IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.1 OF 2001

Pramod Somnath Bhavsar,
Age 42 yrs., Occu.- Service,
Residing at Dhandai Nagar,
Dhule ..Appellant

Versus

The State of Maharashtra ..Respondent

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Mr.R.M.Deshmukh, advocate for appellant

Mr.R.P.Phatke, APP for respondent - State

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WITH

CRIMINAL APPEAL NO.285 OF 2001

The State of Maharashtra ..Appellant

Versus

Pramod Somnath Bhavsar,
Age 37 yrs., Occu. - Service,
Residing at Dhandai Nagar,
Dhule ..Respondent

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Mr.R.P.Phatke, APP for appellant – State

Mr.R.M.Deshmukh, advocate for respondent

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CORAM : M.T. JOSHI, J.
JUDGMENT RESERVED ON : JULY 31, 2015
JUDGMENT PRONOUNCED ON : AUGUST 10, 2015

JUDGMENT :

Heard both sides.

2] Aggrieved by recording of conviction for the offences punishable under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 and the consequential sentences to suffer rigorous imprisonment for six months and one year, respectively, with further direction to pay the fine amount, by learned Special Judge, Dhule, vide judgment and order dated 18/12/2000 in Special Case No. 227 of 1995, Criminal Appeal No.1 of 2001 is preferred by the original accused.

. Criminal Appeal No.285 of 2001 is preferred by the State, for enhancement of the sentence awarded by learned Special Judge, Dhule.

3] The case of prosecution, in short, is as under:-

. That PW 1 – Khushal Palodkar, complainant, wanted an electric connection for his newly built house in Deopur area of Dhule. The necessary application along with necessary documents, therefore, were submitted in the Deopur division of the Maharashtra State Electricity Board (M.S.E.B.) about four weeks prior to the filing of the complaint on 19^{th} April, 1995. At the time of submission of the documents, present appellant/accused had accepted those documents. He told that he would come to visit the spot. The appellant was working as Telephone Attendant in the M.S.E.B. In the circumstances, while the complainant had gone to his work i.e. State Bank of India, the appellant came at the spot. At that time, the complainant's brother Bhalchandra was in the house. At that time, the appellant told the brother of the complainant that an amount of Rs.4,000/- i.e. Rs.1,000/- for each room, will have to be deposited and additionally, an amount of Rs.1,000/- will have to be paid to the appellant for getting the sanction for electricity connection. The brother narrated these facts to the complainant.

. On the next day i.e. on 9th April, 1995 at about 8:30 a.m., the appellant again visited the house as directed by brother of the complainant. Being Sunday, the complainant was present in the house. The appellant repeated the demand. Upon that, the complainant told him that he had only the amount which is necessary for making deposit and told that let him first deposit the amount and thereafter, the on-money would be paid lateron. The appellant, however, told that first the on-money should be paid and then, he would do the needful. During the talk, the appellant returned the documents by saying that the documents would be accepted when the on-money would be available.

. After about one or two days, Bhalchandra, brother of complainant, went to the office of M.S.E.B. and resubmitted the documents. The complainant was not able to visit the M.S.E.B. office due to preoccupation in his job from 9th April, 1995 to 18th April, 1995. Therefore, on 19th April, 1995 at about 8:30 a.m., he again visited the office of M.S.E.B. and met the appellant. At that time also, the complainant told him that he had not brought the amount of Rs.1,000/-. Upon that, the appellant asked the complainant to bring the said amount of Rs.1,000/- on the next day in the evening in the office, so that he would get the sanction. On the very same day i.e. on 19th April, 1995, the appellant visited the spot i.e. house of the complainant at about 3:30 p.m. and again inquired as to whether, the complainant has arranged for the amount of Rs.1,000/-. Upon that, the complainant told him that the arrangement would be made by the evening and the amount would be paid on the next day in his office. The appellant agreed for the same and went away. Since the complainant was not ready to pay the bribe amount, he approached the Anti Corruption Bureau, Dhule and filed a complaint on the very same day i.e. 19th April, 1995 at Exhibit 22.

4] PW 5 – Bhanudas Patil, the then Police Inspector, Anti Corruption Bureau, Dhule had recorded the complaint and crime was registered. Government Servant panch witnesses PW 2 – Arvind Kulkarni and PW 3 – Ramkrushna Patil were collected and all of them were asked to attend the Anti Corruption Bureau office on 20th April, 1995.

5] On 20th April, 1995, demonstration regarding application of anthracene powder was given. The complainant had brought decoy money of Rs.1,000/-; the same was smeared with anthracene powder, which was kept in the left pocket of his shirt. Thereafter, instructions were given to the complainant as well as to the shadow panch PW 2 – Arvind Kulkarni, including predetermined signal to be given by the complainant upon acceptance of the decoy money by the appellant on making demand.

