

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.491 OF 2002

Dadasaheb s/o. Shankarrao Pathare,
Age 44 years, Occ. Senior Grader,
Dist. Aurangabad ..Appellant

Versus

The State of Maharashtra ..Respondent

--

Mr.R.N.Dhorde, Senior Counsel with Mr.V.R.Dhorde,
advocate for appellant
Mr.N.T.Bhagat, A.P.P. for respondent – State

--

CORAM : M.T. JOSHI, J.
RESERVED ON : FEBRUARY 15, 2016
PRONOUNCED ON : MARCH 14, 2016

JUDGMENT :

Heard both sides.

2] Present appellant – original accused no.1 was convicted by learned Special Judge, Aurangabad in Special Case No.2 of 1996, vide impugned judgment and order dated 17th August, 2002 for the offences punishable under Section 7, 13(1)(d) read with

Section 13(2) of the Prevention of Corruption Act. He was sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.2,000/- on each count. Hence, the present appeal.

. The Co-accused no.2 – Suresh Gaikwad was acquitted from the offence punishable under Section 12 of the Prevention of Corruption Act.

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

. That, present appellant was serving as a Grader in Cotton Federation Procurement Centre, at Phulambri during the relevant period. On 28th April, 1995, complainant PW 1 – Shaikh Yakub and his colleague Shaikh Ismail wanted to sell their 60 quintal of cotton of Nanded 44 variety. They, therefore, brought the said raw cotton by a truck to Aurangabad. However, there was rush at Aurangabad centre, therefore, they were advised to take the truck to Phulambri centre. They obtained

gate pass and rushed in the said centre on 29th April, 1995. However, their cotton could not be weighed on that day. On the next day i.e. on 30th April, 1995, their cotton was taken for weighment.

. However, present appellant declared that the cotton was of third grade. The complainant and his colleague, however, insisted that the cotton was of first grade. Ultimately, the appellant agreed to grade the cotton as second grade cotton through accused no.2 – Suresh Gaikwad, on the condition that the complainant and his colleague would pay him Rs.70/- per quintal as bribe. Reluctantly, both of them agreed for the same. They, however, had no money on that day.

. Therefore, though the appellant had got the cotton weighed, the slip and folder was kept by him. The appellant told them that upon payment of Rs.4760/- at the rate of Rs.70/- per quintal for 68

quintal, he would release the weighment slip and the folder to the complainant. He asked them to visit on 1st May, 1995 with money.

. On 1st May, 1995, the complainant and his colleague met the appellant at about 5:00 pm. and told that they were unable to pay Rs.4,760/-. Ultimately, the appellant reduced his demand to Rs.4500/- and asked them to bring said amount on 2nd May, 1995 and to collect the documents. As complainant PW 1 – Shaikh Yakub was not willing to pay the said bribe amount, he filed complaint (Exhibit 47) to the Anti Corruption Bureau, Aurangabad.

4] PW 4 – Hanumant Kulkarni, Dy. Superintendent, Anti Corruption Bureau, Aurangabad, conducted the investigation. He decided to lay a trap on 2nd May, 1995. On 2nd May, 1995, he collected two panch witnesses from public offices including PW 2 –

Chand Khan Pathan, Steno-Typist, Maharashtra Housing Development Corporation, Aurangabad. The complaint was read over to them. They agreed to be panch witnesses. Demonstration of anthracene powder was given to the complainant as well as the panch witnesses. The decoy money brought by the complainant was smeared with anthracene powder. The decoy money was kept in the pocket of the complainant. The panchnama of all the activity was recorded and thereafter, the raiding party proceeded to Phulambri by two separate Jeeps.

5] While the complainant and his colleague as well as the shadow panch witnesses PW 2 – Chand Khan Pathan met the appellant, rest of the team remained in the vicinity. The appellant inquired with the complainant, as to whether money was brought. The complainant answered in the affirmative. Thereupon, the appellant called accused no.2 – Suresh and directed the complainant

to pay the money to him. He also instructed accused no.2 – Suresh to hand over the weighment slip and cheque to the complainant upon getting the bribe amount. Thereupon, accused no.2 – Suresh led the complainant, his colleague and the shadow panch witness to the office. There, accused no.2 – Suresh handed over the complainant and his colleague the weighment slip with a folder and demanded the money. The complainant gave the decoy money to accused no.2 – Suresh. He counted the same and put in the pocket of his Nehru shirt. The complainant, thereafter, came out of the office and gave the predetermined signal to the Investigating Officer upon which, the raiding party rushed on the spot and caught hold accused no.2 – Suresh. The decoy money was recovered from him.

