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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 457 OF 2002

Sudhakar Dhanaji Gaikwad ..Appellant
V/s.
The State of Maharashtra ..Respondent

Mr. Ganesh Gole a/w Bhavin Jain for the Appellant.
Mr. S.H. Yadav, APP for the Respondent/State.

CORAM : C.V. BHADANG, J.

RESERVED ON : 28 OCTOBER 2021
PRONOUNCED ON : 29 OCTOBER 2021

JUDGMENT

1. The challenge in this Appeal is to the Judgment and Order dated 30.03.2002 passed by the learned Special Judge at Malegaon, District Nashik in Special Case No. 13 of 1999 (old Special Case No. 22 of 1992). By the impugned Judgment, the Appellant (accused No.2) has been convicted for the offence punishable under Section 7 read with Section 13(1) (d) and 13(2) of the Prevention of the Corruption Act, 1988. The Appellant has been sentenced to suffer rigorous imprisonment for 1 year and to pay a fine of Rs.250/- and in default to suffer rigorous imprisonment for 2 months.

2. The prosecution case may be briefly stated thus:

That the Appellant was working as a clerk in the office of the Special Executive Magistrate at Malegaon, District Nashik. At the relevant time, Babu Bandu More-accused No.1 (since deceased) was working as a Special Executive Magistrate at Malegaon.

3. A chapter case was initiated against the complainant PW-1 Mohd. Usman and others on the basis of a complaint lodged by one Farooq Ahmed. The complainant had received a notice in the said case to remain present on 15.12.1989 before the Executive Magistrate. The complainant engaged Adv. Riyaz Ahmed. According to the complainant, the complaint lodged by Farooq Ahmed was false and a settlement was arrived between the complainant party and Farooq Ahmed. It is material prosecution case that the accused No.1 Mr. More had demanded an illegal gratification of Rs.500/- from PW-1 for closure of the chapter case. The present Appellant is alleged to have intimated the complainant that the next date was fixed on 29.12.1989. According to the complainant, as he was unwell, he was required to travel to Mumbai and could not attend the said case on 29.12.1989. After he returned to Malegaon on 01.01.1990, he learnt from Azad Nagar Police Station that a non-bailable warrant has been issued against the complainant and others by the Special Executive Magistrate. Further, according to the complainant, he

went to the office of the Special Executive Magistrate on 02.01.1990 when the accused No.1 More was not present. The Appellant is alleged to have informed the complainant that the warrant was issued as the complainant had failed to pay Rs.500/- to Mr. More. The complainant informed the Appellant that he was unable to arrange for Rs.500/- when the Appellant is alleged to have demanded an amount of Rs.250/- for getting the chapter case closed.

4. Feeling aggrieved by the illegal demand, the complainant went to the office of the Anti Corruption Bureau (ACB) and lodged a complaint whereupon a trap was arranged in the presence of panchas. The complainant along with one of the panchas Ashok Salve (PW-2) went to the office of the Executive Magistrate at Malegaon where he met accused No.1 and the Appellant. Accused No.1 asked the complainant to bring an application for cancellation of the warrant. The complainant accordingly got an application prepared and produced the same before Accused No.1 More, who passed an order for cancellation of warrant and thereafter, asked the complainant to pay Rs.250/- to the Appellant. The complainant accordingly paid Rs.250/- which was accepted by the Appellant whereupon the predetermined signal was given when other members of the raiding party came and recovered the amount of Rs.250/- comprising of two currency notes of Rs.100/- each and one currency note of Rs.50/- which were previously smeared with

anthracene powder. After completion of the usual formalities, and on finding anthracene powder in the pocket of the Appellant and on his hands, the Appellant came to be arrested and after investigation a chargesheet came to be filed which was registered as Special Crime Case No. 13 of 1999.

5. It may be mentioned that the Accused No.1 died during the pendency of the trial and the trial against him abated. The learned Special Judge framed charge against the Appellant for the offence punishable under Section 7 read with Section 13 (1)(d) and 13(2) of the Prevention of Corruption Act, 1988. The Appellant pleaded not guilty to the charge and claimed to be tried.

6. At the trial, the prosecution examined in all 4 witnesses namely PW-1 Maulana Mohammad Usman Abdul Shakur Sabuwala, PW-2 Ashok Salve, PW-3 Narayan Dalvi, PW-4 Umeshchandra Sarangi and produced the record of investigation. The Appellant did not lead any evidence in defence.

7. The learned Special Judge by the impugned Judgment has found the Appellant guilty. Hence, this Appeal.

8. I have heard Mr. Gole the learned counsel for the Appellant and Mr. Yadav the learned APP for the Respondent/State. With

the assistance of the learned counsel for the parties, I have gone through the record.