6] While rest of the party remained near the office, the complainant and PW 2 – Arvind Kulkarni entered the office of the appellant. The appellant was sitting in the front room in his office. The Engineer was sitting in next of the room. After pleasantries were over, the complainant asked the appellant, as to what has happened regarding his electric connection work. Upon that, the appellant told that he would arrange for fitting of the electric meter. He further inquired as to whether, the complainant has brought the money as told by him. He further said that since the Saheb i.e. the Engineer, was sitting in his room, they should proceed outside. Accordingly, all three of them came near a wall which was adjoining the main gate. At that time, the appellant asked the complainant to give him money. Accordingly, the complainant handed over the decoy money. The appellant started counting the same. In the meantime, the complainant went outside from the main gate and gave predetermined signal. The raiding party arrived at the spot. The Investigating Officer as well as one police constable caught hands of the appellant. The appellant, therefore, threw the decoy money on the ground. The same was picked up by panch no.2 i.e. PW 3 – Ramkrushna Patil.

7] Thereupon, necessary post trap activities were carried. The relevant parts of the body of the appellant as well his clothes and thereafter, of the complainant were proved to be positive for application of anthracene powder in ultra violet light. Further, usual investigation of recording statements of the witnesses, sending proposal for getting sanction, receiving sanction from PW 4 – the then Superintending Engineer Shri. Sitaram Warke, was carried. The sanction at Exhibit 32 was received and thereafter, charge sheet came to be filed.

. All the prosecution witnesses, except PW 3 – Ramkrushna Patil, second panch, deposed on the prosecution line. PW 3 – Ramkrishna Patil did not give details as regards picking of the decoy money by him and the activity of examination under ultra violent light of the person of the appellant and the complainant.

8] The appellant's defence was that he being merely a telephone attendant, he had nothing to do with the work of sanctioning of electric meter or fitting of the same. He neither has made any demand nor accepted bribe from the complainant or his brother. The panch witnesses had deposed falsely under pressure of the Investigating Officer. Even the deposition of PW 2 – Arvind Kulkarni creates doubt regarding his presence. The sanction is not valid and hence, he wanted that he be acquitted.

9] Learned Special Judge, Dhule however, came to the conclusion that the demand and acceptance is proved as there are no material discrepancies in the testimonies before him. The omission regarding the incident dated 19th April, 1995 from the statement recorded by the Investigating Officer, would not cast any doubt, as the other testimony of the complainant has almost remained unchallenged about the episode, which has taken place at the time of acceptance of the decoy money.

. According to learned Special Judge, though second panch did not speak about picking of the decoy money by him, the first panch has corroborated the case of the prosecution in this regard. Learned Special Judge further observed that when second panch has supported the prosecution regarding handing over of the decoy money, learned APP ought not to have argued that he has betrayed the prosecution.

10] As regards the argument by the side of the appellant that he, being a telephone attendant, there was no question of making any demand of gratification for carrying any official work of sanction of electric meter by him, was not accepted. Learned Special Judge observed that if it was really not in the hands of present appellant to grant sanction, then it is difficult to digest as to why, the appellant had visited the complainant's house often and made demand time and again. In the circumstances, conviction and sentence, as detailed supra, came to be recorded against the appellant.

11] Mr. R.M. Deshmukh, learned counsel for the appellant made following submissions :-

. That learned Special Judge failed to consider that the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 would be made out only when the gratification is demanded for carrying or forbear from carrying any official work. The appellant, admittedly, being a telephone operator, there was no question of seeking any remuneration for carrying any official work of installation of electric meter.

. As regards the offence punishable under Section 13(1)(d) of the Prevention of Corruption Act, 1988, he submitted that the demand itself is not proved. In the circumstances, even if it is assumed that the hands of the present appellant were seen positive to the touch of the decoy money, no presumption under Section 20 of the Prevention of Corruption Act, 1988 can be raised under Section 13(1)(d) of the Prevention of Corruption Act, 1988.

. He further submitted that evidence of the complainant himself would show that till 19th April, 1995, he was not anyway concerned with the alleged visit of the appellant making demand of money, time and again, still, the FIR at Exhibit 22 would show that all those demands were made to him. Even there is an omission as regards the demand dated 19th April, 1995, as detailed supra.

. The evidence of the shadow panch witnesses would merely show that the appellant had made a query as to whether, the complainant had brought the money. Upon which, the decoy money was handed over to him. The prosecution case itself, however, would show that an amount of Rs.4,000/- was to be paid as deposit and additional demand was made by the appellant for Rs.1,000/-. In the light of the fact that the complainant was relying on the hearsay statement allegedly made by his brother to him in the FIR itself, learned Special Judge ought to have extended reasonable benefit of doubt.

12] On the other hand, learned A.P.P. submitted that though there are certain shortcomings in the prosecution evidence, it has been clearly proved that present appellant, though was a telephone operator, has sought illegal gratification and accepted the same. Therefore, as his demand is proved, the offence punishable under Section 13(1)(d) of the Prevention of Corruption Act, 1988 is also made out even in absence of the presumption under Section 20 of the said Act. In the circumstances, he submitted that the appeal may be dismissed.

