

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 570 OF 2012**

The State of Maharashtra,
through, Dipak Bhaskar Bandekar
Dy.S.P., Anti-Corruption Bureau,
Sindhudurg

...Orig. Complainant

: V/s :

Suresh Baliram Rane, age : 52 yrs,
Taluka Inspector, Land Records Office
Vengurla, District-Sindhudurg, No.2 **...(Orig. Accused)**

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Mr. Yogesh Dabke, *APP for applicant-State.*

Mr. A.S. Khandeparkar a/w. Mr. Rohit P. Mahadik

a/w. Mr. Rajdeep Gude, a/w. Mr. Shubham Javlekar
i/by. Khandeparkar & Associates, *Advocate for the
respondent.*

Coram : Sandeep K. Shinde, J.

Dated : 11th January, 2021.

JUDGMENT :

1. This is an, appeal preferred by the State, under Section 378 of the Criminal Procedure Code, 1973 against the order of acquittal dated 17th November, 2011 passed by the Special Judge, Sindhudurg at Oras in Special Case No.11/2010.

2. Respondent, a public servant was charged and tried for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, (“Act” for short) for having accepted the amount of Rs.4,000/- as a gratification while serving as the Inspector of Taluka Land Records (TILR) as a motive or reward for measuring the land bearing Gat No.220 belonging to the complainant, Prasad Naik (“complainant” for short), other than remuneration for doing the official act and for also having committed misconduct by abusing his position as a “public servant”.

3. That before adverting to the facts of the case and the arguments advanced by the learned Prosecutor for the State in support of Appeal and Mr. Khandeparkar, learned Counsel for the respondent, it may be stated that, in the proceedings instituted against the order of acquittal, it is open to the High Court to re-appreciate the evidence and conclusions drawn by the trial Court but only in a case when judgment of the trial Court is stated to be perverse. The word “perverse” to mean is “against the weight of evidence” as held by the Hon’ble Supreme Court in the case of **Gemini Bala Koteshwara Rao V/s. State of Andhra Pradesh**, reported in **AIR 2010 SC 589**.

4. **Prosecution’s case :**

. Complainant being owner of land bearing Gat No.220, had approached respondent-accused, Taluka Inspector of Land Records on 15.11.2008, for measuring his land. Complainant was told by the respondent to deposit Rs.1,500/-

official fees for measuring the land, besides, other formalities like land map, consent of co-sharers. It is alleged, he demanded Rs.8,000/- reward for measuring the land on priority. On 18.11.2008, complainant narrated the incident to Deputy Superintendent of Police, Bandekar attached to Anti-Corruption Office at Kudal. He reduced the complaint to writing. It is prosecution's case that, complainant called the respondent on his cellphone on 18.11.2008 from the office of Anti-Corruption. The telephonic conversation was recorded, which was stored on a Compact Disc (CD). Simultaneously, transcript verification panchanama was drawn in presence of pancha witness. It is prosecution's case that, on 20.11.2008 after drawing pre-trap panchanama, complainant, witness-Shivankar and members of raiding party proceeded to the office of Taluka Land Records. The pre-trap panchanama reveals a device-voice recorder and Rs.4,000/- after applying anthracin powder were given to the complainant, with instructions to record his conversation with the respondent.

The complainant met the respondent in his cabin; recorded the conversation in a device-voice recorder and again met S.P. Bandekar-P.W.4, who was waiting with other raiding party members outside the office of the respondent. Bandekar heard the conversation recorded on device and confirmed “demand” allegedly made by the respondent for measuring the complainant’s land on, priority. As instructed by Bandekar, complainant went back to the office of the respondent and gave him tainted currency Rs.4,000/- which the raiding party found on the person of the respondent. Soon thereafter, respondent was put under arrest.

5. Prosecution in support of the charge, led the evidence of the complainant-P.W.1, pancha-Shivankar-P.W.2 and Bandekar-P.W.4. As, also relied on two transcript verification panchanamas; one relates to telephonic conversation recorded on 15.11.2008 and another transcript of

conversation recorded in device-voice recorder on 20.11.2008.

Reliance was also placed on report of Spectrographic test.

6. So far as telephonic conversation, transcript verification panchanama and the conversation recorded on voice recorder is concerned, it may be stated that both the conversation were stored in the Compact Disc (CD) in presence of panchas.

