

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.266 OF 2002

Sudhakar s/o Tukaram Barde
Age: 52 Yrs., occ. Peon,
in the office of Deputy
Regional Transport Office,
Jalgaon, Tq. and Dist.
Jalgaon.

= **APPELLANT**

VERSUS

The State of Maharashtra,
Through Deputy Superintendent
of Police, Anti-corruption Bureau
Jalgaon, Tq. & Dist. Jalgaon.

= **RESPONDENT**

Mr. NK Kakade, Advocate for Appellant;
Mr. KD Mundhe, APP for Respondent

CORAM : P.R.BORA, J.

DATE OF RESERVING JUDGMENT : 27th April, 2018

DATE OF PRONOUNCING JUDGMENT : 5th June, 2018

JUDGMENT:

1) The appellant has filed the present appeal against the judgment and order passed by Special Judge and Additional Sessions Judge, Jalgaon on 26th April, 2002 in Special Case No. 8/2000. The learned Special Judge, vide the impugned judgment and order, has convicted the appellant (hereinafter referred to as accused)

for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of The Prevention and Corruption Act (for short, the PC Act) and has sentenced him to suffer R.I. for one year and to pay fine of Rs.600/-, in default, to suffer R.I. for one month.

2) The prosecution was initiated against the accused on a complaint lodged by one Ganesh Kautik Dhonge in the office of Anti-corruption Bureau at Jalgaon on 22nd January, 1999. The complainant had alleged that when he had been to the RTO office at Jalgaon for getting transferred of the tractor and trolley in his name, which he had purchased from one Indubai Dnyaneshwar Shelke, the accused, who at the relevant time was working as a Peon in the said RTO office, demanded from him bribe of Rs.200/- for getting the said work done. On such complaint lodged by him, further process was carried out by Anti-corruption Bureau. On the same day, the trap was laid and the accused was caught red-handed while

accepting the amount of Rs.200/-. Thereafter further investigation was carried out and the charge sheet was filed against the accused for the offences noted herein above. A charge was framed against the accused by the Special Judge on 6th September, 2001. The accused did not plead guilty and claimed to be tried.

3) In order to prove guilt of the accused, four witnesses were examined by the prosecution. The complainant deposed as PW 1. Shadow panch viz. Chandrabhan Shaligram Patil was examined as 2nd witness by the prosecution. Regional Transport Officer viz. Laxman Pralhad Khade, who had accorded sanction to prosecute the accused, was examined as third witness of the prosecution. The Investigating Officer – Babruwahan Ambegaonkar deposed as 4th witness on behalf of the prosecution. The defence of the accused was of total denial. The learned Special Judge, after having assessed the oral and documentary evidence brought before him, held the accused

guilty for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of the PC Act and sentenced him to suffer the imprisonment as noted herein above.

4) Shri N.K.Kakade, learned Counsel appearing for the appellant-accused assailed the impugned judgment on various grounds. The learned Counsel submitted that the trial court has utterly failed in appreciating the evidence on record and more particularly, the defence as was raised by the accused. The learned counsel further submitted that the prosecution has failed in proving the very basic fact that the amount as was alleged to be bribe was, in fact, the legally recoverable charges for re-registration of the vehicle after the period of fifteen years. The learned counsel further submitted that the allegation made by the complainant that the aforesaid amount of Rs.200/- was demanded by the accused by way of bribe, has not been corroborated by any other evidence and as such,

could not have been relied upon by the learned Trial Judge.

