

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

CRIMINAL APPEAL NO. 416 OF 2000

Bhimrao s/o Kondiram Wahule,
age 42 years, occ. Service,
R/o Milind Nagar, Osmanpura,
Aurangabad

...Appellant

VERSUS

The State of Maharashtra,
through C.B.I. Nagpur

...Respondent

.....
Shri Satej S. Jadhav, advocate for appellant
Shri Alok Sharma, standing counsel for C.B.I.
Shri V.H.Dighe, A.P.P. for respondent/State
.....

CORAM : V.M.DESHPANDE, J.

DATED : 9th JULY, 2015

ORAL JUDGMENT : -

1] Being dissatisfied with the judgment and order of conviction, passed by the learned Special Judge, Jalna, dated 17.10.2000, in Special Case No. 15 of 1996, by which the appellant is convicted for the offence punishable under Section 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and

consequent sentence to suffer rigorous imprisonment for six months and to pay a fine of Rs.500/-, in default to suffer rigorous imprisonment for one month for the conviction under Section 7 of the Prevention of Corruption Act; and rigorous imprisonment for one year and to pay fine of Rs.500/-, in default to suffer rigorous imprisonment for one month for the conviction under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, the appellant is before this court.

2] The prosecution case in nut shell is as under : -

At the relevant time, appellant was Senior Telecom Assistant in the office of Sub-Divisional Engineer (Rural), Jalna. Shaikh Ilahi Khaja Miya (PW 3), a student and Secretary of Islamic organization, submitted an application for new telephone connection in Non-OYT category on 4.1.1996. According to the prosecution, he obtained demand note and accordingly Rs.1,000/- were deposited. He obtained receipt and submitted the copy of the note to the appellant.

According to the prosecution, on 26.2.1996, appellant demanded Rs.100/- as a bribe from the complainant for expediting the issue of order for installation of new telephone connection. According to the prosecution, on 17.4.1996, the complainant attended the office, that time also demand was repeated.

The complainant was not ready to pay the bribe. Therefore, he approached Khushalchand Baheti (PW 5), an official from the Anti Corruption Bureau and lodged the report.

Shaikh Ilahi's complaint was reduced into writing, which is at Exh.52. Thereafter, PW 5 Baheti called Shaikh Haroon Shaikh Habib (PW 1) and Raosaheb Jadhav as panchas for trap, since it was decided to lay a trap on the appellant.

After explaining the characteristics of the anthracene powder to the complainant and panchas and after observing other formalities required for trap, a pre-trap panchanama (Exh.23) was prepared.

According to the prosecution, thereafter the party proceeded to the office of the appellant. Shaikh Haroon Shaikh Habib (PW 1) was instructed to remain with the complainant. According to the prosecution, the appellant demanded the amount and thereafter asked the complainant to put the same on the table and thereafter he put his right palm on the said currency note. After acceptance of the bribe amount, agreed signal was given. Raiding party thereafter caught hold the hands of the appellant. A detailed panchanama (Exh.37) was drawn.

PW 6 Baheti thereafter lodged a formal first information report (Exh.58) and crime was registered against the present appellant.

3] In order to bring home the guilt of the appellant, the prosecution has examined following five witnesses.

PW 1 Shaikh Haroon Shaikh Habib, panch witness

PW 2 Prakash Vitthal Gajbiye, sanctioning authority

PW 3 Shaikh Ilahi, complainant

PW 4 Sudhakar Dhakre, P.S.I. from C.B.I.

PW 5 Khushalchand Baheti, P.I., Anti Corruption Bureau.

Various documents, which were proved during the course of the trial, were also relied upon.

4] The defence of the appellant is of total denial. According to the appellant, on 17.4.1996, the day of the trap, no work of the appellant was pending with him in connection with telephone. According to him, on 26.2.1996, the complainant had been to him and as per the seniority he made the order on 15.3.1996 and on 18.3.1996 the said order was handed over to the Phone Inspector, the subordinate Junior and JPO.