7. As such four CDs; two containing voice sample and other containing two conversations dated 15th & 19th November, 2008 between the complainant and the accused were sent to Forensic Science Laboratory, Mumbai for Spectrographic Test. In my view, “sound” stored in CD is “electronic record” in terms of Section 2(f) of the Information Technology Act 2000, a secondary evidence. Thus unless, evidence of this nature is not supported by a Certificate

required under Section 65B(4) of the Evidence Act, it is to be kept out of consideration.

8. Be that as it may, the learned trial Court, upon appreciating the evidence of P.W.1, complainant, P.W.2-Shivankar-pancha witness and P.W.4-Deputy Superintendent of Police, Bandekar reached the conclusion that, prosecution could not prove the alleged “demand” of reward/bribe, beyond reasonable doubt and accordingly returned the findings. Resultantly, the learned trial Court acquitted the accused.

9. I have perused the evidence. The findings returned by the learned Judge are founded on the evidence of the complainant, pancha witness and of Bandekar, on the aspect of ‘demand’. It may be noted that, evidence of complainant relating to ‘demand’ has not been corroborated by P.W.2-Shivankar. It so happened that the complainant would say, when he had been to the office/cabin of the respondent,

Shivankar was present, whereas, witness-Shivankar said, he was waiting outside the cabin. It may also be stated that, there is no evidence on record to suggest that, on 15.11.2008 and 19.11.2008, respondent-accused demanded reward from the complainant, for measuring land on priority. Evidence of the complainant on the aspect of demand has not been corroborated at all. The so called telephonic conversation, the complainant had with the respondent on 19.11.2008 was silent on the aspect of demand.

10. Faced with this situation, with the assistance of the learned Counsel, I have gone through the evidence to ascertain whether prosecution has proved that on 20.11.2008 respondent demanded money as motive from the complainant to measure land on priority. Evidence of prosecution's witness, on this point, is contradictory, in as much as, the complainant deposed, he first went in the cabin of the respondent, recorded the conversation on device and paid him Rs.4,000/-. However,

the evidence of P.W.4 suggest, after hearing the conversation recorded in the device and on being satisfied that conversation, spells out demand by the respondent for measuring land on priority, he asked the complainant to pay him. It may also be stated that, evidence of the complainant suggests that, when he returned to P.W.4 alongwith the conversation recorded in the device, he did not disclose to P.W.4, the conversation or gist of conversation he had with the respondent. In other words, the complainant did not tell the respondent no.4 about money demanded money by the accused. The trial Court, therefore rightly reached the conclusion that the omission on the part of the complainant to disclose this “vital conversation” to the P.W.4 renders the prosecution case, suspicious. In my view, this finding is based on the evidence on record and therefore not be a perverse finding. Even otherwise, complainant’s evidence and admissions in cross-examination suggests, he was confused, whether Rs.8,000/-

demanded were towards official fees for measuring adjoining lands or otherwise.

11. It is contended by the prosecution that the raiding party had recovered Rs.4,000/- from the person of the respondent, which had traces of anthracin powder and thus recovery has been proved. It may be stated that, mere recovery itself would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

12. In the case of **M.K. Harshan Versus. State of Kerala, reported in (1996) 11 Supreme Court Cases 729**, the Hon'ble Apex Court has held as thus :

“ In all these type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly there must be acceptance, in

the sense that, accused has obtained illegal gratification. Here, demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely acceptance is very important.”

Mr. Khandeparkar, has rightly relied on another judgment of the Apex Court in the case of **B. Jayaraj Vs. State of A.P., reported in 2014 (13) SCC 55.** In para-8, the Hon’ble Supreme Court has held;

“The only other material available is recovery of tainted currency notes from the possession of the accused. Infact such possession is admitted by the accused himself. Mere possession and recovery of currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive, in so far as, the offence under Section 13(1)(d)(i)(ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illelgal means or abuse of position as a “public servant” to obtain any valuable thing or pecuniary advantage, cannot be held to be established”.

13. In the case at hand, the prosecution could not establish the fact that, respondent had demanded illegal gratification, beyond reasonable doubt.

14. In consideration of the facts of the case and for the reasons stated, appeal fails and is dismissed accordingly.

(Sandeep K. Shinde, J.)