

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 269 OF 2001

Tulshiram S/o Vithalrao Mendhe,
Age 28 years, Occu.: Service (Gramsevak)
R/o At & Post Daregaon, Tq. Aundha,
Dist. Hingoli

.. APPELLANT
(ORIG. ACCUSED)

VS.

The State of Maharashtra
Through Anti Corruption Bureau
Parbhani

.. RESPONDENT
(ORIG. COMPLAINANT)

Mr. S.G. Ladda, Advocate for the appellant
Mr. V.P. Kadam, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

RESERVED ON : 03/09/2015

PRONOUNCED ON : 14/09/2015

JUDGMENT :

Heard both sides.

2. The present appellant was convicted by the learned Special Judge, Hingoli for the offence punishable under section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988, vide judgment and order dated 12/06/2001 passed in Special Case No. 01 of 1998. Sentences of rigorous imprisonment for six

months and to pay fine of Rs.500/- as well the sentence to suffer rigorous imprisonment for 1 year and to pay fine of Rs.1000/-, respectively, on the above counts were awarded against the appellant.

3. Aggrieved by the said decision, the present appeal is preferred.

4. The present appellant was working as a Gram Sevak (Village Development Officer) of village Daregaon, Tq. Aundha Nagnath, Dist. Parbhani during the relevant period. According to the complainant i.e. PW1 Jorsing Rathod, recommendation under the signature of the present appellant was required on an application for getting the loan sanctioned for a well in the agricultural field of his mother, under the scheme named and styled as Jawahar Vihir Vyapti Karyakram. Therefore, on 28/9/1997 and 30/9/1997, the complainant approached the present appellant. On both the occasions, the appellant made a demand of Rs.150/- for putting the recommendation on the said application. He even refused to reduce the amount and, therefore, in the last of the meeting, the complainant told the appellant that he

would pay the said amount. Therefore, the appellant asked him to come on the next Thursday i.e. on 02/10/1997 at Aundha Nagnath, where the appellant was residing during the relevant period. It was the weekly market day.

. In the circumstances, the complainant filed complaint with the Anti Corruption Bureau, Parbhani on 02/10/1997. Two panchas including PW2 - Pandurang Bansode, were collected by PW4 - the Investigating Officer Mr. Manik Perke, the Deputy Superintendent of Police of the Anti Corruption Bureau.

. Regular exercise of demonstration of anthracene powder was given. The said powder was applied to the decoy money brought by the complainant. The trap was arranged, wherein the shadow panch witness i.e. PW2 was to remain with the complainant. Accordingly, all the raiding party proceeded to Aundha Nagnath. Thereat, the complainant PW2 went to the house of the appellant. His wife told them that the appellant had been to the weekly market. Therefore, they went to the market and the appellant was found.

. The trio thereafter had a sitting in the hotel named as Gangotri and had tea. Thereat, the complainant again asked the appellant to sign the application, upon which the appellant enquired, as to whether he has brought the amount of Rs.150/-. The complainant replied in the affirmative. Thereupon, the appellant asked the complainant to accompany him to his house for putting the signature and to put the stamp of the Gram Panchayat. Thereupon, all of them left the hotel. Thereafter, however, the appellant told that he would sign on the form in the weekly market itself and the complainant should pay money and, thereafter, the complainant would go to the appellant's house and get the stamp affixed from the inmates of the house. By saying so, the appellant took the complainant and the shadow panch witness by the side of the hotel behind a pan stall named as Thakur Pan Shop, where a wooden cot was placed. There, the appellant put his signature over page number 2 of the application. He again demanded the amount of Rs.150/-. The complainant therefore paid the decoy money to the appellant. He kept it in his left

pocket of the shirt. Thereafter, upon giving pre-determined signal, the appellant was apprehended. His both hands were caught.

. During the next of the exercise of examining the hands and the clothes of the appellant and, thereafter, of the complainant, the transfer of the decoy money, as detailed above was confirmed. The appellant was arrested. Panchanama of all the activity was drawn. Further investigation was carried by PW4 - Mr. Manik Perke. He obtained sanction to prosecute the appellant from PW3 - Mr. Jagdishprasad, the then Chief Executive Officer of the Zilla Parishad, Parbhani - the appointing authority of the appellant.

5. Upon apprehending the appellant, his written explanation was taken by the Investigating Officer on the spot. The written explanation as well as the defence before the Court is that, in-fact, the complainant had obtained hand-loan of Rs.150/- from the apellant earlier in the shop of one Apparao in presence of said Apparao, Mukinda, Shivrama and Kevalbai for the medical treatment of his wife. The complainant,

however, did not want to repay the amount. No scheme of loan as alleged was being implemented. Complainant even did not want any recommendation. However, there are two factions in the village Daregaon. One faction is led by one Kevalbai and another one by Lakhusing Rathod. The complainant is from the relatives of said Lakhusing. Said Lakhusing was on cross terms with the appellant and, therefore, the present appellant was deceived by filing a false complaint with the Anti Corruption Bureau, as he received the amount of Rs.150/- at the time of the trap towards the repayment of the loan.

6. In view of this defence of the appellant, the Investigating Officer after 3 days has recorded the statement of all the witnesses as named in the explanation. The statement of these witnesses except that of DW1 Apparao Gaikwad did not corroborate the defence. In the circumstances, as detailed above, the Investigating Officer sought sanction to prosecute the appellant, which was granted by the appointing authority, as detailed supra.

7. Before the learned Special Judge, four

witnesses were examined as detailed above. The appellant has examined Apparao S/o Tukaram Gaikwad to fortify his case that in his presence, earlier the hand-loan was given to the complainant by the appellant.

