

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 697 OF 2002

Bhaskar Vishwanath Thorat,
Age : 48 years, Occu.: Service,
R/o Pavan Nagar, CIDCO,
Aurangabad, Dist. Aurangabad

.. Appellant
(Orig. Accused)

VERSUS

The State of Maharashtra

.. Respondent

Mr. M.A. Tandale, Advocate for the appellant
Mr. N.T. Bhagat, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.
RESERVED ON : 11/02/2016
PRONOUNCED ON : 09/03/2016

JUDGMENT :

Heard both sides.

2. The present appellant was convicted by the learned IIIrd Adhoc Additional Sessions Judge cum Special Judge, Aurangabad for the offences punishable under section 7, 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act vide judgment and order dated 20/11/2002 passed in Special Case No. 10

of 1998. He was sentenced to suffer rigorous imprisonment for 6 months and to pay a fine of Rs.100/-, in default to suffer simple imprisonment for 7 days and to suffer rigorous imprisonment for 1 year and to pay a fine of Rs.100/-, in default to suffer simple imprisonment for 7 days, for the above offences, respectively. Hence, the present appeal.

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

. That the appellant was working as a Senior Clerk in the office of District Treasury, Aurangabad when the incident has occurred. The father of the complainant - PW1 - Mukesh Husharsing Lahare was to receive GIS amount of Rs.18000/- from Medical College and Hospital, Aurangabad. The bill of Rs.18000/- was submitted to the Treasury office on 10/05/1997. According to the complainant, on 17/07/1997, he went to the Treasury office for grant of bill of his father. He requested present appellant for sanction of the bill. The appellant

made a demand of Rs.300/- as bribe. After negotiation, as the complainant stated that he can arrange only Rs.100/-, the appellant asked him to bring that much amount on the very same day by 3.00 pm. Accordingly, on the very same day, complaint at Exhibit 9 was filed.

. PW3 - Investigating Officer Police Inspector - Daulat More conducted the investigation. He collected two panch witnesses from the office of Executive Engineer, Maharashtra State Electricity Board, Aurangabad including PW2 - Shankar Rathod. The contents of the complaint were read over to them. Decoy money of Rs.100/- brought by the complainant was smeared with anthracene powder. The same was kept in the chest pocket of the complainant. Thereafter, the raiding party reached the treasury office.

. The complainant and the panch witness Rathod went to the table of the appellant. Thereat, the complainant again requested the appellant for

sanction of the bill at the earliest. Upon that, the appellant took out the file from the cupboard which contained the bill. The appellant therefore enquired, as to whether the complainant has brought the amount. The complainant told that as per the direction of the appellant, the amount was brought. The appellant therefore demanded the money. The complainant therefore presented the decoy money. The appellant accepted the same by his right hand and placed it in his left side chest pocket. He thereafter stated that the bill would be sanctioned and on 21st of the same month, the cheque would be issued in the Medical College and Hospital office. Thereafter, the pre-determined signal was given by the complainant.

. The Investigating Officer thereafter apprehended the appellant and carried his examination under the ultra-violet light which proved the transfer of the money. Later-on the complainant was also examined, which proved the above fact.

. Thereupon, the Investigating Officer conducted further investigation. He sought sanction to prosecute the appellant from the Senior Treasury Officer, Aurangabad. Upon according of the sanction, the chargesheet came to be filed.

. During trial, initially, the appellant was called upon to admit the sanction order. Defence counsel denied the same. The learned Special Judge however held that as the legality or genuineness of the sanction order is not challenged, it should be treated as admitted. It was clarified that the appellant however would be entitled to cross-examine the sanctioning authority on establishing any kind of prejudice if brought on record during the cross-examination of the Investigating Officer. Accordingly, the sanction order was accepted at Exhibit 10.

. The learned Special Judge recorded in his judgment the statement of the defence counsel that the appellant did not want to challenge the legality

of the sanction order.

