

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.523 OF 2002

Sharad s/o. Madhavrao Panchange,
Age 43 years, Occ. Service,
R/o. Parbhani, Dist. Parbhani ..Appellant

Versus

1] The State of Maharashtra

2] Uddhav s/o. Keshavrao Gawande,
Age 35 years, Occ. Service,
Police Head Constable,
R.B. Company, S.R.P. Gat No.12,
Hingoli Camp, Jalna
Tq. and Dist. Jalna ..Respondents

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Mr.R.N.Dhorde, Senior counsel i/b. Mr.V.R.Dhorde
with Mr.Vasant N. Shelke, advocates for appellant

Mr.S.B.Pulkundwar, APP for respondent no.1 – State

None present for respondent no.2

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CORAM : M.T. JOSHI, J.
DATE : DECEMBER 02, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by recording of conviction for the offences punishable under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and the consequential sentences to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/-; and rigorous imprisonment for two years and to pay fine of Rs.1,000/-, respectively, by learned Special Judge in Special Case (PCA) No.5 of 1998 vide judgment and order dated 28th August, 2002, the original accused has preferred present appeal.

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

. That, PW 3 – Udhav Gawande, complainant, was serving as a Police Head Constable in the State Reserve Police Force, Hingoli camp, Jalna. He wanted transfer to Nashik Rural Police Cadre. About one and half months prior to filing of the complaint on 7th October, 1997, the Director

General of Police had passed the order for his transfer accordingly. Said order was received in the office of the Commandant, State Reserve Police Force Group XII, Hingoli Camp, Jalna, about one month prior to filing of the complaint. Present appellant was serving as a Senior Clerk in the said office during the relevant period. He was related with the work of relieving the complainant on transfer.

. Therefore, on 4th October, 1997, the complainant met the appellant and requested him to prepare the relieving order. At that time, the appellant told that he does not have the only work of preparation of said order. He further told that as and when the procedure would be completed, the order would be prepared. When the complainant told his difficulty to the appellant and requested to prepare the order at the earliest, the appellant told that the complainant may meet him on the next

Monday i.e. on 6th October, 1997. However, on 6th October, 1997, the appellant was not present in the office though the complainant had visited the said office for two-three times.

. In the situation, the complainant again went to the said office on 7th October, 1997 at about 11:00 a.m. and requested the appellant to do his work. At that time, the appellant told that he would put a note to relieve the complainant and the order would be prepared on that day only and on the next date i.e. on 8th October, 1997, the complainant would get the order. The appellant also told that on the next day, the complainant should pay him Rs.100/- or Rs.200/- as per wish of the complainant. The complainant showed readiness and also asked as to when he should pay the amount. At that time, the appellant told that he would be reaching back to Jalna from Parbhnai by Railway by High Court Express and outside the

office itself, the complainant to pay Rs.100/- or Rs.200/- as per his wish. He further told that the complainant would get the relieving order because of the appellant only otherwise, it could have been issued in due course even after Diwali festival. In the situation, on making demand of amount by the appellant on 7th October, 1997, the complainant filed the complaint at Exhibit 47.

4] The Investigating Officer – Police Inspector Shri. Khushalchand Baheti conducted investigation. On the next date i.e. on 8th October, 1997, he collected two panch witnesses to accompany the complainant during trap. Demonstration of anthracene powder was shown to the panchas and the complainant. The decoy money was brought by the complainant. Anthracene powder was applied to it and the same was kept in shirt pocket of the complainant. The complainant was directed to pay the decoy money to the appellant upon making

demand by him and the shadow panch witness was to remain with the complainant. The members of the raiding party were to follow the complainant and the shadow panch witness.

5] Thereafter, the complainant and the shadow panch witness went to meet the appellant. They waited for the appellant on the road leading to Mantha, however, the appellant did not come by that road. Therefore, the complainant told that search of the appellant could be made at another gate, which opens on Deolgaonraja road. At that time, at a pan stall, the appellant and one another police constable were seen together. During talk, the appellant asked the complainant as to whether "he has brought". Thereafter, the complainant took the appellant in one corner of the road and talked something in low voice. Upon that, the appellant asked for giving the amount and forwarded his right hand. The complainant took

out the decoy money and handed over it to the appellant. The appellant accepted the same and put in the hip pocket of his trouser. Thereafter, the complainant gave the predetermined signal upon which, the raiding party arrived and further exercise was carried, which confirmed the above activities. The Investigating Officer made further investigation and recorded panchnama and statements of the witnesses etc. He moved the appointing authority of the appellant i.e. PW 2 – Sonaji Pardhi, the then Deputy Inspector General of Police, who accorded sanction to prosecute the appellant (Exhibit 42).

6] Before learned Special Judge, in all five witnesses were examined. The defence of the appellant was that the complainant was aggrieved because of rejection of his earlier three transfer applications due to the note put up by the appellant that since the complainant had not

completed 15 years in service, he was not eligible for inter group transfer. Even the complainant was aggrieved during the relevant period as the appellant told him that for completion of the procedure, some time would take and therefore, during the trap, forcibly, the complainant thrust the amount in the pocket of the appellant.

