

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

CRIMINAL APPEAL NO. 422 OF 2004

Rambhan s/o Dashrath Kapkar,
Age: 60 years, Occ: Retired,
R/o. Nandanwan colony, Bhausingpura,
Aurangabad died through Smt. Sindubai
w/o Ramchandra @ Rambhan Kapkar to
continue the appeal as per Hon'ble Court's
order dtd. 13/12/12 passed in
C.A. No. 5359/12.

...Appellant

versus

The State of Maharashtra

...Respondent

.....
Mr. S.S. Jadhavar, Advocate for appellant
Mr. R.V. Dasalkar, A.P.P. for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 29th MARCH, 2016

JUDGMENT :

The present appeal is preferred by the accused against the verdict of his conviction delivered by the Special Judge, Aurangabad on 22/06/2004 in Special Case No. 05 of 2000 for the offence punishable under Section 7 of the Prevention of Corruption Act, whereby he was ordered to suffer rigorous imprisonment for a period of six months and fine of Rs.150/-, in default to suffer simple imprisonment for 15 days and for the offence punishable under Section 13(1)(d) and 13(2) of Prevention of Corruption Act and

sentenced to suffer rigorous imprisonment for one year with fine of Rs.150/-, in default to suffer simple imprisonment for 15 days.

2. It is not in dispute that present appellant, a public servant, has expired and his legal/sole widow is pursuing the present appeal.

3. The facts, as are necessary for deciding the present appeal, are as under :-

PW-4 Sanjiv Mendke has received a complaint from the complainant Shaikh Osman Shaikh Sardar, Police Constable B.No. 1030 against the appellant, who at the relevant time, was working as junior clerk in the office of Police Commissioner, Aurangabad vide Exhibit-22 alleging that one of his departmental appeal, which was required to be processed and forwarded to the Director General of Police, Maharashtra State, Mumbai, against the punishment imposed upon him, through the Commissioner of Police, Aurangabad was not forwarded by the appellant. Upon inquiry, the appellant demanded bribe of Rs.300/- for forwarding the said departmental appeal.

4. PW-4 having received the complaint, requisition two

public servants, to act as panch witnesses, who were from the office of Executive Engineer, B & C. Aurangabad. The pre-trap panchnama was drawn at Exhibit-25 in the presence of complainant and panch witnesses. It is then claimed that they went to the office of Commissioner of Police, Aurangabad and complainant Shaikh Osman and panch Gaikwad went to the office of appellant, who was followed by the Investigating Officer, his team and other panch witnesses. He then claimed that the complainant inquired with the appellant about his work and the appellant then demanded the amount, which was paid by the complainant was witnessed from the distance by one panch witness. Staff member of the trap party caught hold the accused and upon examination by the members of the trap party in ultra violet rays, noted anthracine powder on the hands of accused. The said amount was recovered from the left pocket of safari wore by the appellant and after it was removed by panch witness Sewalikar, the said amount was then seized and kept in sealed envelope bearing signature of the panchas. His left pocket of safari shirt also reflects the presence of anthracine powder. The panchnama, accordingly, was drawn. He then having completed various panchnamas such as Exhibit-26, articles at Exhibits-21/1 to 21/5, lodged report to the police station, City Chowk, Aurangabad, resulting into registration of Crime No. 3072 of 1999 against the present appellant i.e. Exhibit-31 and the appellant came to be

arrested vide arrest panchnama at Exhibit-27 and unsealed panchnama of muddemal at Exhibit-28. The statement of panch witnesses were recorded on 03/12/1999 and on 06/12/1999 the statement of Bharpure, Office Superintendent of Police Commissioner Office, Aurangabad and Peon, Jamil Ahmed Khan. The surveyor prepared the map of spot and submitted the same on 09/12/1999, which is Article-D. The statement of PSI Syed Amir, which disclosed that the appeal memo of the complainant Shaikh Osman was forwarded on 05/01/1999 and then he collected the papers about appointment and posting of the appellant.

5. He then claimed that the charge sheet in the matter was filed after getting sanction order on 05/05/2000 and then identified the accused.

6. The charge was framed as against the accused at Exhibit-6.

7. Exhibit-18 is the sanction order dated 05/05/2000 issued by the Special Inspector General of Police. Aurangabad, who was authorized to remove a person holding post of junior clerk in the office of Police Commissioner.

8. The prosecution, in support of its case, has examined in all four witnesses namely PW-1 Sudhakar Suradkar, retired Special Inspector General of Police, Aurangabad Range, Aurangabad, sanctioning authority at Exhibit-17, PW-2 Shaikh Usman Shaikh Sardar, complainant at Exhibit-20, PW-3 Chhagan Gaikwad, panch witness at Exhibit-24 and PW-4 Sanjiv Mendke, Investigating Officer at Exhibit-30.

9. Complainant Shaikh Usman Shaikh Sardar, in his examination-in-chief, has in clear terms, narrated that he went to the office of Commissioner of Police, Aurangabad for inquiring status of his appeal, which was to be forwarded to the office of D.I.G. Mumbai in the matter of questioning legality of imposing punishment against him and the present appellant demanded amount of Rs.300/- as bribe, which he was not willing to pay and as such, lodged report on 02/12/1999.

