

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 646 OF 2003

1] Jagannath S/o Diwanrao Barse,
Age : 42 years, Occu.: Service,
Veergaon, Tal : Vaijpur,
Dist. Aurangabad

2] Ganesh S/o Poma Rathod,
Age : 36 years, Occu. : Service,
R/o Ghusur, Tal. Kannad,
Dist. Aurangabad

.. Appellants

VERSUS

The State of Maharashtra

.. Respondent

Mr. R.S. Deshmukh, Advocate for the appellants
Mr. N.T. Bhagat, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.
RESERVED ON : 14/01/2016
PRONOUNCED ON : 10/02/2016

JUDGMENT :

Heard both sides.

2. Aggrieved by the recording of conviction by the learned Special Judge, Aurangabad in Special Case No.31 of 1998 vide judgment and order dated 22/09/2003 for the offences punishable under section 7 and 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988, the present appeal is preferred by the appellants/original accused.

3. The appellant no.1 - Jagannath S/o Diwanrao Barse, who was original accused no.1, was sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.250/- for the offence punishable under section 7 of the Prevention of Corruption Act and to suffer rigorous imprisonment for one year with fine of Rs.250/- for the offence punishable under section 13(1)(d) r/w. Section 13(2) of the Prevention of Corruption Act.

. The appellant no.2 i.e. original accused no.2 - Ganesh S/o Poma Rathod was convicted for the offence punishable under section 12 of the Prevention of Corruption Act. He was sentenced to suffer simple imprisonment for a period of six months and to pay a fine of Rs.500/-.

4. Prosecution case in short, is as under :-

. That appellant no.1 was posted to the Police Station at Kannad, as the Police Head Constable on or about 11/06/1998. Complainant PW1 - Pramod Thete, a jeep driver parked his jeep and was standing at the

bus stand, Kannad. An unknown person, under the influence of liquor, started suddenly beating him. He suffered injury. The unknown person however ran away. A crowd had gathered at the place including PW4 - Deepak Lalwani. The present appellant no.1 also came there. He advised the complainant to file complaint against the unknown person. The complainant however was not ready for the same. Appellant no.1 however threatened that in case the complainant did not file any complaint, he himself would lodge a prosecution against him. PW4 mediated in the matter. Upon that, the appellant no.1 told that an amount of Rs.1000/- be paid to him to end the dispute. Upon negotiation, appellant no.1 became ready to accept the amount of Rs.500/- from the complainant. He also directed the complainant to pay him the said amount within a period of 1 - 2 days. In the circumstances, the complainant filed his complaint with Anti Corruption Bureau at Aurangabad on 16/06/1998.

. PW5 - PI - Krishna Bankar conducted the investigation in the case. He collected two panch witnesses including PW3 - Laxmikant Wankhede, a

senior clerk working in office of Registrar, Co-operative Societies. The trap was laid. The complainant had brought the decoy money. Anthracene powder was applied to it and on 16/6/1998, the panch witness, the staff of the Anti Corruption Bureau and the complainant went by two different jeeps to Kannad. At bus stand, upon enquiry, it was found that the appellant no.1 was in panpoi area. Therefore, at about 5:35 pm, by two separate jeeps, the party went there. Appellant no.1 was on a motorcycle. He himself gave a signal for stopping of the jeep. The complainant and shadow panch witness went near appellant no.1. Original accused no.2 was also with him.

. After the greetings were over, appellant no.1 enquired, as to whether an amount of Rs.500/- was brought. When the complainant answered in the affirmative, appellant no.1 asked the complainant to pay the money to accused no.2/appellant no.2. Accordingly, the complainant handed over the decoy money to accused no.2. Thereafter, both the accused were apprehended. Necessary activity of taking away

the decoy money, examination of the concerned under the ultra violet lamp was conducted. The same confirmed the above facts. In the circumstances, the Investigating Officer conducted further investigation. He secured sanction to prosecute the appellants from PW1 – Mr. Premkiran Jain, the then Superintendent of Police, Rural, Aurangabad at Exhibit 10. Thereafter, the chargesheet came to be filed.

. According to accused no.2, he was serving as a Clerk with one Advocate of Kannad Mr. B.M. Rathod. The mother of the complainant was involved in one civil suit. She has engaged said Mr. Rathod. The suit however was decided against his mother. Therefore, in appeal, Mr. Rathod has engaged one Mr. Salunke, Advocate. For the purposes of appeal, accused no.2 was to recover an amount of Rs.500/- from the complainant. He was not however paying the same. Accused no.2 was therefore continuously pestering him for the same. About a week before the trap when he again made the demand of money, at that time, accused no.1 was with him. Ultimately, the

complainant agreed to pay him the amount and on the date of the trap, he received the amount of Rs.500/- towards the litigation expenses. According to the present appellants, they were falsely involved in all this episode.

5. Before the learned Special Judge, in all 5 witnesses were examined, as detailed supra. Out of them, PW4 - mediator turned hostile. The learned Special Judge relied over the testimony of PW2 - the complainant, PW3 - the panch witness and PW5 - the Investigating Officer and convicted both the accused, as detailed supra.

6. Mr. R.S. Deshmukh, learned Advocate appearing for the appellants took me through the entire evidence. He submits that the evidence on record would show that the prosecution has failed to prove its case beyond reasonable doubt. The fact that the complainant's mother engaged Advocate Mr. Rathod, is fully proved by the certified copy of the written statement obtained from the civil suit. He further submits that there is a suspicion as to

whether, two jeeps were involved in the operation of the raid. He further submits that the prosecution case that appellant no.1 asked the complainant to file report and threatened that he himself would prosecute the complainant, though he was injured in the incident, is ridiculous. There is suspicion, as to when the FIR was prepared.

