

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 535 OF 2016

Raju Shantaram Kakphale,
Age: 45 years, Occ : Service,
Kakphale Chawl, Azad Nagar No.2
Gokul Nagar, Opposite Hotel-United
21, Thane-400 601.Appellant

: V E R S U S :

State of Maharashtra,
Through Anti Corruption Bureau,
Thane (Notice to be served on
Public Prosecutor, High Court,
Mumbai)Respondent

* * * * *

Mr. Satyavrat Joshi, Advocate for the appellant.

Ms. Veera Shinde, APP for State.

CORAM :- SANDEEP K. SHINDE, J.

Resd. On : 18th January, 2021.

Pron. On : 27th January, 2021.

JUDGMENT :

1. Appellant, a peon in the Thane District Court, was found and held, guilty for demanding and accepting Rs.300/- as illegal gratification for supplying certified copies of the judgment to the complainant. Thus, for offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, he was sentenced to suffer simple imprisonment for one year and fine of Rs.1,000/-; and simple imprisonment for six months and fine of Rs.1,000/-; respectively.

2. Mr. Tapan, complainant in this case, was prosecuted and tried in Criminal Case No. 3629/2004. He was acquitted by the learned Judicial Magistrate First Class on 31st January, 2008. After pronouncing the judgment in the open Court on 31st January, 2008, complainant applied for certified copies, on the same day, vide Application No. 161/2008 dated 31st January, 2008. The complainant paid copying charges and copies were to be delivered/supplied on 4th February, 2008.

3. It is unfolded in the evidence that, though the judgment was delivered in the open Court on 31st January, 2008, Pradeep Narvekar, stenographer typed the judgment on 3rd February, 2008.

4. Complainant deposed, after applying for the certified copies on 31st January, 2008, accused who was working as Peon in Court Room No.8 demanded Rs.2,000/- from him for supplying the certified copies of the judgment urgently and asked the complainant to bring money on the next day. When he met the complainant on 01st February, 2008, he alleged the accused repeated the demand and he paid Rs.300/- to him. At that time, accused told him that unless full sum demanded is not paid, he would not receive copies of the judgment and may have to wait for a month. Evidence shows that, complainant deposed that he paid Rs.1,000/- to the accused since he needed the copies urgently, to file proceedings in the High Court, whereupon the accused gave his mobile contact number to him on the chit and asked

him to call and meet on the next day i.e. 2nd February, 2008.

5. Shortly thereafter, the complainant approached the Anti-Corruption Office at Thane. Mr. Powar, verified the complaint in the presence of panchas and after completing the formalities, handed over currency notes to the complainant after applying anthracin powder to it. Accordingly, verification and pre-trap panchanama were drawn. Investigating Officer asked the complainant to contact the accused on his mobile and conversation was recorded in the digital voice recorder. Mr. Rathod, pancha witness accompanied the complainant. The other raiding party members were waiting outside the court building. Permission of Hon'ble District Judge was

sought to lay the trap. Complainant deposed that, accused enquired with him, whether he had brought the money as agreed and asked to hand over to him. Following that, complainant paid Rs.800/- to the accused. The conversation was recorded on the digital voice recorder which was attached to the shirt pocket of the complainant. After giving signal, the raiding party recovered tainted money found on the person of the accused which had traces of anthracin powder. Soon thereafter, FIR was filed. Upon perusing the final report, charge was framed under Section 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act. The learned trial Judge, after appreciating the evidence, convicted the peon as aforesaid against which this Appeal is preferred.

6. Heard Mr. Joshi, learned Counsel for the appellant and Mrs. Shinde, learned APP for State.

7. I have carefully considered the submissions of the learned Counsel for the accused and the State and perused the evidence. The question that falls for my consideration is; (i) whether the prosecution has proved that the appellant had demanded Rs.800/- as illegal gratification other than legal remuneration as a motive or a reward to favour the complainant for urgently supplying the copies of the judgment passed in Criminal Case No. 3629/2004 which was pronounced and dictated by the learned Judicial Magistrate in the open Court on 30th January, 2008.

