IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 136 OF 2012

State of Maharashtra
(Through Khadki Police Station,
Pune … Appellant

Vs.

Nandu Maruti Kamble
R/at A-4, Vishrantwadi Police Line,
Pune … Respondent

Mr. Amit Palkar, A.P.P. for Appellant-State.
None for the respondent.

CORAM : A.S. GADKARI, J.
DATE : 7th October 2020.

ORAL JUDGMENT :

Heard Mr. Palkar, learned A.P.P. for Appellant-State. None appears for respondent, though duly served. Perused the entire record.

2. This is an Appeal against acquittal under Section 378(1) of the Code of Criminal Procedure, impugning the Judgment and Order dated 23rd September 2010 passed by the learned Special Judge (Under P.C. Act), Pune in Special Case No.18 of 2007, acquitting the respondent from the offence punishable under Section 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1998 (for short, 'the P.C. Act').

3. The prosecution case in brief is that, On 12th May 2006 in the night the complainant (PW-1) Mr. Daud S. Sutar with his friend had been for dinner at Vimannagar, Pune. When he tried to contact his friend on mobile bearing No.9325001633, at that time, due to some technical glitch there was wrong connection on his mobile phone. There were exchange of words between him and the person on the other side who had received the phone call. The said incident occurred due to misunderstanding. On 13th May 2006, at about 10.00 a.m. when the complainant (PW-1) was proceeding to Mumbai for his official work, he received a call on his mobile phone from the person with whom he had exchange of words on 12th May 2006. The person on the other end told complainant (PW-1) that he had lodged a complaint against him with Bopodi Police Chowky, Pune on which the informant (PW-1) tendered his apology. On 13th May 2006, in the evening, when the informant was returning from Mumbai, he received a phone call from Bopodi Police Chowky by the respondent. Respondent asked the informant to come to the police chowky immediately to which the informant replied that, he was travelling and would attend the police chowky on the next day. On 14th May 2006, the informant went to Bopodi police chowky along with his wife and children in the morning wherein the respondent was also present. Respondent told the informant that, one Mr. Ashok Hullar has filed a complaint against him and for settling the same, respondent demanded

Rs.10,000/- from the informant. Informant told the respondent that, as it was month end, he would pay the said amount after receipt of salary. The respondent thereafter demanded the driving licence of the informant and retained it towards security of the amount which was to be paid by the informant (PW-1) to the respondent.

That, on 21th May 2006, respondent again contacted the informant on phone and asked him to come to the police chowky. The informant along with his wife and children accordingly went to the police chowky. Mr. Ashok Hullar was present at the police chowky. A compromise in writing between the informant and Mr. Ashok Hullar was entered into wherein the informant assured Mr. Ashok Hullar that, the mistake occurred earlier would not be repeated in future. Mr. Ashok Hullar, left the police chowky. It is alleged that, the respondent thereafter demanded an amount of Rs.10,000/- from the informant and threatened him that, if he fails to pay the said amount, the respondent will lodge Chapter Proceeding (chapter case) against him on the basis of the complaint lodged by Shri Ashok Hullar. Informant told the respondent that, he will pay the said amount after 7th June 2006 i.e. after receipt of payment of salary. The respondent agreed to it, however retained licence of informant with him.

4. It is the further prosecution case that, subsequently on 2-3 occasions, respondent contacted the informant and demanded the said money.

The informant also contacted the respondent seeking his licence back, as it was required by him for his daily use for travelling by motorcycle. As there was constant demand of Rs. 10,000/- by the respondent which was other than legal remuneration and the informant (P.W.-1) did not want to pay the said amount, he went to the Office of Anti-Corruption Bureau, Pune on 14th June 2006 and lodged a complaint.

The Anti-Corruption Bureau thereafter, called two panchas, namely Mr. Sudhir R. Sasane (PW-3) and Mr. Mehboob Shaikh and after complying with the necessary legal formalities of pre-trap panchanama it was decided to lay a trap on 15th June 2006. The informant (P.W.-1) along with Mr. Sudhir Sasane, panch witness (PW-3) proceeded to the Bopodi Police chowky (Out Post), from the jeep of police department. The respondent was present at the said police chowky. The informant and PW-3 sat on a bench which was kept outside the police chowky. It was alleged that, the respondent demanded money from the informant (PW-1) by saying that 'whether it was brought'. The informant demanded his licence back, to which the respondent told that, after payment of money, licence would be returned. The informant, thereafter paid the tainted amount to the respondent and he kept the said amount in the right side pocket of his trouser. A pre-determined signal was given to the raiding party by the informant. Respondent was immediately accosted by the Officers of the Anti-Corruption Bureau and they found tainted currency notes in the possession of the respondent. After completion of investigation and receipt of sanction from the Competent Authority (PW-2), Anti-Corruption Bureau submitted charge-sheet in the Trial Court.

5. The Trial Court framed charge below Exhibit-2. The said charge was read over and explained to the respondent to which, he pleaded not guilty and claimed to be tried. The defence of the respondent was of total denial and false implication. He had adopted a categorical defence that, neither he demanded any bribe amount nor accepted it. The respondent has adopted a specific defence that, after 14th June 2006 the informant on various occasions gave phone calls to him and informed him that, Mr. Ashok Hullar is still contacting him and therefore, the informant wanted to meet the respondent. That, on 15th June 2006 at about 12.15 p.m the informant came to meet respondent and though he never demanded any amount, the informant (PW-1) tried to forcibly insert tainted currency notes in his trouser pocket. The respondent tried to prevent informant from foisting the said amount and in the scuffle, money fell down on ground and immediately the raiding party accosted respondent.

