

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.103 OF 2017

Smt. Shobha Sonba Raut
Age : 47 years, Occ. : Service
as Sub-Divisional Officer and
Land Acquisition Officer, Osmanabad
R/o. Ganpati Chowk,
Near Deshmukh Hote, Vasmat Road,
Parbhani, Tq. and Dist. Parbhani

... Appellant

Versus

The State of Maharashtra

... Respondent

...

Mr. N. R. Shaikh, Advocate for appellant (Appointed through Legal Aid).
Mr. B. V. Virdhe, APP for the respondent – State.

...

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 14.06.2022

Pronounced on : 05.08.2022

JUDGMENT :-

. Present appeal has been filed by original accused challenging her conviction by learned Special Judge, Osmanabad, Dist. Osmanabad on 27.02.2017 in Special Case (ACB) No.11 of 2015; thereby convicting her for the offence punishable under Section 7, 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the “P.C. Act, for short).

2. Present appellant/original accused was serving as Sub-Divisional Officer and Land Acquisition Officer in the year 2014 and was at Osmanabad, Dist. Osmanabad at the time of incident.

3. Prosecution had come with a case that original complainant - one Dattatraya Arjun Deshmane is resident of village Kaudgaon, Taluka and District Osmanabad. He was the owner of agricultural land bearing Gat No.141 admeasuring 1-H 47 R in the said village. His land was acquired by the Government about two years prior to the complaint. He had received the compensation for the land from the Government, but he had not received the compensation for the fruit bearing trees and stone bund from the said acquired land. He had made application for getting that compensation in the office of accused. Complainant had gone to the office of the accused about 5-6 days prior to the complaint for making inquiry into the compensation. He had met accused at that time. She had disclosed that the meeting of the farmers, who were similarly demanding money, was arranged after two days and, therefore, complainant should also attend the said meeting. That meeting was held accordingly and it was disclosed that the cheques for the compensation would be distributed to respective claimants by the end of July. Thereafter, again the complainant went to the office of accused after three days. He was shown with the list of names of farmers with the

amount of compensation that would be paid to them. Accused had then asked him to form group of 5-7 persons and asked them to pay 5% of the sanctioned amount of compensation to her. She also told that if the amount is not paid then the cheques will not be given. Complainant told the said fact to other claimants standing outside and conveyed message of the accused. They decided to form one group and meet accused. Accordingly, complainant along with 5-7 persons went to the office of accused and at that time she demanded amount of Rs.39,200/- for the issuance of the cheques. She asked them to collect the amount. She assured that the amount would be credited to the account of respective claimants after they would pay her the said amount. According to complainant, nothing was due to accused from him as well as other farmers and the amount which the accused was demanding was illegal gratification. Complainant and other farmers were not ready to give bribe, hence he approached Anti-Corruption Bureau, Osmanabad and lodged complaint.

4. It is further prosecution story that after Dattatraya made complaint to Anti-Corruption Bureau, Osmanabad, two panchas were called and arrangement of raid was made. The prior formalities were completed including verification of the demand. Complainant produced amount to be given as bribe in the form of 10 currency notes of

Rs.1000/- and 58 currency notes of Rs.500/-, 2 currency notes of Rs.100/- each; in all Rs.39,200/-. After giving of instructions to complainant and panchas, the police party, panchas and complainant went to the office of accused. Complainant and panch No.1 met accused. Accused asked him as to whether he has brought the amount. When accused demanded the bribe amount again, the currency notes were offered to accused. Accused asked him to count them. Accordingly, he had counted them by his both hands. He was then asked to keep it in her purse. Complainant went outside and gave signal to the raiding party. Raiding party caught hold of accused. The tainted currency notes were found in her purse. Post-trap Panchnama was executed. Police Inspector, Mrs. Bhosale lodged First Information Report (FIR) against the accused. Accused came to be arrested.

5. Investigation was undertaken after the registration of the offence. Statements of the witnesses were recorded. Accused was arrested. Voice samples have been collected. Certified/true copies of certain documents were collected. Sanction was obtained. Therefore, after the completion of the investigation, charge-sheet has been forwarded against accused.

6. After the accused persons appeared before learned Special Judge, Charge vide Exhibit-20 has been framed for the offence punishable

under Section 7, offence under Section 13(1)(d) read with Section 13(2) of the P.C. Act against accused. Contents of the charge were read over and explained to the accused in Marathi. She pleaded not guilty. Trial has been conducted. Prosecution has examined in all 5 witnesses to prove the guilt of the accused. It appears from the cross-examination of the prosecution witnesses taken on behalf of the accused and from her statement under Section 313 of the Code of Criminal Procedure, that her defence is of total denial and false implication.

