

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

CRIMINAL APPEAL NO. 558 OF 2004

STATE OF MAHARASHTRA

Through :

The Public Prosecutor,
High Court Bench
at Aurangabad.

... Appellant
(Ori. Complainant)

VERSUS

1. NARAYAN BALIRAM GAYSAMUDRE

Age : 42 years, Occu.: Service,
As Police Sub-Inspector,
S. P. Office, Osmanabad.

2. SHIVRAM SHOKAPPA KOLI,

Age : 34 years,
Occu.: Service as Police Constable,
B. No. 175, S. P. Office,
Osmanabad.

... Respondents
(Ori. Accused No.1 &2)

....

APP for Appellant : Mr. S P Tiwari
Advocate for Respondents : Ms Bhavana D Panpatil h/f
Mr S B Talekar For R-1,2.

...

CORAM : V.K. JADHAV, J.

Dated: February 17, 2018

...

ORAL JUDGMENT :-

1. This is an appeal preferred by the State against the judgment and order of acquittal passed by the

vsm/-

learned Special Judge, Osmanabad dated 15.05.2004 in Special Case No. 10 of 1999.

2. Brief facts gave rise to the present appeal are as follows:

Complainant Namdeo Keshav Kakade is an Auto-rickshaw driver. His son Kiran is a mechanic, having workshop at Osmanabad. His son Kiran had some strained relations with his second wife, Daivashala. Further, the said Kiran was also addicted to liquor and he used to harass his second wife Daivshala on account of not giving money for liquor to him. Consequently, his second wife Daivashala fed up with him. She had lodged the complaints time to time against the said Kiran at Police Station, Osmanabad. It is a part of the record that as many as eight crimes were registered against the said Kiran by PSI at Osmabanad City Police Station.

3. As per the prosecution story on 28.06.1999, complainant Namdeo learnt that on the basis of the

vsm/-

complaint lodged by Daivashala, his son Kiran was taken to the police station, Osmanabad. On the same day, in the evening, the complainant- Namdeo sent his another son- Prakash to make enquiry about his elder son Kiran. Said Kiran was found arrested by the police and kept in the lock-up. Kiran told his brother Prakash to arrange for his bail and also told him to manage police and see that they can involve him in a chapter case under Section 107 of the Code of Criminal Procedure instead of under section 110 of the Code of Criminal Procedure. In the same night, Prakash has disclosed these facts to his father-complainant Namdeo. On the next day, in the morning i.e. on 29.06.1999 at 8.00 a.m. complainant-Namdeo himself went to Osmanabad City Police Station. He met the PSI. He also met his son Kiran and at that time Kiran told him to manage the things as elaborated above. It is further case of the prosecution that the accused no.1, who happened to be PSI demanded the sum of Rs.1,500/- from him towards gratification amount for preparing the report under section 107 of Cr.P.C instead of Section 110

vsm/-

of Cr.P.C. and subsequently agreed to accept the sum of Rs.1,200/-. The complainant Namdeo had assured that he would arrange for the said amount and accordingly left the police Station. Thereafter, complainant Namdeo has approached the Anti Corruption Bureau, Osmanabad and lodged his complaint. Accordingly, the raid was arranged. It is further case of the prosecution that accused No.2 who is police constable, has accepted the said amount of bribe for accused no.1 and accordingly after completion of the formalities like obtaining of sanction, the charge sheet came to be submitted.

4. The learned Sessions Judge has framed the charge against the accused No.1 for the offence punishable under Section 7 of Prevention of Corruption Act and against accused No.2 for the offence punishable under Sections 7, 13(1)(d) read with 13(2) of Prevention of Corruption Act. Both the accused pleaded not guilty to the said charge and claimed to be tried. The defence of accused no.1 is of total denial. The accused no.2 has,

vsm/-

however, submitted that after finishing his duty, on that day, he was going to his home and at that time the complainant Namdeo met him and informed to accused no.2 that accused no.1 is his relative and he wanted to give some amount to him and accordingly, handed over that amount to accused No.2 for paying it to accused no.1. Accordingly, accused no.2 was caught by the Anti Corruption Officials while accepting the aforesaid amount. It is the defence of accused No.2 that he has been falsely involved in this case.

5. The prosecution has examined in all five witnesses to substantiate the charges levelled against both the accused. After the examination of the prosecution witnesses was over, the statement of the accused under section 313 of the Code of Criminal Procedure came to be recorded. Both the accused have not examined themselves. The learned Special Judge, Osmanabad by judgment and order dated 15.05.2004 acquitted both of them. Hence, this appeal.

