

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 349 OF 2001

Satish s/o Manoharrao Kulkarni,
aged 43 years, occ. Service,
(Talathi) R/o Gangapur,
District Aurangabad

...Appellant
[Orig. Accused no.1]

VERSUS

The State of Maharashtra,
through Police Inspector,
Anti Corruption Branch,
Aurangabad

...Respondent
[Original Complainant]

Mr. Govind Kulkarni, advocate h/f
Shri Rajendra Deshmukh, Advocate for the Appellant
Mr. S.D.Ghayal, APP for Respondent

CORAM : INDIRA K. JAIN, J.
DATED : 15th APRIL, 2016

ORAL JUDGMENT :

This appeal takes an exception to the judgment and order, dated 14.8.2001, passed by the learned Special Judge (ACB),

Aurangabad, in Special Case No. 6 of 1996 convicting the appellant/original accused no.1 of the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.

2] Prosecution case, in brief, is as under .

(i) Accused no.1 was serving as Talathi of village Bhendala Group Grampanchayat. Block No. 192 was situated at village Bhendala. It was belonging to five families of Mahar community. As some of the original owners of the land had passed away, legal heirs of the deceased were to be brought on record and mutation entry was to be effected in 7/12 extract.

(ii) Complainant Lahu Hiwale approached accused no.1 for bringing the names of legal heirs on record. It is alleged that accused no.1 demanded Rs.20,000/- for mutation. The amount was settled to Rs.10,000/-. On two occasions Rs.4,000/- each came to be paid to accused no.1. It was decided between the parties that complainant would pay Rs.1,500/- and remaining amount of Rs.500/- to be paid after work is over.

(iii) Complainant was not willing to pay bribe of Rs.2,000/- demanded by accused no.1 and so he approached the Anti Corruption office and lodged complaint. Verification of demand was made in the

presence of panch witnesses. Pre-trap panchanama was drawn. Trap was arranged on 17.11.1995 and it was successful. Accused no.2 was the person who accepted amount of Rs.1,500/- on behalf of accused no.1. Statements of witnesses came to be recorded. On completing investigation charge sheet was submitted to the Special Court.

3] Charge came to be framed against the accused. Accused pleaded not guilty and claimed to be tried. Accused no.1 raised specific defence that for making mutation entry arrears of land revenue were required to be cleared by the holders of the land. Block No. 192 was in arrears of Rs.2,000/- land revenue. On 17.11.1995 complainant paid Rs.1,500/- to accused no.1 towards land revenue. Accused no.1 submitted that he was falsely implicated by complainant who had no concern with the land in respect of which mutation entry was sought to be effected.

4] To substantiate the alleged guilt of accused, prosecution examined PW 1-Chokharam Umaji Rathod a shadow panch. PW 2-Lahu Hiwale complainant, PW 3-Sampat Hiwale a co-sharer of land, and PW 4-Ambadas Sawai investigating officer.

5] Considering the evidence of complainant, shadow panch and investigating officer, Trial Court came to the conclusion that demand and acceptance was proved beyond reasonable doubt against accused no.1. Regarding sanction, evidence of investigating officer was relied upon and sanction was held as legal and proper. On the basis of evidence, Trial Court held accused no.1 as guilty and convicted and sentenced him as stated above. However, accused no.2 was found not guilty and stood acquitted. Being aggrieved with the order of conviction and sentence this appeal has been preferred by accused no.1.

6] Appellant assailed the evidence of prosecution witnesses on various grounds. Shri Govind Kulkarni, advocate holding for Shri R.S.Deshmukh, learned counsel for appellant submitted that sanction order (Exh.35) would indicate use of whitener and name of sanctioning authority written in ink after scoring the earlier name. It is submitted that prosecution ought to have examined sanctioning authority to explain the suspicious circumstances and non-examination of sanctioning authority would vitiate the sanction order.

7] Another contention raised on behalf of appellant is that complainant is a seasoned person. On earlier occasion he lodged report against another Government employee with Anti Corruption office. He was fully conversant with the procedure. He was not concerned with the land Block No.192, still he took upon the responsibility to get the names of legal heirs entered in 7/12 extract. It is submitted that evidence of complainant is wholly doubtful and in the absence of independent corroboration it would be risky to rely upon the testimony of complainant.

