

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 148 OF 2001

Baban S/o Namdeo Mhaske,
Age 54 years, Occu. : Service
at present working in Adult Education
Office, Zilla Parishad, Jalna

.. Appellant
(Orig. Accused)

VERSUS

The State of Maharashtra
through Anti Corruption Bureau,
Beed

.. Respondent
(Orig. Complainant)

Mr. M.K. Deshpande, Advocate for the appellant
Mr. S.D. Ghayal, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.
RESERVED ON : 03/12/2015
PRONOUNCED ON : 11/01/2016

JUDGMENT :

Heard both sides.

2. The present appellant was convicted by the learned Special Judge cum Additional Sessions Judge, Beed vide judgment and order dated 09/03/2001 passed in Special Case No. 53 of 1993 for the offences punishable under section 7, 13(1)(d) r/w. 13(2) of

the Prevention of Corruption Act, 1988. He was sentenced to suffer rigorous imprisonment for a period of 1 year and to pay fine of Rs.1,000/- on each of the counts, respectively. Hence, the present appeal.

3. The prosecution case, in nutshell, is as under:-

. PW1 – complainant Ramdhan Dapkar during the relevant period was Assistant Teacher in Nalanda Vidyalaya, Kaij, Dist. Beed. He was terminated from the services on 30/04/1988. The School Tribunal however vide judgment passed on 24/04/1989 reinstated him with a direction to pay full back salary with allowances. The complainant resumed the services on 25/04/1989 and the issue of payment of back salary remained pending.

. Ultimately, on 17/8/1992, the Headmaster of the school DW1 – Sham Thorat had sent a bill to the Education Officer, Zilla Parishad, Beed for payment

of the said salary. As per the procedure, the bill was sent to the Pay Unit and, thereafter, the payment was to be received through bank. As the bill was not passed, ultimately, the complainant went to the Office of the Education Department of Zilla Parishad on 01/02/1993. The present appellant, being a Clerk was dealing with the file of the complainant. The appellant at that time made demand of Rs.2,000/- for sanction of the bill. The complainant showed his inability by saying that he was unable to raise Rs.2000/- and said that as and when the amount under the bill would be received, he would pay the amount to the appellant. The appellant however said that as per his experience, nobody turns back once the bill is received. Ultimately, the complainant agreed to pay Rs.1000/- after he would receive the then current salary.

. Again on 05/02/1993, the complainant met the appellant. At that time, when the appellant questioned about the payment, the complainant falsely

said that he was yet to get the salary and promised that he would pay the amount by next Monday. Again, on 08/02/1993, the complainant met the appellant in his office. The appellant made enquiry about the money. At that time, the complainant told that he had only Rs.200/- and offered the same with a promise that rest of the amount would be paid on Tuesday i.e. 09/02/1993. The appellant however said that the complainant did not know as to how to get the work done and told that the full amount be brought and then the work would be done. Upon that, the complainant told the appellant that he would bring the entire amount of Rs.1000/- on the next day and went away. However, since he did not wish to pay the bribe, he filed complaint with the Anti Corruption Bureau, Beed on 09/02/1993 at Exhibit 28.

4. PW3 - the then Superintendent of Anti Corruption Bureau Mr. Bhaurao Chavan conducted the investigation in the offence. He collected two panch witnesses including PW2 - Vishnupant Tandle, the

Agricultural Assistant serving with the Sub Divisional Agricultural Office Training and Visit Scheme, Beed. In their presence, complaint was read over. Demonstration about the application of anthracene powder was shown. Decoy money brought by the complainant was smeared with anthracene powder. The same was kept with the complainant. The shadow panch witness PW2 – Vishnupant Tandle was asked to accompany the complainant at the time of transaction of handing over of the decoy money and the rest of the team of the Anti Corruption Bureau followed them.

