

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.270 OF 2001

Nivrutti s/o. Gyanuji Mundhe,
Age 55 years, Occ. Service,
Revenue Circle Officer,
Circle Waluj, Tq. Gangapur,
Dist. Aurangabad
(died through Lrs.)

1-A] Smt. Tarabai Nivruti Mundhe,
Age 53 years, Occ. Nil,
r/o. Bhimnagar, Bhausingapura,
Tq. and Dist. Aurangabad

1-B] Pravin s/o. Nivruti Mundhe,
Age 36 years, Occ. Driver,
r/o. As above

1-C] Vijay s/o. Nivruti Mundhe,
Age 34 years, Occ. Advocate,
r/o. As above

1-D] Avinash s/o. Nivruti Mundhe,
Age 32 years, Occu. Wall
painting, r/o. As above

1-E] Raviraj s/o. Nivruti Mundhe,
Age 30 years, Occ. Rickshaw
Driver, r/o. As above

..Appellants

Versus

The State of Maharashtra,
Anti Corruption Bureau,
Aurangabad

..Respondent

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Mr.R.B.Deshpande, advocate for appellants

Mr.A.R.Kale, A.P.P. for respondent - State

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CORAM : M.T. JOSHI, J.

DATE : FEBRUARY 15, 2016

ORAL JUDGMENT :

Heard.

2] Aggrieved by the conviction for the offences punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act (for short "the Act") vide impugned judgment and order dated 16th June, 2001 passed by the learned Special Judge, Aurangabad in Special Case No.3 of 1996, original accused has preferred the present appeal.

. The appellant was directed to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/- for the offence punishable under Section 7 of the Act; and rigorous imprisonment

for two years and to pay fine of Rs.2,000/- for the offence punishable under Section 13(2) of the Act. Hence, the present appeal.

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

. That, during the relevant period, the appellant was working as Revenue Inspector at village Waluj. The complainant PW 2 - Uday Patil was, during the relevant period, was Administrator of the Gram Panchayat, Waluj. For some period, he was Sarpanch of the Gram Panchayat. There were complaints that some earth from river 'Kham' which run through the village, was being taken away. One Baban Ahire had, allegedly, complained to the Tahsildar against the present complainant PW 2 - Uday Patil that he was excavating the alluvial land and was transporting earth by his tractor. Said complaint was filed long back on 7th January, 1995. Said complaint was allegedly forwarded to

the present appellant/accused being the Revenue Inspector of the village vide letter dated 18th January, 1995 to make inquiry in the matter and forward a report.

. According to the appellant/accused as, at that time, he was on election duty, he could not contact the complainant PW 2 – Uday Patil. Therefore, the appellant had sent the Village Kotwal to the complainant PW 2 – Uday Patil to merely inform about the inquiry pending with him. The complainant PW 2 – Uday Patil, therefore, approached the respondent for early conclusion of the the enquiry.

. In the situation, on 26th June, 1995 at about 10:30 am., the appellant came to the house of the complainant. He stated that in case, an amount of Rs.1,000/- is paid to him, he would dispose of the complaint. Upon negotiation, the appellant became

ready to accept Rs.500/-. The complainant, therefore, unwillingly became ready to pay said amount. Thereupon, the appellant told that he would again visit on 29th June, 1995 and upon payment of the bribe amount, he would keep ready the panchnama and necessary documents in that regard. On that day, complainant, however, did not approach the appellant. Therefore, at about 4:00 p.m. in the evening, the appellant met the complainant and told that he did not even remain present for preparation of the panchnama and also showed his readiness to anyhow prepare the panchnama. The complainant, however, avoided him by saying that he was required to go to Aurangabad. He promised that on the next day, he would remain present for preparation of the panchnama.

. On the next day i.e. on 30th June, 1995 again the Village Kotwal came to the complainant. He

told that he was searching the complainant to give a message of the appellant. He further told that the appellant has already prepared the file and he would meet the complainant in the evening after some meeting at Gangapur was over. He also told the complainant that the appellant had asked him to wait in the evening near the bus stand of Waluj.

. Thereafter, in the evening, the appellant came to the house of the complainant and told that his statement would be recorded. Upon that, the complainant told that he was required to go out of station and his statement can be recorded on the next day. It was, therefore, agreed that on the next day between 8:30 am. and 9:00 am. in the morning, the appellant would come to the field of the complainant and at that time, everything including payment of the bribe amount would be done. The appellant even warned the complainant

that if, on the next day, the amount is not paid, he would not oblige the complainant. In the circumstances, the complainant went to the office of the Anti Corruption Bureau.

. The Investigating Officer PW 3 – Ramesh Khakale conducted investigation in the matter. He collected two panch witnesses from the Government departments including, PW 1 – Marjiba Avad, who was working as Clerk in the Social Forest Department. The contents of the complainant were read over to the witnesses. Thereafter, demonstration of the application of anthracene powder was given to the complainant and the panch witnesses.