5) The learned Counsel pointed out that PW 2 Chandrabhan Patil, shadow panch, in his entire testimony before the court did not depose any such fact that any amount was demanded by the accused from the complainant in his presence. The learned Counsel further pointed out that the sanctioning authority has candidly admitted that after the period of fifteen years, every vehicle has to be re-registered and for re-registration charges of Rs.100/- are to be legally paid. The learned Counsel submitted that if the trial court would have properly appreciated the evidence on record, in no case, the finding of conviction could have been recorded by it. The learned Counsel further submitted that the trial court also did not appreciate that the accused being working as Peon was not having any authority to pass any order or to re-register the vehicles belonging to the complainant. The learned counsel further submitted that the complainant in

his evidence before the court has deposed that he handed over two currency notes of the denomination of Rs.100/- each to the Anti-corruption officer for to be paid to the complainant during the course of the alleged trap; whereas the other evidence on record shows that the tainted notes were of the denomination of Rs.50/- and not of Rs.100/-. The learned Counsel submitted that this instance alone was sufficient to discard the evidence of the prosecution. The learned counsel, therefore, prayed for setting aside the impugned judgment and consequently to acquit the accused of the charges leveled against him.

6) Shri K.D.Mundhe, learned APP appearing for the State, supported the impugned judgment and order. The learned APP submitted that the trial court has passed a well-reasoned order and no interference is warranted in the impugned judgment. The learned APP, therefore, prayed for dismissal of the appeal.

7) I have carefully considered the submissions made by the learned Counsel appearing for the appellant-accused and learned APP appearing for the State. I have also perused the impugned judgment and the entire evidence on record. On perusal of the judgment, in background of the evidence on record, it is apparently revealed that the learned trial court has not properly appreciated the evidence on record and more importantly has failed in taking into account the defense, as was raised by the accused. It is not in dispute that the accused was working as a Peon in the RTO office at Jalgaon. Though in his testimony before the court, complainant – Ganesh (PW 1) has deposed that he was not knowing as to in what capacity the accused was employed or working in RTO office at Jalgaon, the statement so made by him is apparently false in view of the fact that in the written complaint lodged by him, he has specifically mentioned that the accused was peon in the RTO office at Jalgaon.

8) After having perused the entire evidence on record, the story attempted to be put forth by the complainant appears improbable and unbelievable. As has come on record, complainant was having good deal of knowledge about the registration of the vehicles in the RTO office. It has also come on record that he was also assisted by an agent working in the said office who carries out the works pertaining to the registration of the vehicles. In background of these facts, it appears unconscionable that the complainant, instead of meeting any officer concerned entrusted with the said work, would meet the peon in the said office. Further, even if it is accepted that he met the accused and he demanded the amount of Rs.200/-, the natural conduct of the complainant must have been to meet the officer concerned and to tell him about the amount allegedly demanded by the accused. The complainant, admittedly did not adopt the said course. The entire said story appears to be false for the reason that considering the

practice being followed in the RTO office, once the papers are handed over to the RTO agent, the entire further work is carried out by the said agent and the owner of the vehicle need not to contact any other officer at least not to the peon.

9) It is further significant to note that in the cross-examination, complainant – Ganesh has clearly admitted that he did not enquire with the accused as to for what purpose the amount of Rs.200/- was demanded by him. Complainant Ganesh has also admitted that he felt that the accused was asking that amount as bribe because he has not specified the purpose of the said amount. It is thus evident that the complainant himself was not sure whether the amount was demanded by way of bribe. Whereas it was the specific defence raised by the accused that the amount of Rs.200/- was not demanded by the accused by way of any bribe, but it was to be paid by the complainant towards the re-registration charges and since the

time to deposit the amount was over, to facilitate the deposit of the said amount on the next day, he had shown his willingness to accept the said amount from the complainant. It was further contention of the accused that the complainant was wrongly claiming preference in accepting his amount and to immediately issue him necessary certificate and since the accused did not concede to the said request, complainant ultimately tried to implicate him in the false case. The defence of the accused does not appear improbable.

10) The learned Trial Judge while scrutinizing the evidence on record has completely ignored the defence so raised by the accused and merely on the basis of recovery of the amount of Rs.200/- from the accused has jumped to the conclusion that the said amount was accepted by the accused by way of bribe from the complainant.

