

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 601 OF 2003

Ramesh S/o. Sanduji Barode
(Since deceased) Through his L.Rs.

1. Smt.Saroja W/o. Ramesh Barode
Age :40 Yrs. Occu : Labour
R/o. Plot NO.16, Chetnanagar,
Harsul, Aurangabad.

2. Gaurav S/o. Ramesh Barode,
Age : 15 Yrs. Minor,
Through U/G Applicant No.1 Mother

...Appellant

Versus

The State of Maharashtra

...Respondent

Mr.V.R.Dhorde, Advocate for appellant
Mr.A.V.Deshmukh, A.P.P. for Respondent

CORAM : A.M.DHAVAL, J.

DATE : March 20, 2018

ORAL JUDGMENT :-

1. This is an appeal against conviction. The original appellant, a Police Constable in Traffic Branch was convicted for accepting bribe of Rs.400/- from the driver of a truck and he was sentenced as follows :-

Section	Substantive Sentence	Fine	I/d.
S.7	RI 6 months	Rs.200/-	SI 15 days
13(1)d 13(b)	RI 1 Year	Rs.200/-	SI 15 days

. There was direction to run both the sentences concurrently.

2. During the pendency of the appeal, the original appellant died, and as his conviction affected his right to get retirement and pensionary benefits, his legal heirs filed application u/s 394 of Cr.P.C. and got themselves impleaded as legal heirs and continued to prosecute this appeal.

3. The prosecution of the appellant is also peculiar as there was no previous complaint as routinely found in cases under the Prevention of Corruption Act. On 12.12.1998, PW4 Sanjay Mandke of Anti-Corruption Bureau (ACB) received secret information that Police officers from City Traffic were obstructing the vehicles entering Aurangabad City and were threatening and extracting from them bribe. However, due to fear such owners/drivers of the vehicles were not coming forward to lodge report. Therefore, PW4 PI Mandke decided to lay a trap by using a punter. He called 3 government officials from Irrigation Department, PW-2 Sonajipant Birare and PW-3 Gulabrao Sindkar were taken as panchas and he explained his plan to them. He applied anthracene powder on notes of Rs.1,000/- and handed it over to PW2 Birare. The pre-trap panchanama was drawn and PW4 brought panchas to Jalna Central Octroi Naka, Chikalthana which is eastern end of Aurangabad city. Then one truck driver Kisansingh Jwlasingh was requested to

participate in the plan of ACB to lay a trap. Two panchas boarded the truck, while the other members of the raiding party followed them in private vehicle. At about 7.00 p.m. when the truck came near Gajanan Maharaj T Point (seven hill), one constable Ramesh Barode (the original Appellant) gave signal and the truck was halted by chasing at some distance. He obtained the documents from the truck driver and told him that he would have to pay a fine of Rs.850/- for making entry in prohibited area. He was asked to wait there upto 7.30 p.m. When PW2 Birare on behalf of the truck driver demanded documents of the truck, the appellant told him that he would have to pay Rs.850/- if he wanted to have receipt, and the truck would be taken to the Police Station. PW2 Birare (perhaps posing himself as owner of the truck) told the appellant that the amount was too heavy and it should be reduced then the appellant told him that if he would pay Rs.500/-, he would not file any case and truck would be released. PW2 – Birare showed willingness to pay Rs.400/- to which the ori. appellant agreed. PW2 paid tainted notes of Rs.400/-. The appellant received and kept that amount in the right side shirt pocket. He was immediately caught by raiding party and anthracene powder was found on his finger and currency notes and on inner side of the shirt pocket. Then, he was taken to Anti-Corruption Bureau, where detailed panchnama was drawn upto early in the morning. Thereafter, at about 4.40 p.m. PW4 Mendke lodged F.I.R. at Mukundwadi Police Station. The crime was registered at C.R. No.II 3071/1998 and was investigated into. After collection of necessary

relevant documents and recording the statements, the charge sheet was filed in the court.

4. The learned Special Judge and Additional District Judge framed charge to which the appellant pleaded not guilty. The prosecution examined four witnesses. The defence of the accused is that the amount was thrust in his pocket. He was demanding the fine amount, and he had shown willingness to issue receipt. The learned Trial Judge held him guilty and convicted him. Hence, this appeal.

5. Mr. V. R. Dhorde, learned advocate for the legal heirs of the appellant made following submissions :-

(i) There was no report from anybody about any demand of bribe, still the ACB made preparation to hold trap. It is abnormal and suspicious.

(ii) The accused was admittedly demanding fine of Rs.850/- for which he was ready to issue receipts.

(iii) There was no demand of bribe. The amount was thrust by PW2 in the pocket of the accused when there was no demand from him.

