IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO. 21 OF 2005

Chandrashekhar Damodhar Choudhary,
Aged about 45 years, Occu: Service,
R/o Ayodhya Nagar, Nagpur. …. **APPELLANT**

// **VERSUS** //

The State of Maharashtra,
through Inspector, Anti Corruption
Bureau, Nagpur. **…. RESPONDENT**

Shri S.L.Raut, Advocate for the Appellant
Shri I.J.Damle, Additional Public Prosecutor for the Respondent.

CORAM : N.B. SURYAWANSHI, J.

DATE : 17.02.2021

ORAL JUDGMENT :

The appellant is convicted by the learned Special Court (designated under Prevention of Corruption Act), Nagpur under Section 7 of the Prevention of Corruption Act and is sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs. 500/- (five hundred), in default of payment of fine he shall further undergo rigorous imprisonment for one month and under Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, he is sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs. 2000/-(two thousand), in default of payment of fine he shall further undergo rigorous imprisonment for three months in Special Case No. 15/1994. The conviction is challenged in the present appeal.

2] The prosecution case, in short, is as under:-

The accused, at the relevant time, was working as Patwari. He was appointed by the Sub-Divisional Officer. The complainant Pralhad Nagorao Gajbhiye's ancestral lands were mutually partitioned amongst his family members on 19.01.1989. The partition-deed was registered. The complainant therefore, submitted application for mutation entries in terms of partition on 20.01.1989 to Naib Tahsildar, Parseoni. The Naib Tahsildar, Parseoni asked the complainant to meet the accused, who at the relevant time was working as Talathi at Itgaon. The accused took mutation entries but those were not taken as per the shares allotted in the partition-deed. After taking the copies of 7/12 extract in May 1990, the complainant noticed that the entries were not taken as per the partition-deed. The complainant, therefore, started pursuing the matter for correction of the mutation entries as per the partition-deed. On 18.01.1993, the complainant submitted an application for correction of mutation entries to the Naib Tahsildar – Mr Kale. Mr. Kale directed complainant to meet the accused. The complainant met the accused and told him that mutation entries were wrongly recorded and they need to be corrected. At that time, the accused told the complainant that he will have to pay Rs. 2,500/-. He also told the complainant that from that amount, a certain amount was required to be paid to the Naib Tahsildar. If the amount is not paid, then the complainant will have to indulge in litigation and spend five to ten years and incur expenses for advocate fees etc. The complainant told the accused that he will consult with his brother. After the complainant consulted his brother on 19.01.1993, he paid the amount of Rs. 2000/- to the accused. The accused did not correct the entries. He repeatedly requested the accused to correct the entries. The accused told him that Rs. 500/- would be required. Again, the complainant met the accused on 01.02.1993 and requested him to correct the entries as he had paid Rs. 2000/-. The accused told the complainant that amount of Rs. 2000/- paid by him was paid to the Naib Tahsildar and remaining amount of Rs. 500/- was not paid to him. Unless that amount was paid to him, he will not correct the mutation entries. Therefore, the complainant agreed to pay an amount of Rs. 500/- to the accused. Again on 06.02.1993, the complainant met the accused and the accused insisted him to pay Rs. 500/-. He asked the complainant to bring a copy of the partition-deed dated 07.02.1993 at his house and then he would make corrections in the mutation entries and corrected copy of 7/12 extract would be given. Since the complainant was not willing to pay the bribe amount, he approached the Office of Anti Corruption Bureau (ACB), Nagpur and lodged his complaint (Exhibit No.27). After the receipt of the complaint, the ACB completed the formalities and laid the trap. Pre-trap panchanama (Exhibit No.32) was prepared. Thereafter, the complainant and shadow panch left the ACB Office for going to Parseoni by motorcycle. The other ACB Officers, members of trap party and Panch No. 2 followed them by Government vehicle. They left the ACB Office at 9.30 a.m. and reached Parseoni at 10.45 a.m. Again instructions were repeated to the complainant and Panch Nos.1 and 2. However, accused was not found at his house. Thereafter, the complainant and the raiding party went to Itgaon. Even there, the accused was not found. Thereafter, they returned to Parseoni bus stand at around 1.00 p.m and waited there for about two hours. At about 1 p.m., they saw the accused alighting from a matador. The complainant pointed out the accused to shadow panch No.1 and the members of the raiding party. The complainant and shadow panch No.1 went to meet the accused. After exchange of good wishes, the complainant asked the accused about his work and handed over the document from his pocket. At that time, the accused asked whether the complainant had brought the amount. The complainant told him that he had brought an amount of Rs. 500/-. The accused asked for that amount. The complainant took out the money from the pocket of his jacket and gave the tainted notes of Rs. 500/- to the accused. The complainant then gave the agreed signal to the raiding party. The members of the raiding party and panch No. 2 rushed to the spot and caught the hands of the accused. The complainant told Inspector Parad that the accused had accepted the amount and kept the same in his chest pocket of his shirt. The raiding party introduced themselves to the accused. The tainted notes were recovered from the chest pocket of the shirt of the accused. A solution was prepared, in the third attempt, the finger tips of the accused were tested in the solution and the solution changed it's colour to purple. On sprinkling the solution on the bribe notes recovered from the accused, dots of purple colour appeared on them. On applying the solution on the chest pocket of the shirt of the accused, it changed its colour to purple. The bribe amount was recovered from the accused and was kept in a sealed envelope. The numbers of the notes recovered from the accused were tallied with the numbers noted in the panchama (Exhibit No.32). Even the finger tips of the complainant's right hand by which he handed over bribe amount to the accused turned purple when dipped in the solution. The inner portion of the jacket of the complainant also turned purple when the solution was applied. The documents i.e. the 7/12 extract, mutation entries register, receipt books, daily entry register were seized from the house of the accused in presence of the panchas, vide panchanama (Exhibit No.36). Inspector Shri Parad drafted the complaint (Exhibit No.56) and forwarded the same to Parseoni Police Station for registration of the offence. Accordingly, Crime No. 16/93 was registered vide FIR (Exhibit No.41). After the completion of the investigation, charge-sheet came to be filed.