11) It is further revealed that the learned Trial Judge has also not taken into account the vital admissions given by the complainant in his cross-examination as well as the facts as have come on record through the testimony of PW - 3 Laxman Khade, the sanctioning authority as well as in the evidence of the Investigating Officer (PW 4). PW 1 in his cross-examination has admitted that he was not aware whether the penalty of Rs.100/- each is imposed if re-registration is not done. PW 1 has further admitted that he did not enquire with the accused as to for what purpose amount of Rs.200/- was required to be paid by him. It was further admitted by complainant - Ganesh that 'he felt that the accused was asking that amount as bribe because he has not specified the purpose of that amount'. The learned Trial Judge has failed in appreciating that when the complainant himself did not enquire with the accused as to for what purpose he was demanding the amount of Rs.200/-, there was, in fact, no evidence to jump to the

conclusion that the amount so demanded was by way of bribe.

12) There were several modes through which the complainant could have first ascertained whether the amount so demanded by the accused of Rs.200/- was really required to be paid or it was illegally demanded by the accused by way of illegal gratification. Instead of even making such enquiry with the officers in RTO office, the complainant straightway reached to the Anti-corruption office and merely on his presumption that the amount was being demanded by way of bribe lodged the complaint against the accused. The Trial Court has failed in appreciating the evidence as aforesaid in proper manner.

13) It has come on record that the tractor and trolley, of which re-registration was to be done by the complainant, were originally registered in 1980 and 1982. Admittedly, the period of fifteen years has lapsed. The learned

Counsel for the appellant-accused had brought to my notice the provision in Section 14(7) of the Motor Vehicles Act, which pertains to re-registration of the vehicles. It provides that it is mandatory to get the vehicle re-registered after the period of 15 years. PW 3 - Laxman Khade, the then RTO, Pune, who had accorded sanction to prosecute the accused, in his cross-examination has admitted that re-registration of the vehicle after fifteen years is necessary and for such re-registration, registration charges with penalty are required to be paid. The said authority has further admitted that in respect of the tractor and trolley such re-registration charges were Rs.100/- each. Considering the information so given by PW 3 - Laxman Khade, there appears substance in the defence raised by the accused that the amount of Rs.200/- as was quoted by him and was asked to be paid by the complainant was towards re-registration charges and not by way of bribe. This aspect has been lost sight of by the sanctioning authority and

also by the learned Special Judge.

14) As has further come on record, the time for depositing the amount was over when the complainant had been to the office of RTO. PW 3 in his cross-examination has admitted that the time for receipt of cash in the office of RTO is up to 2.30 p.m. PW 3 has further admitted that there is no bar for the third person to make the payment on behalf of the owner of the vehicle or a license holder to pay the legal fees. In view of the above, the defence raised by the accused that the amount was accepted by him to deposit the same on the next day, does not appear improbable.

15) After having scrutinized the entire evidence on record, it is difficult to agree with the conclusions recorded by the learned Trial Judge that the prosecution has beyond reasonable doubt proved that the accused demanded and consequently accepted the amount of Rs.200/- by

way of bribe from the complainant. From the material on record, it is quite evident that the tractor and trolley purchased by the complainant, which the complainant was intending to get transferred in his name, were registered in the year 1980 and 1982 respectively. Admittedly, the period of fifteen years from the date of Certificate of Registration, as provided under Section 41(7) of the Motor Vehicles Act, 1988 (for short the MV Act) was expired and both the vehicles, i.e. tractor and trolley, were required to be re-registered as provided under sub-section (8) of Section 41 of the MV Act.