vsm/-

6. The learned A.P.P. submits that the prosecution has examined P.W.3 Sudhakar Shankarrao Suradkar, who has issued the sanction order for launching the prosecution against accused No.1. P.W. 3 S.S. Suradkar, was Special Inspector General of Police, Aurangabad, Range Aurangabad. The prosecution has duly proved the sanction order Exhibit-52 by examining P.W.3 S. S. Suradkar. There is no reason to discard the sanction order duly issued by P.W.3 S. S. Suradkar. The learned A.P.P submits that similarly the Superintendent of Police who is appointing authority of accused No.2 Police Constable has issued the sanction order Exhibit-56. The prosecution has examined P.W.4 Anup Kumar Sing, the Superintendent of Police, Osmanabad and duly proved the contents of sanction order Exhibit-56. The learned A.P.P. submits that the prosecution has examined P.W.1 Namdeo Keshav Kakade, who happened to be the original complainant and P.W. 2 Arun Motiram Shendarkar, who happened to be the panch witness accompanied to the complainant at the time of actual raid. The learned A.P.P. submits that both the

vsm/-

witnesses have fully supported the prosecution story. There was demand of bribe in presence of the panch witness by accused No.1 and in consequence of the said demand under the direction of the accused No.1, the accused No.2 had accepted the said amount. The prosecution has proved the case beyond reasonable doubt about the demand as well the acceptance of the bribe by both the accused persons. The learned Sessions Judge has discarded the material evidence only on the basis of the minor contradictions and omissions. Those contradictions and omissions do not go to the root of the case. This appeal deserves to be allowed and both the accused may be convicted for the offences charged against them.

7. The learned counsel Ms. Bhavana D. Panpatil h/f Mr. S. B. Talekar submits that P.W. 3 S. S. Suradkar is not the appointing authority of accused No.1 and as such he is not competent person to issue the sanction order. The learned counsel submits that even assuming for the sake of argument that P.W. 3 S. S. Suradkar is a

vsm/-

competent person to issue the sanction order, however, from his own admission, it appears that there was no application of mind at all to issue such sanction order of prosecution as against accused No.1. The learned counsel submits that so far as the accused no.2 is concerned, though the sanction order Exhibit-56 has been issued by the competent authority, however, in his case also there is no application of mind by the sanctioning authority to the facts of the case and sanction has been issued mechanically and in a very casual manner.

8. The learned counsel submits that there is no evidence at all about the demand made by accused No.1 in any manner. Even PW-2, panch witness Arun Motiram Shendarkar has also not supported the prosecution story. He did not accompany the complainant- Namdeo when the complainant had talked with accused no.1 at relevant time in police station. The learned counsel submits that the learned Special Judge has rightly accepted the explanation offered by accused

vsm/-

No.2. The learned Special Judge has marshaled the evidence of both these material witnesses carefully and accordingly come to the conclusion that both the accused deserve to be acquitted. The learned counsel submits that there is no substance in this appeal and this appeal is liable to be dismissed.

9. On careful perusal of the record and proceedings and impugned judgment and order of acquittal passed by the learned Special Judge, it appears that prosecution witness P.W.3 S. S. Suradkar who has issued sanction order for launching prosecution against accused No.1 as per Exhibit-52 has stated in his examination-in-chief itself that the Deputy Inspector General of Police is the only appointing and removing authority of the Police-Sub-Inspector. Though he has further stated in his examination-in-chief that Special Inspector General of Police is the upgraded post to the post of Deputy Inspector General of Police. However, it is clear that so far as the appointment of accused No.1, he was not the competent authority. Consequently, the

vsm/-

sanction order issued by him in the capacity as a Special Inspector General of Police, Aurangabad Range, Aurangabad is not the sanction order issued by the competent authority. Even assuming that the post held by him as a Special Inspector General of Police is upgraded to the Deputy Inspector General of Police, as such the sanction order has been rightly issued by him. However, on careful perusal of the sanction order and further admission given by this witness clearly demonstrate that PW-3 S. S. Suradkar has not applied his mind at all while issuing the sanction order. According to him, he has received the set of xerox copies from the Superintendent of Police, Osmanabad and not the original papers. In view of the above admission, it is clear that he has not bothered to see the original case papers pertaining to this case to grant the sanction. He has also not mentioned any details in the sanction order as to the papers received by him in the xerox set submitted by Superintendent of Police, Anti Corruption Bureau, Aurangabad. He has further admitted that in para 6 of

vsm/-

his cross-examination that he has received only one draft of sanction order from Superintendent of Police (Anti Corruption Bureau), Aurangabad. P.W.3 S.S. Suradkar brought the said draft sanction order before the court and further admitted that the contents of the draft sanction order and the sanction order passed by him are the same and there is no change in it. Even the learned Special Judge has also observed in the impugned judgment and order that word by word and line by line are also same from the draft sanction order and sanction order issued by PW-3 S.S.Suradkar. Even, P.W.3 S.S. Suradkar has changed his version in his cross-examination that sanction order was sent to him in three sets. In my considered opinion, the learned Special Judge has rightly observed that the sanction order issued by P.W.3 S. S. Suradkar is not in accordance with the law and as such the prosecution case suffers.

10. Similar is the case of P.W.4 Anup Kumar Sing, Superintendent of Police. He has also not mentioned

vsm/-

the documents referred by him while issuing the sanction order. He has also received the draft sanction order from the Superintendent of Police (Anti Corruption Bureau). The case of accused No.2 is on different footings. However, the same is not reflected from the sanction order issued by P.W. 4 Anup Kumar, Superintendent of Police for launching the prosecution against accused no.2.