4] On 1st July, 1995, the trap was arranged. PW 1 – Marjiba, shadow panch witness was asked to wear Dhoti and Bandi to pose as a villager as he was to accompany the complainant. He was to watch the

transaction and hear the conversation between the complainant and the appellant and accordingly, the trap was organized at the house of the complainant. At about 8:00 am. the entire team went to village Waluj at the house of the complainant. The members of the raiding party, excluding the complainant and the shadow panch witness PW 1 - Marjiba, were hidden in a room in the house of the complainant. The complainant and the shadow panch witness remained in the front room. The shadow panch witness sat on the floor while the complainant was occupying a chair.

. After about one hour, the appellant came to the house of the complainant on his motorcycle. After arriving thereat, the appellant informed the complainant that he had already prepared the panchnama and the complainant was merely required to sign the same ante-dating as 30th June, 1995. Accordingly, the complainant signed the same by putting date as 30th June, 1995.

. Upon watching the shadow panch witness sitting on the floor, the appellant inquired about his identity. The complainant told him that the shadow panch witness was, in fact, his servant. Upon that, the appellant suggested that he would also record statement of the shadow panch witness and further told the shadow panch witness that upon recording his statement, as and when occasion would arise, he will have to appear before the Tahsildar in case, any summons is issued. The shadow panch witness agreed for the same. Accordingly, the appellant drafted the statement and directed the shadow panch witness to put signature below the said panchnama and put date as 30th June, 1995. The shadow panch witness, however, intentionally put the date 1st July, 1995 and handed over the same to the appellant. The appellant kept all these documents in his bag.

. The appellant, thereafter, told the complainant that some arrangement for the

Tahsildar also will have to be made and an amount of Rs.25/- will have to be spent for the Village Kotwal. The complainant told the appellant that he would manage for the payment to the Tahsildar, however, the amount of Rs.25/- to be paid to the Village Kotwal, should be paid by the appellant himself. During this dialogue, the appellant again asked for payment of amount of Rs.500/- to the complainant upon which, the complainant took out the decoy money and presented the same in front of the appellant. The appellant took the decoy money and kept the same in the pocket of his shirt. Thereafter, the complainant gave the predetermined signal to the raiding party members, who were hiding in the adjacent room.

5] Accordingly, the raiding party arrived and the appellant was caught hold. Thereafter, exercise of examination of the appellant under the ultra violet light was carried. It showed transfer of

decoy money. Thereafter, the complainant was examined, which confirmed transfer of money. Thereafter, the panchnama to that effect was recorded.

. The Investigating Officer, thereafter, registered the offence. He took search of the appellant. All the necessary documents including the complaint of said Baban Ahire to the Tahsildar, were seized. The statements of the relevant witnesses were recorded. He, thereafter, referred all these papers to the appropriate authority for sanction to prosecute the appellant. Accordingly, the sanction was received from the Collector and the charge sheet came to be filed.

6] Before the learned Special Judge, the shadow panch witness, the complainant and the Investigating Officer were examined, as detailed supra. The learned Special Judge did not examine

the sanctioning authority. The sanction granted by the sanctioning authority was exhibited at Exhibit 36.

7] The defence of the appellant was that in fact, the statement of the complainant PW 2 -Uday Patil and panchnama were recorded on 30th June, 1995 at the spot. It was informed to the complainant that the appellant would be visiting the complainant at his house on the next day for the purpose of recording the statement of his servant and driver of the tractor. Therefore, he had visited the complainant at his house on the next day. However, the complainant was already enraged with the appellant as earlier, a relative of the said complainant by name, Ramchandra Patil was prosecuted for felling of the trees unauthorizedly. The complainant wanted that the said prosecution be dropped. The appellant, however, did not pay heed to the same. Therefore,

the complainant had earlier abused the appellant over his caste for which, even a complaint was made to the Tahsildar. The complainant smelled that in the inquiry regarding carrying earth also, the report would be against him and therefore, he falsely implicated the appellant in the present case with the help of the Investigating Officer and the shadow panch witness. He even examined Baban Ahire, who had filed a complaint to the Tahsildar regarding carrying of the earth, as a defence witness.

8] According to the defence, at the time of the actual trap, while the appellant was preparing the report, the complainant thrust the decoy money in his bag. When the appellant found the money, he questioned the complainant as to why, he had thrust the money. However, immediately, the complainant and the shadow panch witness caught hold the hands of the appellant.

9] The learned Special Judge, however, found that the prosecution case was proved beyond the reasonable doubt. It was held that the sanctioning authority was not required to be examined and the sanction was validly granted. Therefore, the conviction and sentence, as detailed supra, came to be recorded against the appellant. Hence, the present appeal.