3] The accused was charged for the offences punishable under Section 7, 13 (2) read with Section 13(1) (d) of the Prevention of Corruption Act. He denied the charge. His defence was of total denial and false implication. According to him, the complainant had planted the notes in the application for mutation and the documents given to him. According to him, the sanctioning authority was not the competent authority to grant sanction. After recording the evidence, the learned trial Court convicted the appellant. Hence, this appeal.

4] Heard learned Advocate for the appellant and the learned Additional Public Prosecutor for the State.

5] The learned Advocate for the appellant vehemently submitted that the prosecution has failed to prove the offence beyond reasonable doubt. According to him, the panchans were spot Panchas of the Anti Corruption Bureau and their evidence is not trustworthy. The learned Trial Court has not properly appreciated the evidence and has ignored the vital admissions given by the prosecution witness. He, therefore, submitted that the prosecution has failed to prove the charge against the appellant beyond reasonable doubt and the appellant is entitled for acquittal. It is submitted that the Sub Divisional Officer was not competent to accord sanction for prosecution of the appellant.

6] On the other hand, the learned Additional Public Prosecutor supported the judgment of the learned trial Court stating that the prosecution has led cogent evidence and proved the charges levelled against the appellant. The learned trial Court has supported its judgment by giving proper reasoning and the learned trial Court was therefore justified in convicting the appellant. He, therefore, says that there is no merit in the appeal and the appeal deserves to be dismissed.

7] There is no force in the argument of the learned advocate for the appellant that the Sub Divisional Officer was not competent to accord sanction for prosecution of the appellant and the Collector was the competent authority to appoint him and to grant sanction. In ***Dattatraya Laxman Bagdi v/s State of Maharashtra reported in 2017 ALL MR (Cri) 4622,*** this Court held that the Sub Divisional Officer was the appointing authority for Talathi. In that view of the matter, the said argument is not acceptable.

