

vks

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 70 OF 2001**

The State of Maharashtra	] .. Appellant
V/s.	
Shri. Yohan Henry Parhad	]
Police Hawaldar, B. No.1618	] .. <u>Respondent</u>
Palghar Police Line	] Ori. Accused.
Room No.15, Tal. Palghar	]
District: Thane	]

Mr. H. J. Dedhia, for the APP for the appellant State.
Mr. A. S. Ramesan, for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th NOVEMBER, 2015.

ORAL JUDGMENT : [Per : Dr. Shalini Phansalkar-Joshi, J.]

1. This appeal is preferred by the State challenging the acquittal of respondent for offence under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, as recorded by the Special Judge (A.C.) Palghar, in Special Case No.22 of 1999, by his judgment and order dated 30th December, 2000.

2. Brief facts of the appeal can be stated as follows :-

P.W.1 Rajaram Patil, had gone to Saphala Police Station on 17th August, 1998 alongwith his nephew Prashant in respect of some altercation that had occurred in the village in which it was alleged that Prashant was beaten by one Dattatraya and his brother Gangadhar. In respect of the same incident, counter complaint was also lodged by Gangadhar and Dattatray against Prashant and his two sisters. Sikandar Shaikh - Upsarpanch of village Mathane, was also accompanying P.W.1 Rajaram and Prashant to Saphala Police Station. Respondent/accused was on duty there as Head Constable. He asked Prashant whether he has brought his sisters to the police station. P.W.1 Rajaram requested accused to give him some time and also not to arrest Prashant and his two sisters on the basis of said complaint. On the request of P.W.1 Rajaram, accused gave him time of two days for production of his sisters and also for bringing surety, subject to condition of payment of Rs.5,000/- towards the favour shown to him. P.W.1 Rajaram pleaded his inability to pay this much amount of Rs.5,000/-, hence after negotiations, amount of demand was reduced to Rs.2,000/-. It

was decided that in the presence of Sikandar Shaikh, the Upsarpahch of village, the amount was to be paid while furnishing surety of Prashant after 2 days.

3. P.W.1 Rajaram then went to A.C.B. Office on 19th August, 1998 and lodged complaint Exh.13 with P.W.4 A.C.P. Salunke. In view thereof A.C.P. called two panchas viz. P.W.2 -Vinayak Jagtap and P.W.3 Milind Ahire and read over complaint Exh.13 to them. In their presence P.W.1 Rajaram Patil produced cash amount of Rs.2,000/- in the denomination of 20 notes of Rs.100/-each. Anthracene powder was applied to those notes. Panchanama to that effect was prepared vide exh.17. Then alongwith P.W.1 Rajaram and Panchas, P.W.4 ACP Salunke, left for the raid. As per instructions P.W.1 Rajaram went in Saphale police station, P.W.2 panch Jagtap, raiding party including P.W.3 panch Ahire and P.W.4 ACP Salunke waited for the signal near railway station.

4. As per prosecution case when P.W.1 Rajaram approached accused, accused asked him whether he had met

Sikandar Shaikh. P.W.1 told him that he has not met as Sikandar Shaikh was not available in the village. Accused, therefore, told P.W.1 Rajaram Patil to come with Sikandar Shaikh-the Upsarpanch, on the next date. Thus, on that day, the accused did not accept amount of Rs.2,000/- as demanded. The said raid, thus, became unsuccessful. Panchanama to that effect was also drawn vide exh.18.

