

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 268 OF 2012

Shamsundar S/o Balwantrao Joshi,
Age : 51 years, Occu.: Service,
working as PSI, R/o Pawannagar,
Taroda Kd., Malegaon Road,
Nanded

.. Appellant

VERSUS

The State of Maharashtra,
Through In-charge Police Station,
Mudkhed, Tal. Mudkhed,
Dist. Nanded

.. Respondent

WITH

CRIMINAL APPEAL NO. 272 OF 2012

Balaji S/o Nagorao Suradwar,
Age 40 years,
Occu.: Police Head Constable,
Buckle No.734, Police Station,
Mudkhed, Dist. Nanded

.. Appellant

VERSUS

The State of Maharashtra,
Through In-charge Police Station,
Mudkhed, Tal. Mudkhed,
Dist. Nanded

.. Respondent

Mr. R.S. Deshmukh, Advocate for the appellant in Criminal
Appeal No. 268 of 2012

Mr. Joydeep Chatterji, Advocate for the appellant in
Criminal Appeal No. 272 of 2012

Mr. A.R. Kale, A.P.P. for the respondent/State in both
appeals

CORAM : M.T. JOSHI, J.
RESERVED ON : 29/01/2016
PRONOUNCED ON : 25/02/2016

JUDGMENT :

Heard both sides.

2. Both the appeals have arisen from the order of conviction dated 15/03/2012 passed by the learned Special Judge cum Assistant Sessions Judge, Nanded in Spl. (ACB) Case no. 2/2008, for the offences punishable under section 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act against the respective appellants.

3. Both the appellants were sentenced to suffer rigorous imprisonment for a period of 3 years each and to pay a fine of Rs.5000/- each.

4. The prosecution case in brief is as under:-

. That appellant – Shamsundar was posted as P.S.I. while appellant – Balaji was posted as a Constable at Mudkhed Police Station during the

relevant period. On 20/7/2007, the appellants had seized country liquor bottles from the house of complainant PW1 – Raosaheb Ramrao Deshmukh of village Chikala, Taluka – Mudkhed. Complainant was arrested and was kept in the cell of the Police station. Friend of complainant, namely, Sanjay Ingole came to meet the complainant in the lock-up. At that time, appellant – Shamsundar, in presence of said Sanjay, made a demand of Rs.2000/-. Appellant promised that if the said amount is paid, the complainant would be produced before the Court on the same day and the complainant would be able to get his release on bail else the complainant was threatened to be kept in the lock-up for whole of the night.

. Upon negotiation, the appellant – Shamsundar became ready to accept an amount of Rs.1600/-. The complainant had Rs.600/- with him. He paid the same to appellant – Shamsundar and agreed to pay the balance amount of Rs.1000/- on the next day. Appellant – Shamsundar handed over the amount of Rs.600/- to appellant – Balaji, who was present

there. Thereafter, appellant – Balaji took the complainant to Mudkhed Tehsil Office. Certain signatures of the complainant were obtained in the Tehsil office. Thereafter, the complainant was produced in the Court at Nanded and the complainant was released on bail.

. Thereafter, on 22/07/2007 at about 9.00 am, both the appellants came to the house of the complainant at Chikala. Appellant – Shamsundar questioned him as to why the amount was not brought and threatened that another crime would be registered against the complainant. The complainant told that he would be able to make the arrangement of the money within 2 – 4 days. Again after 4 days, both the appellants visited the house of the complainant at village Chikala. At that time, in absence of the complainant, they threatened the wife of the complainant that the amount should be sent at the Police station.

. Thereafter, on 29/7/2007, appellant – Balaji

met the complainant in the weekly bazar of Mudkhed. He abused him and further threatened that if the amount of Rs.1000/- is not paid on the next day by visiting the Police station, a false crime would be registered. Upon that, the complainant again sought time of 1-2 days for making the arrangement of money. Appellant – Balaji therefore told the complainant to be ready with the amount and he should come in Gujarati hotel near the Tehsil office on the next day i.e. on 30/7/2007 at about 5.00 pm alongwith the money and two passport size photographs.