5. At about 3.00 pm, the complainant and the shadow panch witness waited in the premises of the office of the Education Department. At about 3:45 pm, the appellant came from outside towards the office. After the greetings were over, the complainant in presence of the shadow panch witness asked the appellant about his work. Upon that, the appellant asked as to whether the amount is brought. The complainant answered in the affirmative. Upon

that the appellant said that he was going to make water and, therefore, the complainant should follow him. Thereafter, the complainant and the appellant went towards the open space, which was towards the western side of the office. They urinated in standing position and returned back. While walking, the appellant forwarded his hand before the complainant. The complainant handed over the decoy money to him. The appellant kept the same in his right trouser pocket. Upon that the complainant gave the predetermined signal. Therefore, the raiding party apprehended the appellant and next of the exercise of examination of the clothes and hands of the appellant and the complainant under the ultra-violet lamp had started. Said exercise confirmed the transfer of the decoy money from the complainant to the trouser pocket of the appellant.

. Appellant was therefore arrested. Necessary panchanamas were prepared. Statements of the witnesses were recorded. Photocopy of the letter

from the Headmaster, photocopy of the bill and copy of the judgment of the School Tribunal were seized from the office of the appellant, under the post-trap panchanama. The Investigating Officer thereafter forwarded the necessary documents to the then Regional Deputy Director of Education, Aurangabad for according sanction to prosecute the appellant. Accordingly, PW4 - Mr. Tukaram Londhe - the then Regional Deputy Director accorded the sanction at Exhibit 41. Thereafter, the chargesheet came to be filed.

6. Before the learned Special Judge cum Additional Sessions Judge, Beed, the complainant was examined as PW1. Shadow panch witness Mr. Tandale was examined as PW2. The Investigating Officer was examined as PW3 and the sanctioning officer was examined as PW4.

7. The defence of the appellant was that in-fact, arrears of salary was already received by the

appellant from the school itself. No original documents were submitted by the school for sanction of any bill. On 7th February, 1993, the complainant met him and pressed for sanction of the bill only on the basis of the photocopies of the documents. The appellant told him that he is not authorized to sanction any bill and only on the photocopy, no bill would be sanctioned. The complainant was enraged by these facts and, therefore on 09/02/1993, while the appellant was returning from making water, in the ground the complainant offered the money. The appellant refused the same. However, the complainant forcibly put the decoy money in his pocket and within no moment, the appellant was caught by the Investigating Officer.

8. The learned Special Judge found the prosecution case as proved beyond reasonable doubt. The sanction was also found to be valid and, therefore, the conviction and sentences, as detailed supra came to be recorded.

9. Mr. Deshpande, learned counsel for the appellant submitted that the admission of the complainant coupled with the deposition of the defence witness – the Headmaster, would show that the complainant had already received the arrears of salary from his school. Further, the prosecution case itself is that only the photocopies of the documents were seized. Further, there are vast contradictions between the statements of the prosecution witnesses, which would show that the shadow panch witness was not able to hear any conversation between the appellant and the complainant and in the circumstances, he submits that the learned trial Court ought to have extended benefit of reasonable doubt and acquitted the appellant.

10. On the other hand, the learned A.P.P. submitted that for some minor variation in the oral evidence, no benefit of doubt can be extended to the appellant.

11. As regards the sanction, Mr. M.K. Deshpande submitted that the evidence of PW4 would show that he has not applied his mind and no necessary documents were supplied to him. On the other hand, learned A.P.P. submitted that the evidence would show that the sanction is legal and valid.

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

I) Whether the sanction accorded by PW4 to prosecute the appellant is legal and valid ?

II) Whether the prosecution has proved that from 01/02/1993 till 09/02/1993, the appellant made a demand of Rs.2000/- and, thereafter, of Rs.1000/-, as remuneration other than any legal remuneration for facilitating the sanction of bill of arrears of salary of the complainant ?

III) Whether the prosecution has proved that during the above said period, the

present appellant has attempted to make pecuniary gain and has accepted the same by corrupt and illegal means ?

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

13. The deposition of PW1 - the complainant, PW2 - the shadow panch witness would show that on the day of the trap, the appellant made the demand of amount of Rs.1000/- for facilitating the sanction of the bill. The deposition of PW3 - Investigating Officer would show that from some distance, he had occasion to see the voluntary transfer of the decoy money from the complainant to the appellant.

