

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 380 OF 2009

1. Avinash s/o Sudhakar Rao Ankush,
Age : 29 years, Occu.: Service,
(at present under suspension),
R/o.: Samata Nagar, Sillod,
2. Ramrao s/o Namdeo Dandge,
Age : years, Occu.: Agriculture,
R/o.: Village Wangi (Kh.),
Taluka: Sillod,
District : Aurangabad

APPELLANTS
(Ori. Accused)

VERSUS

The State of Maharashtra,
through Police Inspector,
Anti Corruption Bureau,
Aurangabad

RESPONDENT

Mr. R.S. Deshmukh, Advocate for the appellants
Mr. P.N. Muley, A.P.P. for the respondent-State

CORAM : M.T. JOSHI, J.

[RESERVED ON : 6th OCTOBER, 2015]
[PRONOUNCED ON : 15th OCTOBER, 2015]

JUDGEMENT:

1. The present appellant no. 1 – Avinash was convicted by the learned Special Judge, Aurangabad in

Special Case No. 22 of 2004, vide judgement and order dated 24th July, 2009, for the offences punishable under section 7 and 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, 1988 (for short, "P.C. Act"). He was sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.1000/- for the offence punishable under section 7 of the P.C. Act. He was further sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1000/- for the offence punishable under section 13(1)(d) read with section 13(2) of the P.C. Act.

. The present appellant no. 2 – Ramrao was convicted for the offence punishable under section 7 read with section 12 of the P.C. Act and was sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.1000/-.

. Both the present appellants have, therefore, filed the present common appeal against the order of conviction and sentence, as detailed above.

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

. That, PW2 complainant – Radhakisan Bankar was facing a proceeding under section 107 of the Code of

Criminal Procedure, for keeping the peace in the public. The said case was pending in the Tahsil Office at Sillod against him. Complainant's brother Ganesh was also a co-respondent in the said case. Counter case against his rival group was also pending. He used to regularly attend the Tahsil Office in this regard. Appellant/accused no.1 – Avinash was working as a clerk handling the said case. Appellant/accused no. 2 – Ramrao, during the relevant period, was his helper. On every date, both of them used to get Rs.25/- or Rs.50/- from the complainant. Particularly, on 9th January, 2004 when the complainant and his brother – Ganesh attended the case, appellant/accused no. 1 – Avinash told them that he would tell his officer to close the case, but for that purpose, the complainant should pay him Rs.500/-. After negotiations, he agreed to accept Rs.300/-. Complainant promised that he would arrange for the money and would pay him the same in Tahsil Office on 13th January, 2004. During the talk, appellant/accused no. 2 – Ramrao also said that the amount should be brought on 13th January, 2004, otherwise unnecessarily there would be protraction of the case. Since the complainant was not willing to give the bribe,

he approached the Anti Corruption Bureau, Aurangabad and filed complaint on 13th January, 2004 (Exhibit 18).

. PW4 – Police Inspector of Anti Corruption Bureau Mr. Rameshwar Thorat conducted the investigation. Upon recording of the complaint, he collected two employees of Municipal Corporation, Aurangabad including PW3 – Deelip Nyayadish as panch witnesses. The contents of the complaint were read over to them. Demonstration of application of anthracene powder was given. The decoy money brought by the complainant was smeared with anthracene powder. The decoy money was kept in the left chest pocket of the shirt of the complainant. He was instructed to pay the bribe amount only when demanded and thereafter, to give predetermined signal by wiping his face by handkerchief upon acceptance of the decoy money. PW3 – Deelip Nyayadish was directed to accompany the complainant during whole of the exercise of trap.

. Accordingly, the trap party proceeded to the Tahsil Office at Sillod. The complainant and the shadow panch witnesses entered the office while the rest members of the party remained in the compound. The complainant and shadow panch witnesses went to the table of appellant/accused no. 1 – Avinash. Complainant asked

appellant no. 1 as to whether he would close the case on that day. Upon that, the appellant/accused no. 1 asked appellant/accused no. 2 Ramrao to take out the file of the complainant. Accordingly, appellant no. 2 took out the file from the steel rack. Thereupon, the appellant no. 1 took out a register from the drawer of his table and handed over the same to the appellant/accused no. 2. Thereafter, by gestures, he asked the appellant/accused no. 2 to instruct the complainant to keep the bribe amount in the register. Upon that, appellant/accused no. 2 inquired with the complainant as to how-much amount was brought. The complainant replied as Rs.300/-. Thereupon, the appellant/accused no. 2 opened the registered and asked the complainant to put the decoy money in the said register. Accordingly, the complainant put the decoy money in the pages of the register. The appellant/accused no. 2 closed the register and placed the same on the table of the appellant/accused no. 1. Thereupon, he told appellant/accused no. 2 that exactly Rs.300/- were kept. Thereafter, the complainant gave the predetermined signal and the rest members of the raiding party reached there.