5] I have heard Shri Satej S. Jadhav, learned counsel for the appellant; Shri Alok Sharma, learned standing counsel for the Central Bureau of Investigation; and Shri V.H.Dighe, learned Additional Public Prosecutor for respondent/State. With their able assistance, I have gone through the entire record and proceedings.

During the trial, an application under Section 294 of the Code of Criminal Procedure was given by the Central Bureau of Investigation. The said application is at Exh.19. Item No.12 in the said application is a document in the nature of certified xerox copy of "Outward register JTO", page no.14 entry no.3.

The defence has admitted said document and it is at Exh.28. Perusal of Exh.28 would reveal that it is an extract of outward register. It is dated 18.3.1996. Against Sr. No.3 there is an entry "AN-L.010/15.3.1996.

6] Exh.29, which is also admitted by the defence is an advice note for new telephone connection given to the complainant. It's number is L-10/15.3.1996. Thus, the advice note is prior to one month of the trap.

Further, Exh.28, which is an extract of outward register, is of 18.3.1996.

With the aforesaid admitted position, let us examine the evidence of complainant and the evidence of panch witness.

7] From Exh.37, post trap panchanama, it is clear that tainted note was not found in possession of the appellant. The recitals of panchanama show that the said currency note was seized from under a paper on the table of appellant. Further

the fingers of appellant were not having any traces of anthracene powder. The relevant recitals from Exh.37 read as under :-

“ श्री वाहुळे यांच्या दोन्ही हाताचे परीक्षण केले असता त्यांचे उजव्या हाताचे तळव्यावर ठिकठिकाणी अन्थ्रासीन पावडरची निळसर चकाकी स्पष्ट दिसून आली”

8] According to the complainant Shaikh Ilahi (PW 3), when he reached to the office of the appellant on the day of trap, accused asked as to whether he has brought the amount or not. He replied that he has brought the amount, but he should give the order first. Then accused took one paper, written something and gave it to him. It is at Exh.29. It would be useful to reproduce the relevant portion from the evidence of PW 3 Shaikh Ilahi, which is as follows :-

“ Myself and panch no.1 entered in the office. Accused was there, I wished him. Accused asked me whether I have brought the amount or not. I replied that I have brought the money, but he should give me the order first. Accused took one paper, written something and gave it to me and told that I should give it to Ranjani and get telephone installed. Exh.29 is the same paper.”

The panch witness PW 1 Shaikh Haroon has also corroborated to handing over of Exh.29 to the complainant on the day of the trap, as it can be seen from his version that : -

“ He then wrote something on it and handed over the same to the complainant. The chit

Exh.29 now shown to me is the same on which the accused wrote something and handed over to the complainant.“

Thus, it is clear that according to the prosecution case, Exh.29 was handed over to the complainant on the day of the trap.

As observed in the preceding paragraph, Exh.29 is a demand note and is having a particular number.

9] Exh.28, which is the extract of the outward register, dated 18.3.1996 shows that the said demand note was sent on 18.3.1996. Thus, the evidence of the prosecution witness that on 17.4.1996, Exh.29 the demand note was handed over by the appellant to the complainant is contrary to the prosecution document itself. Exh.28 is an outward register duly maintained in the office. There is nothing available in the prosecution case to show that there is any manipulation to the said register.

10] Now, according to Shaikh Ilahi (PW 3) complainant, Exh.29 was given to him prior to handing over of tainted amount to the appellant, however, the said fact is not corroborated by PW 1 Shaikh Haroon, the panch witness. According to him, firstly he had taken out tainted amount by his right hand and thereafter he accepted Exh.29 from the appellant.

Thus, there is variance on this aspect in the

prosecution case.

The matter does not stop there. According PW 1 Shaikh Haroon, written chit Exh.29 was taken out by the complainant by his right hand from his right pocket of pant and thereafter he gave the same to Baheti (PW 5) and it was seized.