8] The third contention raised by accused is that accused no.1 has come with a defence that complainant gave him Rs.1,500/- against the arrears of land revenue which was to be cleared before the entries in the names of legal heirs were entered in 7/12 extract. The learned counsel submitted that accused no.1 examined DW 1 concerned Talathi Mahadu Sandu Bangale who has proved the certificate showing Rs,2,000/- towards arrears of land revenue against land Block No. 192. The learned counsel submits that accused no.1 has been falsely implicated and considering his defence Trial Court ought to have acquitted him.

9] Per contra, learned Additional Public Prosecutor supports the judgment and order of conviction passed by the Trial Court. He submitted that trap was successful and based on evidence Trial Court has rightly convicted accused no.1.

10] On going through the material and evidence on record and hearing the submissions advanced on behalf of the parties, following points arise for determination of this court.

- (i) Whether prosecution could prove that on 17.11.1995 appellant being public servant demanded Rs.1,500/- as amount other than legal remuneration as a motive for entering names of legal heirs in 7/12 extract ?
- (ii) Whether sanction to prosecute the appellant granted by sanctioning authority is legal and valid ?

Findings to the above points 1 and 2 are in the negative for the reasons to follow.

11] It is an undisputed fact that at the relevant time accused was working as Talathi and he was responsible for mutation of names of legal heirs in 7/12 extract. He did not dispute that on 17.11.1995 he accepted Rs.1,500/- from the complainant. In view of these admissions, the moot question remains to be answered is

whether amount of Rs.1,500/- received by the accused from complainant was towards arrears of land revenue or as a bribe as alleged by complainant.

12] It is stated by complainant Lahu Hiwale that Block No. 192 was owned by five owners. Names of legal heirs were to be brought on record and so in a meeting it was decided that he should get the names of legal heirs recorded in the Record of Rights. On 24.8.1995 complainant met accused no.1 and requested him to mutate the names of legal heirs. He stated that accused no.1 told him to give Rs.20,000/- and after settlement it was brought down to Rs.10,000/-. He then stated that on 28.8.1995 and 9.9.1995 amount of Rs.4,000/- each was paid to accused no.1. Complainant stated that for remaining amount of Rs.2,000/- accused no.1 asked him to pay Rs.1,500/- and to pay remaining amount of Rs.500/- after work is over. As he was not willing to pay Rs.2,000/- bribe complainant reported the incident to Anti Corruption office. He proved first information report. After report, demand was verified, trap was arranged and the same was successful.

13] It can be seen from cross-examination of complainant that he had no concern with land Block No. 192. He states that in a

meeting it was decided that he should get the names of legal heirs recorded in the Record of Rights. This fact is denied by PW 3-Sampat Hiwale a co-sharer of land in his evidence. It further appears from the evidence of complainant that Sanjay Ganpat, Bala Bhaskar and one Sheshrao accompanied him at the time of initial demand. None of these witnesses could be examined by prosecution. Prosecution placed reliance on the evidence of PW 3-Sampat Hiwale. On meticulous scrutiny of evidence of PW 3-Sampat it can be seen that he does not support prosecution on alleged demand. On the contrary, he fully supported the defence raised by accused that amount was paid towards arrears of land revenue.

14] The next important factor relates to verification of demand. If verification panchanama is looked into it can be seen that there is no whisper in the said panchanama about demand as bribe. As PW 3-Sampat did not support the prosecution and verification panchanama is silent on demand towards bribe, Court was left only with the sole testimony of complainant.

15] As indicated above, independent witnesses were available to the prosecution. They were kept away from the witness

box. Considering the fact elicited in cross-examination of complainant, corroboration to his testimony was essential. For want of corroboration it would be risky to place reliance on the testimony of complainant, particularly when accused could show by preponderance of probabilities that he accepted the amount towards arrears of land revenue and not as bribe.

16] This takes the Court further to the evidence of DW 1- Mahadu Bangale. He was serving as Talathi since 1988. He stated that there were 12 share holders of land Gat No. 192. According to him, sharers of the land were in arrears of land assessment. As per register, Rs. 2,000/- were to be recovered from six khatedars for the assessment year 1994-95. He further states that entries of arrears of land revenue were made in the register and on the basis of those entries he issued certificate Exh.44. This certificate clearly indicates that land holders of Gat No. 192 were in arrears of Rs.2,000/- towards land revenue. DW 1-Bangale is an independent witness. His testimony is based on record. Nothing could be elicited in cross-examination of DW 1-Bangale to disbelieve his evidence. Based on evidence of DW 1-Bangale and Exh.44 accused no.1 could succeed in showing that land holders of Gat No. 192 were in arrears of land revenue and since the names of legal heirs were to

be recorded in 7/12 extract amount of Rs.1,500/- was paid as arrears.

