From

City Survey No. 10612 situated at Chaus Colony, Shahbazar, Aurangabad for Rs. 1,00,000/- [Rupees One Lakh] from Smt. Shahin Fatema Mohammad.

Complaint further proceeds that on 01/08/1994, complainant made an application for mutation with City Survey Officer No. 1, Padampura, Aurangabad. In spite of his various visits to the office, he was unable to meet surveyor.

Complaint further alleges that on 21/08/1995, when he had been to the city survey office, that time, Surveyor, accused No. 1 Karbhari S/o Vithoba Tupe met him. Complainant showed the receipt to him about filing of his application for mutation and made enquiry as to whether his work is done or not. That time, accused No. 1 took out a file from cupboard and from the said file, he handed over copy of the sale deed to the complainant and directed that he should obtain signature of one Officer as 'true copy' and also he gave a blank copy of form Namuna No. 9 on writing on the same city survey No. 10612 and directed the complainant that he should obtain signature of his vendor on the said form.

It is alleged in the complaint that, that time, accused No. 1 demanded ₹ 300/- [Rupees Three Hundred]. However, after some talk between them, it was agreed that

initially the complainant should give ₹ 200/- and remaining ₹ 100/- shall be given after the work was over.

It is further alleged in the complaint that thereafter complainant obtained signature of Head Master of Dr. Zakir Hussain high School on the sale deed and also obtained signature of Smt. Shahin Fatema Mohammad on form Namuna No. 9.

5. It is further alleged in the complaint that on 25/08/1995, complainant made application in the name of Municipal Commissioner, Aurangabad and along with the said, he submitted duly signed copy of the sale deed and Namuna No. 9. After submitting the said application, as per the complaint, accused No. 1 met him. That time, he demanded papers from him. Upon that, it was revealed to accused No. 1 that on that day itself he has given the application and the necessary documents. Upon that, accused No. 1 quipped that there was no necessity to give the application and demanded money. When the complainant informed that he has no money, therefore, accused No. 1 asked him to come to the office on 30th or 31st and pay the amount.

6. Shrinivas Tandale [P.W.8] on 31/08/1995 was working as Dy. Superintendent of Police in the office of Anti Corruption Bureau at Aurangabad. He took complaint of the complainant [Exh.28] and thereafter he gave letter to the incharge of Employment Exchange to provide two employees as panchas and accordingly Keshav Rambhau Jadhav [P.W.2] and Maroti Dhondur Jadhav, employees of Employment Exchange came to act as panchas. They gave their consent as such. Panchas read the complaint of the complainant. Thereafter, demonstration of Anthracene powder was given. Pre-trap panchanama was drawn [Exh.33]. Thereafter, on 31/08/1995, complainant along with panch Keshav Jadhav reached to the office of accused No. 1. There he demanded money and directed that the same should be given to the accused No. 2, who is Tea stall owner. As per the prosecution case, accordingly the amount was given to accused No. 2. Thereafter, agreed signal was given. The members of trap party immediately reached to the said spot. Thereafter, they caught both the hands of accused No. 2. Tainted amount was recovered. All other formalities of the trap was completed and post-trap panchanama [Exh.34] which is styled as spot panchanama was drawn. On 01/09/1995, house of accused

No. 1 was searched vide house search panchanama [Exh.35]. However, nothing incriminating was found at his house. Sanction was also obtained vide sanction [Exh.56].

7. Necessary Charge was framed against both the accused persons. They abjured their guilt and claimed for their trial.

In order to bring home the guilt of the accused persons, eight witnesses were examined by the prosecution, including complainant Sk. Ibrahim s/o Raj Mohammad [P.W.1], Keshav Rambhau Jadhav, pancha [P.W.2], Pratibha Balasaheb Puranik [P.W.3], Kaduba Harsingh Shimre [P.W.4], Madhukar Gopalrao Dhaneshwar, Surveyor [P.W.5], Ashok Rangnathrao Ghadge, Record Keeper [P.W.6], Pandit Ramji Kanekar, Sanctioning Authority [P.W.7] and Shriniwas Nagindas Tandale, Investigating Officer [P.W.8].

After the trial, learned Special Judge convicted both the accused as observed in the opening paragraphs of this Judgment.