16) Rule 52 of The Central Motor Vehicles Rules, 1989 provides that an application by or on behalf of the owner of the motor vehicle, other than a transport vehicle, for the renewal of Certificate of registration, shall be made to the registering authority in whose jurisdiction the vehicle is, in Form 25 not more than sixty days before the date of its expiry, accompanied by the

appropriate fee, as specified in Rule 81. The material on record sufficiently evinces that such an application for renewal of certificate of registration was admittedly not submitted by the complainant or erstwhile owner of the subject vehicles before sixty days of the expiry of such registration certificate. Sub-section (11) of Section 41 of the MV Act provides that if the owner fails to make an application under sub-section (1), or, as the case may be, under sub-section (8) within the period prescribed, the registering authority may, having regard to the circumstances of the case, require the owner to pay, in lieu of any action that may be taken against him under section 177, such amount not exceeding one hundred rupees, as may be prescribed under sub-section (13). Sub-section (13) of Section 41 of the MV Act says that for the purpose of sub-section (11), the State Government may prescribe different amounts having regard to the period of delay on the part of the owner in making an application under sub-section

(1) or sub-section (8). As has come on record through the cross-examination of PW 3 – Regional Transport Officer, Pune, the complainant was required to pay rupees 100 each for the re-registration of the tractor and trolley by way of penalty. Though it has not specifically come on record, it has to be assumed that the said amount was required to be paid by the complainant in view of the provisions under Section 41(11) of the MV Act. As has come on record, the complainant had remitted the fees of Rs.50/- each for re-registration of the tractor and the trolley as provided under Rule 81 of the Central Motor Vehicles Rules, 1989. In view of the provision under Section 41(11) read with Section 41(13) of the MV Act, it is quite clear that the tractor and trolley allegedly purchased by the complainant could not have been re-registered unless the complainant pays the amount as prescribed under the aforesaid provisions.

17) In the instant matter, it is not the

case of the complainant that he had paid the fees for re-registration of the vehicles, as provided under Rule 81 of the Central Motor Vehicles Act, 1989 read Section 41(9) of the MV Act as well as the further amount by way of penalty, as provided under Section 41(11) read with Section 41(13) of the MV Act. I reiterate that as was deposed by the Regional Transport Officer, Pune (PW 3), in addition to the amount of fees for re-registration of the tractor and trolley @ Rs.50/- each, the complainant was required to pay Rs.100/- each for the delay committed by him in making an application for re-registration of the said vehicles.

18) After having considered the provisions, as aforesaid, there is reason to believe that the amount of Rs.200/-, as was paid by the complainant to the accused, was towards the penalty in view of the aforesaid provisions and not by way of bribe. It also cannot be outrightly disbelieved that since the time to

deposit the said amount was over, the accused had accepted the said amount of Rs.200/- to be deposited by him on the next day for and on behalf of the complainant. Considering the evidence, as aforesaid, I reiterate that the prosecution has failed in bringing on record any unimpeachable evidence to show that the amount of Rs.200/- was accepted by the accused by way of bribe. In absence of any such unimpeachable evidence, the accused cannot be held guilty for the offences charged against him. The prosecution has failed in proving that the amount of Rs.200/- was paid by the complainant to the accused by way of bribe; whereas the accused has brought on record sufficient evidence through the cross-examination of the prosecution witnesses to prove his defence that the amount of Rs.200/- was accepted by him from the complainant to deposit the said amount on the next day for and on behalf of the complainant towards the charges/penalty for the delay caused in making the application for re-registration of the tractor and trolley.

Since the prosecution has failed to bring on record any unimpeachable evidence to prove that the amount of Rs.200/- was demanded and accepted by the accused, by way of bribe, the benefit of which would go to the accused, the order of conviction passed by the learned Trial Judge cannot be sustained and deserves to be quashed and set aside.

19) In the foregoing circumstances and for the reasons recorded, as above, following order is passed, -

ORDER

i) The judgment and order dated 26th April, 2002, passed by Special Judge and Additional Sessions Judge, Jalgaon in Special Case No.8/2000, is quashed and set aside;

ii) The appellant - Sudhakar s/o Tukaram Barde is acquitted of all the offences charged against him. His bail bond stands cancelled;

iii) Fine amount, if any, paid by the appellant-accused, shall be refunded to him;

iv) The Criminal Appeal thus stands allowed in the aforesaid terms.

(P . R . BORA)
JUDGE

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