7. After perusing the evidence and hearing both sides, the learned Special Judge, has held that the prosecution has proved the guilt of the accused. Accused was sentenced to suffer rigorous imprisonment for 4 years and pay fine of Rs.25,000/- in default to suffer rigorous imprisonment for six months for the offence punishable under Section 7 of the P. C. Act. She was further sentenced to suffer rigorous imprisonment for 4 years and to pay fine of Rs.25,000/- in default to suffer rigorous imprisonment for 6 months for the offence punishable under Section 13 (1)(d) read with 13(2) of the P. C. Act. Hence, this appeal.

8. Heard learned Advocate Mr. N. R. Shaikh for the appellant – accused and learned APP Mr. B. V. Virdhe for the respondent – State.

Perused the record and proceeding.

9. Learned Advocate for the appellant submitted that there is no dispute about the fact that the appellant was the public servant. She was convicted on 27.02.2017 and her sentence was not suspended. Therefore, she had undergone the substantive sentence. However, she has right to file the appeal and accordingly, it has been filed. Perusal of the evidence led by the prosecution would show that the prosecution had failed to prove the guilt of the accused beyond reasonable doubt. PW.1 – Dattatray Arjun Deshmane i.e. complainant had given application for compensation in respect of fruit bearing trees and stone bund and states that after it was sanctioned when he had gone with the request to release the amount, the appellant, who was the concerned officer, had demanded 5% of the compensation amount as bribe on 15.07.2014. According to the complainant, he had no intention to give the bribe and, therefore, lodged complaint Exhibit-24 on 16.07.2014. If we consider his testimony whatever amount he has allegedly given to the accused is the 5% of the compensation amount of seven persons including of himself. He contends that he had collected that 5% amount from others and contributed his own amount also, but it can be said that it is impossible to collect the same within a day when no figure of compensation was disclosed by the accused to them. In his examination-

in-chief itself he says that the amount of Rs.39,350/- was allegedly calculated by the accused. The anthracene powder was applied to the currency notes and it was in the pocket of the complainant, before he could give the said tainted money to the accused. The question is how to the exact amount, the anthracene powder was applied even before its calculation. It was the defence of the accused that one Rambhau Jadhav, who was working in the same office where the appellant is working and who was trapped earlier, who was having grudge against the appellant, was present in the cabin of the accused and this fact has been admitted by the complainant in his cross-examination. Everything appears to have been got manipulated at his behest. But PW.5 – the Investigating Officer has not even recorded the statement of said Rambhau Jadhav, who was admittedly present in the cabin of the accused. In his examination-in-chief, PW.1 – complainant has stated that he has returned the amount of the others but was unable to say how many was contributed by each of the other claimant by way of bribe. The possibility of thrusting the amount in the purse of the accused cannot be ruled out. The learned Special Judge failed to consider the say of the accused as part of statement under Section 313 of the Code of Criminal Procedure. It was also not considered that the forensic report was not supported by mandatory certificate under Section 65-B of the Indian

Evidence Act. Who had prepared the audio is not proved by the prosecution. Though P.W.3 – panch witness No.1 apparently corroborated to what the complainant is saying, yet from the testimony of the complainant as well as the panch witness, it can be emerge to say that there was no demand by accused; but the complainant on his own was asking as to how much amount was to be given. P.W.4 – Sanctioning Authority has not applied its mind while according sanction. Therefore, taking into consideration all these aspects, it ought to have been held that the offence was not proved beyond reasonable doubt by the prosecution.

10. In respect of non compliance of mandatory provision of Section 65-B of the Indian Evidence Act and admissibility of the electronic record, the learned Advocate for the complainant is relying upon Full Bench decision of *Anvar P V Vs. P K. Basheer and others*, [2014 (10) SCC 473]. He has also relied on the decision in *Syed Murtuza Syed Murad Ali Vs. State of Maharashtra*, [2018 Cri. L. J. 609] by this Court, wherein considering the inconsistency in the testimony of the complainant and the other witnesses, accused was acquitted. Further, the Delhi High Court in *Parmanand Vs. C.B.I.*, [2013 (4) Cri.CC 763 : 2014 (1) JCC 336] held that, the recovery memo is not a substantive piece of evidence. Even if it is accepted that there was demand and

acceptance, but the recovery which is stated to be from an open briefcase, unless it is proved that the briefcase belongs to the appellant, it cannot be stated that the said recovery has been proved beyond reasonable doubt. The learned Advocate appearing for the appellant prayed that the appeal be allowed and the conviction be set aside.