. The appellant was called at the spot. His personal search was carried by another panch. One diary, eight chits, certain amount of Rs.125/- and

miscellaneous articles were found on his person. The diary and the chits were seized. A folder of the weighment slips were seized from the drawer of one table. Over the folder, there was an endorsement made by the appellant directing not to make payment unless green cards are produced by the complainant and his colleague.

. After the trap was over, the Investigating Officer directed Shri.Shejul, Officer of the Agricultural Produce Marking Committee (for short "APMC") to prepare cheque for payment towards the raw cotton, as the complainant and his colleague had produced the green cards.

. Thereafter, the Investigating Officer filed a formal report (Exhibit 63) with Phulambri Police Station. He recorded statements of the relevant witnesses. He sought sanction to prosecute the appellant from the Managing Director, Maharashtra

State Cotton Federation, Nagpur. Eventually. PW 3 – Mr.Omprakash Jahratra, Managing Director, Maharashtra State Cotton Federation, accorded the sanction to prosecute the appellant vide letter at Exhibit 61. Thereupon, the charge sheet came to be filed.

6] According to the appellant on 30th April, 1995, the complainant and his colleague managed to get illegal entry of the truck in the centre with the help of Officer of APMC – Shri. Shejul, though none of them were holding any green card. The complainant, thereafter, pressed the appellant for grading the cotton by saying that he would bring the green card within two days. The appellant told the complainant that unless the green card is brought, he would not issue the cheque from APMC.

. As there was a mob and disturbance was caused, the appellant, under pressure, graded the cotton. However, the complainant had raised a dispute

regarding the gradation. The appellant told that as per the rule, the complainant could take the dispute to 'Vandha Committee' of the APMC. Ultimately, the colleague of the Cotton Federation weighed the cotton of the complainant and the appellant signed over the folder. However, since the green card was not produced by the complainant, the appellant was unable to verify regarding the cultivation of the cotton and therefore, he endorsed that unless the green card is produced, the payment shall not be made.

. The complainant and his colleague were enraged. They complained to the APMC, Aurangabad instead of making a proper complaint to the Cotton Federation. In the complaint, it was alleged that present appellant had mis-behaved with them and graded their cotton wrongly, as they were unable to pay any bribe to the appellant. According to the appellant, once the gradation is put on the folder, he does not have any concern with the forwarding of

the cheque. In the situation, on the day of the trap i.e. on 2nd May, 1995, when the complainant was seen in the crowd of the farmers making inquiry regarding the folder and cheques, the appellant told them that as per the procedure, the folder would be with APMC and they should approach the said office and get their work done. He was not concerned with the payment of price of the cotton in any way. However, he was falsely involved due to dispute between him and Shri. Shejul, Officer of the APMC. On 6th March, 1995 i.e. much earlier to the present episode, he had complained about the said dispute. Even said Shejul had also filed a complaint with Phulambri Police Station and one P.S.I. had even visited the appellant to make inquiry.

. In the situation, according to the appellant, said Shejul might have instigated the complainant and his colleague to involve the appellant in a

false case. Hence, the appellant wanted that he should be acquitted.

7] The learned Special Judge, however, came to the conclusion that not only the statement of the complainant and the shadow panch witness, would show that the present appellant had made demand of illegal gratification and accepted it through accused no.2 – Suresh, the diary and eight chits which were seized the person of the appellant, would also show that the appellant was regularly in habit of grading the cotton as per his own convenience in case illegal remuneration is paid to him. In the circumstances, the appellant came to be convicted.

8] Mr.Dhorde, learned Senior Counsel, submitted before me that in fact, the appellant was not, in any way, concerned with the payment of price of the cotton.