8. Actually, copy of the judgment was typed by the stenographer, Narvekar, D.W.1 on 3rd February, 2008. Indeed, alleged demand by the accused for giving certified copies, was made on 30th January, 2008 and according to the complainant on the same day, he gave a receipt to the accused vide which copying charges were paid by him. Indeed certified copy section of the District Court was certain to deliver judgment copy on 4th February, 2008. However, till 3rd February, 2008, judgment was not typed. In these circumstances and in view of the fact that, when Certified Copy Section was certain to given certified copy, if ready, on 4th February, 2008, why the complainant would pay Rs.1,000/- to accused on 1st February, 2008. Besides, it may be stated that the complainant was familiar with the court procedure, so much so that, he had

filed one case against a constable, Mr. Kurne. Moreover, complainant was also prosecuted in Regular Criminal Case No. 1213/2011. It is therefore, unclear, as to why, person familiar with court procedure, would approach accused either on 30th or 1st for certified copy when, copying section was to give copy on 4th February, 2008. Certainly, no prudent person would approach and pay, Court peon either on 01st February, 2008 or 2nd February, 2008 when copy of the judgment was typed on 3rd February, 2008. In this case, the complaint is not a lay person but had visited with the cases in the Court. Thus, looking into the attendant circumstances, prosecution's case, against the accused is not only unclear but debatable.

9. Evidence of Mr. Rathod, pancha witness who had accompanied the complainant on 2nd February, 2008, stated something else. His evidence, discloses that, when complainant told the accused that he had brought the money, accused brought zerox copies of the judgment and order. This statement of facts of the P.W.2, cannot be accepted for the simple reason that on 2nd February, 2008 when trap was laid, copy of the judgment was not available because it was typed on 3rd February, 2008. Be that as it may, even assuming, zerox copy was brought by the accused, as stated by pancha, Rathod, Investigating Officer ought to have seized the copy and produced it before the Court.

10. Mr. Joshi, learned Counsel for the appellant, argued that, once an application for certified copy is made, a separate section in the District Court handles this business. Admittedly, the accused was not working in the Certified Copy section but was a Peon in the Court of Judicial Magistrate First Class, Court Room No.8. Therefore, at the first place, it was unlikely that complainant, a person familiar with the court procedure, would approach Peon for certified copy, though he was not working in the certified copy section. Secondly, on 2nd February, 2008, certified copy of the judgment was not typed and therefore the evidence of Mr. Rathod, P.W.2, that on 2nd February, 2008, accused had brought the zerox copy of the judgment, renders his evidence improbable.

11. Thus, conjoint reading of the evidence of the complainant and witness, renders prosecution's case, that accused demanded Rs.2,000/- from the complainant on 31st January, 2008 uncertain.

12. Nextly, Mr. Joshi, learned Counsel for the appellant submitted, supplying/giving certified copy was not within the ambit and scope of duties of the accused. Therefore, even assuming, but without admitting that, appellant had accepted illegal gratification, it could not be said that it was in consideration of discharge of official duties.

13. Contradicting Mr. Joshi's argument, learned Prosecutor, has invited my attention to the transcript of conversation between the appellant and

the complainant recorded in the voice recorder before the trap was laid. He submitted, the conversation discloses 'demand' of illegal gratification by accused. As also, perused evidence of the Investigating Officer who had stated that, after recording the conversation between the complainant and the accused on the digital voice recorder, later it was stored on the 'Compact Disc' and conversation in the digital voice recorder was deleted. In the cross-examination, the Investigating Officer admitted that, the person who had transferred dated from Digital Voice Recorder to Compact Disc, had not given report/certificate nor the prosecution has examined him.

14. The conversation stored in the C.D. being 'electronic evidence' of secondary, in nature,

Certificate under Section 65B of the Evidence Act is mandatory. Prosecution has not produced a Certificate contemplated under Section 65-B of the Evidence Act. Therefore, the alleged conversation between the complainant and the accused, is required to be kept out of consideration.

15. Mr. Joshi, in the course of his arguments, had taken me through the evidence of P.W.1 and pointed out ‘omissions’ which in my view, needs no special emphasis, being insignificant.

16. In consideration of the facts of the case, evidence renders prosecution’s case, doubtful and unclear on both the facts in issue i.e. “demand” and “acceptance”. The law on the issue is well settled that, illegal gratification is sine-qua-non for

constituting an offence under the Prevention of Corruption Act, 1988. Mere recovery of tainted money is not sufficient. Mere receipt of amount by accused is not sufficient to fasten guilt in absence of any evidence with regard to “demand” and “acceptance” of the amount as illegal gratification.

17. Thus, for the reasons stated hereinabove, I hold that, prosecution could not prove beyond reasonable doubt that the appellant, accused demanded and accepted illegal gratification as a reward for giving/supplying certified copies to him.

18. That for the reasons aforesaid, appeal is allowed and impugned judgment and sentence dated 19th July, 2016 passed by the Additional Sessions

Judge-1 and Special Judge (POC Act), Thane in
Special Case No. 19/2008, is quashed and set aside.

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Sawant

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(SANDEEP K. SHINDE, J.)