4. Before the learned Special Judge, the complainant was examined as PW1. PW2 – Shankar Rathod was the shadow panch witness while PW3 is the Investigating Officer. The learned Special Judge came to the conclusion that the prosecution has proved its case beyond reasonable doubt and, therefore, the impugned order came to be passed.

5. Mr. Tandale, learned counsel for the appellant submitted before me that the sanction order was not proved. On fact, he submitted that the complainant, during his cross-examination admitted the entire defence case that in-fact the amount of Rs.100/- was accepted by the present appellant towards the repayment of Rs.100/- earlier received by the complainant as an advance for supply of the bricks. Therefore, he submits, as reasonable doubt had arisen, the learned Special Judge ought to have extended the benefit of reasonable doubt to the appellant. He further submits that the prosecution

case would show that the staff members of the treasury were present at the time of the trap, however, none of them are examined. Further, according to him, the deposition of PW2 – Shankar Rathod would not show that the present appellant has demanded any amount towards the bribe.

. In the circumstances, relying on the ratio of **"T. Subramanian Vs. State of T.N." (2006) 1 Supreme Court Cases 401** and **"B. Jayaraj V. State of A.P." AIR 2014 SC (Supp) 1837**, he submits that the appeal be allowed.

6. On the other hand, learned A.P.P. submits that the defence counsel had accepted the validity of the sanction. Even in the appeal memo, no ground is raised regarding the legality of the sanction. Therefore, when only during the oral arguments, the said issue was raised, this Court was required to ask the appellant to file affidavit in this regard. Thereafter, only the affidavit is filed denying the legality or validity of the sanction.

. In the circumstances, he submits that as the defence is playing hide and seek game in this regard, now it would not lie in the mouth of the appellant, to say that the sanction is not valid.

. On merit, the learned A.P.P. submits that the evidence on record would clearly show that the complainant was won over by the appellant. During examination-in-chief, the complainant completely deposed on the line of the prosecution. During cross-examination however, he answered every leading question relating to the defence, in the affirmative. Thereafter, the Court was required to put him certain questions and during the Court questions, he again deposed that the amount of Rs.100/- was paid by him as bribe. Further, PW2 - the independent shadow panch witness has deposed that not only the appellant made the demand of Rs.100/-, upon acceptance of the same, he told the complainant that he would get the money from the Medical College and Hospital on 21st of the month and

thereafter the agreed signal was given.

. In this state-of-affairs, the learned A.P.P. submits that the learned Special Judge has rightly come to the conclusion that the prosecution has proved its case beyond reasonable doubt.

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

I) Whether the sanction to prosecute the appellant granted by the sanctioning authority is legal and valid ?

II) Whether the prosecution has proved that the present appellant made a demand of Rs.100/- as a gratification other than the legal remuneration from the complainant on 17/07/1997 ?

III) Whether the prosecution has further proved that on the very same day, the present appellant has again made the demand and accepted the said gratification ?

IV) Whether the prosecution has

further proved that the present appellant has obtained the pecuniary advantage by abusing his position as a public servant ?

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

8. As regards the validity of the sanction, the checkered history, as detailed supra, would show that the appellant is taking the stand which would be suitable for him at a particular point of time. Initially, he denied the validity of the sanction. During arguments before the learned Special Judge, however, the defence counsel has made a statement that the legality or validity of the sanction is not challenged. In the appeal memo, no ground is made on this count and only during the oral arguments, it was submitted that the sanction accorded is not

valid. All this material on record would show that now it would not lie in the mouth of the appellant that the sanction accorded is not legal.

. The ratio in the cases of "**State of Maharashtra Through C.B.I. Vs. Mahesh G. Jain**" 2014 **ALL SCR 177** and "**Mohd. Iqbal Ahmed Vs. State of A.P.**" **AIR 1979 S.C. 677** relied on by Mr. Tandale, learned counsel for the appellant, therefore, are not relevant in this regard.