(iv) The prosecution has not examined material witness, the truck driver Kisansingh.

(v) Post trap panchanama continued from 7.30 p.m. to 4.00 a.m. next day which is highly suspicious.

6. There are *inter se* contradictions in the evidence of PW2, PW3 and PW4. Hence, the appeal be allowed and the conviction be set aside.

7. Mr. A.V.Deshmukh, learned A.P.P. for the State strenuously supported the Judgment. He argued that PW4 PI Mandke had received secret information about the corruption by traffic constables. As there was nobody coming forward to lodge report, he was constrained to initiate suo motu action for laying trap with the help of punter. The truck was halted by the appellant at 7.00 p.m. and the appellant had taken the papers of the truck with him and the truck was detained till 7.30 p.m. Thereafter, there was negotiation and the accused demanded Rs.500/- which was agreed to be reduced to Rs.400/-. The accused had no authority to reduce fine. He has to receive fine amount as per the instructions. The fact remains that he has demanded Rs.500/- and received Rs.400/- as bribe. The driver of the truck was from Calcutta, his role was limited. He has to induce a traffic constable to halt the truck and see whether he demands bribe. Since that was done, the prosecution has not examined him. PW2 and PW3 are examined. PW1 has granted sanction. The accused has not given any explanation.

There is presumption under section 20. Hence, the appeal deserves to be dismissed.

8. The points for my consideration with my findings are as follows :-

Sr.No.	Points	Findings
1	Whether the appellant had accepted gratification of Rs.400/- for doing favour to Kisansingh, a truck driver of PW2 Birare?	Not proved.
2	Whether the conviction of the original complainant under Sections 7, 13(d) r/w 13(2) of the Prevention of Corruption Act and the sentence needs any interference?	In the affirmative.
3	What order?	The appeal is allowed. Conviction and sentence set aside.

REASONS

9. It is indeed abnormal case. Nobody has gone to the ACB office to lodge a report about any demand of bribe. The record shows that when the truck was halted, the appellant has rightly halted the truck for making wrongful entry in Aurangabad city a prohibited area where transport vehicles were not permitted during particular hours. The truck driver was liable for prosecution and the accused as per the procedure, imposed on him fine of Rs.850/-. If the driver of the truck would have paid the amount, truck could have been released. The evidence on record shows that the appellant had offered to issue receipt for the fine to be paid.

10. Learned A.P.P. raised contention that the truck was halted from 7/00 to 7.30 p.m. The truck was entered into Aurangabad city when it was not supposed to enter, perhaps upto 7.30 p.m. If the accused would have released the truck, it could have been caught again in the next squares. The truck might have been halted so that the schedule time of prohibition was over and the truck could be taken out of Aurangabad city along the Jalna Road. Therefore, detention of the truck for half an hour is not incriminating circumstance.

11. The evidence of PW3 discloses that during this period, there was no alleged demand of bribe. In fact, there was no demand of bribe by the accused. The evidence shows that PW2 Birare, who was present, selected by ACB officer made an offer of bribe. It does not disclose that PW2 Birare was not willing to pay bribe and was constrained to pay bribe to get his work done. In fact, PW2 Birare was instructed to act as punter, and therefore, it was expected that PW2 should have offered bribe to the accused immediately when the truck was halted and the documents of the truck were demanded by the appellant at about 7.00 p.m. But this has not happened.

12. As per the evidence, PW2 asked the accused that the fine amount was too heavy and it be adjusted. Then, the accused told him to pay Rs.500/- but PW2 made further bargaining and showed willingness

to pay Rs.400/-. The accused agreed to receive Rs.400/-. The evidence in this regard does not disclose that the accused told that this payment will be not legal. There is no evidence to show that PW2 had demanded receipt and accused had refused to issue receipt. It is also seen that the truck driver had committed traffic offences of making entry in the city in the prohibited areas and not halting the truck in spite of signals given by the Police. Therefore, there was nothing wrong on the part of the original appellant to demand fine amount.

13. It is quite possible as argued by learned A.P.P. that the accused might have made offer to reduce the fine amount subject to the condition that there will be no issuance of receipt. If there is no desire to issue receipts then, it will be illegal gratification and it would amount to bribe, but the evidence on record shows that the accused might have agreed to reduce the fine amount from Rs.850/- to Rs.500/- and Rs.400/-. There is nothing in evidence of PW2 and 3 to show that the accused had no desire to issue receipts.