10. In the above referred background, Mr. Jadhavar, learned Counsel for the appellant would submit that the sanction order in the present case issued by PW-1 is required to be discarded as the same was passed without application of mind and without considering the material on record. He would invite attention of this Court in support of the said contention to the evidence of PW-1

wherein PW-1, in categorical terms, has stated that he has not read appeal memo of the complainant, which was to be forwarded to the office of Director General of Police. He would then submit that the complainant was annoyed with the present appellant as his appeal proposal was not forwarded to the office of D.I.G. and as such, he lodged false complaint. He would then submit that the work of the present appellant was never pending with him and only information that was sought by the complainant was already provided to him which is in relation to the pendency of the proposal of the appellant in the office of Commissioner of Police, Aurangabad. Mr. Jadhavar, learned Counsel for the appellant would submit that the Court below has failed to appreciate the same and in view of the fact that neither the appellant was competent authority nor the work was pending with him, the question of demand and acceptance is at all not proved. He would then invite my attention to the fact that panch witness PW-3 was standing outside the hall and was not eye witness to the trap in question and sought to rely upon the evidence of PW-3 for the said purpose. According to him, learned Special Judge has not framed the issue as regards the application of mind by sanctioning authority, as such, according to him, the appeal needs to be allowed.

11. Learned A.P.P. while supporting the judgment of conviction would submit that the case in question is a trap case

wherein trap was successful as the currency notes which were coated with anthracine powder were recovered from the appellant and there are traces of anthracine powder on the pocket of his shirt and also on his hand. Learned A.P.P. would submit that the sanction order was issued without application of mind was not canvassed during the trial but still according to him, upon perusal of the evidence of PW-1, there is hardly any material to infer that PW-1 sanctioned authority either lack the competency to grant sanction or has not applied its mind to that effect. He would submit that sanctioning authority has rather deposed in examination in chief that the sanction was granted after perusal of the entire record in relation to the accused. According to him, PW-1 was eye witness to the incident, standing at the distance of 7 to 8 feet and has heard conversation and witnessed the incident. He would then submit that the appeal be dismissed.

12. With the assistance, I have read and analyzed the evidence of all four witnesses i.e. sanctioning authority, complainant, panch witnesses and the Investigating Officer. Both the complaints i.e. one by the complainant and another by the Investigating Officer was very much proved along with pre-trap panchnama. The said panchnama is at Exhibit-25, which is proved by the Investigating Officer and panch witness. It is required to be noted that Exhibit-22

is report lodged by the complainant. He, in clear terms stated that the appellant has demanded amount, which he was unwilling to pay. He then along with panch witness Gaikwad went to the office of the Commissioner of Police, Aurangabad along with trap party and at that place, the appellant demanded him amount, which he paid and then trap party upon his signalling caught the appellant with the amount. The appellant though had tried to canvass the case that the complainant has taken handloan of Rs.500/- from other clerk Dande, who is working in the same office of which Rs. 200/- was already paid and Rs. 300/- was given to the complainant to be paid to Dande. It is to be noted that said defence of the appellant will be of hardly any consequence, as the said witness Dande is not examined by the appellant-accused in his defence.

13. Apart from above, it is required to be noted that tainted notes were recovered from the pocket of the shirt of present appellant. PW-1 sanctioning authority, who is examined at Exhibit-17 has in clear terms deposed that he has studied all the papers, applied his mind and then thought it necessary to accord sanction to prosecute the present appellant. He has proved sanction order which is at Exhibit-18. In his cross examination, he has admitted that being Special Inspector General of Police, he is appointing authority and has power of removal of the appellant. Though he admits that

he has not seen appeal memo submitted by the complainant, however, the same is of hardly any consequence or any help to the accused person, particularly when the sanction is based on the entire material on record.

14. PW-3 in his evidence in categorical terms has proved pre-trap panchnama at Exhibit-25 and also narrated the entire incident of demand and acceptance of bribe by the appellant. Exhibits-21 and 22 are the photo copies of the documents of the complainant Shaikh Usman which were pending with the appellant-accused for processing. The other panchnama at Exhibit-28 of anthracine bottle is also proved.

15. He has supported the prosecution case in its entirety.

16. From the above referred discussion, it could be easily inferred that the sanctioning authority has granted sanction, who is competent to do so for the purpose of prosecution of the accused. The Special Judge has considered the material that was placed before it. In my opinion, nothing could be elicited from testimony of Sanctioning Authority so as to infer that sanctioning authority was not competent to accord sanction or has not applied his mind before passing sanction order. Hence, the said submission of the appellant

is rejected.

17. The second submission of the appellant that he has no authority to process the application of the complainant to be forwarded to the office of D.I.G., and other information that was sought by the complainant about status of his appeal was very much provided. The complainant was informed that the appeal proposal was not forwarded to the office of D.I.G. and as such, being annoyed, the complainant has lodged false complaint. The said contention is also required to be rejected for the following reasons.

18. Upon demand, the complainant has lodged independent report and thereafter successful trap was led, in which the appellant was caught red handed while accepting bribe. The fact remains that Exhibits-19 and 20 are the documents which were seized from the custody of the appellant, which were in relation to appeal memo of the complainant pending for processing to be forwarded to the office of D.I.G. In the above referred back ground, the claim that the appellant is falsely implicated does not hold any substance in view of the enough material available on record, as such, the said contentions are also rejected.

19. Having regard to the observations made herein above, in my opinion, the order of conviction passed by learned Special Judge does not call for interference, as no illegality could be noticed. As such, present appeal against conviction fails, stands dismissed.

[N.W. SAMBRE, J.]

Tupe/-