10] Mr.Deshpande, learned counsel for the appellant submitted before me that the sanctioning authority was not examined. The sanction order Exhibit-26, would show that there was non-application of mind at the time of granting the sanction. There was contradiction between the statements of the complainant and the shadow panch witness. The record would show that the complainant had animus against the present appellant. In the circumstances, he submitted that

the appeal may be allowed and the appellant may be acquitted.

11] On the other hand, learned A.P.P. for the respondent – State submitted that the learned Special Judge has rightly relied on the ratio laid down in the case of ***Vishwanath s/o. Karnuji Londhe Vs. The State of Maharashtra, 1995 Cri. L.J. 25,*** which would show that failure to examine the sanctioning authority would not be a fatal to the prosecution case. If the sanction order would show that there was application of mind and the facts would constitute the offence, it can be held that the sanction has been validly granted.

. As regards the facts of the case, learned A.P.P. submitted that the defence itself would show that the shadow panch witness was very well present at the time of the trap. Admittedly, his statement was also recorded by the present

appellant. Therefore, in such circumstances, said independent witness would not have deposed against the appellant, had the appellant not made demand of bribe and accepted the same. The learned A.P.P. therefore, submitted that the appeal may be dismissed.

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

A] Whether the sanction granted by the sanctioning authority was valid and legal ?

B] Whether the prosecution has proved that the the appellant had made demand of Rs.1,000/- and agreed to accept an amount of Rs.500/- for a favourable report in an inquiry which was pending against the complainant ?

C] Whether the prosecution has proved that on 1st July, 1995, the appellant had again made demand of

Rs.500/- and accepted the same on the same day towards the gratification other than the legal remuneration ?

D] Whether pecuniary advantage was obtained by the present appellant by corrupt and illegal means by abusing his position as a public servant ?

. My findings to 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] As regards the sanction, the ratio laid down in the case of **Vishwanath** (cited supra) would show that failure to examine the sanctioning authority would not be a fatal to the prosecution case. In the circumstances, it would be clear that in every case, it is not necessary to examine the sanctioning authority.

14] As regards non-application of mind, the sanction order at Exhibit-26 would show that all the factual aspects have been recorded therein. The only defect in the sanction order, was about the date below the sanction order, as it could be seen that the place of the date was .kept blank and when the sanction order was typed, date and year was typed as 1995. The sanction was granted in the month of February, 1996. It is a common knowledge that after end of every year, inadvertently, sometime the earlier year is mentioned in documents. Therefore, merely because there was a clerical mistake as regards the year of the sanction order, one cannot jump to the conclusion that there was non-application of mind in granting the sanction.

15] As regards the facts, besides the statement of the complainant, we have corroboration from the shadow panch witness PW 1 – Marjiba Avhad.

According to the appellant also, said panch witness was very well present in the room in the house of the complainant when the appellant had visited the house of the complainant.

. It is the defence that the complainant had certain animus against the appellant as one of the relatives of complainant, was dealt with sternly by the appellant. No document in that regard was filed though the same could have been said to be in existence being official record.

. On the other hand, a certified copy of one report is filed, which would show that on 31st January, 1994, present appellant had sent a report to the Taluka Magistrate regarding felling of certain trees. In that report, it was allegedly recommended that a criminal case be filed *inter alia* against the present complainant. It is however to be noted that it was not at all the

defence of the appellant that he had directly certain inimity with the complainant.

. Further, it was the defence that on the day of the incident, the appellant visited the house of the complainant.

. Had there been a deep animosity between the appellant and the complainant, the appellant would not have visited the house of the complainant to carry official work like recording of statement of the servant. This, on the other hand, would show that the appellant was to prepare a favourable report in favour of the complainant in the present episode.

16] There are no serious contradictions between the statements of complainant and the panch witness regarding the actual incident, except the fact that while, as per the prosecution case, the appellant had prepared the statement of the shadow

panch witness as servant on the spot, the shadow panch witness, during his deposition, deposed that the appellant had already prepared the statement. This statement is factually incorrect. It is not the case of the appellant that on the earlier date i.e. on 30th June, 1995, there was a meeting between the appellant and the complainant or during that meeting, the complainant told that his servant namely, Marjiba would be giving statement regarding the case of taking away the earth. In the circumstances, the present appellant could not have dreamt that the shadow panch witness Marjiba would be present on 1st July, 1995 and therefore, his statement already should be prepared in his name.

17] If all these facts are taken into consideration, in my view, there is no force in the present appeal. The learned Special Judge has rightly come to the conclusion that the

prosecution case is proved beyond the reasonable doubt.

18] Hence, the following order :-

A] The Criminal Appeal is hereby dismissed.

B] Bail bonds of deceased appellant - Nivrutti s/o. Gyanuji Mundhe shall stand cancelled.

19] Since Mr.R.B.Deshpande, learned counsel was appointed through High Court Legal Services Sub-Committee to appear on behalf of the appellant, his fees is quantified at Rs.10,000/- (Rs.Ten Thousand), to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[M.T. JOSHI, J.]