. During the next of the examination of the decoy

money under the ultra violate lamp, the transaction, as detailed above, was confirmed. The investigating officer arrested both the appellant/accused. Further necessary investigating carried. The District Collector, Aurangabad was requested to accord sanction to prosecute both the appellants. Thereupon, PW1 — Mr. Vikas Kharage, the then District Collector, Aurangabad, upon going through the prosecution papers, accorded sanction to prosecute the appellants at Exhibit 13. Thereupon, the charge sheet came to be filed in the Court.

3. Before the learned Special Judge, in all four witnesses were examined as detailed above. The defence of the appellants was that appellant/accused no. 1 acts on the directions of Tahasildar or Naib-Tahasildar in such cases. Appellant/accused no. 2 was working as a part time employee. None of them had made any demand of money at any time. At the time of trap, he was busy in having the official discussion with Dr. Shaikh in the office concerning his theater. Some other citizens were also present to get their work done. Their files were on his table. The complainant was also present. Suddenly, the raiding party arrived and during their exercise

only, he came to know that certain amount was kept in the register. At that time, appellant/accused no. 2 was also present. According to appellant/accused no. 2, the complainant had simply made inquiry regarding his case on 13th January, 2004. Therefore, he took out the concerned register. The complainant, however, all of a sudden, put the money in the register and went away.

4. Learned Special Judge, however, came to the conclusion that the prosecution case is proved beyond reasonable doubt. Hence the present appeal.

5. Mr. R.S. Deshmukh, learned counsel for the appellants made the following submissions before me.

. That no verification exercise was carried by the investigating officer to corroborate the case of initial demand. Not only the record but also the deposition of the complainant would show that the chapter case under section 107 of the Code of Criminal Procedure was already closed on 9th January, 2004. In the circumstances, there was no occasion for the complainant to file complaint on 13th January, 2004 alleging there in that the appellant/accused no. 1 - Avinash on 13th January, 2004 had made demand of Rs.300/-

for closing the case and even the appellant/accused no. 2 – Ramrao told that if the amount is not paid, the complainant would be constrained to attend the case again and again.

. Mr. Deshmukh further points towards the evidence of the complainant that he had earlier quarrel with appellant/accused no. 2 which was even reported to the Executive Magistrate. The independent witness Dr. Shaikh and other citizens were admittedly present during the alleged trap. None of them, however, was examined. There is contradiction regarding the conversation that took place at the time of trap, as deposed by the complainant and the panch witness. Further, the panch witness has admitted during cross examination that before entering the witness box, not only the contents of the panchanama was read by him but even he was aware that if he would not depose according to it, he may face action.

. It was further submitted that the sanctioning authority has not applied its mind while granting the sanction to prosecute the appellants though the documents on record would clearly shows that on 9th January, 2004 itself, the Executive Magistrate had

closed the case.

. In the circumstances, it was submitted by Mr. Deshmukh that the learned Special Judge ought to have taken into consideration all these facts and ought to have acquitted both the appellants.

6. On the other hand, Mr.P.N. Muley, learned A.P.P. submitted that the learned Special Judge has taken into consideration all the facts on record and has satisfactorily appreciated the evidence. The evidence on record would clearly show that the appellants had made demand of Rs.500/- initially and thereafter Rs.300/- for closure of the case and have accepted the same during the trap by again making the demand and directing the complainant to place the decoy money in the register. He further submitted that the sanction to prosecute the appellants has been properly given and no prejudice is caused to the appellants if certain purported lacunae are assumed to have been remained. In the circumstances, learned A.P.P. 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 during the period from 9th January, 2004 to 13th January, 2004 the appellants/accused no. 1 and 2 made demand of Rs.500/- and thereafter of Rs.300/- from the complainant and thereafter accepted the amount of Rs.300/- through appellant/accused no. 2 as remuneration other than legal remuneration as gratification for doing the official act of closing the chapter case filed against the complainant?
- (II) Whether the prosecution has further proved that appellant/accused no. 1 gained pecuniary advantage for himself by corrupt or illegal means ?
- (III) Whether the prosecution has further proved that the appellant/accused no. 2 abetted the commission of offence committed by the appellant/accused no.1 ?

(IV) Whether the sanction granted by PW1 – the then District Collector, Aurangabad to prosecute both the appellants is legal and valid ?

My findings to above points No. (I) to (III) are in the negative and to point No. (IV) is in the affirmative. The appeal is, however, allowed and both the appellants are acquitted from the offences with which they were charged, for the reasons to follow.

R E A S O N S

8. The complainant under the stress of cross-examination has admitted that the proceeding under section 107 of the Code of Criminal Procedure was closed on 9th January, 2004 itself. The said order is passed in the rojnama of the proceeding and the signatures of the complainant and his brother Ganesh to that effect were also admitted by him. He specifically deposed that on 9th January, 2004 itself, he came to know that the proceeding was closed.

