

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 531 OF 2001

Vyankat s/o Baburao Kailwad,
Age : 25 years, Occu. Service as
Gramsevak, Massajog, Grade-III,
Panchayat Samiti, Kaij, Tq. Kaij,
District Beed

APPELLANT

VERSUS

The State of Maharashtra

RESPONDENT

Mr. S.S. Choudhari, Advocate for the appellant
Mr. R.V. Dasalkar, A.P.P. for the respondent-State

CORAM : M.T. JOSHI, J.

DATE : 16/02/2016

ORAL JUDGEMENT :

1. Heard both sides.
2. Aggrieved by the conviction for the offences punishable under section 7 and 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, 1988, by the learned Additional Sessions Judge/Special Judge, Ambajogai, vide judgement and order dated 6th November, 2011 passed in Sessions Case No. 3 of 2000, the present appeal is preferred by the original accused.

He was sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 3000/- on each count. Both the sentences were directed to run concurrently.

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

. That, PW3 Purushottam Deshmukh - the complainant wanted that there should be mutation entry in his name in the Gram Panchayat record of village Massajog, Taluka Kaij, District Beed. The present appellant was working as Gramsevak of the said Gram Panchayat. Therefore, on 20th October, 1999, the complainant handed over the original sale deed which was recorded on a stamp paper of Rs.5/-, to the appellant. The appellant, however, made a demand of Rs.1,000/- for making necessary entries and for grant of certified copy of the same. Even after negotiations, the appellant did not agree to reduce the amount. Ultimately, the complainant paid an amount of Rs.150/- to the appellant on that day. The appellant warned the complainant to pay balance of Rs.850/- by the evening of that day. The complainant, however, avoided by saying that he would be out of station for three to four days and thereafter, the balance amount would be paid.

. On 25th October, 1999, the complainant again met the appellant in connection with the said work. The appellant again made the demand of the money. Thereupon, the complainant promised to the appellant that the amount would be paid on the next day i.e. 26th October, 1999 by 12:00 noon at the office of the appellant at Massajog. Accordingly, the complaint came to be filed with Anti Corruption Bureau, Beed on 25th October, 1999.

. The then Deputy Superintendent of Police, ACB, Beed – PW4 Mahindra Bhokare, conducted the investigation in the case. He collected two employees from the R.T.O. Office as panch witnesses. Out of them, PW1 – Raghuttam Naikwade was agreed to be the shadow panch witness, who was directed to hear the conversation and watch transaction between the appellant and the complainant. The decoy money brought by the complainant was smeared with anthracene powder.

. The appellant was found in the office of the one another Gramsevak Mr. Kedar in Kaij town. The shadow panch witness and the complainant went to meet the appellant while rest of the members of the raiding party were waiting outside the office of the appellant.

Thereat, during the conversation, the complainant asked the appellant as to whether the certified copy was prepared. Upon that, the appellant asked as to whether the remaining amount of Rs.850/- was brought. The complainant replied that he had brought the money. Thereupon, the appellant made certain entries in the old registers. He also prepared certified copy of the same and handed over the it to the complainant. Thereafter, the appellant asked for money, whereupon, the complainant handed over the decoy money to him. Thereupon, the complainant gave predetermined signal upon which the raiding party arrived at the spot.

. The investigating officer thereafter carried further activities of examining the hands and clothes of the appellant and thereafter of the complainant under the ultra violate lamp which confirmed the above activities. Thereafter, further investigation was made and necessary documents were seized.

. The Chief Executive Officer of Zilla Parishad, Beed was requested to grant sanction to prosecute the appellant. PW2 - Mr. S. Chokkalingam, the then Chief Executive Officer, upon perusal of the documents granted

sanction to prosecute the appellant by issuing sanction order at Exhibit-30. Thereafter, the chargesheet came to be filed in the Court.

4. Before the learned Special Judge, four witnesses, as detailed supra, were examined. The learned Special Judge has found that the prosecution has proved its case beyond reasonable doubt and therefore, the conviction, as detailed above, came to be recorded. Hence, the present appeal.

5. Mr. S.S. Choudhari, learned counsel for the appellant made following submissions before me.

. That, the complainant was an influential politician who was facing the charges of murder, etc. during the relevant period. He admitted, during cross-examination that he was earlier Sarpanch of the village and member of the Panchayat Samiti as well as chairman of the Cooperative Society. Many cases were filed against him, including attempt to commit murder, etc. He was also facing a case of cheating. He was having four houses and two open plots at village Massajog. During the relevant period, according to him, he had

spent for repairing of certain machine of the gram panchayat and wanted that the tax amount due towards him of the gram panchayat should be adjusted from the said expenses.

. Learned counsel submitted that the appellant, however, used to tell him that it was not his job to adjust the amount and the tax was due against him and he had even received one demand notice of Rs. 984/- towards the house tax and water tax during the relevant period. The copy of the said notice at Exhibit-35 was admitted by him.

