

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.301 OF 2005

Bharat Shrikant Naik
Age 46 yrs., Occupation: Service
Residing at Quarter No.4,
Dr. Babasaheb Ambedkar Qtrs.
General Hospital, Kirkee,
Pune-411 003

)...Appellant

v/s.

State of Maharashtra
(Through Anti Corruption Bureau,
Pune

)...Respondent

Mr. Aniket Nikam i/by Ashish Satpute, Advocates for the Appellant.

Mr. A.R.Kapadnis, APP for the Respondent - State.

CORAM : P N. DESHMUKH, J.

DATE : 6th OCTOBER 2016.

ORAL JUDGMENT :

This appeal takes exception to the judgment passed by the learned Special Court, Pune in Special Case No.35 of 2001, convicting appellant for the offence punishable under Sections 7, 13(1)(d) read

with 13(2) of the Prevention of Corruption Act, sentencing him to suffer R.I. for one year and to pay fine of Rs.2000/- in default to suffer further R.I. for three months under Section 7 of the Act and to suffer R.I. for one year and to pay fine of Rs.2000/- in default to suffer further R.I. for three months under Sections 13(1)(d) read with Section 13(2) of the Act. Both the sentences are directed to run concurrently.

2 In brief, it is the case of the prosecution that at the time of incident, appellant was working as Health Superintendent in Khadki Cantonment Board, Pune while complainant wanted to start rickshaw garage near the P.C.M.T. Bus Stop Khadki and in that background on 18.1.2001 contacted appellant in his office for seeking appellant's permission to erect cabin near the P.C.M.T. Bus Stop to which appellant informed that he cannot grant him any written permission however, assured to give him oral permission on his making payment of Rs.10,000/- to appellant. According to the case of prosecution, said amount was agreed to be accepted by appellant on 24.1.2001. However, as complainant was not willing to make such payment, he visited office of the Anti-Corruption Bureau on 24.1.2001 and lodged his report as per Exhibit 9.

3 On receipt of report, officials of the ACB arranged for panchas, who were introduced with complainant to whom he narrated his complaint. Both the panchas then verified contents of Exhibit 9, to satisfy if recorded, as stated by complainant and put their signatures thereon. Both the panchas, complainant were then given demonstration of effect of ultra violet lamp on anthracene powder, vide which they learnt that when seen under the rays of ultra violet lamp, the anthracene powder glows. Anthracene powder was then applied to bribe notes produced by complainant and necessary instructions were given to both the panchas and complainant. He was further directed to not to touch notes and to make payment only on demand. Complainant was also instructed to give signal by moving his left hand over his head after the amount is demanded and accepted by appellant. A detail pre-trap panchanama was drawn at Exhibit 11.

4 It is further case of the prosecution that trap came to be laid in the office of appellant where appellant in presence of independent panchas demanded and accepted bribe, when he came to be apprehended on the spot. Bribe money came to be recovered from the file which was kept in office of appellant. After drawing post trap

panchanama, report came to be lodged with Khadki Police Station on the basis of which Crime No.3015 of 2001 came to be registered and was thereafter investigated.

During the course of investigation, investigation papers were sent to Competent Authority for grant of sanction to prosecute appellant, which was granted by P.W.3-Saumik Mujumdar. After recording statement and on completion of investigation, charge-sheet came to be filed before Special Court at Pune.

5 Charge is framed against appellant vide Exhibit 4 to which he pleaded not guilty and claimed to be tried. It is the case of appellant that he is falsely implicated by complainant having strained relations. Appellant, however, had not examined any witness in support of his defence.

6 Prosecution to establish charge, levelled against appellant had examined four witnesses and on considering their evidence as well as documents on record convicted appellant as aforesaid. Hence, this appeal.

7 Heard learned counsel for appellant and learned APP for the State. By referring to the material evidence on record, it is submitted for appellant that there is no evidence establishing demand on the part of appellant, on the contrary, there is sufficient evidence to hold that relations between appellant and complainant were strained at the time of incident due to which he falsely came to be involved as there is also evidence to establish that appellant was not competent to grant any permission for which bribe is stated to have demanded by him.

 Learned counsel has further pointed out that fact of appellant's false implication on the say of one Patel, who is friend of complainant and was attached to Maval Taluka General Kamgar Sanghatna, at the time of incident. By referring to the evidence of P.W.2-Kiran Balasaheb Tilekar independent panch witness, it is submitted that his evidence establish that when the panchanamas came to be drawn, he was not present, so also, it is pointed out from the evidence on record that placement of office of appellant was such that one cannot demand or accept bribe at such a place which was open from all the sides and as at the time of incident there were many other persons present in his office. It is , therefore, contended that case of the prosecution fails on this count also.

8 It is also contended from the evidence of PW.3-Saumik Mujumdar the sanctioning authority that sanction accorded is not valid. On all these counts, it is, therefore, submitted that appeal be allowed by setting aside impugned judgment and order of the Special Judge.

9 The learned APP on the other hand by referring to the evidence of witnesses had made an attempt to establish that even if the complainant has not supported the case of the prosecution, from the evidence and contents of panchanamas at Exhibits 11 and 12, case of the prosecution is established. The learned APP has thus, supported the impugned judgment and order.