The prosecution examined in all four witnesses in support of its case, namely Mr. Daud S. Sutar (PW-1) is the informant; Mr. Ravindra P. Sengaonkar (PW-2) the Sanctioning Authority; Mr. Sudhir R. Sasane (PW-3) panch witness to the trap dated 15th June 2006 and Mr. Arun B. Joshi (PW-4) the Investigating Officer. The learned Trial Court after recording evidence and after hearing the learned counsel for the respective parties has acquitted respondent from the offence charged against him and punishable under the provisions of Prevention of Anti-Corruption Act, by the impugned Judgment and Order dated 23rd September 2010 as noted hereinabove.

6. Minute perusal of the depositions of Mr. Daud Sutar (PW-1), the informant and Mr. Sudhir Sasane (PW-3) would clearly reveal that, there are material contradictions in their depositions. PW-1 has deposed that, on 14th May 2006, he went to the said police chowky along with his wife and children in the morning in furtherance of the phone call received by him from the respondent. Mr. Ashok Hullar was present at the police chowky. A compromise in writing took place, wherein the informant assured Mr. Ashok Hullar that, the mistake which occurred earlier would not be repeated in future and thereafter Mr. Ashok Hullar left the police chowky. The respondent thereafter demanded an amount of Rs.10,000/- from the informant. The informant assured respondent that, he will pay the said demanded amount after his salary i.e. after 7th June 2006. That, on 2-3 occasions the respondent gave phone call to the informant and demanded the money. On 14th June 2006 the informant lodged complaint with the Anti-Corruption Bureau and the Investigating Agency decided to lay a trap on 15th June 2006. On 15th June 2006, the PW-1 along with panch witness (PW-3) went the Bopodi Police

Chowky. PW-1, PW-3 and respondent sat on the bench which was placed outside of the police chowky. The respondent, thereafter demanded money by saying that, “whether it was brought”. The informant thereupon asked for his licence. It is stated that, the respondent told the informant to first pay the amount and thereafter he would receive the licence back. The informant thereafter took out the amount from the pocket of his shirt and handed it over to the respondent. The respondent kept the amount with his right hand in the right side pocket of his trouser. The informant thereafter gave pre-determined signal of acceptance of bribe amount and immediately raiding party accosted the respondent.

In contradiction to the deposition of the PW-1, the PW-3 has stated that, after going to the police chowky, the complainant requested the respondent to hand over his licence. The respondent took out the licence from the pocket of his shirt and handed it over to the informant. The informant kept the licence in the right side pocket of his trouser. The respondent told the complainant that, he never intentionally gives trouble to the complainant and thereafter asked the complainant as to what happen to his money. The complainant thereafter, took out the amount from the pocket of his shirt with his right hand and gave it to the respondent. The respondent accepted the amount and kept it in the right side pocket of his trouser. However, the respondent got suspicion about the Anti-Corruption raid, got frightened and threw the amount on the floor near his leg. The personnel from the raiding party immediately accosted the respondent.

7. Record further indicates that, the respondent has adopted a specific defence that, on 21st May 2006 in pursuance of complaint lodged by Mr. Ashok Hullar in the meeting which took place in the said police chowky amongst the respondent, first informant (PW-1) and Mr. Ashok Hullar, the informant had to tender apology of Mr. Ashok Hullar and thereafter Mr. Ashok Hullar withdraw his complaint. The informant was having grudge against the respondent as though the informant was having contacts with high ranking persons from the society and despite it, had to tender apology of Mr. Ashok Hullar. The informant therefore on 14th June 2006 gave a call to the respondent and told him that, till date Mr. Ashok Hullar was troubling him and therefore the informant wanted to meet the respondent. On 15th June 2006, at about 12.15 p.m. the informant alone came to meet the respondent and without their being any demand of illegal gratification or otherwise, the informant tried to thrust tainted amount in the pocket of the trouser of the respondent. Respondent with a view to resist the attempt of the informant shrugged off hand of the informant and at that time, the tainted amount which was in the hands of the informant fell on the floor. The Officers of the Anti-Corruption Bureau thereafter immediately accosted him.

8. As noted earlier, the independent panch witness in his deposition has stated that, on 15th June 2020 the respondent handed over licence to the informant immediately after they went to the police station. There are also contradiction with respect to the alleged actual demand. PW-1 has stated that, the respondent demanded bribe amount prior to handing over licence of the respondent, whereas PW-3 has stated that the respondent demanded the alleged bribe amount after handing over of the licence. There is material variation in the depositions of witnesses with respect to the alleged demand of bribe amount by the respondent. As a matter of fact, the tainted amount was seized by the Investigating Agency which was lying on the floor. It appears from the record that, the prosecution has failed to clearly establish the basic ingredient in a bribery cases i.e. demand by respondent. As noted earlier, there are material contradictions in the evidence of PW-1, PW-3 and also the Investigating Officer (PW-4). The defence adopted by the respondent appears to be more probable and genuine. The respondent was successful in rebutting the presumption under Section 20 of the P.C. Act. Therefore he is entitled for benefit of doubt.

9. In view of the above and after perusal of the entire record, this Court is of the clear view that, the Trial Court has not committed any error either in law or on facts while passing the impugned Judgment and Order dated 23rd September 2010.

This Court finds no merit in the Appeal, and the same is accordingly dismissed.

10. This Judgment will be digitally signed by the Personal Assistant of this Court. All the concerned will act on production by fax or e-mail of a digitally signed copy of this Judgment.

(A.S. GADKARI, J.)

Omkar S. Kumbhakarn
Digitally signed by Omkar S. Kumbhakarn
Date: 2020.10.23 17:53:40 +0530