

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 454 OF 2000

Shrirang s/o Ramji Chibhade,
Age : 45 years, Occu. Ex-Circle
Inspector, Waloor, Tal. Sailu,
District Parbhani, Now Circle
Inspector, Kalamnuri

APPELLANT

VERSUS

The State of Maharashtra

RESPONDENT

Mr. S.P. Chapalgaonkar, Advocate for appellant
Mr. V.P. Kadam, A.P.P. for respondent-State

[CORAM : M.T. JOSHI, J.]

[RESERVED ON : 5th AUGUST, 2015]

[PRONOUNCED ON : 21st AUGUST, 2015]

JUDGEMENT :

1. The present appellant was convicted for the offences punishable under section 7 and 13 (2) read with section 13 (1) (d) of the Prevention of Corruption Act, 1988, by the learned Special Judge, Parbhani, vide judgement and order dated 16th November, 2000 passed in Special Case No. 2/1994. The appellant was sentenced to suffer rigorous imprisonment for six months and one

year, respectively on these counts with further direction to pay fine. Hence, the present appeal.

2. The prosecution case, in short, is as under:-

. That, PW1 Babasaheb Raswe is resident of Chikalthana (Khurd), Taluka Sailu, District Parbhani. He was a primary teacher during the relevant period. He owned two lands, admeasuring 3 acres and 38 gunthas and 13 acres and 18 gunthas at village Chikalthana during the relevant period. On 25th July, 1993, in presence of the brother of the complainant i.e. Bhagwan Take, the police patil, the appellant told that from his land admeasuring 3 acres and 38 gunthas, one acre of the land is proposed to be acquired for the purpose of rehabilitation. The complainant showed unwillingness. Therefore, again in the next meeting, the complainant persuaded for taking steps in this regard.

. Ultimately, on the very same day i.e. on 25th July, 1993, the complainant went to the house of the appellant with said Bhagwan Take. At that time, the appellant made a demand of Rs. 10,000/- for doing the needful. Ultimately, he agreed to accept an amount of

Rs. 5500/-. The appellant told that as 18 acres of land is standing in the name of the appellant, he had received the order that one acre of land of the complainant be acquired. He, therefore, suggested that mutation be carried regarding the land to show the partition of the lands. It was agreed that the land would be mutated by divisions in the name of the complainant, his two sons and his wife. The appellant suggested that an old dated stamp paper would be required for the same. The complainant told that he was already having such a stamp paper. Upon that, the appellant asked him to come on 26th July, 1993 with the said stamp paper.

. On the very same day i.e. on 25th July, 1993, the complainant even paid an amount of Rs. 300/- to the appellant. Signatures of the relevant persons over the blank stamp paper were obtained on 26th July, 1993. The said old stamp paper was filled in. The necessary form No. 4 was also taken. All these documents were supplied to Bhagwan Take who ultimately handed over those documents to the present appellant.

. On 8th August, 1993, again complainant - PW1 Babasaheb alongwith his brother Bhagwan Take went to the

house of the appellant at Sailu. An amount of Rs. 1200/- was paid to him. The appellant asked to pay balance of the amount at the earliest. Accordingly, on 23rd August, 1993, the complainant again visited the appellant at his house and paid an amount of Rs. 2000/-. Upon that, the appellant said that the money should not be paid in instalments. Thereupon, the complainant told him that on getting the salary, he would pay the balance amount of Rs. 2000/-.

. On 11th September, 1993, the complainant again visited the appellant's house. He was not found there. Therefore, when the complainant was on way to return to his village, the appellant met him on the S.T. stand and asked him to come to his house. The complainant, however, told him that since the bus was to proceed, he would meet him lateron. At that time, the appellant asked the complainant to pay the money. Upon that, the complainant told the appellant that as and when the copies of the mutation entries would be provided to him, he would pay the money. The appellant, however, told that the copies are ready at his house. Upon that, the complainant told him that he would come to his house on next Monday. Thereupon, the appellant told him to visit

his house on next Wednesday at or before 9.30 a.m. in the morning. In the circumstances, the complainant approached the Anti Corruption Bureau at Parbhani and filed his complaint on 14th September, 1993.

3. PW4, the then Deputy Superintendent of Police Mr. Ramrao Jadhav conducted the investigation. He collected two Government servants as panch witnesses to lay the trap. The pre-trap exercise of demonstration of anthracene powder, the application of the same to the decoy money brought by the complainant was carried and the trap was laid at the house of the appellant on 15th September, 1993. PW2 Sheshrao Phad, one of the panch witnesses was deputed as shadow panch witness with the complainant. A mini tape-recorder was also placed in the underwear pocket of the complainant. He was directed to record the relevant conversation during the trap.