5. On the next day i.e. on 21st August, 1998, P.W.1 Rajaram again went to A.C.P. office and lodged complaint vide Exh.14 against accused for the earlier demand of Rs.2,000/-. On the basis of said complaint, raid was arranged on the next day i.e. on 22nd August, 1998. Earlier two panchas viz P.W.2 Jagtap and P.W. 3 Ahire were directed to remain present for the same raid. On that day, P.W.1 went to Safala police station alongwith panch P.W.3 Ahire. Accused was present on P.S.O duty. Accused enquired whether Prashant and his sisters were brought in the police station. Accused further enquired whether the amount was brought. P.W.1 Rajaram told the accused he had kept Prashant and two sisters standing outside police station. Then accused

took him to the another room where P. W. 1 Rajaram handed over him amount of Rs.2,000. The accused kept that amount in his right side pant pocket. P.W.1 then gave pre-determined signal, the raiding party came to the police station. Amount of Rs.2,000/- was seized from the possession of the accused under panchanama. Accused was arrested. Further investigation of the case was carried out and after completion of investigation, all the papers were sent to the sanctioning authority, the Superintendent of Police, Thane Rural, Shri.Kamate. On receipt of sanction order Exh.28, chargesheet came to be filed against the accused in the Special Court at Palghar.

6. The trial court framed charge against the accused vide exh.20. The accused pleaded not guilty and claimed trial raising defence of false implication with specific plea that P.W.1 Rajaram Patil had obtained hand loan of Rs.2,000/- from Sikandar Shaikh and he helped Sikandar Shaikh to recover amount from P.W.1 Rajaram Patil. According to accused, amount of Rs.2,000/- was thrust in his pant pocket by P.W.1.Rajaram; he has not demanded any such amount nor he has extended any favour.

The accused also examined one defence witness by name Rajad, who was sitting in the wireless room where the alleged amount was accepted, to prove that no such amount was demanded or accepted.

7. In support of its case, prosecution examined four witnesses viz P.W.1 complainant Rajaram Patil, P.W.2 panch Vinayak Jagtap, P.W.3 another panch Milind Ahire and lastly P.W.4, A.C.P. Arun Salunke.

8. On appreciation of their evidence and the evidence of defence witness, the Trial Court was pleased to hold that the prosecution has failed to prove its case against accused beyond reasonable doubt and accordingly acquitted him of the charges levelled against him.

9. This judgment of the trial Court, is challenged in this appeal by the learned APP Mr. H. J. Dedia; whereas supported by learned counsel Mr. A. S. Ramesan, for respondent accused.

10. At the outset itself, it has to be stated that the

prosecution, in the present case has failed to examine the sanctioning authority - Superintendent of Police, Thane Rural Shri. Kamathe. Sanction to prosecution of a public servant is vital and major aspect to the cases filed under Prevention of Corruption Act. Mere exhibiting sanction order through Investigating Officer P.W. 4 ACP Salunke cannot prove that the sanctioning authority has applied its mind to the facts of the case and thereby accorded valid sanction for the prosecution of public servant. Essential requirement of according sanction to the prosecution of public servant is laid down in the statute with a specific object that no public servant should be harassed or prosecuted on the basis of false complaints or in the absence of any sufficient material on record against him. Here in the present case sanction order, being not proved through evidence of sanctioning authority, is a major lacuna in the prosecution case and it has also caused prejudice to the accused, as he did not get any opportunity to elicit material through cross examination of the sanctioning authority to prove that sanction exh.28 was not accorded with proper application of mind.

11. Another major lacuna in prosecution case is non examination of Prashant and Upsarpanch Sikandar Shaikh. P.W.1 Rajaram Patil has, in his examination-in chief itself in paragraph No.5 specifically stated the incident of alleged demand of Rs.5,000/- by the accused and after negotiations demand being reduced to Rs.2,000/- had happened in the presence of Prashant and Upsarpanch Sikandar Shaikh. As per his evidence both of them had accompanied him to the police station. The demand of bribe amount is most crucial ingredient to prove the offence under Section 7 of the Prevention of Corruption Act. Unless and until the demand is proved, mere acceptance of the amount by the accused has no significance, it has to be preceded by demand. In the instant case it may be true that P.W.1 Rajaram Patil has deposed about demand by the accused, but as the said demand was made in the presence of two other witnesses viz Prashant and Upsarpanch Sikandar Shaikh, their evidence was of vital significance, in the instant case especially, in the light of defence raised by the accused, not only in his statement under Section 313 of the Code of Criminal Procedure but also in the cross examination of these witnesses. A specific