It would be useful to refer to the said portion from the evidence of PW 1 Shaikh Haroon, which is as follows :-

“The written chit Exh.29 handed over by the accused to the complainant was taken out by the complainant by his right hand from his right pocket of his pant and gave the same to Mr. Baheti.”

11] The evidence of panch witness clearly shows that PW 3 complainant Shaikh Ilahi took out the tainted amount by his right hand.

Thus, it is crystal clear from the evidence of PW 1 Shaikh Haroon that before accepting Exh.29, the complainant came in contact with the tainted note. Further, even as per the evidence of the panch witness, at the time of seizure of Exh.29 he handed over the said chit from his right hand.

12] What is important to note is that when this chit was focused in the light of ultra violet lamp, no bluish colour appeared.

Thus, if the complainant, whose fingers came in contact with the smeared note, when subsequently handing over the chit by the said hand, the note ought to have traces of anthracene powder. Even the investigating officer PW 5 Baheti has admitted that no anthracene powder was found on the chit which was handed over by the appellant to the complainant.

13] The truthfulness of the entire prosecution case is under clouds in view of the evidence of PW 1 Shaikh Haroon, panch and an independent witness.

It would be useful to reproduce the relevant portion.

“ Before entering in the office of Anti Corruption Bureau I put on the tape record given to me by Mr. Baheti. Whatever the conversation taken place between the accused and complainant in my presence have taped in it. The taped conversation was put on to listen us in the office of accused and again the same was put on to listen the same in the office of ACB after coming back. Mr. Baheti then kept that tape recorder in his custody however, I do not remember whether it was seized and labelled with the signatures of panchas.”

However, PW 5 Baheti is completely denying the afore said aspect. From the aforesaid portion, as appearing in the evidence of PW 1 Shaikh Haroon, it is clear that the Anti Corruption Bureau provided him the tape recorder and the conversation was taped in the said tape recorder and PW 5 Baheti kept the said tape recorder in his custody, however, the

said fact is flatly denied by Baheti (PW 5). Firstly, there was no reason for PW 1 Shaikh Haroon, an independent witness, to tell lie before the court about the tape recorder. Surely it was not from his own imagination. Further, if the prosecution was of the opinion that it was the outcome of his imagination, the prosecution did not declare him hostile or did not apply for his re-examination on the said aspect.

Thus, the prosecution is withholding the best possible evidence from the court and that requires to draw an adverse inference against the prosecution. Further, even the complainant PW 3 Shaikh Ilahi is also giving evasive reply on the tape recorder. He has stated in his cross-examination as under :-

“ I do not recollect whether the tape recorder given to panch no.1 by Baheti before he left the office.”

Thus, he is not specifically denying that the tape recorder was not given to PW 1 Shaikh Haroon.

14] Further, PW 2 Prakash Gajbiye, sanctioning authority, who has proved the sanction Exh.45, has stated as under :-

“ Exh.26 i.e. advice note dated 15.3.1996 is prepared by the accused. It also bears the signature of Sub-Divisional Engineer. True that after issuing the aforesaid note no work is remained with the accused in connection with the installation of telephone.”

Thus, it is clear that on the day of the trap, no work of the complainant was pending with the appellant.

15] Further, from the documentary evidence Exh.28, it is clear that demand note Exh.29 was already sent on 18.3.1996. Therefore, that is the reason why traces of anthracene powder were not noticed on Exh.29 on the day of the trap i.e. on 17.4.1996.

16] The aforesaid evaluation of the prosecution case, leads me to pass following order.

- (i) Criminal Appeal is allowed.
- (ii) The judgment and order of conviction of the appellant for the offence punishable under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, passed by the learned Special Judge, Jalna, dated 17.10.2000, in Special Case No. 15 of 1996, is quashed and set aside.
- (iii) The appellant is acquitted of the offences punishable under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.
- (iv) Bail bonds of the appellant stand cancelled.

- (v) Fine amount, if any paid by the appellant,
be refunded to him.

[V.M.DESHPANDE, J.]

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