

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 275 OF 2009

Bhanudas Yeshwantrao Gore,
Age : 52 years, Occu.: Service,
R/o. Old Ausa Road, Mahsul Colony,
Latur, Dist. Latur

.. Appellant

VERSUS

The State of Maharashtra

.. Respondent

Mr. Joydeep Chatterji, Advocate for the appellant
Mr. N.T. Bhagat, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.
RESERVED ON : 08/12/2015
PRONOUNCED ON : 13/01/2016

JUDGMENT :

Heard both sides.

2. The present appellant was convicted by the learned Special Judge, Omerga in Special Case (A.C.) No. 3 of 2005 vide judgment and order dated 08/05/2009 for the offences punishable under section 7 and 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988. He was sentenced to suffer rigorous imprisonment for two years and to pay a fine

of Rs.1000/- on each of the counts with a direction to suffer further simple imprisonment for one month on each of the counts, in default of the payment of fine. Hence, the present appeal.

3. The prosecution case in short is as under:-

. The appellant was working as a Tashildar of Lohara, District - Osmanabad during the relevant period. PW1 - complainant Sugriv Birajdar was the then Chairman of Vividh Karyakari Seva Sahakari Sanstha Ltd. of Sayyad Hiparga, Tq. Lohara. As a Chairman, he used to look after the fair price shop as well as sale of kerosene oil received through the public distribution system.

. On 15/04/2003, according to him, when he was away at village Jewali to collect kerosene oil from the dealer, the present appellant had inspected his shop in his absence and in presence of his son Sanjay. His son told him that the appellant had inspected certain record and out of them took the ration cards of one Umadevi Patil, Vasant Ovande and

Salar Karbhari with him. He also said to Sanjay that the entries in those three ration cards were not taken properly and, therefore, the license to operate the fair price shop as well as selling the kerosene oil is required to be cancelled. By saying so, the appellant told Sanjay to send the complainant to Tehsil Office, Lohara.

. Accordingly, on 17/04/2003, the complainant visited the appellant in his office. The appellant was free by the evening at 7:00 pm. At that time, the appellant told the complainant that the record was not maintained properly and, therefore, the licenses are required to be cancelled. The complainant told him that it was merely a mistake and the same should be condoned. The appellant however told that a case would be lodged against the complainant and, ultimately, he told that in case an amount of Rs.5000/- is paid, he would not take any action and the ration cards of the three persons would also be returned to the complainant. Upon negotiation, the appellant agreed to accept an amount

of Rs.3000/-. Out of the said amount, he accepted an amount of Rs.1000/- on the spot from the complainant and directed the complainant to pay the balance amount of Rs.2000/- on Monday, 21st April, 2003 in his office.

. In view of these facts, the complainant filed his complaint with Anti Corruption Bureau on 21/04/2003 at Exhibit 23.

. PW4 - Deputy Superintendent of Police of Anti Corruption Bureau, Osmanabad conducted the investigation. He collected two panch witnesses by sending requisition to different Government Departments. PW3 - Ankush Nawale, the then Deputy Chief Auditor of Local Fund Account, Osmanabad was one of them.

. In the presence of the panch witnesses, the demonstration of the application of anthracene powder was shown. The decoy money brought by the complainant i.e. two currency notes in the denomination of Rs.500/- and 10 currency notes in the

denomination of Rs.100/- each were smeared with anthracene powder. The same decoy money was distinctly kept in the left pocket of the shirt of the complainant. Thereafter, the raiding party proceeded to Tehsil Office, Lohara.

. Instructions were given to the complainant and the shadow panch witness to remain in the company of each others. The shadow panch witness was directed to hear the conversation between the complainant and the appellant and to note their activities. The complainant was directed to pay decoy money upon demand while rest of the members of the raiding party remained in the premises.

. Appellant was on certain tour on that day. At about 4:45 pm, the appellant came to his office. He entered his chamber. The complainant shown the shadow panch witness that the appellant was the same Tehsildar.

. The complainant and the shadow panch witness proceeded to the chamber. There, the complainant by

gestures asked the shadow panch witness to stand near the door of the chamber itself. The shadow panch witness therefore remained near the door of the chamber facing east. The complainant all alone went to the chamber of the appellant. After the greetings were over, the appellant by gestures only asked the complainant to sit in the front chair. The complainant sat on the chair, which was to the right side of the table facing west. During talks, the appellant asked as to whether the money, as directed earlier, was brought. The complainant answered in the affirmative. Upon that, the appellant made demand of the amount. Accordingly, the complainant handed over the decoy money to the appellant. The appellant accepted the same by his right hand and placed the decoy money in the right side drawer of his table by opening the said drawer. Upon query, the appellant told the complainant that the three ration cards would be returned to him within 1-2 days and no action would be taken. The complainant thereupon returned from the chamber and gave pre-determined signal to the raiding party.