. The green card, which would show that the farmer had grown the cotton and that the cotton brought was not result of any commercial activity, was necessary. However, the green card was not produced by the complainant and his colleague. The Investigating Officer had, eventually, made out a case that the green card was produced by the complainant and his colleague at the time of passing of the cheque and the said green card was even returned to them. In fact, no green card was produced at any time by the complainant. He submitted that if the green card was really produced by the complainant or his colleague, the Investigating Officer ought to have seized the same.

. Mr.Dhorde further submitted that during the cross-examination, it was brought on record that the complainant had made complaint not only to the

Anti Corruption Bureau, but even to the APMC. Further, it was also proved that the present appellant had already complained to his superior about the conduct of said Shejul and about his apprehension that said Shejul may involve him in some false accusation.

. In the circumstances, Mr.Dhorde, taking me through the record, submitted that the present appeal may be allowed and the appellant may be acquitted.

9] On the other hand, Mr.Bhagat, learned A.P.P. for the respondent – State submitted that the statement of the complainant coupled with deposition of the shadow panch witness, are fortified by the eight chits and the diary, admittedly, seized from the person of the appellant. It would clearly show that the appellant, not only in the present episode had made demand of illegal gratification, but was in habit

of making such demands to various farmers. He, therefore, submitted that the appeal may be dismissed.

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

(I) Whether the prosecution has proved that the present appellant has attempted to obtain an amount of Rs.4,760/- as a gratification for higher gradation of the raw cotton of the complainant and his colleague ?

(II) Whether the prosecution has further proved that on 1st May, 1995, the appellant has agreed to reduce the said demand to Rs.4,500/- ?

(III) Whether the prosecution has further proved that on 2nd May, 1995, the

appellant has again made demand of illegal gratification and obtained the same through accused no.2 – Suresh ?

(IV) Whether the appellant has abused his position as a public servant to obtain the pecuniary advantage by corrupt or illegal means ?

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

R E A S O N S

11] The deposition of the complainant as well as the shadow panch witness is on the line of the prosecution case, as detailed supra. The deposition of the Investigating Officer would also show that the decoy money was found in possession

of accused no.2 - Suresh. The appellant has also admitted that he was called at the spot and from his person *inter-alia* a diary and eight chits were recovered.

12] Mr.Dhorde submitted that in fact, the appellant was in cross terms with said Raosaheb Shejul, the then Officer of the APMC at Phulambri. Said Shejul had even filed a complaint with Taluka Shetkari Sahakari Kharedi Vikri Sangh on 7th March, 1995 vide inward No.755/1995, which was annexed to the affidavit of the appellant filed on 15th February, 2016. He further submitted that during trial, the complainant has admitted that he had lodged a complaint (Exhibit 49) to the Chairman of APMC regarding various illegal activities carried on at the centre at Phulambri. He further submitted that as per the admitted procedure, in case any huge quantity of cotton was brought for sale, then the farmer was required to produce the

green card, as said green card would show that the farmer had, in fact, cultivated the cotton in his field that he was able to produce the cotton himself. It would confirm that the farmer had not brought the cotton by illegally procuring the same from the farmers/market.

. In the present case, the green card was not admittedly produced by the complainant. Therefore, the appellant had made endorsement on the folder that the price be not paid till the green card is not produced. This has naturally enraged the complainant and his colleague. Therefore, they made a false complaint against the appellant.

. Shri.Shejul, Officer of APMC already had animus against the appellant.

. Considering all these facts, Mr.Dhorde submitted that the learned Special Judge ought to

have extended benefit of reasonable doubt to the present appellant.

13] In the trial Court, the appellant has relied over the complaint filed by complainant with the Chairman of APMC on 1st May, 1995 (Exhibit 49). Thereafter, on 2nd May, 1995, the complainant had filed complaint with the Anti Corruption Bureau (Exhibit 47).

. The complaint at Exhibit 49 would show that the complainant had reported the Chairman of APMC that though he and his colleague had produced the cotton, it's payment was unnecessarily withheld. Further, though the cotton was of superior quality, it was graded as of medium quality and the Grader has demanded bribe at the rate of Rs.70/- per quintal. This complaint is dated 1st May, 1995. It recites other facts as are reported in the F.I.R. on the next date I.e. bringing

cotton at Phulambri on 29th April, 1995, its weighment on 30th April, 1995 etc.