. In these circumstances, the complainant filed his complaint with Anti Corruption Bureau, Nanded on 30/07/2007.

. PW4 – Police Inspector Mr. Naeem Pasha Abdul Hakeem Hashmi conducted the investigation in the crime. He collected two panch witnesses i.e. employees of the Nanded Municipal Corporation including PW2 – Vilas Gajbhare. Contents of the complaint were read over to them. It was decided to

organize a trap. The decoy money brought by the complainant was smeared with anthracene powder. After taking all the precautions, the decoy money was kept in the left side chest pocket of the complainant.

. Thereafter, the raiding party proceeded towards the Gujarthi hotel. While the complainant and the shadow panch witness went ahead, other members of the trap party followed them by remaining in the vicinity. Complainant thereafter made a phone call to both the appellants from a public call center. The complainant told both the appellants that he was waiting for them. Upon that, appellant – Balaji asked him to wait for five minutes. After some time, appellant – Balaji came on a motorcycle. He was in Police uniform. Appellant – Balaji directed the complainant to sit on the backside of the motorcycle. Thereafter, appellant – Balaji slowly took the motorcycle to one Natraj Bar and Restaurant. Said restaurant had half wall cabins near the main door. They sat in the cabin. The

shadow panch witness in speedily went to the beer bar. He positioned himself at the door of the cabin. The complainant was facing the shadow panch witness while back of the appellant – Balaji was towards the shadow panch witness. The panch witness was around 5 feet away from them.

. During conversation, appellant – Balaji questioned the complainant, as to whether he had brought two photographs and the amount of Rs.1000/-. The complainant answered in the affirmative. He firstly handed over the two photographs and said that in-fact appellant – Shamsundar had directed him to directly pay the amount to appellant – Shamsundar himself. Upon that, appellant – Balaji stated that the money should be paid to him and he would hand over the same to the appellant – Shamsundar. Thereupon, the complainant presented the decoy money and said that in future, no crime should be registered against him. Appellant – Balaji accepted the amount, counted the same and put it in the hip pocket of his khaki trouser. At the same time, he

said that there would be no trouble to the complainant from them. Thereupon, the complainant gave the predetermined signal. Thereupon, rest of the members of the raiding party arrived at the spot.

. The Investigating Officer carried further examination of the clothes and hands of the appellant – Balaji and, thereafter, of the complainant under the ultra-violet light. The said examination confirmed the transfer of the decoy money from complainant to the hip pocket of the trouser of the appellant – Balaji. Said khaki trouser was seized upon first bringing blue coloured trouser from the house of the appellant – Balaji. Appellant – Balaji was arrested vide panchanama at Exhibit 50. Further necessary investigation was carried. Necessary documents were seized.

. PW3 – Mr. Sharadprasad Yadav, the then Special Police Inspector General at Nanded Range accorded sanction to prosecute both the appellants vide sanction order at Exhibit 44 and the chargesheet

came to be filed.

5. Before the learned Special Judge, in all 4 witnesses, as described above were examined. The case of the appellant – Shamsundar was that at no point of time he made any demand of the money. As the crime was registered against the complainant, the appellant is falsely implicated in the case. In-fact, Balasaheb the cousin of the complainant had expended amount for the release of the complainant on bail in the prohibition case. The said amount was to be repaid through appellant – Balaji and the appellants were falsely implicated in the trap.

6. According to the appellant – Balaji, he has accepted the amount in-fact towards the onward payment to Balasaheb as the expenses of securing release of the complainant on bail. However, as the complainant was enraged because of the registration of the prohibition case, he (appellant – Balaji) was trapped in the raid while accepting the said money.