9. It is submitted by the learned counsel for the Appellant that the sanction granted by the Competent Authority is not legal and proper. It is submitted that there is no evidence to show that the sanctioning authority had applied mind before grant of sanction. It is next submitted that as per Section 17 of the said Act, the investigation in the offence under the said Act has to be done by an Officer not below the rank of an Assistant Commissioner of Police (ACP). It is submitted that unless and until there is a special authorisation by the State Government, an officer of the rank of Police Inspector (PI) is not competent to investigate the offence. He, therefore, submitted that the investigation by PW-3 is not legal and proper and the trial is vitiated. It is next submitted that there is no acceptable evidence about the demand or acceptance of the illegal gratification by the Appellant. The learned Counsel has referred to certain discrepancies in the amount recovered from the Appellant and accused No.1 which were their personal amounts. It is submitted that PW-2 claims to have signed the trap panchnama on the following day i.e. on 04.01.1990. It is pointed out that PW-2 does not state about use of ultra violet light to ascertain the presence of the anthracene powder on the appellant and on his clothes. Thus, in the submissions of the learned counsel, the demand and acceptance is not established particularly when PW-1 had failed to support the prosecution. It

is submitted that other persons whose presence has been admitted and who being independent witnesses have not been examined. It is submitted that the Appellant as a clerk was not competent to cancel the warrant and/or to close the case therefore, could not have demanded or accepted the amount in consideration of a favour to the complainant. It is submitted that accused No.1 had already cancelled the warrant and therefore, there was no occasion for payment of amount. He, therefore, submitted that the learned Special Judge was in error in convicting the Appellant.

10. The learned APP has supported the impugned Judgment. It is submitted that PW-4 being the Collector was a Competent Authority to grant sanction and the evidence of PW-4 sufficiently establishes that the sanction was granted upon application of mind.

11. Insofar as the competence of PW-3 to investigate the offence is concerned, the learned APP has produced an order dated 19.04.1989 by the Government of Maharashtra by which all the Inspectors of Police in the Anti-Corruption Bureau, Maharashtra State have been conferred with powers to investigate the offence under the Said Act. It is pointed out that the such authorisation is granted in exercise of the powers conferred by proviso to Section 17 of the said Act.

12. It is submitted that the evidence of PW-2 and the Investigating Officer is sufficient to establish the demand and acceptance of the illegal gratification by the Appellant for and on behalf of the accused No.1. It is submitted that such aspect is established notwithstanding the fact that PW-1 had turned hostile. It is submitted that minor discrepancies about the amount cannot come in the way of accepting the evidence of PW-2 and PW-3 in the matter of demand and acceptance of the illegal gratification by the Appellant.

Sanction Order

13. PW-4 Umeshchandra Sarangi was the Collector of Nashik from year 1988 to November 1991 and was the Competent Authority to grant sanction. Investigating papers were sent to him by the ACP and PW-4 claims that upon examination of the papers, he granted sanction vide Exh. 57. Nothing significant has been brought in the cross-examination of PW-4. The learned counsel for the Appellant pointed out that PW-4 has stated that the Appellant was trapped for accepting the bribe of Rs.200/- to close the chapter case. This according the learned counsel is sufficient to hold that there was non application of mind. The contention in my considered view cannot be accepted. PW-4 has stated about grant of sanction after the papers of the investigation were sent to him. The sanction order is dated 04.05.1991 and the evidence of PW-4 was recorded on 25.01.2002. Thus, merely because PW-4 has stated an amount of Rs.200/- would not be

sufficient to hold that there is non application of mind. Therefore, the contention regarding the sanction order being vitiated cannot be accepted.

Competence of PW-3 to investigate the offence

14. The first proviso to Section 17 of the Act of 1988 states that a Police Officer not below the rank of Inspector of Police, authorised by the State Government in this behalf by a general or Special Order, may also investigate any such offence without an order of Metropolitan Magistrate or a Magistrate of the First Class, as the case may be, or make arrest therefor without a warrant. There is an order by the Government of Maharashtra by which the Government in exercise of powers conferred by the first proviso to Section 17 of the 1988 Act has authorised all the Inspectors of Police in the Anti-corruption Bureau (ACB), Maharashtra State for the purposes of that proviso. Thus the contention on behalf of the Appellant cannot be accepted.

15. This takes me to the merits of the matter. It is necessary to note that the Appellant was working as a clerk in the office of the accused No.1 who was the Special Executive Magistrate. The Appellant had no authority to either issue a warrant or to cancel the same, nor was authorised or competent to close the chapter case. The prosecution case and the evidence led has to be appreciated in the context of the aforesaid position.