8. The learned Special Judge, however, found that there is nothing to disbelieve the testimony of the independent witness i.e. PW2 - Pandurang Bansode. Further, according to the learned Special Judge, admittedly, the amount was accepted by the side of the hotel behind a pan stall i.e. at a secluded place. Therefore, in view of the learned Judge, had it been the transaction of return of the hand-loan, the appellant would not have taken the complainant and the panch witness at the said secluded place to receive the money. Slight admissions given by the complainant in this regard in the cross-examination were, therefore, not accepted as the complainant during cross-examination at the hands of the learned Assistant Public Prosecutor thereafter washed away those admissions. In the circumstances, the appellant came to be convicted as detailed above. Hence, the present appeal.

9. Mr. S.G. Ladda, learned counsel for the appellant submitted before me that the complainant has clearly admitted in his cross-examination that in-fact the amount demanded was towards the amount due to the appellant from the complainant. Even DW1 – Apparao Gaikwad has clarified the situation. In the circumstances, he submits that the reasoning of the learned Special Judge are not proper.

10. On the other hand, learned A.P.P. submits that the admitted facts on record would show that the appellant has taken the complainant and the panch witness at a secluded place to receive the money. Further, there is no reason to disbelieve the statement of independent panch witness. In the circumstances, he submits that the appeal be dismissed.

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

I) Whether the prosecution has proved that the present appellant being a public servant had on 28/9/1997 and 30/9/1997 at village Daregaon, made a demand of Rs.150/- from the complainant as a

gratification other than the legal remuneration as a reward for making recommendation and signing the application of the complainant's mother for sanction of the loan for the well in her land ?

II) Whether the prosecution has further proved that on 02/10/1997 at Aundha Nagnath, the present appellant again made the demand of the said illegal gratification for himself from the complainant and accepted the same ?

III) Whether the prosecution has further proved that the present appellant being a public servant has obtained the gratification by abusing his position as a public servant ?

My findings to all the points are in the affirmative. The appeal is therefore dismissed for the reasons to follow.

R E A S O N S

12. There is no denial from the appellant that behind the tea stall by the side of the hotel at Aundha

Nagnath, as detailed above, the present appellant accepted the amount of Rs.150/-. The statement of the complainant, and the shadow panch witness PW2 - Pandurang Bansode does not show that during the said meeting, there was any indication that certain amount towards the hand-loan was given by the appellant to the complainant or that the decoy money was towards the repayment of the said hand-loan.

13. The evidence of independent panch witness PW2 - Pandurang Bansode would show that when the complainant asked for putting the signature on the application, the appellant made an enquiry, as to whether the amount of Rs.150/- is brought. When the complainant answered in the affirmative, initially, the appellant started taking them to his house. Thereafter, however, he changed his mind and asked them to come behind the pan stall and, thereat, he accepted the decoy money. This acceptance of the decoy money at a secluded place, in the opinion of the learned Special Judge itself would show that it could not have been a simplicitor transaction of repayment of hand-loan.

14. The complainant in the cross-examination has deposed against his statement in the examination-in-chief by stating that the amount he paid to the appellant was towards the due amount and though he narrated these facts to the Investigating Officer PW4, the Investigating Officer told him that though the payment was towards the due amount, still, it would be necessary to write in the application (complaint) that the complainant had nothing to pay to the appellant.

15. This theory that the Investigating Officer had himself prevailed upon the complainant, to recite in the complaint, that the amount was not towards any repayment of hand-loan, is against the defence case that due to the village politics, the complainant has animosity against the appellant and, therefore, he thought it fit to deceive the appellant by filing a false complaint and by getting the appellant caught red-handed while accepting the decoy money. Had the complainant intended to record the FIR that it was of repayment of hand-loan, then it was not necessary for him to approach the Anti Corruption Bureau, as any ordinary prudent person would know that acceptance of the hand-loan is not a bribe.

16. The complainant though made a somersault in the cross-examination, as detailed supra, thereafter, the learned A.P.P. in the trial Court sought re-examination due to this contradictory statements. During the cross-examination at the hands of the learned A.P.P., the complainant however was required to state the facts that the amount was demanded as the consideration for the recommendation and not towards any repayment of hand-loan. Further, he denied all the defence suggestions thereafter that during the relevant period, there was no scheme of sanction of loan and, therefore, there was no requirement of any recommendation.

17. The case of the defence that during the relevant period, there was no scheme and no recommendation was required, would also be required to be rejected outright since there is no denial that the form of the application seized at the spot from the complainant at Exhibit 29 bears the signature of the present appellant.

18. Mr. Ladda has rightly pointed out that when the prosecution witness Apparao was examined, as defence witness, the prosecution could not have cross-examined him, thereby bringing on record certain statement in his alleged earlier statement recorded by the Investigating Officer. However, even if we ignore the said cross-examination, the above facts would prove beyond reasonable doubt that the present appellant has accepted the decoy money as the remuneration for making the recommendation on the loan application put up by the complainant.

19. Mr. Ladda submits that the panchanama as well as the statement of shadow panch witness would show that merely the appellant asked for money and the complainant paid the same. According to him, there is no clarity as to for what purposes, the money was demanded and paid and, therefore, as reasonable doubt has arisen, the appellant is required to be acquitted.

. I am unable to accept the said proposition, as the entire evidence in this regard would show that when the complainant asked for putting the signature on the

application and thereby recommend for the loan, thereupon, the appellant has asked for the money. In that view of the matter, the following order:-

20. Criminal Appeal is hereby dismissed.

21. Bail bonds, if any, of the appellant shall stand cancelled.

22. The learned Special Judge is directed to take steps for securing the presence of the present appellant for serving the rest of the sentences, as ordered by the learned Special Judge.

[M.T. JOSHI]
JUDGE

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