7. Before the learned Special Judge, the

complainant deviated from the prosecution case. During cross-examination, he deposed that the amount was towards the expenses for his bail. Balasaheb and one Laxman had accompanied him till his release on bail. He had therefore promised to pay the amount of Rs.1000/- to appellant – Balaji towards the payment to Balasaheb. He however again denied the suggestion that appellant – Balaji never demanded an amount of Rs.1000/- as bribe.

8. Shadow panch witness PW2 – Vilas Gajbhare supported the prosecution case.

9. The learned Special Judge came to the conclusion that the prosecution has proved its case beyond reasonable doubt and, therefore, the conviction came to be recorded.

10. Mr. R.S. Deshmukh, learned counsel for the appellant – Shamsundar in Criminal Appeal No. 268 of 2012 and Mr. Joydeep Chatterji, learned counsel for the appellant – Balaji in Criminal Appeal No. 272 of 2012 submitted before me that the veracity of the

complainant is full of suspicion in view of the fact that according to the F.I.R. itself the complainant had illegally stored country liquor in his house. Further during cross-examination he admitted that he was already facing trial for the offence punishable under section 324 etc. of the Indian Penal Code. Not only this, the statement of the shadow panch witness would also show that he was under the apprehension to support the prosecution case and, therefore, he made a false statement. Therefore, taking me through the evidence on record, they submitted that in-fact the prosecution has failed to prove that any demand was made at any time or the decoy money was accepted towards the said demand of illegal gratification.

11. On the other hand, learned A.P.P. submits that though the complainant has deviated from the prosecution case to some extent, the independent panch witness has fully supported the prosecution case. He therefore submits that the appeal be dismissed.

12. On the basis of this material, following points arise for my determination:-

I) Whether the prosecution has proved that for a period between 20/7/2007 till 30/7/2007, both the appellants, in furtherance of their common intention made a demand of Rs.1600/- towards the gratification other than the legal remuneration, to facilitate the release of the complainant on bail ?

II) Whether the prosecution has further proved that on 22/7/2007, appellant – Shamsundar had accepted an amount of Rs.600/- towards the part of the said illegal gratification ?

III) Whether the prosecution has further proved that on 30/7/2007, appellant – Balaji had accepted the amount of Rs.1000/- at Mudkhed, as the balance of the illegal gratification ?

IV) Whether the prosecution has further proved that both or any of the appellants had obtained the above said pecuniary advantage by illegal means by

abusing their position as the public servants ?

My findings to all the above points are in the negative. Both Criminal Appeals are therefore allowed and the appellants are acquitted of all the offences, for the reasons to follow.

R E A S O N S

11. The complainant deposed that he has taken a written complaint to the Anti Corruption Bureau. According to the Investigating Officer, however, no such written complaint was given to him. He himself has reduced into writing the oral complaint made by the complainant. Leaving aside this controversy, the compliant at Exhibit 34 would show that the complainant had stored country liquor bottles in his house. The appellants raided his house on 20/7/2007. They seized the bottles and arrested the complainant. During cross-examination, the complainant also admitted that he was already facing the trial for the

offence punishable under section 324 of the Indian Penal Code in the Court of learned Judicial Magistrate First Class. He also further admitted that in-fact his father - Ramrao Deshmukh had also filed a complaint against him with the Police Station.

12. In this state-of-affair, we shall have to find out, as to whether the deposition of the complainant regarding the initial demand is proved beyond reasonable doubt. To prove the said demand naturally, we have the solitary statement of the complainant.

. We have already found that as to whether the complainant has taken a written complaint to the Anti Corruption Bureau, or as to whether he made a oral complaint, is a disputed fact. He admitted that due to the institution of a criminal case of storage of illicit country liquor, he was annoyed with both the appellants. He initially deposed in cross-examination that he is not aware as to whether the

appellant had prepared his arrest panchanama upon seizure of liquor on the day of the raid i.e. on 20/07/2007.