. No connection between the appellant and said Shejul could be shown by the appellant at any point of time.

14] DW 1 – Jagdish Chillare, Deputy Manager of Maharashtra Cotton Growers' Federation, Khamgaon has deposed that while he was posted at Aurangabad in the first week of 1995, he had received a telephonic message that certain quarrel took place between the appellant and said Shejul at Phulambri centre. Therefore, he along with other officials had reached Phulambri centre at about 4:00 pm. on that day. The appellant had complained to him that Shri.Shejul used to interfere in his work. Thereat, the appellant gave a complaint in writing against Shri.Shejul. DW 1 – Jagdish took the said complaint to his office at Aurangabad. He had

endorsed receipt of the same. Said complaint was produced by him at Exhibit 77.

. This complaint at Exhibit 77 would show that on 6th March, 1995, said Shejul had created certain difficulties in purchase of cotton and tried to stop purchase of the cotton. It is also complained that said Shejul had threatened that he would see that the appellant would be arrested by the Officers of the Anti Corruption Bureau.

. This defence was brought on record on 5th August, 2002. When the Investigating Officer was cross-examined, he was candid enough in admitting that during investigation, he found that the complainant and his colleague had filed complaint also with the Chairman of APMC, though the complainant had never disclosed it to him.

. Though, during the cross-examination, mention of Shejul was made and the Investigating Officer

has admitted that when he entered the office of APMC where the appellant has accepted the bribe amount said Shejul was present, it was neither suggested to him that during investigation, he also became aware of filing of any complaint to the superior officer of said Shejul, nor there was any suggestion to him that the appellant had narrated to him that in fact, he was involved in a false trap case by said Shejul and that the appellant had already filed a written complaint with his superior in this regard.

15] To repeat, the Investigating Officer was candid enough in making statement in cross-examination that when, during investigation, he came to know of filing of the earlier complaint by the complainant and his colleague to Chairman of APMC, he made investigation in this regard and attached the said complaint (Exhibit 49).

. In the circumstances, had the present appellant made a statement regarding the written complaint already made by him against said Shejul to his superior, the Investigating Officer would not have failed in making investigation in that direction and seizing the said complaint also.

. In the circumstances, statement of D.W.1 that the appellant had reported vide Exhibit-77, on 6th of March, 1995 that Mr.Shejul had threatened that the appellant would be implicated in corruption case can not be relied.

16] It is the case of the prosecution that as bribe amount was not paid on the day of weighment, the appellant kept the folder with him by making endorsement that the payment would not be made unless the green card is produced. The complainant as well as the shadow panch witness were definite in stating that on the day of the trap, the

appellant again made demand of bribe amount and when the complainant stated the he had brought the amount, then only he released the folder to accused no.2.

17] As already pointed out, the appellant has admitted seizure of one diary and eight chits from his person when he was brought to the spot where, the accused no.2 had accepted the decoy money. Those chits are at Articles 1 to 8.

. Out of those chits, Article 1 to Article 3 would show that various persons known to the appellant had requested by chits to the appellant to help the person who had brought the tractor load of raw cotton and that maker of the chit would meet him in the evening. Article 3 would show that one Darade requested the present appellant to help his friend Isaq.

. The chit admittedly seized from the appellant at Article 4 to Article 6 would show that certain amount was deposited and against the name of various persons, some amount was shown. The appellant, admittedly, was working as a Grader and was not concerned with the payment and still those chits were found on his person, which have been rightly appreciated by the learned Special Judge.

. The learned Special Judge has, therefore, rightly inferred that those admitted chits would reveal that the appellant was indulging in awarding suitable gradation of the cotton for some extraneous consideration.

18] In the circumstances, in my view, the prosecution has proved its case beyond the reasonable doubt.

19] Hence, the following order :-

A] The Criminal Appeal is hereby dismissed.

B] Bail bonds of the appellant shall stand cancelled.

C] The learned Special Judge is directed to take steps for securing presence of the appellant in the Court in order to see that the appellant would serve remainder of the sentences.

[M.T. JOSHI, J.]

kbp