plea is raised by the accused that P.W.1 Rajaram Patil has borrowed the amount of Rs.2,000/- from Sikandar Shaikh, as hand loan and Sikandar Shaikh had requested the accused when he had come to police station alongwith P.W.1 Rajaram Patil to help him in recovering that amount from P.W.1 Rajaram Patil. As per the plea raised by accused, he has told P.W.1 Rajaram Patil to return that amount to Sikandar Shaikh.

12. In the light of this plea, evidence of Sikandar Shaikh and corroborating evidence of Prashant was important. The non examination of these two witnesses therefore, creates a dent in the case of prosecution and probabilises the plea raised by the accused. In the present case the plea raised by the accused is probabilised even from the evidence of P.W.1 Rajaram, who has admitted that on 20th August, 1998, alongwith P.W.2 Panch Jagtap, when he went to Saphala police station and requested the accused to accept amount of Rs.2,000/-, the first question asked by accused to him was whether he has met Sikandar Shaikh and further accused told him that P.W.1 should give amount Rs.2,000/- to Sikandar Shaikh. In paragraph No.9 of his

evidence P.W.1 has deposed that when he told accused that Sikandar Shaikh was not available in the village, then accused insisted that he should bring Sikandar Shaikh day after. On that day accused even refused to accept and did not accept amount of Rs.2,000/- in the absence of Sikandar Shaikh though P.W.1 has offered the said amount to him. It is also pertinent to note that as per evidence of P.W.1 Rajaram, on that day accused was in civil dress. Despite that he has refused to accept the said amount which necessarily implies that the accused has asked P.W.1 Rajaram for the amount of Rs.2,000/-, as it was to be given to Sikandar Shaikh towards his hand loan.

13. The cross-examination of P.W.1 Rajaram further shows that even on the first day i.e. 18th August, 1998 when the appellant met accused, appellant had asked him to hand over the amount to Sikandar Shaikh. In his further cross examination he has stated that accused had told him that amount shall be delivered by him to Sikandar Shaikh.

14. It is pertinent to note that on 20th August, 1998 when

accused refused to accept amount in the absence of Sikandar Shaikh, the raid was unsuccessful. Thereafter there was no fresh demand made by accused to P.W.1 Rajaram. Despite that second complaint Exh.14 came to be recorded on 21st August, 19998 and another attempt of raid was made.

15. As regards second raid, the evidence of P.W.3 panch Ahire reveals that he has acted as panch in 4 to 5 similar such cases. Secondly his evidence and evidence of P.W.1 Rajaram go to show that amount was given even in another room and not at the place where accused was sitting. Accused has examined defence witness Rajgad to prove that in the said room no such transaction of giving and accepting of the amount took place though he was very much present there when these three persons i.e. P.W. 1 Rajaram, P.W.3 Ahire and accused came in that room. In his cross examination also prosecution has failed to elicit any material to that effect.

16. In my considered opinion, all these facts and circumstances are tell-tale to probabalise the defence of the

accused instead of proving the case of prosecution. If the accused has really demanded said amount, it does not appear probable that on the very first occasion when P.W.1 had come there to pay the amount, he will refuse to accept it and insist on the presence of Upsarpanch Sikandar Shaikh. The evidence of P.W.1 Rajaram also proves that accused had asked him to give amount to Sikandar Shaikh.

17. Therefore, when the accused has succeeded in probalising his defence on the evidence brought on record by prosecution itself, then it cannot be said that the trial Court has committed any error in giving benefit of doubt to the accused. The impugned judgment of the trial Court, acquitting the accused, hence does not call for any interference. The appeal therefore, holds no merit and hence stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the original signed judgment.