9. The learned Special Judge had also observed that as per the provisions of sub-section (6) of section

116 of the Code of Criminal Procedure, if the enquiry in such a proceeding is not concluded within a period of six months from the date of its commencement, then the proceeding automatically stands expired. The learned Special Judge, however, further assumed that the complainant was not aware of the closure of the case and he had merely signed the rojnama. Further, according to the learned Special Judge, there was no independent order passed by the Executive Magistrate of closure of the case and therefore, the appellant/accused No. 1 had "managed" to obtain the signature of the Executive Magistrate merely on the rojnama in which the recitals about the closure of the case were made by the appellant/accused No. 1.

. The learned Special Judge overlooked the specific admission of the complainant that on 9th January, 2004 itself, he was aware of the closure of the proceeding. He deposed as follows :

"It is true that when I had approached ACB Office I was knowing that chapter case proceeding against me is closed."

10. When the complainant in cross-examination has admitted that when he approached A.C.B. office, he was knowing that the chapter case was already closed, the learned Special Judge could not have observed that the complainant was not aware regarding the closure of the chapter case. Further, the observation of the learned Special Judge that the appellant/accused No. 1 has managed to obtain the signature of the Executive Magistrate over the rojnama wherein it was recorded that the chapter case was closed on 9th January, 2004, is merely an assumption of the learned Special Judge that the order of closure of the case cannot be passed in the rojnama and a separate order for that purpose is required. There is nothing on record to support these assumptions.

. These facts would clearly show that on 9th January, 2004 itself, the complainant was aware that the proceeding against him was closed. In the circumstances, there was no occasion for him to pay any bribe later on to the appellants for closure of the case as according to the complainant, the amount was asked for for closure of the case in future. According to the complainant, even appellant/accused No. 2 had warned the complainant

on 9th January, 2004 that in case the amount is not paid on 13th January, 2004, the proceeding would not be closed and the complainant would be required to attend the Tahsil office again and again in connection with the said proceeding.

11. The complainant has admitted in cross examination that he had once met the Executive Magistrate and complained him that the appellant/accused No. 2 threatened him and his brother and made demand of money. Further, once the appellant/accused No. 2 had even pushed him when he had visited the Tahsil office for making enquiry regarding the next date. This would clearly show that the complainant has animus against the appellant/accused No. 2.

12. Further cross-examination of the complainant would show that besides the chapter case, the complainant was regularly attending the criminal court in one assault case. He had engaged an Advocate in the criminal case though he did not engage any Advocate in the chapter case. In all these circumstances, it cannot be ruled out that the complainant was aware that in case the chapter case is not concluded within six months, it

is automatically lapsed.

13. This takes us to appreciate the evidence regarding the trap dated 13th January, 2004. PW3 Deelip Nyayadhish – the shadow panch witness has admitted that he was the regular witness in trap cases and the present case was a third one. What was an occasion for this witness to be regular witness in such cases when at Aurangabad, the Investigating Officer had an opportunity to send requisition to various Departments at Aurangabad calling for the shadow panch witness remains a mute question. Not only this, this panch witness has admitted under the strain of the cross-examination that before entering the witness box, he had read over the contents of panchanama and accordingly, he deposed in the court. He also deposed that he was aware of the fact that if he did not state the facts as mentioned in the panchanama, the action may be taken against him.

. It is an admitted fact that various citizens, including one Dr. Shaikh was present at the time of trap. None of them is, however, examined. The panch witness even admitted that at the time of dialogue between the complainant and the appellants, the

complainant spoke in low volume while remaining 5 to 6 feet away from the panch witness. There is contradiction as to actually in what words, the amount was demanded by any of the appellants.

. Besides these lacunae, Mr. R.S. Deshmukh, learned counsel for the appellants, pointed out towards various contradictions in the evidence of the complainant and the panch witnesses regarding the actual incident.

14. As regards the sanction accorded by PW1 Mr. Vikas Kharge, the then District Collector, Aurangabad to prosecute both the appellants, merely because the register would show that the chapter case was closed on 9th January, 2004, unless the prosecution papers would show that the complainant was aware of such closure as he admitted lateron in the cross-examination, it cannot be said that the sanctioning authority has not applied its mind while according the sanction. In that view of the matter, the sanction to prosecute the appellants cannot be called as invalid one.

. However, on merit, it is found that the prosecution has failed to prove its case beyond

reasonable doubt. Taking into consideration all the above facts, in my view, the learned Special Judge ought to have extended reasonable benefit of doubt to the appellants. The present appeal, therefore, succeeds. Hence, the following order.

15. (A) The appeal is hereby allowed.

(B) The order of the learned Special Judge, Aurangabad dated 24th July, 2009 passed in Special Case No. 22/2004, convicting and sentencing the present appellant/accused No. 1 Avinash for the offences punishable under section 7 and section 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act is hereby set aside.

. Similarly, conviction and sentence of the appellant/accused No. 2 Ramrao for the offence punishable under section 12 of the Prevention of Corruption Act is hereby set aside.

(C) Both the appellants are acquitted of the offences, with which they were charged. Their bail bonds stand cancelled.

(D) The fine amount deposited by the appellants, if any be refunded to them after a period of eight weeks

from the date of this order.

(E) The present appeal accordingly stands disposed
of.

[M.T. JOSHI]
JUDGE

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