

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.56 OF 2002

Shyamlal s/o. Bhikan Deokar,
Age 41 years, Occ. Service,
R/o. Ekodisagaj, Tq. Vaijapur,
Dist. Aurangabad ..Appellant

Versus

The State of Maharashtra,
Through Police Station, Veergaon,
Tq. Vaijapur, Dist.Aurangabad ..Respondent

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Mr.P.F.Patni, advocate for appellant

Mr.P.N.Muley, APP for respondent – State

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CORAM : M.T. JOSHI, J.
DATE : OCTOBER 06, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by judgment and order dated 16th
January, 2002 passed by learned Special Judge,
Aurangabad in Special Case No.9 of 1997 thereby

convicting the present appellant for the offences punishable under Section 7, 13(2) read with 13(1) (d) of the Prevention of Corruption Act (for short "the Act"), present appeal is preferred by the appellant.

. The appellant was sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.1,000/- for the offence punishable under Section 7 of the Act; and further to suffer rigorous imprisonment for one year for the offence punishable under Section 13(2) read with Section 13(1)(d) of the Act.

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

. PW 1 - Kadu s/o. Kisan Kakade, complainant is resident of Vaijapur, Dist. Aurangabad. His wife Shashikala was a

beneficiary of a scheme for building of house under "Indira Awas Yojana". An amount of Rs.24,500/- was sanctioned as subsidy for the same. Each of the beneficiaries was required to deposit an amount of Rs.500/-. Accordingly, the complainant paid an amount of Rs.500/- to present appellant, who was the then Gramsevak of the village and obtained receipt of the same.

. Thereafter, however, on 7th November, 1996, when the appellant brought the cheque of Rs.5,000/- towards the first installment of the subsidy, at that time, he made demand of Rs.1,000/- to the complainant by saying that said amount was required to be given to his senior officer.

. Thereafter, on the next day i.e. on 8th November, 1996, the complainant and his wife Shashikala went to Bank of Maharashtra for depositing the said cheque. The appellant also

accompanied them upto the bank premises. Amount of Rs.5000/- was withdrawn through said cheque and amount of Rs.1,000/- was paid by the complainant in presence of his wife to the appellant.

. Thereafter, on 14th November, 1996, one Basheer Pathan, a similar beneficiary under the above said scheme, told the complainant that the appellant had called the complainant at the native place of the appellant i.e. Mahalgaon, with an amount of Rs.500/-. Therefore, on 15th November, 1996, the complainant went to the house of the appellant and made inquiry as to for what purpose, he was again asking for Rs.500/-. At that time, the appellant told that said amount of Rs.500/- would be for himself and since the next cheque would be coming, all the further transactions are under his control. The complainant, however, expressed his inability since he had purchased raw material for construction of the house. Upon that, the appellant told the complainant that he should

bring Rs.500/- on next Monday either at Panchayat Samiti office, Vaijapur or at his house at Mahalgaon.

. As the complainant was not ready to pay the bribe amount to the appellant, he filed complaint with Anti Corruption Bureau, Aurangabad on 8th November, 1996.

. Accordingly, PW 5 – Police Inspector Krishna Bankar, organized the raid. PW 3 – Govind Gavande along with one another panch witness were called as independent witnesses to conduct the raid. Demonstration of anthracene powder was given to them. The decoy money was brought by the complainant and anthracene powder was applied to it.

. Thereafter, the raiding party went to the Panchayat Samiti office. The appellant was not

found there. Upon making inquiry, the raiding party went to village Mahalgaon. Present appellant was seen sitting in a garage named and styled as 'Sanjay Motorcycle Works' near bus stand. After meeting the appellant there, the appellant immediately took the complainant and the shadow panch witness to one hotel namely, 'Ashirwad Bhel Centre'. Thereat, after having certain talks, the appellant started watching the shadow panch witness with suspicion. Ultimately, during talks, the appellant asked as to whether, the complainant has brought the amount of Rs.500/-, as agreed earlier. Upon that, the complainant answered in the affirmative and gave the appellant the decoy money, which was accepted by the appellant. Predetermined signal was given by the complainant to the raiding party after acceptance of money by the appellant. Thereafter, rest of the members of the raiding party had rushed to the spot. The Investigating Officer apprehended the appellant.

. Thereafter, regular exercise of examination of relevant clothes on the person of the appellant and the complainant was conducted, which confirmed acceptance of decoy money by the appellant.

. The Investigating Officer, thereafter, conducted necessary investigation. Upon his requisition, PW 2 – Bhaskar Mundhe, the then Chief Executive Officer has accorded sanction to prosecute the appellant at Exhibit 14.

4] Before learned Special Judge, in all, five witnesses were examined. PW 1 – Kadu Kakade is the complainant. PW 2 – Bhaskar Mundhe has accorded the sanction. PW 3 – Govind Gavande is the shadow panch witness. PW 4 – Hari Danekar is the Taluka Inspector of Land Records, who has prepared the map of spot of raid, while PW 5 – P.I. Krishna Bankar is the Investigating Officer.

5] The defence of the appellant, in short, is as under:-

. That the beneficiaries of the scheme were required to contribute an amount of Rs.500/- each for availing the benefit of the scheme. The complainant, however, could not pay said amount of Rs.500/- towards his contribution. Therefore, the Deputy Sarpanch of village had asked the appellant to manage for Rs.500/-, which would have been, thereafter, reimbursed by the complainant to him, as in absence of said amount, the entire scheme would fail. Therefore, the appellant has prepared the receipt showing that amount of Rs.500/- was paid, however, said amount was not at all paid by the complainant.