11. Learned APP vehemently submitted that in his testimony PW.1 – complainant had stated that he was asked by others to collect the amount and, therefore, he was taking those decisions, which were in favour of the claimants. The transcript of the voice record shows that there was demand of 5% of the compensation amount. Exhibit-23 was the application by the complainant for demand of compensation. It is not in dispute that the accused was the in-charge of the disbursement of the money and as such before releasing the amount, the accused had demanded the said amount from the group of those persons including the complainant, who was to receive the compensation amount. The amount of 5% was calculated by the accused herself and even prior to that it has been stated that she had shown the list containing the names of those persons, who were granted compensation. The amount was demanded on 15.07.2014 and on the next date when the complainant had gone there, there was verification. After the complaint was filed by the complainant, the trap was successful. There was no amount which

was legally due from the complainant or any other person to the accused and, therefore, the said amount which was demanded by the accused was illegal gratification. There is no explanation given by the accused as to how the tainted currency notes was found with her. Sanction has been proved to be legal and valid. The testimony of complainant stands corroborated by the testimony of PW.3 – panch No.1 and PW.5 – Investigating Officer. The learned Special Judge has considered every aspect and, therefore, no case is made out for interference.

12. Taking into consideration the above submissions, following point arise for determination, finding and reasons for the same are as follows :-

POINT

(I) Whether the prosecution has proved that the accused being the public servant working as Sub Divisional Officer and Land Acquisition Officer, Osmanabad, by corrupt and illegal means and by abusing her position as public servant demanded Rs.39,200/- from Complainant-Dattatraya for release of cheque towards compensation, as a motive or reward for doing the said work in the exercise of her official function and accepted amount of Rs.39,200/- from him, and thereby, committed offence punishable under Sections 7, 13(1)(d) punishable read with Section 13(2) of the P.C. Act?

FINDING

In the negative.

REASONS

13. As aforesaid, there is no dispute that the appellant – accused is the public officer and on the date of the incident she was serving as Sub Divisional Officer and was in-charge of the person to distribute the amount of compensation. P.W.1 - Dattatray Deshmane/complainant has deposed that he had given application Exhibit-23 on 16.06.2014 for getting compensation of fruit bearing trees and stone bund, though he accepted that he has received the amount of compensation for acquired land of 1-H 17 R from his Gut No.141 situated at village Kaudgaon. He says that he along with six other persons had gone to meet the accused on 15.07.2014 to get the cheque of their respective amounts of compensation and at that time itself, accused told that 5% of the total compensation by making it round figure, they should give her amount of Rs.39,200/-. Complainant has stated that two days after his application for getting compensation i.e. 16.06.2014, when he had gone to the office of the accused, she had suggested to form group of farmers of 5-6 persons and then to meet her. Accordingly, he had discussion and they formed a group and went to the office of accused. Accused gave list to

verify and accordingly, he says that after verifying the list, accused demanded 5% of the total amount of compensation. Further, in his testimony, he says that they have decided to give amount of Rs.39,200/- and accordingly, the amount was collected on 15.07.2014. But then at another breath, the complainant says that he as well as other farmers were not willing to pay the amount to the accused, but were under the impression that if the amount is not given, they will not get the amount of compensation and then he decided to approach the Anti Corruption Bureau to lodge the complaint. Important point to be noted is that he has not stated in the examination-in-chief that the other farmers along with him were also of the opinion that such complaint should be filed. He has not stated that other farmers had accompanied him to the Anti Corruption Bureau at the time of lodging complaint. None of those farmers, who had taken the decision along with the complainant to lodge the complaint, has been examined by the prosecution. It is not even clear from the testimony of PW.5 – the Investigating Officer as to whether he had recorded the statements of those witnesses or not. How much amount was contributed by each one of the said farmer to collect amount of Rs.39,200/- is neither stated by the complainant, nor by the Investigating Officer. However, certainly the entire amount of Rs.39,200/- was not belonging to the complainant. It was not even the

bribe amount, which was demanded from him individually. When the complainant says that he was made as leader by the co-farmers also, then it requires that he should explain as to how much amount was collected by him from each one of the other six members of the group and how much amount he has refunded to them.