. He further submits that the prosecution case itself would show that no official work of the complainant was pending with the appellant no.1 and, therefore, the Superintendent of Police ought not have granted sanction to prosecute appellant no.1. In the circumstances, he submits that the appeal be allowed.

7. The learned A.P.P. submits that the reasons forwarded by the learned Special Judge are correct.

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

I) Whether the sanction granted by PW1 to prosecute the appellant no.1 is legal and valid ?

II) Whether the prosecution has proved that on or about 11/6/1998, the present appellant no.1 made a demand of Rs.500/- as a gratification other than legal remuneration for not filing a case against the complainant ?

III) Whether the prosecution has further proved that on 16/6/1998, the present appellant no.1 again made a demand and accepted the gratification of Rs.500/- vide abetment of appellant no.2/accused no.2 ?

IV) Whether the present appellants have committed criminal misconduct ?

My findings to point no.(I) is in the affirmative, to point nos.(II) to (IV) are in the negative. Criminal Appeal is therefore allowed for the reasons to follow.

R E A S O N S

9. It is the prosecution case that the present appellant no.1, for forbearing from taking any

criminal action against the complainant, made a demand of Rs.500/- as a gratification. In that view of the matter, the sanction to prosecute the appellant no.1 by PW1 cannot be faulted with.

10. On facts however, the prosecution has failed to prove beyond reasonable doubt that the present appellant no.1 have made a demand of the said gratification.

11. As per the prosecution, on or about 11/6/1998, the complainant was injured by assault of an unknown person at a public place. Therefore, the present appellant no.1 asked him to file a complaint with the Police Station. When the complainant refused, the appellant no.1 threatened him that he himself would prosecute the complainant. In the situation, PW4 - Deepak Lalwani mediated and the appellant no.1 became ready to accept an amount of Rs.500/- from the complainant. On the face of it, this fact would appear illogical. A person, who has suffered injury due to attack of an unknown person, would not have been, in normal course, asked by the

Police to face the prosecution, in case he fails to file a complaint against an unknown person.

12. That apart, the prosecution case would show that on the date of the trap, no venue was fixed and the raiding party was required to search for appellant no.1. The complainant has admitted that his jeep was a private jeep without any permit to carry the passengers. He was unable to state as to how many times, he was prosecuted for illegally carrying the passengers in the said jeep. He even admitted that he regularly consumes liquor and even on the preceding date, when he was called in the Court for recording of his evidence, he was under the influence of liquor.

. It is prosecution case that the incident of assault on the complainant and the talk between the complainant and the appellant no.1 had occurred before the crowd including PW4 – Deepak Lalwani, the mediator. This witness however did not support this case.

13. The complainant further admits that as per

his own knowledge, on the report of PW4 – Deepak Lalwani, two more constables were prosecuted for the similar offences. Said Lalwani had settled the talk of bribe amount between him and the appellant no.1. He further deposed that he did not ask PW4 – Lalwani, as to why he was required to pay an amount of Rs.500/- when he was not at all to blame for the incident. Above all, the complainant admitted that on 16/6/1998, though he approached the Anti Corruption Bureau, and though the complaint was reduced into writing, he did not sign the complaint on that day. As against this, it is the prosecution case that on that day, a complaint was recorded. The date of paying of the bribe was not fixed.

14. While the complainant admitted that his mother was involved in a civil suit, he deposed that he did not know, as to how Advocate Mr. B.M. Rathod was engaged by her.

15. PW3 – Laxmikant Wankhede, the shadow panch witness deposed that he was unable to identify accused no.2 in the Court. Further on 15/6/1998, for

whole of the day, from 10.00 am to 3.00 pm, he was in the Anti Corruption Bureau Office, though trap was led on 16/6/1998. There was only one jeep while the prosecution case is that there were two jeeps.

16. PW4 – Deepak Lalwani deposed that there was some altercation between the complainant and the appellant no.1. He advised them to settle the dispute, but he never told that any bribe should be paid.

17. PW5 – P.I. Krishna Bankar denied that he was waiting for an opportunity to get both the accused together.

18. All this evidence on record would show that though the FIR in the case is stated to have been filed on 16/6/1998, according to the complainant, he did not sign the same on that day. There is suspicion, as to whether the party went by two jeeps or by a single jeep. The appellant no.1 was required to be searched for making payment of the alleged bribe amount.

. The independent witness PW4 – Deepak Lalwani did not accept the prosecution case of making the demand of bribe.

. The fact that the complainant was regular in illegally transporting the passengers, therefore always confronted with the Police and was a habitual drunkard, also ought to have been taken into consideration by the learned Special Judge.

19. In view of all these fact, in my view, the learned Special Judge ought to have extended benefit of reasonable doubt in the present case to the appellants. Hence, the following order :-

20. Criminal Appeal is hereby allowed.

21. Conviction of both the appellants recorded by the learned Special Judge, Aurangabad in Special Case No.31 of 1998 vide judgment and order dated 22/09/2003 for the offences punishable under section 7 and 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988, and the consequential sentences are hereby set aside.

. Instead, both the appellants are acquitted of all the offences.

22. Criminal Appeal stands disposed of accordingly.

[M.T. JOSHI]
JUDGE

arp/