16. PW-1 who is the complainant did not support the prosecution. He stated that the amount was paid to accused No.1 (since deceased). PW-1 disowned the portion marked A and B (Exh.52 and Exh. 53) from his complaint. Thus, no reliance can be placed on the evidence of PW-1 on the point of the demand and acceptance of the illegal gratification by the Appellant. PW-2 is the only other witness examined by the prosecution who had an occasion to be a witness to such demand and acceptance. PW-2 was working as a stenographer in the office of District Adult Education Office at Nashik. He states that on 03.01.1990 his Superior Officer Mr. Salunke directed him and a Junior Clerk Mr. Jagdish Borse to attend the office of Anti-corruption Bureau and accordingly, both of them have attended the office. PW-2 has then stated about having accompanied the complainant to the office of the Special Executive Magistrate at Malegaon at 4.00 p.m. they entered in the office of the Special Executive Magistrate and the complainant exchanged pleasantries with the Appellant. There were 4 to 5 other persons near the table of the Appellant who were asked to sit outside. He states that the Appellant asked the complainant and PW-2 to wait outside. After sometime they again approached to the Appellant. The Appellant informed that the chapter case is adjourned to 09.01.1990 and asked whether the amount is brought as per the direction of the accused No.1 Mr. More. After some time, the complainant and PW-1 again went to the Appellant when he was standing near the table of the

accused No.1 Mr. More. PW-1 requested accused No.1 More to cancel the warrant and to file the case, whereupon accused No.1 More asked the complainant to submit an application “as per rule”. The accused No.1 also asked whether the amount was brought. After that the complainant and PW-2 came outside, got an application prepared from one vendor and went to the accused No.1 at about 4.30 p.m. The application was given to the accused No.1 and he was again requested to cancel the warrant and to file the case. It has come on record that Mr. More passed an order on the same recalling the order of the issuance of the warrant. The relevant order below Exh.38 reads “*Allowed order withdrawn.*”

17. It is the material evidence that after this the accused No.1 More asked PW-1 to give the amount to the Appellant. PW-1 accordingly, took out the amount from his pocket by right hand and gave it to the Appellant who counted the same by both the hands and kept the same in the left hand side pocket of the pant, after which predetermined signal was given when other members of the raiding party came and subsequent recovery was effected and formalities were completed. What is significant is that PW-2 does not state that the presence of the anthracene powder on the hands or the pant pocket of Appellant was tested in the ultra violet light. Further, he states that he had signed the trap panchnama on the following day i.e. on 04.01.1990. There is also nothing on record to show that a requisition was given by the

Investigating Officer to the superior of PW-2 requiring the services of PW-2 and other panch, nor there is any order by which PW-2 was asked or was relieved to attend the ACB office and the subsequent proceedings. Except PW-1 and PW-2, there are no other prosecution witnesses on the point of demand and acceptance. As noticed earlier, PW-1 has turned hostile and there are material discrepancies in the evidence of PW-2 which cast a doubt on the presence of PW-2 at the time of the raid. There is no reason why PW-2 signed the panchnama on the following day, if at all he was present during the course of the raid. That apart the record also discloses that the warrant was already cancelled before PW-2 claims that the amount was tendered by PW-1 which according to the direction of accused No.1 was given to the Appellant. It is necessary to emphasise that the Appellant in his capacity as a clerk was neither competent, nor clothed with the jurisdiction to cancel the warrant or to close the chapter case. At the highest, the prosecution claims that the amount was accepted by the Appellant as per the direction of the accused No.1, who is already dead.

18. The learned counsel for the Appellant placing reliance on the decision of the Supreme Court in *B. Jayaraj v/s. State of Andhra Pradesh*¹ has submitted that mere recovery of the tainted currency notes is not sufficient to establish the charge in the absence of a specific demand and acceptance by the accused.

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Considering the overall circumstances and the fact that the accused No.1 who was in fact competent to cancel the warrant and close the case is already dead and further having regard to the fact that prior to the amount being tendered by PW-1 the warrant was already cancelled and in the absence of acceptable evidence regarding the demand and acceptance of the illegal gratification by the Appellant, the conviction in my considered view cannot be sustained.

19. Hence, the following order is passed:

- (i) The Appeal is allowed.
- (ii) The impugned Judgment and order dated 30.03.2002 is hereby set aside.
- (iii) The Appellant Sudhakar Dhanaji Gaikwad is hereby acquitted of the charge under Section 7 read with Section 13(1) (d) and 13(2) of the Prevention of the Corruption Act, 1988.
- (iv) The bail bonds of the Appellant stand cancelled.

(C.V. BHADANG, J.)