17] So far as sanction to prosecute accused no.1 is concerned, it would be necessary to look at the evidence of investigating officer. Prosecution has not examined the sanctioning authority. True non-examination of sanctioning authority would not be fatal to the prosecution case unless it is brought on record that sanction accorded was without due application of mind. PW 4-P.I. Sawai was attached to Anti Corruption office. He conducted investigation and submitted charge sheet. According to P.I. Sawai, after completion of investigation detailed report was made to sanctioning authority through Superintendent of Police, Anti Corruption Bureau along with list of documents. The Superintendent of Police then submitted a detailed report to Assistant Collector, Vaijapur. Thereafter Assistant Collector, Vaijapur accorded sanction vide Exh.35.

18] A quick glance at sanction order Exh.35 would make it clear that at the bottom whitener was used and the name of signatory was mentioned in ink by scoring the earlier name. It has come in the evidence of investigating officer that by letter Exh.32

documents were forwarded to Superintendent of Police, Anti Corruption Bureau and in turn Superintendent of Police forwarded the documents and draft sanction order vide letter Exh.33. On perusal of letter Exh.33 it can be seen that draft sanction order along with other documents was sent to the sanctioning authority.

19] Commenting upon draft sanction order sent along with letter Exh.33, learned counsel for the appellant vehemently contended that the possibility of the concerned Department drafting the order, sending it to the authority and the authority simply signing the order is not overruled. Learned counsel placed strong reliance on the decision of this court in **Jagannath Maruti Tekale Vs State of Maharashtra [1991 (2) Mh.L.J. 976]** and submitted that it would be extremely risky to hold that sanction order in the present case was legal and proper.

20] In the judgment in **Jagannath** referred by learned counsel for the appellant, it was observed as under : -

"4. Normally, having decided the aforesaid point in favour of the appellant, I would not have considered it necessary to deal with any of the subsequent submissions. Mrs. Ranadive, learned A.P.P. elaborately tried to convince the Court that the application of mind can be gauged from the sanction order itself and that, it was unnecessary to

examine the sanctioning authority. That argument, unfortunately, is unacceptable because the Court will have to take judicial notice of the fact that in the Government set-up, the orders are often times drafted out by a department and put up to an authority for signature and, therefore, it would be extremely dangerous to conclude even if the sanction order is correctly or perfectly drafted, that the authority who signed it must have applied his mind in the absence of his deposing before the Court that he had in fact done so."

21] In the case on hand, no evidence is brought on record that after receiving draft sanction order authority has applied the mind and issued sanction order (Exh.35).

22] In this circumstance it was necessary for the prosecution to explain that draft sanction order was approved by the sanctioning authority after due application of mind and before the sanction order could be issued authority was subjectively satisfied that accused was to be prosecuted for the offences under the Prevention of Corruption Act. These circumstances were not to be explained by the investigating officer but by the sanctioning authority. Since sanctioning authority was not examined it is doubtful that sanction order was issued with due application of mind by the authority concerned.

23] In the light of above, it is apparent that prosecution could not prove through reliable, convincing and trustworthy evidence, demand and acceptance of alleged bribe and legal and valid sanction. The impugned judgment and order of conviction and sentence thus deserves interference in the present appeal. Hence the following order.

ORDER

- (i) Criminal Appeal No. 349 of 2001 is allowed.
- (ii) The impugned judgment and order of conviction passed on 14.8.2001 by the learned Special Judge (ACB), Aurangabad in Special Case No. 6 of 1996 convicting and sentencing the appellant-Satish Manoharrao Kulkarni of the offences under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act is hereby set aside.
- (iii) Appellant is acquitted of the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.
- (iv) Bail bonds of the appellant stand cancelled forthwith.

- (v) Fine amount, if deposited, shall be refunded to the appellant.

[INDIRA K. JAIN, J.]

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