. At about 9.00 a.m., a meeting took place between the appellant and the complainant in presence of the shadow panch witness. The appellant had brought three chairs from his house and kept those in front of his house. All the three sat on the same. After the

preliminaries, the appellant told that the work of the complainant was done and one Pralhad Take was to bring the documents. The appellant made a query as to whether the money would be paid by the complainant. Upon that, the complainant offered the decoy money. The appellant accepted it and went inside his house.

. At that time, the complainant gave predetermined signal. Thereupon, the raiding party came at the spot, caught the hands of the appellant. The currency notes were found under a purse which was on the windowsill of the house. During the post-trap exercise, the hands of the appellant and of the complainant were seen positive to the application of anthracene powder. Thereafter, the exercise of recording of panchanamas, statements was carried by the Investigating Officer. The sanction to prosecute the appellant from PW5 Santoksing Sandu, the then Collector of Parbhani was obtained and the chargesheet was filed.

4. Before the learned Special Judge, in all four witnesses were examined, as detailed above.

. The learned Special Judge found that the case has been proved by the prosecution beyond reasonable

doubt. Therefore, the conviction and sentence against the appellant, as detailed supra, came to be recorded.

5. Mr. S.P. Chapalgaonkar, learned counsel for the appellant, made the following submissions before me :-

(I) That, the complainant is admittedly a primary teacher. His brother Bhagwan Take was working as a police patil. The cross-examination of the complainant would show that no proposal to various relevant authorities regarding acquisition of any land for rehabilitation purposes had reached. It is a common knowledge that partition of the property does not save any property from acquisition. Even as per the complainant, a back-dated stamp paper was available with him.

(II) The tape-recorder allegedly kept with the complainant was not switched on. There is a serious question as to who has picked up the decoy money from the alleged sill of the window and the Investigating Officer has made immediate improvements in his deposition in this regard.

(III) Bhagwan Take, the step brother of the complainant, in whose presence, according to the prosecution, most of the activities took place, has not supported the prosecution case. Not only this, but even the enmity between the complainant and appellant has been satisfactorily proved.

(IV) Though the complainant has denied that the present appellant was instrumental in taking possession of tenanted land from him earlier and handing over of the same to the tenant as per the direction of the superior, the certified copies of the relevant documents filed by the appellant on record would clearly fortify this case.

(V) It was further submitted that the sanctioning authority did not refer to the documents placed before it for perusal and mechanically granted the sanction to prosecute the appellant. Only draft sent by the Investigating Officer was accepted as it is by the sanctioning authority. The sanction was, therefore,

without application of mind and hence, Mr. Chapalgaonkar prayed that the appeal be allowed.

6. On the other hand, Mr. V.P. Kadam, learned A.P.P. submits that the independent panch witness i.e. PW2 Sheshrao has corroborated the case of the complainant regarding the demand and acceptance of the money at the time of trap. The documents filed by the appellant/accused on record would show that he was not personally involved in delivery of possession of the tenanted land. Since it was on the direction of the senior officials, there is no question of having any enmity between the appellant and the complainant to make a false statement. In that view of the matter, Mr. Kadam submitted that the appeal be dismissed.

7. On the basis of above material on record and the submissions advanced on behalf of both the sides, the following points arise for my determination :-

(I) Whether the prosecution has proved that the present appellant, being a public servant, had demanded an amount of Rs. 5500/- as a

remuneration other than the legal remuneration, as a motive for effecting the mutation entries regarding the land of the complainant and accepted the amount of Rs. 300/- on 25th June, 1993, an amount of Rs. 1200/- on 8th August, 1993, an amount of Rs. 2000/- on 23rd August, 1993 and an amount of Rs. 2000/- on 15th September, 1993 ?

(II) Whether the prosecution has further proved that the present appellant, being a public servant, has committed criminal misconduct by securing an amount of Rs. 5500/- by corrupt and illegal means from the complainant, by abusing his position as a public servant?

(III) Whether the sanction to prosecute the appellant granted by PW5 Santoksing Sandu is legal and valid ?

My findings to the above points NO. (I) and (II) are in negative and to point No. (III) is in the affirmative. The appeal is, therefore, allowed, for the reasons to

follow :-

R E A S O N S

8. The conduct of the complainant in immediately making available a three year old stamp paper, his admissions in the cross-examination that there was no proposal either with the Gram Panchayat or with other relevant authorities for acquiring any land for the purpose of rehabilitation and his bold denial regarding handing over of the possession of one land from the occupation of the present complainant by the appellant earlier to a protected tenant under the order of the superior officials cast a doubt on the veracity of the complainant's statement as a whole.

. According to the complainant, many of the activities of demand of gratification, etc., occurred in presence of step brother PW3 Bhagwan Take. The said witness has deposed that there was only the talk regarding the distribution of the land between the family members of the complainant and no talk took place between the complainant and the appellant regarding any

demand or acceptance of money for the said transaction in his presence. Nothing could be brought in his cross-examination.