7] Learned Special Judge, however, believed the prosecution case that the present appellant had made demand of bribe amount and accepted the same in presence of the shadow panch witness. Therefore, the conviction and sentence came to be recorded, as detailed supra.

8] Mr.R.N.Dhorde, learned Senior Counsel in the brief of Mr.V.R.Dhorde, learned counsel, submitted that the evidence on record would show that the complainant himself did not subscribe the prosecution case that the first demand was made on

6th October, 1997. Even as per the prosecution case, no amount of bribe was fixed. The animus is an admitted fact. Further, the prosecution case itself would show that the complainant himself took the appellant in a corner of the road and talked in low voice. According to the panch witnesses, the only words that were used by the appellant were as to whether, the complainant has 'brought something'. Even this shadow panch witness did not accept the prosecution case that at the time of the trap, the appellant was required to be searched by the complainant at various places at the time of the trap.

. Mr.Dhorde, therefore, submitted that if all these facts are taken into consideration, learned Special Judge ought to have extended benefit of a reasonable doubt to the appellant. He has relied upon the decision in the cases cases of (i) *M.R. Purushotham Vs. State of Karnataka*, (2015) 3 SCC

247; (ii) *B. Jayaraj Vs. State of Andhra Pradesh*, (2014) SCC 55; and (iii) *A. Subair Vs. State of Kerala*, 2010 All SCR 1115.

9] On the other hand, learned A.P.P. for respondent no.1 – State submitted that the depositions of the complainant as well as the independent shadow panch witness, would show that present appellant had made demand of bribe and accepted the same. He supported the reasons of learned Special Judge and submitted that the present 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 7th October, 1997, present appellant being a public servant, has made a demand of bribe of Rs.100/- or

Rs.200/- for himself from the complainant for preparation of the relieving order of the complainant ?

II] Whether the prosecution has further proved that on 8th October, 1997, the appellant again made a demand of said illegal remuneration and accepted it by corrupt and illegal means by abusing his position as a public servant ?

. My findings to 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 — PW 3 — Uddhav Gawande, in his cross-examination, has admitted that earlier, on three occasions, he had applied for his

transfer to Nashik. However, the appellant had put up a note on his applications that the complainant was not eligible for transfer since he was to complete 15 years in the service. Further, the complaint itself would show that when on 4th October, 1997, the complainant met the appellant for issuing the relieving order, at that time, the appellant told the complainant that he did not have the only work of the complainant with him and as and when the procedure would be completed, the relieving order would be issued.

12] Reading of the FIR would further show that the appellant had told the complainant that in usual course, the order would be issued after Diwali festival. It is an admitted fact that the the period of Diwali festival fell in October in the year 1997. All these facts would show that the complainant was already aggrieved because of the earlier notes put up by the appellant over the

earlier transfer applications of the complainant. The tone and tenor of conduct of the appellant, as is expressed by the FIR, would show that the appellant was not anxious to do the work of the complainant immediately. The complainant, however, wanted that his work should be done immediately.

13] Above all, in the FIR at Exhibit 47 filed by the complainant, it is specifically recited that when on 6th October, 1997 he went to meet the appellant repeatedly for two-three times, the appellant was not found and therefore, on 7th October, 1997, he met the appellant. As against this statement in the FIR, the complainant deposed that the meeting did take place on 6th October, 1997 and during the talks, the appellant made demand of money. During cross-examination, therefore, the specific portion from the FIR at Exhibit 47 was confronted to him, still he deposed

that the first demand was made on 6th October, 1997.

. Further, no specific amount was demanded as per the prosecution case itself. Not only this, the prosecution case would show that at the time of the trap, search for the appellant was made at various places, so that the decoy money would be given to him. Despite this, the shadow panch witness did not agree with this prosecution case.

14] As per the prosecution case, the appellant, allegedly, made a statement in presence of the shadow panch witness as to whether, the complainant has brought (money?). Thereafter, the complainant himself took the appellant in a corner of the road and had certain secret talks in low voice. What prevented the complainant from speaking in presence of the shadow panch witness, is an enigma. All these facts would show that the defence of the appellant is probable.

15] Considering all the facts on record, in my view, a reasonable doubt arises in the present case as to whether, present appellant had made any demand of remuneration other than the legal remuneration to do the work of the complainant regarding issuing relieving order and accepted the bribe amount.

16] In the circumstances, the following order :-

A] The appeal is hereby allowed.

B] The impugned judgment and order dated 28th August, 2002 passed by learned Special Judge, Jalna, in Special Case (PCA) No.5 of 1998, convicting and sentencing the present appellant for the offences punishable under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, is hereby set aside.

. Instead, the appellant is acquitted of all the offences.

C] Bail bond of the appellant shall stand cancelled.

D] Fine amount, if any, paid by the appellant be refunded to him after a period of ninety days from the date of this judgment.

[M.T. JOSHI, J.]

kbp