8. Heard Mr. Joydeep Chatterji, learned counsel for accused No. 1 in Criminal Appeal No. 407 of 2000 and Mr.

M.N.Navandar, learned counsel for accused No. 2 in Criminal Appeal No. 404 of 2000. I also heard Mrs. V.A.Shinde, learned Assistant Public Prosecutor for the State in extenso.

9. The submission of learned counsel for the appellants is that they are falsely implicated. According to the learned counsel for appellant/accused No. 1, no work of complainant was pending with accused No. 1 Karbhari Tupe and, therefore, there was no reason for him to make any demand from the complainant. He also submitted that prosecution must fail because of want of valid sanction. He submitted that the sanctioning authority has mechanically granted sanction. The sanctioning authority has not applied its mind independently. He further submitted that the evidence in respect of demand on the day of trap, as adduced on record through complainant [P.W.1] and panch witness [P.W. 2], is at variance. It is also submitted that the evidence of complainant is found as omission on material aspect.

It is also submitted that there was no demand by the accused No. 1 in presence of accused No. 2. Accused No. 2 was not knowing that any amount is demanded by accused No. 1. It is also submitted that after accepting money, accused

No. 2 made entry in the 'khata book' of accused No. 1.

10. According to the learned counsel for the appellants, learned Judge of the Court below has not considered this vital aspect and, therefore, their conviction is liable to be set aside.

11. Per contra, learned A.P.P. would submit that the evidence as available in prosecution case reveals that there was demand from accused No. 1 for completing the work of complainant and the same was accepted through accused No. 2. It was submitted that the Court below has not committed any mistake and, therefore, submitted that the Judgment of conviction be maintained.

12. Firstly, it will have to be seen that whether the work of complainant was pending with accused No. 1 and for that there was demand to the complainant. Secondly, it will have to be seen whether there is valid sanction.

13. From the complaint [Exh. 28], complainant submitted application on 01/08/1994 for mutation. Said

application is at Exh. 37. By the said application, City Survey Officer No. 1, Aurangabad was requested by the complainant for taking the name of complainant in the P.R. Card. At the foot of the said application, there is a note,

“ एन ए मिळकत प्रमाणपत्राची सत्य प्रत जोडणे ”

Thus, it is clear that on the said date, the application of the complainant was not complete in all respect.

14. Reference to the evidence of prosecution witness Madhukar Dhaneshwar would be relevant.

From 1994 – 1997, this witness was working as Surveyor in the office of City Survey, Aurangabad.

Through his evidence, it is brought on record the practice and procedure of the office in respect of receipt of the applications. The relevant portion from his evidence is reproduced here under.

“ मी त अ पुढे सांगितले कि, जर कागदपत्रामध्ये त्रुटी असेल तर अर्जदाराला प्रत पाठविले जाते व जर त्याने त्रुटीची पूर्तता न केल्यास त्याचा अर्ज बंद केला जातो व या केसमध्ये असे दिसते कि, ३/९/९४ रोजी पत्र शेख इब्राहीमला पुर्ततासाठी पाठविले व त्यावरून असे दिसते कि त्याने त्या पत्राची पूर्तता केली नाही व म्हणून त्याचा अर्ज दि. १/८/९४ रोजीचा बंद केला ”.

15. Further, he has admitted in his evidence that accused No. 1 Karbhari Tupe was transferred from Table No. 8 to Table No. 9 on 23/03/1995. In that behalf, his evidence would reflect as under :

“ On 23/03/1995, the accused Tupe was transferred from table No. 8 to table No. 9. I also came to know that before transfer of his table, the application of Sk. Ibrahim was disposed of. Before his transfer to Table No. 9, one Shri. Asolkar was on table No. 9. The work of Sk. Ibrahim was concerned with Table No. 9 ”.

The work of Shaikh Ibrahim was concerning Table No. 9.

Thus, it is clear that the application was disposed of even prior to the accused No. 1 was transferred to Table No. 9.

16. According to P.W. 5, if the compliance is made by the party, notice is given in Namuna No. 9 to the Vendor and its copy is kept in the office. Its entry is made in the outward register. Thereafter the vendor comes in the office and and

if he has no objection, then the mutation is taken.