. The complainant further admitted that the present appellant had told him that unless the dues against him are paid, the mutation entry regarding the plot would not be taken. He had replied the notice and asked for adjustment of the amount. However, that reply was not with him. He further admitted that as the appellant – gramsevak had told him that his name would not be registered in the register unless he pays the dues, he felt insulted and therefore, was annoyed. He also admitted that he had told the appellant that he had paid some amount of dues and therefore, the appellant

gave the copy of the mutation entry. He further admitted that he was having various motor vehicles like, car, jeep, tractor, truck and therefore, the employees of the R.T.O. office (from where both the panch witnesses were called) are known to him.

. Mr. Choudhari submitted that according to the prosecution itself there was no specific talk of payment towards any bribe in presence of the shadow panch witness. In this state of situation, Mr. Choudhari submitted that the learned Special Judge ought to have extended benefit of reasonable doubt to the appellant in the case. He, therefore, prayed that the appeal be allowed.

6. On the other hand, learned A.P.P. submitted that though the complainant has tried to support the accused in the witness box, the original complaint as well as the statement of independent panch witness would show that the amount was demanded towards the gratification other than legal remuneration for merely making mutation entry in the gram panchayat record and issuing the certified copy of the same. In the circumstances, he submitted that the appeal be

dismissed.

7. On the basis of above material on record and considering the submissions advanced on behalf of both sides, the following points arise for my determination.

(I) Whether the prosecution has proved that the present appellant being a public servant made a demand of gratification other than the legal remuneration for carrying the entry in the mutation register regarding the plot purchased by the complainant and to pass certificate of the same ?

(II) Whether the prosecution has further proved that on 20th October, 1999, the appellant accepted an amount of Rs. 150/- and Rs. 850/- towards the said gratification ?

(III) Whether the prosecution has proved that the appellant being public servant has obtained pecuniary advantage by abusing his position as a public servant by corrupt means ?

My findings to all the above points No. (I) to (III) are in the negative. The appeal is therefore allowed and

the appellant is acquitted of the offences, for the reasons to follow.

R E A S O N S

8. The details of the prosecution case and the statement of the complainant in the court, already reproduced in detail, would show that while in the complaint, the complainant has alleged that the amount was demanded towards making the entry in the mutation register and to pass the certified copy of the same, in the court he admitted that the present appellant was pestering him for payment of dues towards the tax.

. It could have been very well inferred that the complainant during the trial wanted to support the appellant and therefore, he had deviated from the prosecution case. However, we have the copy of the demand notice at Exhibit-35. The fact that the complainant was an influential politician and was facing many criminal cases, is clear from the record. Exhibit-35 would show that earlier to the present episode itself, a notice was slapped to the complainant for payment of the dues. In these circumstances, it has

become doubtful as to whether the amount demanded by the appellant was towards the gratification other than legal remuneration or towards the dues.

. Had there been a case of demand of illegal gratification during the trap, then the partial tilt of the complainant could have been ignored as we would have independent testimony from the shadow panch witness.

9. However, it is the prosecution case itself that in presence of the shadow panch witness, there was no conversation which would show that the amount of Rs. 850/- was demanded only towards making an entry in the mutation register and to pass the certified copy of the same. The conversation between the complainant and the appellant would show that the complainant asked as to whether the certified copy was prepared, upon which the appellant counter-questioned as to whether the money was brought. Thereafter, when the complainant told that the money was brought, thereupon the appellant made entry in the mutation register and passed the certified copy of the same and thereafter, asked for the money.

10. It is the defence that upon receipt of the money, the appellant was going to pass the receipt of the same. However, within no time, the predetermined signal was given by the complainant and the raiding party arrived and nabbed the appellant and thus he could not pass the receipt.

. Whether this defence is to be accepted or not would depend on the circumstances on record. Here, in the present case, admittedly during the conversation between the appellant and the complainant before the independent panch witness, there was no clear-cut indication that the amount was demanded towards merely making the entry in the mutation register and passing the certified copy thereof.

11. As already pointed out, leaving aside the oral statement of the complainant, Exhibit-35 – the demand notice would show that the complainant was in arrears of the municipal taxes. This would probabalize the defence that the amount was demanded towards the gram panchayat taxes.

12. Learned Special Judge, however, appears to have

been prejudiced due to the partial hostility of the complainant only in the cross-examination at the hands of the appellant and finding that the demand was made and the money was accepted in presence of the independent panch witness, the conviction came to be recorded.

13. In my view, though honourable acquittal in the case could not have been recorded, atleast benefit of reasonable doubt is required to be extended in the set of facts. In the circumstances, the following order.

14. The appeal is hereby allowed. The order of conviction and sentence dated 6th November, 2011 passed by the learned Additional Sessions Judge/Special Judge, Ambajogai in Sessions Case No. 3 of 2000, for the offences punishable under section 7, 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, is hereby set aside.

. Instead, the appellant is acquitted of the offences punishable under section 7, 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act. His bail bonds, if any shall stand cancelled. The fine

amount deposited by him, if any be refunded to him after
a period of ten weeks from the date of this order.

[M.T. JOSHI]
JUDGE

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