. Thereupon, the Investigating Officer and the raiding party arrived in the chamber and necessary activities of examination of the hands and clothes of the appellant and the complainant under the ultra-violet light were carried. The said exercise confirmed the above transactions. The Investigating Officer thereafter recorded the panchanama, conducted further investigation, moved the State of Maharashtra for grant of sanction to prosecute the appellant. Accordingly, PW2 - Mr. Chandrakant Mhatre, the then Under Secretary of the Revenue and Forest Department, Mumbai after receipt of the opinion from the Law and Judiciary Department, Home Department accorded the sanction at Exhibit 29. Thereafter the chargesheet came to be filed.

4. Before the learned Special Judge, in all four witnesses, as detailed above were examined.

. The appellant has also examined three defence witnesses i.e. two ration card holders and DW3 - the then Peshkar of the Tehsil office, Lohara

to show that on 21/4/2003, a meeting was arranged at Omerga and that the Tehsildar was to attend the said meeting.

5. The learned Special Judge however found that the prosecution case is proved beyond reasonable doubt. It was also held that the sanction accorded by PW2 is legal and valid. In the circumstances, the conviction and sentences, as detailed supra came to be recorded.

6. Mr. Joydeep Chatterji, learned counsel for the appellant submitted before me that the immediate conduct of the appellant would show that he was not aware of the dropping of the decoy money in the drawer. As per the prosecution case itself, the complainant, against the direction of the Investigating Officer kept the shadow panch witness away from the spot. The shadow panch witness in his cross-examination has deposed that he did not know as to why he was directed to remain away from the chamber and was not allowed in the chamber of the appellant by the complainant. Further, though it is

the prosecution case that the second panch took out the decoy money from the drawer, he was not examined. Further, the handle of the drawer also was not examined under the ultra violet light. The defence witnesses have corroborated the defence. In the circumstances, he submits that the learned Special Judge ought to have acquitted the appellant.

. He further submits that the sanction accorded by PW2 – the Under Secretary, Revenue and Forest Department, Mumbai is merely the replica of the draft received to him from the Investigating Officer. Further, the Under Secretary is not competent to accord the sanction and in the circumstances, on this sole ground, he submits that the appellant deserves to be acquitted.

7. In support of his submissions, Mr. Chatterji relied on the ratio of **"P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and another"** (2015) 10 Supreme Court Cases 152, to buttress his argument that mere recovery of the decoy money de-hors of the proof of demand would not be

sufficient to convict the accused. As regards the defect in the sanction, he relies on the ratio of the decision of this Court in Criminal Appeal No. 327 of 2002 dated 27/04/2015.

8. On the other hand, learned A.P.P. submits that the evidence on record would show that the shadow panch witness was just near the door of the chamber. He deposed that he was able to watch the activities of the complainant and the appellant and hear the conversation between them. Therefore, merely because he was near the door of the chamber of the appellant, it cannot be said that he was not an eye witness to the transactions.

. As regards the ratio of the judgment in Criminal Appeal NO. 327 of 2002 (cited supra), he submits that the said ratio is not applicable in the facts of the present case. Hence, he submits that the appeal be dismissed.

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

I) Whether the prosecution has proved that the present appellant being a public servant, had on 17/04/2003, made a demand of Rs.5000/-, accepted an amount of Rs.1000/- and agreed to accept an amount of Rs.2000/- on 21/04/2003, as a remuneration other than the legal remuneration, as reward for not taking action against the complainant regarding his alleged improper operation of the public distribution system shop ?

II) Whether the prosecution has further proved that on 21/04/2003, the appellant again made the demand of Rs.2000/- and accepted the same ?

III) Whether the prosecution has further proved that the present appellant obtained the amount of Rs.3000/-, the pecuniary advantage to himself by corrupt or illegal means ?

IV) Whether the sanction accorded by PW2 is legal and valid ?

My findings to all the above points are in the affirmative. The appeal is therefore dismissed for

the reasons to follow.

R E A S O N S

10. The deposition of the complainant would show that while in his absence, the present appellant has visited his shop on 17/04/200; when he visited the appellant in his office, he threatened that action would be taken. During dialogue, he made demand of Rs.5000/- and upon negotiation, agreed to accept Rs.3000/-. Out of it, Rs.1000/- was paid on the spot and Rs.2000/- were agreed to be paid on 21/04/2003.