9. The certified copy of the letter dated 05.09.1990 at Exhibit-41 coupled with the certified copy of record of right at Exhibit-42 would clearly show that the present appellant had, on the orders of his superior official, taken possession of land bearing Survey No. 47/2 and delivered the same to the protected tenant Mr. Haribhau Raghuji Take sometime in the month of September, 1990. Had the complainant admitted these facts in his cross-examination, then it could have been argued that since the official duty was carried by the appellant, the complainant could not have personal grudge against him. However, the very fact of bold denial of this fact which was required to be proved by the appellant by filing the certified copy of this document would go to show that the complainant wants to hide something from the court.

10. The Investigating Officer tried to have a scientific evidence by placing a mini tape-recorder in the underwear pocket of the complainant. The

complainant did not switch on the same during the conversation. He explained that since he did not find the time to switch on the tape-recorder at the time of meeting, no conversation could be recorded. The evidence on record, however, would show otherwise.

11. If we go to the details of the meeting, according to the complainant as well as the panch witness at the time of trap, they both went on foot to the house of the appellant. At that time, the wife of the appellant told that he was not at home. Therefore, they started returning. About 25 to 30 steps, they saw the appellant coming from the opposite side towards his house. After some preliminary talk and after giving identity of the panch witness as the relative of the complainant, they returned to the house of the appellant. Both of them were asked to wait outside. The appellant went inside the house. He changed the garments to the informal garments like lungi and banyan. Thereafter, he brought three chairs from inside of his house and placed them in front of the house and all of them occupied those chairs and thereafter, the conversation took place.

12. The panchanama at Exhibit-23 would show that the courtyard of the appellant's house is 76 feet x 15 feet. The chairs were placed about two feet away from the main entrance door on the eastern side. After this, long courtyard, there is the main house of the appellant.

. The evidence on record as well as the spot would thus show that in the said 76 feet long courtyard, three chairs were placed about two feet away from the main entrance door. According to the complainant and the panch witness, upon returning to the house, the appellant made them to wait in the courtyard. The appellant went inside his house and changed his dress. Thereafter, he brought three chairs and thereafter, the conversation had started. Nothing prevented the complainant from switching on the tape-recorder when the appellant was inside his house busy in changing his dress to the informal dress. The complainant, however, conveniently deposed that since he did not find the time to switch on the tape-recorder, the conversation could not be recorded.

13. The shadow panch witness PW2 Sheshrao Phad has deposed that the second panch had lifted the currency notes from the windowsill. The Investigating Officer, under the stress of cross-examination, has deposed that he had even examined the hands of this second panch under the light of ultra violet lamp as he had lifted the decoy money. This exercise, however, is conspicuously absent in the recorded panchanama at Exhibit-23.

. The shadow panch i.e. PW2 Sheshrao Phad has deposed in his examination-in-chief that the second panch and other members of the raiding party went inside the room. The notes were found kept under a purse and second panch lifted the notes and counted the same. During cross-examination, however, he deposed that he was in the first room only. He did not see the window in the common wall between those rooms.

. When the prosecution case is that money was kept under the purse on the windowsill, which was not seen by this witness, still, he deposed about the facts which had occurred beyond his site as though witnessed by himself in examination-in-chief, it would be hazardous to place reliance on his testimony,

particularly in the light of all the above facts which cause serious doubt regarding the prosecution case.

14. As regards the sanction, the deposition of PW5 Santoksing Sandu, would show that he has applied his mind while granting sanction to prosecute the appellant. Therefore, merely because the draft is used as a guideline would not mean to say that the sanctioning authority has not applied its mind. Therefore, the sanction to prosecute the appellant is valid. However, so far as the facts are concerned, the above discussion would show that the benefit of reasonable doubt will have to be extended to the appellant.

15. The learned Special Judge, finding that the panch witness has also deposed on the prosecution line, convicted the appellant. In my view, reasonable doubt has arisen for the reasons forwarded hereinabove. In the circumstances, the impugned judgement of conviction and sentence deserves to be interfered with. Hence, the following order.

16. The appeal is allowed. The impugned judgement and order, dated 16th November, 2000, passed by the learned Special Judge, Parbhani in Special Case No. 2/1994, convicting and sentencing the appellant for the offences punishable under section 7 and 13 (2) read with section 13 (1) (d) of the Prevention of Corruption Act, 1988, is hereby set aside.

. Instead, the appellant is acquitted of the offences punishable under section 7 and 13 (2) read with section 13 (1) (d) of the Prevention of Corruption Act, 1988. The bail bonds of the appellant shall stand cancelled.

[M.T. JOSHI]
JUDGE

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