. In the circumstances, when the amount of Rs.500/- was demanded by the appellant to the complainant, the Deputy Sarpanch, due to animosity, has involved the appellant by showing

demand as the bribe. In-fact, at the time of the trap, the appellant has accepted the amount towards payment of deposit, as detailed supra.

6] Before learned Special Judge, the complainant deposed on the line of the prosecution case in his examination-in-chief. In cross-examination, however, he admitted various suggestions given to him from the side of defence which would have corroborated the defence, as detailed supra.

. In the circumstances, learned Public Prosecutor in the trial Court sought permission to cross-examine the complainant on the next day. The said permission was granted.

. On the next day, the cross-examination by the APP was resumed. At that time, the complainant told that he was threatened by henchman of the appellant to answer in the affirmative to the questions put by the defence

counsel and, therefore, he has answered all the suggestions as "Yes" in the cross-examination by the defense lawyer. He further clarified that the earlier statements made by him in the cross-examination are not correct. The appellant was allowed to cross-examine the complainant only to this restricted allegation.

7] The shadow panch witness has deposed that when the appellant made demand of Rs.500/-, the complainant paid the same. The learned Special Judge came to the conclusion that due to threat of the henchman of the appellant, the complainant, who is a villager and an illiterate person, had agreed with the suggestions given in the cross-examination. Learned Special Judge however found that the prosecution case of demand of Rs.1000/- by the appellant is not proved. However, rest of the case was accepted and the conviction came to be recorded.

8] Mr.Patni, learned counsel for the appellant took me through the entire evidence. He submitted that while learned Special Judge was impressed by the statements made by the complainant in the cross-examination at the hands of the prosecution, that due to the threats of the henchman of the appellant, he has accepted the defence version; learned Special Judge did not advert to the statement of the complainant in the cross-examination at the hands of the defence, that on the next day, while facing cross-examination at the hands of the prosecution, the very Deputy Sarpanch had, admittedly, accompanied the complainant upto the Court.

. He further submitted that the record would show that the entire case of the prosecution is belied, still the learned Special Judge was prejudiced due to the statement of alleged threat to the complainant and has convicted the appellant.

9] On the other hand, learned A.P.P. for the respondent/State submitted that the evidence on record would show that the prosecution case is proved beyond reasonable doubt. He submitted that the reasons assigned by the learned Special Judge are proper and, therefore, the appeal may be dismissed.

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

I) Whether the prosecution has proved that on 15th November, 1996, the present appellant has made a demand of Rs.500/- from the complainant, as a gratification other than the legal remuneration ?

II) Whether the prosecution has proved that on 18th November, 1996, the present appellant has again made a demand of Rs.500/-, as such remuneration and accepted the same ?

III) Whether the prosecution has proved that the present appellant has obtained pecuniary advantage by corrupt and illegal means by abusing his position as a Government servant ?

My findings to all the above points are in the negative. The Appeal is therefore allowed for the reasons to follow.

R E A S O N S

11] The complainant had in his FIR recited that the amount of Rs.500/- was paid by him about one month prior to filing of the complaint i.e. sometime in the month of October, 1996 and he possessed receipt for the same. However, the panchanama of the house search of the appellant, admittedly, caused on the very same day of the trap as well as the statements of witnesses, would show that the original receipt was seized alongwith

other papers from the house of the appellant. The complainant as well as the shadow panch witness have in their deposition confirmed this fact.

. The complainant in his cross-examination has admitted that he did not go to Bank of Maharashtra to encash the cheque and, thereafter, the amount of Rs.1000/-, as alleged earlier, was not paid by him in person. Learned Special Judge has disbelieved this version of the prosecution case that earlier an amount of Rs.1,000/- was paid by the complainant to the appellant. This would, thus, go to show that the earlier payment of Rs.1000/- is not proved.

12] Admittedly, however, the amount of Rs.500/- was required to be paid by each beneficiary of the said scheme. The complainant, in his cross-examination admitted that he has not deposited that amount and he had asked the Deputy Sarpanch to deposit the said amount.

13] The only issue is as to whether during the trap, payment of Rs.500/- was towards bribe on the deposit.

. The deposition of the shadow panch witness would show that the appellant has simply made a demand only of Rs.500/-. We have already found that the case of the prosecution, that the complainant was having receipt of Rs.500/-, is belied in view of the panchnama of house search of the appellant whereunder, the receipt is seized from his house. The dialogue at the time of demand and acceptance of said amount is not specific. Therefore, learned Special Judge ought to have extended benefit of reasonable doubt in the present case.

. Learned Special Judge was impressed by the statement of the complainant that on the day of the cross-examination at the hands of the defence, he

was threatened by the appellant's supporter and therefore, he made statement in the cross-examination that the Deputy Sarpanch was, in fact, the key person in all the activities. Yet, after making statement in favour of the prosecution on the next day, during cross-examination at that hands of the defence, the complainant has clarified that the Deputy Sarpanch had accompanied him on this next date.

14] If all these facts would have been considered by learned Special Judge, then he would have definitely extended reasonable benefit of doubt to the present appellant.

15] In the result, the following order :-

A] The appeal is allowed.

B] The impugned judgment and order passed by learned Special Judge, Aurangabad is hereby set aside.

. Instead the appellant is acquitted of all the offences.

C] Fine amount, if any, deposited by the appellant, be refunded to him after a period of 60 (sixty) days from the date of this judgment.

D] Bail bonds of the appellant shall stand cancelled.

E] Muddemal property be disposed as per the directions of learned Special Judge, Aurangabad.

[M.T. JOSHI, J.]

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