10 With the assistance of learned counsel for both sides, I have scrutinised evidence on record. Evidence of complainant PW.1-Rafiq Rashid Qureshi is to the effect that for starting his garage, he was in need of permission from Sanitary Inspector of Cantonment Board at Khadki. At the time of incident, appellant was working as sanitary inspector to whom complainant contacted on 18.1.2001. When appellant told him that he would require to pay Rs.10,000/- for obtaining such permission, complainant informed appellant that he would arrange for such amount and would pay the same on 24.1.2001

in his office. However, as complainant was not willing to make payment of bribe money, he visited office of Anti Corruption Bureau, Pune and lodged report at Ex.9.

11 Complainant has thereafter deposed about officials of ACB drawing pre-trap panchanama in presence of two witnesses and on demonstration given by the officials of ACB with regard to effect of ultra violet rays on anthracene powder and instructions to complainant as well as both the panchas.

12 On the point of incident, complainant has deposed that on his visit to office of appellant along with P.W.2-Kiran Balasaheb Tilekar first panch, 7-8 persons were already sitting there when appellant asked complainant if he has visited the site and left the cabin when complainant kept bribe notes smeared with anthracene powder inside one file and by coming out of the cabin, gave proposed signals, when members of the raiding team arrived and apprehended appellant and recovered bribe amount.

13 Considering the above piece of evidence, it is thus noted that in the entire evidence of complainant, there is no whisper of

appellant demanding bribe money of Rs.10,000/-. As what is deposed by complainant is on his meeting appellant on 18.1.2001, he was informed by appellant that complainant would be required to pay Rs.10,000 for obtaining permission upon which complainant informed that he would arrange for the said amount and would pay on 24.1.2001 by bringing amount in office of appellant. The above piece of evidence of complainant does not establish that said amount was demanded by appellant or that appellant had agreed to accept the same in his office on 24.1.2001. As from the evidence what has come on record is that it is complainant who had informed appellant that he would arrange for the said amount and would pay amount on 24.1.2001 by bringing that amount in the office of appellant.

14 In fact, from further evidence of complainant, prosecution has failed to establish subsequent demand at the time of incident as well as acceptance of bribe money by appellant as it has come in the evidence of complainant that at the time of incident when appellant went out of his cabin, complainant kept bribe money smeared with anthracene powder inside the file, and then went outside the cabin and gave signal. Evidence of complainant is totally silent on appellant's demanding money as bribe on the day of incident or of accepting the

same. In fact, complainant has specifically stated that he on his accord had kept the money in the file and came out of the office of the appellant. To a specific question put by the learned Special Court, if appellant had asked complainant if he has brought money, complainant had replied in negative. In the light of evidence of complainant as aforesaid, he was allowed to be cross-examined by the prosecution wherein he has denied entire case put to him by the learned APP. He has denied that appellant had asked if he has brought money of Rs.10,000/-. He has also denied that he has informed appellant that he has brought such amount. He has further denied that appellant then asked him to keep bribe money inside file lying on the table. It is also denied that as per the instructions of appellant, he kept the amount in file. In view of denial as above, prosecution cannot said to have established case from the evidence of complainant.

15 With reference to case of appellant of his false implication, further evidence of complainant substantiates case of appellant when complainant has admitted that he has studied upto 4th standard and cannot read Marathi language. Admittedly, report Exhibit 9 is scribed in Marathi and has further deposed that he owns House No.314 situated at Khadki Bazar and one Parvatibai Shinde was occupying premises as

tenant and had carried out some illegal construction and, therefore, complainant's name could not be recorded as owner over the said property and for that purpose, he had applied to cantonment board for removing such illegal construction and in that connection had met appellant, who did not remove the unauthorised construction and on that count, there was quarrel between complainant and appellant and their relations also became strained. Complainant had admitted that for this reason, he was annoyed with appellant.

16 He has further stated that one Premji Laxman Patel is his friend and is attached to Maval Taluka General Kamgar Sanghatana and his relations with appellant were also not cordial and has therefore admitted that whatever complaint is lodged by him against appellant was scribed by his friend Patel upon which his signatures were obtained; above piece of evidence is material when complainant has specifically admitted that he has studied upto 4th standard and has no knowledge of Marathi language while report Ex.9 is scribed in Marathi language. This evidence is thus sufficient to establish that contents of report Ex.9 is brain child of Premji Patel friend of complainant. Complainant has even otherwise admitted that it is his friend Patel who had provided Rs.8,000/- to complainant to arrange a trap and that

Patel had accompanied with complainant in the office of ACB and had advised him to lodge the complaint. The above discussed evidence thus sufficiently established that it is only on the say of Premji Patel, complainant had lodged false report involving appellant, whose relations were also not cordial at the time of incident.