11. It is well settled position that the sanction order must indicate that the sanctioning authority has evaluated the material placed before it and it has come to the conclusion that the case is warranted the prosecution. In both the sanction orders though the material was placed before the sanctioning authority as to indicating the animus of the complainant P.W.1 Namdeo as against the PSI and even against the entire police station for having registered the crime frequently against his son, Kiran and even P.W.1 Namdeo has also accepted the same, however, both the sanctioning authorities have not considered the said aspect to find

vsm/-

out whether the complainant has lodged the aforesaid complaint before the Anti Corruption Bureau Authority to take revenge against certain officers of police station.

12. According to the prosecution story, complainant Namdeo went to Osmanabad Police Station on 29.06.1999 at about 8.00 a.m. However, in the cross-examination P.W.1 Namdeo has admitted that he directly went to the Anti Corruption Bureau, Osmanabad and did not go to the Osmanabad Police Station at 8.00 am. The learned Special Judge, has, therefore, rightly criticized that if P.W. 1 Namdeo had not gone to the police station and did not contact accused No.1 at that time, then the evidence about the demand by accused no.1 about gratification amount of Rs.1,500/- and the settlement of the figure at Rs.1,200/- appears to be not trustworthy. It is the case of the prosecution that PW-1 Namdeo under advice of his son Kiran, has requested accused No.1 not to submit the report under Section 110(e) (g) of Cr.P.C. and instead send the report under Section 107 of Cr.P.C. It is not necessary to mention

vsm/-

here that Section 107 of Cr.P.C. speaks about security for keeping the peace in other cases, whereas Section 110 of Cr.P.C. specifically speaks for security for good behaviours from habitual offenders. At the instance of son Kiran, P.W.1 Namdeo wanted to settled the matter with PSI to book his son under some less serious charges instead of Section 110(e) of Cr.P.C. so as to enable him to get his son release on bail. During the course of investigation, certain papers came to be seized from the said police station by the investigation officer. On perusal of the same, it appears that accused No.1 has prepared the report on 29.06.1999 against Kiran (son of the complainant -Namdeo) bearing No. 20 of 1999 under Section 110(e) and (g) of Cr.P.C. and the said report is marked as Exhibit-44. Had there been any negotiation between accused No.1 and complainant-Namdeo for not sending the report under Section 110(e), then no.1 PSI would not have prepared the report till he gets the amount as agreed by the complainant- Namdeo. Furthermore, there is no satisfactory evidence about the demand made by accused No.1 about the bribe amount

vsm/-

from the complainant in presence of P.W. 2 Arun Motiram Shendarkar. P.W. 2 Arun Shendarkar has deposed that he stayed away and only prosecution witness Namdeo talked with the accused No.1 PSI. P.W.1 Namdeo talked to accused No.2. Thereafter PW 1 Namdeo alongwith accused No.2 went towards PW.2 Arun and in his presence gave the said amount to accused No.2. The learned Special Judge has considered this circumstance as a doubtful circumstance. There was no reason for accused No.2 to accept the said amount while going towards P.W.2 Arun Shendarkar. As per the prosecution story, if accused No.2 had accepted the said amount of bribe for accused No.1, then he would have accepted the said amount from the prosecution witness no.1 Namdeo in an isolation and at least not in presence of P.W.2 Arun Shendarkar. The learned Special Judge has, therefore, rightly given weightage to the explanation offered by accused No.2 in his defence that P.W. 1 Namdeo informed to him that accused no.1 is relative and he wanted to give certain amount to accused no.1 and

vsm/-

since he was in hurry, accepted the said amount. Though there is presumption about acceptance of gratification other than legal remuneration, as contemplated under Section 20 of the Prevention of Corruption Act 1988, in view of the discrepancy in the prosecution case, as aforesaid, the defence story set up by the accused No.2 cannot be said to be wholly improbable. It is well settled that the accused need not establish his defence by a test of proof beyond reasonable doubt. It would be enough if he establishes his case by pre-ponderance of probabilities. There is no satisfactory evidence about the demand on the part of both the accused about the gratification and further there is no satisfactory evidence about the acceptance of the amount as bribe. The prosecution has miserably failed to prove that the amount was passed as a result of the demand by either of these two accused. Even the complainant P.W.1 Namdeo has accepted in his cross-examination that he paid the amount to accused No.2 on his own and not under the instructions of accused No.1. Thus, the explanation offered by accused No.2 is

vsm/-

required to be considered in the light of the admissions given by P.W.1 Namdeo. The learned Special Judge has, therefore, rightly acquitted both of the accused. I do not find any perversity in the judgment and order passed by the learned Special Judge. There is no substance in the appeal. Hence, the following order.

ORDER

1. Criminal Appeal No. 558 of 2004 is hereby dismissed.
2. The bail bonds, if furnished by both the accused under Section 390 of the Code of Criminal Procedure, stand cancelled.
3. Appeal is accordingly, disposed of.

Sd/-
(**V.K. JADHAV, J.**)

...

vsm/-