11. The appellant in his additional written statement at Exhibit 82 had explained that on 16/04/2003, he had received training program from the District Headquarter regarding the Census to be carried of the families below the poverty line. He had no meeting with the complainant on 17/04/2003. Further, as the training program was organized on 21/04/2003 at Omerga, he could not have remained present at Lohara, as the said program was for the

entire day.

. It was further supplemented that the complainant shook hand of the appellant. As the appellant was busy in talking over phone, he could not attend the complainant. Thereafter, the complainant went away and the decoy money was found in the drawer.

12. Further, according to the additional statement recorded under section 313 of the Code of Criminal Procedure at Exhibit 82, when the appellant visited the shop run by the complainant, he had received the complaint and, therefore, he had recorded statement of those three ration card holders. He had even further made enquiry with the complainant and recorded panchanama of the same. As per the case of both the sides, however, the complainant was not present to make any enquiry.

13. As regards the meeting between the complainant and the appellant on 17/04/2003, as per the prosecution, the appellant made the demand and

accepted an amount of Rs.1000/-, as per the defence, besides the complainant, there is no other evidence on record.

. The appellant suggested to the complainant that on 17/04/2003, certain work of holding EGS meeting and meeting tour was going on. The complainant deposed that he was not aware of the same but he had a talk with the appellant. Though, the complainant's statement in this regard is uncorroborated, the next of the event dated 21/04/2003, however, would clearly show that on that day, the appellant made a demand of balance amount of Rs.2000/-, accepted the same and kept it in his right hand drawer of the table.

14. PW3 – shadow panch witness Mr. Ankush Nawale was at that time was working as Deputy Chief Auditor of Local Fund Account, Osmanabad. Inter-alia, he deposed that, he as well as the complainant approached the chamber of the appellant. At the door of the chamber of the appellant, the complainant told him that the appellant would not accept the amount

from him, if he would accompany the complainant and, therefore, asked him to stay near the door of the chamber of the appellant. He deposed that he, therefore, remained near the door of the chamber, seen all the activities and heard all the dialogues, as detailed above. He deposed that he had seen the appellant accepting the decoy money, opening the drawer of his table and keeping the decoy money in the drawer.

15. It is the case of both the parties that the table had cupboard under the surface platform without any drawer or door to the side facing the visitors while the drawer and doors of the cupboard were facing the officer i.e. the appellant. It is thus clear that unless a visitor crosses the table and comes towards the side of the chair of the officer and opens the drawer, nothing can be put in the drawer. The defence that the complainant might have put the decoy money in the drawer however is not plausible as we have already found that the opening of the drawer was from the side of the officer i.e.

the appellant and not from the side of the visitor.

16. The shadow panch witness had no axe to grind against the appellant. There is no reason as to why he would make a false statement that he had seen the activities which occurred between the appellant and the complainant and also heard the dialogue between them. In that view of the matter, the prosecution case cannot be doubted.

. As regards the sanction, PW2 – the Under Secretary, Revenue and Forest Department, Mumbai inter-alia, has deposed in the cross-examination that the draft of the sanction order was forwarded by the Investigating Officer alongwith the papers. His evidence however would show that the proposal was sent to the Home Department. After consent from the Home Department, the proposal was moved to the Law and Judiciary Department and when the Law and Judiciary Department also gave opinion that it was a fit case for according sanction, the sanction was accorded.

17. Mr. Chatterji relied on the ratio in the case of **"The State of Maharashtra through P.P.H.C. Aurangabad Vs. Chand Beg S/o Sharfu Beg"** delivered by this Court in Criminal Appeal No. 327 of 2002 on 27/04/2015.

18. In that case, however, the caption of the sanction at Exhibit 33 was "Sanction Draft". No date of according of the sanction was given in the said order. There was in verbatim reproduction of the sanction draft in the said document signed by the sanctioning authority. In the circumstances, observation of the learned Special Judge that the heading "Sanction Draft" cannot be a typing mistake was accepted by this Court, to come to the conclusion that there was non-application of the mind at the time of according of sanction.

19. In the present case, however, the situation is quite different, as detailed supra. The sanction therefore cannot be called as invalid.

20. In the case of "**P. Satyanarayana Murthy**" (cited supra), on facts, finding that in view of the death of the complainant, the initial demand could be proved and the other evidence found not sufficient, benefit of doubt was extended to the appellant therein. In the present case, on facts, however, we have found the prosecution case is proved beyond reasonable doubt. The Appeal is therefore dismissed. Bail bonds, if any, of the appellant shall stand cancelled.

21. The learned Special Judge, Omerga is directed to take steps for securing the presence of the appellant to serve the sentences awarded to him.

[M.T. JOSHI]
JUDGE

arp/