14. In this case, the act of PW4 in initiating trap proceeding even in absence of any complaint of bribe is highly suspicious. Normally, even when there is specific complaint of demand of bribe, the Police are not ready to take action. They verify such complaint by sending one panch along with the informant to the accused person and expect that the accused should make again the same demand in presence of panch

No.1. This is referred as verification panchanama and subsequently, further round is taken for offering bribe amount by laying a trap. In such situation, when there was no complaint of demand of bribe making preparation of trap itself is suspicious where PW2 was used as punter. The evidence of pre-trap panchanama and smearing anthracene powder on notes of Rs. 1000/- does not look natural. It is not known how bribe amount was expected to be upto Rs. 1000/-.

15. The post trap activities about taking out tainted amount from the pocket of the accused, watching the hands of the accused and the tainted notes were made on the spot itself. Thereafter, they were taken to the ACP office and post trap panchnama was drawn. It could have been completed in a short time, but unusual long period from 7.40 p.m. to 4.00 a.m. (8 hours) was taken for drawing post trap panchanama, which is highly suspicious.

16. I find that truck driver was main person, who was independent and his truck was halted. His documents were taken from him. But he has not been examined. It adds to the suspicion about the prosecution case.

17. Evidence of PW3 does not show that, there was demand of bribe. In fact, there was offer of bribe by PW2 (if the prosecution case is accepted). Section 24 of the Prevention of Corruption Act grants

protection to the bribe giver and he cannot be prosecuted as abettor in cases of traps. In case of **Bhupinder Singh V. C.B.I. 2008 Cr.L.J.4398 at p.4408 (Delhi)**, it is observed that --

When immunity is provided to bribe giver .- It may be noted that whenever a person lodges a complaint with the police that he has been asked to give bribe which he is not willing to give, his statement is recorded. Upon the registration of F.I.R. if investigation is taken up and if so required, the trap is laid. It is during this investigation and the trial, the complainant is required to make such statement and on such statement, he cannot be prosecuted for the offence of abetment under the Act. Section 24 of the Act, does not envisage blanket protection to the bribe-giver, under all circumstance. The immunity for the bribe giver is provided where he is unwilling to pay illegal gratification to a public servant and approaches the police agency, in order to get the public servant trapped while accepting the bribe.

18. There was no demand of bribe, but PW2 offered to pay Rs.500/- by way of adjustment. It is not clear as to whether it was paid as bribe or as reduced fine amount. It is difficult to rely on the evidence of PW2 and PW3.

19. There is no substance in the contention of the learned A.P.P. that the accused had no authority to reduce the fine amount. In fact, that

time, PW2 as punter should have offered bribe upto Rs. 1000/-. It is not known which offences were committed by the truck driver.

20. It is not proper for ACB Office to take help of the drivers by asking him to commit crime so as to expose the corrupt Police officers who were collecting bribe. It is not proper for ACB Office to allow any person to commit any traffic offence.

21. It is pertinent to note that the information received by PW4 did not disclose the place where the corruption was going on, at what time it was going on and how much amounts were demanded and accepted. In the light of absence of such details, it is not understood how the truck driver was asked by PW4 to proceed along Jalna road, and how cash of Rs.1000/- was kept ready with PW2 for offering as bribe.

22. The accused has examined one defence witness. He has stated that he was also halted by the accused at the same time, date and place. He had stated that one truck was also halted and one person thrust money in the pocket of Policeman and immediately thereafter, Police was caught. This defence of thrusting is not acceptable for the simple reason that when the fingers of the original accused were inspected under the ultra violet lamp, it was noticed that there was glowing of anthracene powder. Therefore, case of thrusting the money cannot be accepted.

23. From the above circumstances, I find that there is possibility that the accused reduced the fine amount to Rs.400/- as fine. In this regard, the prosecution case is not proved beyond reasonable doubt.

24. The learned trial Judge has discussed, generally, how corruption was/were serious problem and how it was essential to take effective steps for curbing it. He recorded the ratios of Judgment cited (supra). He has assumed that the negotiations between the PW2 and the accused was in respect of the bribe money and it cannot be in respect of reduced fine amount. I find that when there was specific evidence of demand of fine amount of Rs.850/- and offer of receipt by the appellant/accused, and there is no specific evidence of demand of bribe by the accused and when the accused had no time to issue receipt, the presumption under section 20 cannot be drawn. Hence, it is not possible to sustain the conviction and sentence imposed by the learned trial Judge.

25. In the result, the appeal deserves to be allowed. Hence, the order :-

ORDER

(A) The Appeal is allowed.

(B) Conviction and sentence imposed on the original accused

(Ramesh S/o Sanduji Barode) by learned Special Judge in case No. 12/1999 is hereby set aside.

(C) The fine amount deposited by him shall be refunded to the legal heirs brought on record.

(A.M. DHAVAL, J.)

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