In the present case, even according to the complaint, notice is given in Namuna No. 9 to him by accused in order to obtain the signature of his vendor. According to prosecution, said notice is at Exh. 41. Perusal of notice [Exh. 41] would reveal (i) it is undated, (ii) it is not signed by District Inspector of Land Record and the City Survey Officer No. 1. There is only mention of City Survey No. 10612. According to complaint [Exh.28], it was signed by Shahin, the vendor. In the present case, Smt. Shahin is not examined. Therefore, it is crystal clear that whether Smt. Shahin, the previous vendor is having any objection or not, is not all established. Further, it is brought on record that when statement of P.W. 5 Dhaneshwar was recorded by the Investigating Officer, even on that day, it was noticed that the complainant has not made compliance. He also noticed that there was no 'no objection' in Namuna No. 9 of the vendor.

Thus, from the above, it is amply established that though the application [Exh.37] dated 01/08/1994 for mutation was given by the complainant, he failed to fulfill the necessary requirement as are required for completing the mutation process and, therefore, his application was already

filed prior to the date of trap.

17. It is incumbent upon the prosecution to prove that the valid sanction has been granted by the sanctioning authority, after the said authority is satisfied that the case for sanction is made out constituting the offences. In the present case, prosecution has examined Pandit Kanekar [P.W.7], who has accorded sanction. The sanction is at Exh. 56. From 15/09/1995 to 31/07/1998 this prosecution witness was working as Dy. Director of Land Records at Aurangabad.

If the evidence of this witness is read as whole, then it appears that his sanction order is based on the report of one Mr. Deshmukh and the papers submitted by the Anti Corruption Bureau. He has admitted in his evidence as under :

“ I had not called office papers pertaining to this case. The documents were not called by me as those were verified by my sub-ordinate Mr. Deshmukh. He has submitted his report to me in writing. I believed his report ”.

“ My sanction order is based on the report of Mr. Deshmukh and the papers submitted by Anti Corruption Bureau. ”

Further, he has admitted that he has not made any enquiry as to on which table the file of the complainant was pending for the work.

18. Last straw, which could be the death nail for the sanction, can be seen from the evidence of sanctioning authority, which is reproduced here under,

“ In the papers submitted to me by ACB, there were statements of Dhaneshwar and Ghatge. I had studied their statements. I did not feel that the file of complainant was closed when I read the statements of the above witnesses. On reading the statement of Shri. Dhaneshwar, I was realized that the file of the complainant was closed. Before granting sanction, I had realized that as per order dated 21/03/1995, accused Tupe was transferred to Table No. 9. I was realized from the statement of Dhaneshwar that the file of complainant was closed before the accused No. 1 Tupe had taken the charge of table No. 9. ”

19. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act

which affords protection to government servants against frivolous prosecution and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned, is the dictum of the authoritative pronouncement of the Apex Court in the case of **Mohd. Iqbal Ahmed Vs. State of A.P., AIR 1979 Supreme Court 677.**

20. From the aforesaid, it is clear that the sanctioning authority has not applied its mind. The material was already available before the sanction was accorded by the sanctioning authority that the file of the complainant was closed well before the accused No. 1 Karbhari Tupe had taken charge of Table No. 9.

21. From the aforesaid discussion, it is clear that the present Appeals need to be allowed on this count itself without going into the details, whether the prosecution has proved the demand from accused No. 1 and accused No. 2 has accepted amount for and on behalf of accused No. 1.

22. Hence, I pass following order :

(i) Criminal Appeal No. 407 of 2000 is

allowed.

(ii) The Judgment and Order of conviction dated 21/09/2000 convicting appellant Karbhari s/o Vithoba Tupe for the offences punishable u/s 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act passed by the Special Judge [A.C.], Aurangabad in Special Case No. 10 of 1995 is hereby quashed and set aside. Appellant Karbhari s/o Vithoba Tupe is acquitted for the aforesaid offences. His bail bonds stand cancelled. Fine amount paid by him be refunded to him.

(iii) Criminal Appeal No. 404 of 2000 is allowed.

(iv) The Judgment and Order of conviction dated 21/09/2000 convicting appellant Karbhari s/o Vithoba Tupe for the offences punishable u/s 12 read with 7 of the Prevention of Corruption Act passed by the Special Judge [A.C.], Aurangabad in Special Case No. 10 of 1995 is

hereby quashed and set aside. Appellant Prabhulal s/o Chandanlal Jaiswal is acquitted for the aforesaid offences. His bail bonds stand cancelled. Fine amount paid by him be refunded to him.

[V.M.DESHPANDE, J.]