8] The prosecution in support of its case has examined 9 witnesses. The Sub Divisional Officer was examined as PW-7 and he stated in his evidence that he was the appointing authority of the appellant and at the relevant time he was working as Sub Divisional Officer, Ramtek and the appellant was working as Talathi of Saja Tamaswadi, Village Itgaon. He received the proposal for sanction of the prosecution against the appellant alongwith draft sanction order and bunch of papers. After going through the papers, he was satisfied that the appellant was involved in the offence under Prevention of Corruption Act. Since he was the appointing authority, he issued the sanction order (Exhibit No.47) for the prosecution.

9] During the cross-examination, he admitted that the power of the certifying mutation entry was vested with Naib Tahsildar,

Tahsildar and Revenue Inspector. He also admitted that if the mutation entry was wrongly recorded, appeal against it lies with the Sub-Divisional Officer. He further admitted that he issued the sanction order and got it typed as per the draft sanction order sent by the ACB. He signed the sanction order Exhibit No.47 on 8.8.1994. He could not tell what were the documents in the bunch. On the date of deposition, he could not tell what documents were sent in the bunch alongwith the proposal for sanction. He could not tell for how much time, the papers were with him.

10] If the admissions given by the PW-7 sanctioning authority are taken into consideration, it appears that he has got the draft sanction order typed and issued the same after signing it. Admissions of the sanctioning authority PW-7 clearly indicates that he had not applied his mind to the documents on record and has mechanically prepared the sanction order in accordance with the draft sanction order. His evidence therefore, that he applied his mind and accorded sanction by going to the papers, does not inspire confidence. In my opinion, the sanction order is vitiated on account of non-application of mind on the part of sanctioning authority and therefore, the appellant is entitled for acquittal solely on that ground.

11] In Central Bureau of Investigation’s case (supra), the Hon’ble Supreme Court laid down following legal propositions in respect of sanction -

> *16. In view of the above, the legal propositions can be summarized as under :*
>
> *16.1 The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.*
>
> *16.2 The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.*
>
> *16.3 The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.*

> *16.4 The order of sanction should make it evident that the authority had been aware of all relevant facts/ materials and had applied its mind to all the relevant material.*
>
> *16.5 In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.*

12] In Romesh Lal Jain's case (supra) the Hon'ble Supreme Court held that :-

> "an order granting or refusing sanction must be preceded by application of mind on the part of the appropriate authority. If the complainant or the accused can demonstrate such an order granting or refusing sanction to be suffering from non-application of mind, the same may be called in question before a competent court of law."

13] In Mohd. Iqbal Ahmed's case (supra) the Hon'ble Supreme Court held that :

> *"The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned".*

14] If the ratio of the above judgments is applied to the facts of the present case, it is clear that the sanctioning authority P.W.7 has not applied his mind to the material on record and he has mechanically issued the sanction order by just typing the draft sanction order and signing it. The sanction is therefore vitiated.

15] I find that since the sanction order is vitiated, the conviction of the appellant is unsustainable and the same is liable to be quashed and set aside.

Hence, the following order is passed :-

ORDER

1] The impugned judgment and order of conviction passed by the Special Judge (designated under the Prevention of Corruption Act) Nagpur in Special Case No. 15/94 is hereby quashed and set aside.

2] The appellant is acquitted of all charges levelled against him.

3] Fine amount, if any, deposited by the appellant be refunded to him.

4] The bail bond of the appellant stands cancelled.

5] The appellant shall execute personal bond of Rs. 15,000/- (Rs. Fifteen Thousand only) with one or two sureties in the like amount before the Trial Court, in terms of Section 437-A of the Code of Criminal Procedure.

6] The appeal is allowed in the above terms.

JUDGE

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