14. The complainant further deposed about the previous demands made by the appellant for doing the

needful. During cross-examination, he admitted that he had however already issued to the school the acknowledgment of receipt of the arrears of salary from the school. He however denied that any payment was made to him. DW1 – the Headmaster had deposed that in-fact the arrears of salary was paid to the appellant and he has accordingly signed the acquittance roll. It is however the defence case itself that photocopies from the letter from the Headmaster and the photocopy of the judgment of the School Tribunal was seized from the custody of the present appellant. Thus, it is clear that the issue of payment of arrears of salary was forwarded to the office of the appellant. Obtaining signatures over the acquittance rolls by the Headmaster, therefore, is of little consequence, so far as the present controversy is concerned.

15. According to the prosecution, the appellant has accepted the bribe amount in the open space after returning from making water by the west side of the

office. It has come on record that though there is a constructed urinal, the people used to make water in the open space. According to the appellant also, the amount was thrust in his pocket in the said open space. The complainant has deposed in examination-in-chief that while the shadow panch witness remained behind, the appellant made enquiry with him that whether he had brought the money, which he answered in the affirmative. The shadow panch witness PW2 – Tandale deposed that he has heard the conversation between the two that the appellant and the complainant made enquiry with each other about the work and about the money. Further, when the complainant told that the money was brought, the appellant asked the complainant to accompany him for going to make water and while returning from making water, at the backside of the office, the appellant again made demand of money to the complainant and complainant handed over same to the appellant. He has deposed that for all the time, he was following both of them.

16. Though the complainant has deposed that the shadow panch witness remained behind, no suggestions were given either to the complainant or to the shadow panch witness that the distance between them was such that he was not able to hear any conversation that took place between the appellant and the complainant.

17. The shadow panch witness PW2 – Tandale had no interest in the case. There is nothing on record to show as to why he would make a false statement that he had heard the conversation between the appellant and the complainant. Besides them, PW3- the Investigating Officer Mr. Bhaurao Chavan has deposed that he, as well as the rest of the members of the raiding party were standing in the compound of the office and they had seen the voluntary transfer of the money. In that view of the matter, merely for certain minor variation, as detailed supra, the prosecution case cannot be thrown away.

18. Mr. M.K. Deshpande however relied on the ratio of eight (8) cases, wherein on facts, inter-alia finding that the prosecution evidence is unreliable, the accused were acquitted, which are as under:-

- 1) "Avinash Sitaram Garware Vs. State of Maharashtra" 2008 (1) Bom.C.R. (Cri.) 260
- 2) "State of Maharashtra Vs. Dnyaneshwar Laxmanrao Wankhede" 2009 ALL MR (Cri.) 3127 (S.C.)
- 3) "Arjun Bajirao Kale Vs. The State of Maharashtra" 2009(2) Bom.C.R.(Cri.) 202
- 4) "Panalal Damodhar Rathi Vs. State of Maharashtra" 1979 CRI. L.J. 936(1)
- 5) "Suraj Mal Vs. The State (Delhi Administration)" 1979 CRI.L.J. 1087(1)
- 6) "Pandharinath Shelke Vs. State of Maharashtra" 2005(2) Bom.C.R. (Cri.) 940
- 7) "Banarsi Dass Vs. State of Haryana" 2010 AIR (SC) 1589
- 8) "Manohar Ravan Kamble Vs. State of Maharashtra" 2011 BCI 110

19. On facts, however, we have found that the

prosecution has proved its case beyond reasonable doubt.

20. As regards the sanction to prosecute the appellant, PW4 – Tukaram Londhe has deposed that the case papers were sent to him and after examining the same, he was satisfied that it was a fit case in which the sanction was necessary and, therefore, he granted sanction to prosecute the appellant. During cross-examination, he deposed that besides the statement of the witnesses and the panchanamas, no other documents were amongst those case papers.

21. On the strength of this statement, Mr. Deshpande submits that when entire set of investigating papers were not sent to the sanctioning authority, it cannot be said that the sanctioning authority had any occasion to completely examine the papers.

22. It is however to be noted that the statements of witnesses includes the complainant's

statement and the recital in the panchanamas would also include the facts. In that view of the matter, no fault can be found with the sanction granted by PW4. In the result, the following order:-

23. Criminal Appeal is hereby dismissed.

24. Bail bonds, if any, of the appellant shall stand cancelled.

25. The learned Special Judge is directed to take steps for securing the presence of the appellant to serve the sentences awarded to the appellant.

[M.T. JOSHI]
JUDGE

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