17 Even otherwise case of the prosecution that appellant, who had demanded and accepted bribe of Rs.10,000/- in his office does not appear to be convincing as it has come in the evidence of complainant that on 24.1.2001 when he visited office of appellant, there were 8-10 persons sitting in his office and in fact has further deposed that one of the officers of ACB had signalled complainant to keep the amount inside file and accordingly he kept bribe money inside file and came out of office and gave signal. This evidence also reveals that at that time Premji Patel was standing at the spot along with his friend; above piece of evidence thus, goes to establish that it is only on the say of one Patel, appellant is falsely implicated which fact is further found substantiated when complainant has admitted that Patel had instigated him to lodge complaint and admitted that prior to lodging such report, he alongwith Patel had filed one petition against appellant in the High Court, which complainant had never attended and of which all the

expenses were borne by Patel. In that view of the matter, appellant can said to have established its case of false implication by complainant, on the say of his friend.

18 Though from the evidence of P.W.2-Kiran Balasaheb Tilekar it has come on record that at the time of incident on his attending office of appellant along with complainant, appellant asked complainant if he had brought money as told by him to which complainant replied in affirmative and was then instructed by appellant to go by the side of the rack and to keep amount in file, which was lying in the rack, which was accordingly kept by complainant in file. Above said evidence, however, do not find corroboration from complainant. Even otherwise evidence of P.W.2 as aforesaid did not establish demand by appellant at the time of incident nor acceptance of bribe money. The above piece of evidence establishes that appellant asked complainant if he has brought amount told by him. Evidence of complainant is silent as to what amount was directed by appellant to be brought. In absence of evidence of complainant to corroborate evidence of P.W.2 Panch, though evidence of P.W.2 finds corroborated from the contents of pre trap panchanama, post-trap panchanama Exhibits 11 and 12, contents of both these documents itself create doubt when

P.W.2 has deposed that after the incident panchanama was typed inside the office of the cantonment board for 2-3 hours, during which period, he, co-panch Subhash Devji Thorawade and complainant were outside office and on completion of scribing the panchanama, they were called inside upon which they signed. In that view of the matter, there is sufficient room to doubt the contents of these panchanamas as are found to be scribed by the Investigating Officer, so as to suit the case of the prosecution.

Similarly, it has come in the evidence of P.W.2-Kiran Balasaheb Tilekar panch that the office of the appellant was a cabin and at the time of incident, there were 25-30 persons present in the passage near the cabin of appellant, as well as some persons were present in the office of appellant. From his evidence, it is also found that the cabin was having door to go to adjoining cabin. In that view of the matter, it is difficult to conclude that at such place, appellant would demand and accept bribe money. Moreover, independent panch has also admitted that it is complainant who, himself put the money inside file. In that view of the matter, evidence of P.W.2 Panch also do not substantiate case of the prosecution any further.

19 Lastly, on considering the evidence of PW.3-Saumik Mujumdar, Sanctioning Authority, it is found that the sanction accorded by this authority to prosecute appellant is not valid sanction, he does not appear to be appointing authority of appellant as according to the case of the prosecution, appellant was working as Health-Cum-Garden Superintendent while PW.3 was working as Cantonment Executive Officer. He has stated that in the cantonment board, there are two types of employees i.e:- supervisory employees holding supervisory posts and non-supervisory posts respectively. He was competent to appoint employees belonging to non-supervisory posts and has admitted that appellant at the material time since was working on supervisory post, power to appoint him vested with the board and had thus further admitted that he has no authority to appoint or remove appellant holding post of Health Superintendent.

20 In view of the evidence of Sanctioning Authority as aforesaid, sanction Exhibit 16 accorded by him is found to be invalid which document even otherwise does not appear to be convincing to be acted upon as from further evidence of PW.3 it has come on record that on receiving papers from ACB Department, they were placed before the legal advisor of cantonment board who accordingly gave his

opinion. Matter was thereafter placed before the Board along with recommendations of the committee and on 7.7.2001, resolution was passed to accord sanction to prosecute appellant. PW.3 in his capacity as secretary of Cantonment Board, issued sanction order on 3.8.2001 and had proved the same on record at Ex.16. In view of evidence of PW.3 aforesaid apart from his being not competent to accord sanction, it has also come on record that sanction accorded is based on legal advice by advisor of the cantonment board and it has also come on record that it is the Cantonment Board which is competent to accord sanction and not PW.3 who is Secretary of the said board.

21 Moreover, according to further evidence of PW.3, appellant was not competent to accord any sanction to complainant to erect cabin when the sanctioning authority has admitted that no such powers are vested with the officers, who are attached to Health and Garden Department and appellant at the material time was attached to said department as superintendent.

22 When the above said piece of evidence is considered, learned trial Court appears to have erroneously noted that Khadki Cantonment Board, which has issued sanction to prosecute appellant

was just legal and can be acted upon as, PW.3 in his capacity as executive officer working for said Cantonment Board has only communicated the same and as such does not suffer from any illegality.

23 Having considered evidence as discussed above, prosecution is thus found to have miserably failed to establish its case. The impugned judgment and order is thus liable to be set aside. Hence, the following order is passed:

- (1) Appeal is allowed.
- (2) Conviction and sentence imposed by the learned Special Judge, Special Court, Pune is set aside.
- (3) Fine amount if any, paid be refunded to appellant.

(P. N. DESHMUKH, J.)