14. Further, if we consider the examination-in-chief of the complainant, then it can be seen that when he as well as panch No.1 Mrs. Bodke went to the office of accused, at that time, there was discussion between accused and other farmers. Thereafter, the complainant made inquiry with accused in respect of their compensation amount of fruit bearing trees and stone bund and asked how much amount is required to be paid to her. The answer by the accused was to give payment of 5% of the compensation amount and then she will issue the cheque of compensation. These wordings in his examination-in-chief shows that there was no demand from the accused, but it was the response given by the accused and the talk was initiated by the complainant and he asked how much amount is required to be given. This cannot be “demand” as contemplated under the P.C. Act. Interestingly, the testimony of P.W.3 - Dr. Bodke/panch No.1 also says that when she along with the complainant had gone to the office of the accused, she found accused in the office. Then complainant had shown

the list of seven farmers to the accused and told that as per her direction, he had collected 5% amount of total cheque amount and brought the same with him and thereafter, she herself as well as complainant returned to the Deputy Superintendent of Police Mrs. Bhosle near the jeep. That means, she was telling the above portion in respect of verification panchanama. She has not stated that any word was uttered by the accused at that point of time which will show that there was a demand from the accused.

15. According to the complainant, after the alleged verification panchanama when they returned to Anti-Corruption Bureau office, the voice recorder was played and the panchanama was prepared. As regards that electronic evidence is concerned, it would be dealt with later. However, as per the complainant, he was carrying amount of Rs.39,350/-. Cash of Rs.150/- was separated and anthracene powder was applied to the currency notes of the requisite denomination to make the total amount of Rs.39,200/-. After the said panchanama was executed, all of them went to the office of accused. Complainant then says that accused checked the amount of each of the farmer in the list, which he had shown and then the accused told total amount of compensation of the seven farmers and amount of Rs.39,200/- which is 5% of the total amount, was demanded from the complainant.

Interesting point to be noted is that in the entire case of the prosecution, it has not been brought on record as to how much compensation was allotted to the 7-8 persons including the complainant. Merely because the complainant and the other prosecution witnesses are saying that the accused had calculated the amount of 5% of the compensation, the amount of Rs.39,200/- is that much figure cannot be so believed. Total amount of compensation has not been told by the complainant. Interestingly, the complainant in his cross-examination states that he had not even told the amount of compensation to other farmers. Why the list which the complainant was allegedly showing to the accused was not seized is a question. If we decide to consider the transcript panchanama and the transcript itself, then there is a mention of the chit, but surprisingly it was not seized which could have been a vital piece of evidence.

16. Merely because the tainted amount was recovered from the accused, it cannot prove the guilt of the accused *per se*. No doubt, it has been stated that there was evidence of traces of anthracene powder of both hands of the accused and the tainted amount was in her purse, yet if the demand is not proved, we cannot say that there is acceptance in proper perspective.

17. PW.5 – the Investigating Officer in her examination-in-chief has stated that accused had given memorandum in her own handwriting, however, she does not say that she had forwarded that memorandum/say to the sanctioning authority. If that document would have been forwarded by the Investigating Officer to the sanctioning authority; then the sanctioning authority would have applied the mind properly before according sanction.

18. Now, turning towards the electronic evidence, it is to be noted that the said panchanama including the transcript of the dialogues exchanged is stated to have been prepared on the basis of what was heard from the voice recorder. No doubt, it appears that by taking out hash value the said voice recorder was sent to the forensic lab for analysis with the sample of the voice, but no efforts appears to have been taken by the prosecution to play that voice recorder or the CD prepared therefrom during the course of the testimony of P.W.1, P.W.3 and P.W.5. Mere submission of the certificate will not absolve the prosecution from identifying the voice before the Court. The report of the forensic lab would be in the form of opinion of an expert and the concerned authority may come to a conclusion that the voice, which has been heard in both the devices, are of the same person. But it has to be concluded that, the said voice is of the accused and that can be done

only before the trial Court. Therefore, taking into consideration all the abovesaid evidence, scanning thereof and the reasons aforesaid, it cannot be said that the offence was proved by the prosecution against the appellant beyond reasonable doubt, and therefore, the point is answered in the negative. The appeal deserves to be allowed. Hence, the following order :-

ORDER

- I) The appeal stands allowed.
- II) The conviction awarded to the appellant - Smt. Shobha Sonba Raut in Special Case (ACB) No.11 of 2015 by learned Special Judge, Osmanabad on 27.02.2017 for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the P.C. Act, is hereby set aside.
- III) The accused stands acquitted of the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the P.C. Act.
- IV) Her bail bonds stand cancelled.
- VI) Fine amount deposited, if any, be refunded to the accused.

[SMT. VIBHA KANKANWADI, J.]