9. The complainant has deposed that on 17/07/1997, in the forenoon ,he visited the Treasury office. At that time, the appellant met him there. He initially made the demand of Rs.300/- and, thereafter, agreed to accept an amount of Rs.100/- on the same day. Therefore, the complaint was filed. It is an admitted fact that during the trap, the present appellant has accepted the decoy money. The only issue, therefore, would be as to whether, the said amount was accepted as the illegal gratification or as the refund of certain amount

towards the supply of bricks.

10. The complainant during cross-examination has accepted the entire defence case. He accepted that he was supplying building material including the bricks. He had earlier supplied 1000 bricks to the appellant for Rs.900/-. He had however already received an amount of Rs.1000/-. Additional bricks were to be supplied. Due to financial problems, he was unable to supply 1000 bricks additionally. He was therefore to repay the balance amount of Rs.100/- to the appellant, however, he was not able to repay the same. In the circumstances, when in connection with the sanction of the bill, he was required to meet the appellant, the appellant insisted for refund of the amount of Rs.100/-. He however was got annoyed because of the said demand and, therefore, he filed the complaint with the Anti Corruption Bureau.

. When the Presiding Officer of the Court put questions to him, he deposed that he had not

refunded the amount of advance of Rs.100/- received by him but paid the said amount as bribe. He however again resiled from the said statement by saying that the contents of the complaint regarding the transaction are incorrect. He was not financially sound to pay bribe of Rs.100/- but he thought that he would pay money so that the bill would be passed.

11. This evidence would show that the complainant cannot be called as a reliable witness. PW2 - the shadow panch witness - Shankar Rathod however categorically deposed that during the conversation, the appellant made demand of Rs.100/-. Thereupon, the complainant handed over him the decoy money. Upon that, the appellant told the complainant that he would get the money for the bill from the Medical College and Hospital Office on 21st of the month. Thus, according to him, there was no talk of repayment of any advance towards the supply of bricks.

12. It has been admitted by the appellant that he has received the decoy money during the transaction. Shadow panch witness had clearly deposed that upon acceptance of the amount, the appellant promised that the complainant would receive the amount under the bill by 21st of the said month. Due to the fact of acceptance of the money, a presumption that the said money was accepted towards the gratification other than the legal remuneration will have to be drawn, according to the provisions of section 20 of the Prevention of Corruption Act, 1988. The issue therefore would be, as to whether the said presumption is rebutted by the defence.

13. We have the statement of the complainant during cross-examination that he had long standing financial transactions with the appellant and the money was in-fact the refund of the advance is the material. In my view, this material is not sufficient to rebut the presumption. The answer of the complainant to the Court questions would clearly

show that the decoy money was not paid towards the refund of any advance.

14. In the circumstances, in my view, the prosecution has proved beyond reasonable doubt that the present appellant has demanded an amount of Rs.100/- towards the gratification other than the legal remuneration and accepted the same in presence of the shadow panch witness.

15. Mr. Tandale, learned counsel for the appellant relied on the ratio of "**T. Subramanian**" and "**B. Jayaraj**" (cited supra). In the case of "**T. Subramanian**", it was held that mere proof of receipt of money by accused, in absence of proof of demand and acceptance of money as illegal gratification, would not be sufficient to establish the guilt of the accused. In the present case, however, we do not have merely the proof of receipt of money but the evidence of the shadow panch witness would show that the money was demanded and accepted as illegal gratification. The ratio of the

above case, therefore, is not applicable in the present case.

16. In the case of "**B. Jayaraj**" (cited supra), the complainant has disowned to have made the complaint to the Anti Corruption Bureau. No other evidence was adduced by the prosecution to prove the demand. It was therefore held that the demand of gratification cannot be held to be proved only on the basis of the complaint filed and evidence of the panch witness.

. In the present case, however, we find that the answer to the Court question givens by the complainant would shatter his trick of waivering during the cross-examination at the hands of the defence. In that view of the matter, the following order:-

17. Criminal Appeal is hereby dismissed. Bail bonds of the present appellant shall stand cancelled.

18. The learned Special Judge, Aurangabad is directed to take steps for securing presence of the present appellant for making him to serve the remainder of the sentence.

[M.T. JOSHI]
JUDGE

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