. In the circumstances, the photocopy of the panchanama was confronted to him bearing his signature. Thereupon he admitted the said panchanama. He lastly admitted that at the time of his arrest, his cousin brother Balasaheb Deshmukh and Narhari Deshmukh were present. He also admitted that from the time of his arrest till his release on bail, both the panch witnesses had accompanied him. He also admitted that Balasaheb had to look after the issue of his release on bail from the Court. In the FIR however he recited that one Sanjay came to meet him in the lock-up.

13. If all these facts are taken into consideration, then it would be clear that the complainant was enraged because of the raid at his house from where admittedly, illegally stored country liquor bottles were seized by the appellants.

Regular panchanama of his arrest was prepared and the panch witnesses and his relatives were allowed to remain with him from the time of his arrest till his release on bail. Had any of the appellants wanted to exploit the complainant by threatening him to keep behind the bar, his cousin would not have been allowed to remain with him.

. We have already found the credibility of the complainant is dented, which need not be repeated here. It is therefore difficult to completely trust the sole testimony of the complainant regarding the initial demand.

14. As regards the last of the demand during trap, we have however the corroboration from PW2 – Vilas, the shadow panch witness. This corroboration however is shrouded in suspicion. The shadow panch witness deposed during cross-examination that before entering the witness box, he read over the contents of the prosecution papers and more particularly the panchanama. He was aware of the fact that if he

would depose against the contents of the panchanama, then he would be required to face a criminal case as well as a departmental enquiry.

. It is an admitted fact that the bar cum restaurant where the raid was carried had several customers at the time of occurrence. The complainant has admittedly kept away the shadow panch witness while making a phone call to both the appellants and, therefore, the shadow panch witness was not aware about the talk between the complainant and the appellants.

15. The panch witness simply deposed that while appellant – Balaji took away the complainant on his motorcycle towards Natraj bar and restaurant, he followed them on foot. In these circumstances, it would be difficult to accept his case that he was able to reach Natraj bar and restaurant on foot within no time with an opportunity to witness all the transactions.

16. Above all, while it is the prosecution case that appellant – Balaji was in police uniform and the decoy money was recovered from his hip pocket of khaki colour trouser, the arrest panchanama recorded by the Investigating Officer immediately after the raid at Exhibit 50 would show that appellant – Balaji had red coloured checks on his shirt and blue coloured jean pant. Spot panchanama at Exhibit 37 would show that the khaki trouser only was seized. Thus khaki shirt should have remained on his person at the time of arrest.

17. Besides this, according to the deposition of shadow panch witness during the talk, appellant – Balaji simply asked the complainant as to whether he had brought the photographs and the money and when the complainant answered in the affirmative, the appellant – Balaji accepted the two photographs and the decoy money. He did not depose about the details of the talk as is found in the prosecution case, as detailed above.

18. If all these facts are taken into consideration, the corroboration of PW2 – Vilas Gajbhare, the shadow panch witness failed to satisfy that during the raid, appellant – Balaji had made a demand of money towards any illegal gratification and accepted the decoy money towards the said demand.

19. The learned Special Judge however appears to have been impressed by the partial hostility of the complainant in the cross-examination and generally relying on the testimony of the complainant as well as the shadow panch witness, convicted both the appellants.

20. In my view, however, the above material would show that the prosecution has failed to prove its case beyond reasonable doubt. In the circumstances, the following order :-

21. Both the Criminal Appeals are hereby allowed.

22. The impugned judgment and order dated

15/03/2012 passed by the Special Judge cum Assistant Sessions Judge, Nanded in Spl. (ACB) Case No. 2/2008, convicting both the appellants for the offences punishable under section 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, is hereby set aside.

. Instead, both the appellants are hereby acquitted of both the offences. Their bail bonds shall stand cancelled. Fine amount, if any, desposited by them, be refunded to them, after a period of 10 weeks from the date of this order.

23. Both Criminal Appeals stand disposed of accordingly.

Sd/-
[M.T. JOSHI]
JUDGE

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