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

> I] Whether the prosecution has proved that in the month of April, 1995, the appellant had on occasions made demand of Rs.1,000/- as a gratification other than legal remuneration as reward for sanction and providing electric connection in the house of the complainant in discharge of his official duties ?

II] Whether the prosecution has proved that the appellant has, on 20th April, 1995, being a public servant, had again made a demand and illegally obtained Rs.1,000/- as a pecuniary advantage from the complainant by using his position as a public servant ?

. My findings to the above points are in the negative and the appeal is, therefore, allowed and the appellant is acquitted of all the offences, for the reasons to follow.

R E A S O N S

14] The FIR of the complainant PW 1 - Khushal Palodkar, coupled with his examination-in-chief, would show that he himself had handed over the application along with the necessary documents for getting electric connection to the appellant in person sometime about four weeks prior to filing of the complaint on 19th April, 1995. At that time, the appellant told the complainant in person that he would visit the site. Thereafter, in absence of the complainant, the appellant had visited the site and made a demand of gratification to the brother of complainant, which in turn was communicated to the complainant by his brother. Therefore, on 9th April, 1995, the appellant had visited the site when the complainant in person was present there. At that time also, the appellant had repeated the demand to the complainant in person. At that time, the complainant told the appellant that he had money only as was required for deposit. Upon which, the appellant had returned the documents to him by saying that unless the on-money is arranged for, the work would not be done. After about one or two days, the brother of complainant submitted the documents in the M.S.E.B. Office.

. Thereafter, on 19th April, 1995 at 8:30 a.m., the complainant visited the M.S.E.B. office and met the appellant, who again repeated his demand and at that time, it was agreed that on the next day, in the morning, the complainant would pay all the amount to the appellant in his office. However, on the same day, the appellant again visited the spot at 3:30 p.m. and made inquiry regarding arrangement of money to which, the complainant promised that on the next day, the amount would be paid.

. As against this testimony as well as the similar contents of FIR, the complainant PW 1 - Khushal, in cross-examination, has deposed that from 9th April, 1995 to 19th April, 1995, he did not come in contact with the appellant. Therefore, at the time of recording of his complaint at Exhibit 22, he did not state that on 9th April, 1995, when the appellant came to his house, he had application in his hand and the appellant had asked whether, arrangement for money was made. Even the FIR Exhibit 22 is silent that on 19th April, 1995, when the complainant went to the office of the appellant, the appellant asked as to whether, the money was arranged and the complainant told him that let the application be remain with the appellant and he would see about the money, as has been deposed in the examination-in-chief.

15] Even if, we neglect next of the contradiction regarding the actual wording, the fact would remain that from 9th April, 1995 to 19th April, 1995, there was no contact between the appellant and the complainant. Yet his FIR at Exhibit 22 and his own statement in examination-in-chief would show that from 9th April, 1995 he had direct contact with the appellant. According to him, even the appellant came to his house and returned the documents to him. Thus, it would be hazardous to place reliance on his testimony.

16] It is the prosecution case itself that at the time of trap, the appellant only asked as to whether, the money is brought, as deposed by the shadow panch witnesses. There was no reference as to whether, the amount was to be brought towards the deposit or towards the on-money.

17] PW 3 – Ramkrushna Patil, the second shadow panch, did not depose about picking of the decoy money and exposure of anthracene powder and the next exercise and only deposed that when the money was handed over to the appellant, the powder had stuck his hands. Learned Special Judge refused to permit cross-examination of this witness at the hands of the State on the ground that merely because the witness has not deposed in verbatim as per the prosecution case, it cannot be said that he has resiled from the prosecution case.

18] Thus, upon scrutiny of the evidence on record, in my view, the prosecution has failed to prove beyond reasonable doubt that, the appellant has made a demand of remuneration otherwise than the legal remuneration for supply of connection of electricity to the complainant and thereafter, accepted said illegal remuneration. In that view of the matter, the issue, as to whether, the demand was made or there is any motive or reward for doing any official act in exercise of his official function, would be irrelevant.

. Similar is the case regarding the misconduct by accepting the gratification, the pecuniary acceptance by corrupt means, an offence punishable under Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

19] In view of above factual position, there is no need to advert to the authorities relied upon by both sides on the legal position.

20] In the result, the following order :-

a] Criminal Appeal No.1 of 2001 is hereby allowed.

b] The impugned judgment and order passed by learned Special Judge, Dhule, in Special Case No.227 of 1995, convicting the appellant for the offences punishable under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 and sentencing him to suffer rigorous imprisonment for six months and one year, respectively, is hereby set aside.

. Instead, the appellant is hereby acquitted of both the offences.

c] Fine amount, if already deposited by the appellant, be refunded to him.

d] Bail bonds of the appellant shall stand cancelled.

21] In view of the above, Criminal Appeal No.285 of 2001 preferred by the State for enhancement of the sentences, does not survive and stands disposed of as such.

[M.T. JOSHI, J.]

kbp