IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.393 OF 2011

Shankar Pandurang Waghere ....Appellant
Versus
The State of Maharashtra .... Respondent

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Mr. Satyavrat Joshi, Advocate i/b. Sumant Deshpande a/w. Nitesh Mohite, for the Appellant.

Mr. Yogesh Y. Dabke, APP, for the Respondent-State.

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CORAM : SARANG V. KOTWAL, J.

DATE : 15th SEPTEMBER, 2022

ORAL JUDGMENT :

1. The appellant has challenged the judgment and order dated 25.4.2011 passed by the Special Judge, Nashik in Special Case No.8/2004. The appellant was convicted for commission of the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (for short, 'PC Act') and was sentenced to suffer RI for one year and to pay fine of Rs.5,000/- and in default

to suffer SI for three months. He was also convicted for commission of the offence punishable under Section 13(1)(d) read with 13(2) of the PC Act. He was sentenced for commission of that offence to suffer RI for one year and to pay fine of Rs.5,000/- and in default to suffer SI for three months. Both the sentences were directed to run concurrently.

2. The prosecution case is that the complainant Suhas Jagtap was holding Power of Attorney for Shekhar Deshpande and Manisha Nikam. They had purchased a property at village Anjaneri, District Nashik and they wanted to enter their names in the revenue record. The appellant was working as Talathi in that region. It is the case of the complainant that the appellant demanded Rs.6,000/- to Rs.7,000/-and showed his willingness to accept Rs.4,000/- for doing that work. The complainant did not want to pay that amount. He approached the Anti-Corruption Bureau at Nashik and lodged his complaint. The ACB officers called two panchas and conducted the procedure for laying a trap. On 17.3.2004 at about 12.30 p.m., the complainant went to a Juice Center and called the appellant there to pay him the bribe amount. After telephonic talk, the appellant went there. The complainant was accompanied by one of the panchas. ACB Officers were standing in the area. Before going to the Juice Center, anthracene powder was applied to the currency notes which were to be paid as bribe amount. They were kept in the pocket of the complainant. When the appellant came to the Juice Center, he demanded the amount. The complainant handed over those notes with his left hand. The appellant counted those notes with his both hands and kept them in his pocket. The complainant gave pre-arranged signal. The ACB officers entered the Juice Center. They caught the appellant. His both hands were checked under ultraviolet lamp. They were found to have traces of anthracene powder. His shirt pocket also showed presence of anthracene powder. The currency notes were found in his pocket. They were checked with the pre-trap panchnama. Their numbers tallied. The appellant was apprehended. The ACB officers went to Sarkarwada police station and lodged FIR about commission of offence by the appellant under the provisions of the PC Act. After that, the investigation was carried out. The case was tried before the Special Judge and as mentioned earlier at the end of the trial, the appellant was convicted for the offence.

3. During trial, the prosecution examined four witnesses. PW-1 was the complainant, PW-2 was one of the panchas, PW-3 was the investigating officer and PW-4 was the Sanctioning Authority. After recording the evidence, statement of the appellant was recorded under Section 313 of Cr.P.C. The specific defence of the appellant was that the appellant had given Rs.5,000/- to the complainant because the complainant had suffered accident and he needed money for his treatment. The complainant had not returned the amount. In the land transaction, the purchasers had not produced evidence that one of them was an agriculturist and, therefore, to pressurize the appellant to enter their names, the appellant was trapped. He was told that the complainant wanted to return the amount and on this false assurance he was trapped. The appellant had not demanded any bribe amount and had not accepted any bribe amount. Learned trial Judge did not accept this defence. He believed the evidence of the complainant as well as that of the pancha and the investigating officer and convicted and sentenced the appellant, as above.

4. Heard Shri Satyavrat Joshi, learned counsel for the appellant and Shri Yogesh Dabke, learned APP for the State.

5. The prosecution case unfolds through the evidence of PW-1 Suhas Jagtap. He has deposed that he was holding Power of Attorney for Shekhar Deshpande and Manisha Nikam in respect of a land transaction. They had purchased land at Gat No.1145/1 at village Anjaneri, District-Nashik. PW-1 collected the documents and met the appellant and gave those documents to him, such as, copy of the sale deed, 7/12 extract and application for recording their names. The appellant demanded Rs.6,000/- to Rs.7,000/- as bribe amount for recording names of those two persons in the record of rights. PW-1 told the appellant that he had not brought the amount but would make arrangement. He told the appellant that he would pay Rs.4,000/- to him for doing the work. The appellant was to tell him the place where the money was to be paid. On the next day, he made a phone-call to the appellant and they decided to meet at a Juice Center known as 'Thunder Point

Shop' on HPT College Road. The complainant went to the office of the Anti-Corruption Bureau, Nashik on 17.3.2004 and gave his written complaint against the appellant for demanding money. The complaint is produced on record at Exhibit-14. The officers of ACB called two pancha witnesses. The complainant had already brought Rs.4,000/- consisting of eight currency notes in the denomination of Rs.500/- each. The officers demonstrated use of anthracene powder and it was applied on the notes and those notes were kept in the pocket of his shirt. He was told not to touch those notes. He was present in the ACB Office till 11.15 a.m.. Then he along with the panchas and the ACB officers went to HPT college Road in their vehicle. They parked their vehicle by the side of the Juice Center. He along with a pancha (PW-2 Pathan) and other pancha went to the counter of Juice Center. PW-1 was instructed by the ACB Officers to give signal by showing the handkerchief to the ACB Officers after the money was accepted by the appellant. After the complainant reached the Juice Center he called the appellant by giving telephonic message. He came there on his motorcycle. PW-1 told the appellant that he had brought the money. Then the appellant told PW-1 that he would do PW-1's work. PW-1 gave those currency notes to the appellant with his left hand because his right hand was in plaster. The appellant accepted the amount and kept it in the pocket of his shirt. After that PW-1 along with the pancha and the appellant entered the Juice Center for taking juice and after sitting on the bench he gave signal to the officers of the ACB by showing his handkerchief. The officers came inside the Juice Center. They caught hands of the appellant. Then they along with the appellant and panchas went to Krushi Nagar police station where the procedure was continued. He was kept outside. After some time he was called inside and his left hand as well as his pocket were checked for anthracene powder which was seen there. On the next day, the ACB officers recorded his statement. He identified the appellant before the Court.

In the cross-examination, he deposed that he went to the ACB office at about 9 to 9.30 a.m. on that day. The demand regarding money was made by the appellant on 10.3.2004. He did not mention this fact in his complaint given to the ACB. He also deposed that he had stated that the appellant had demanded Rs.6,000/- to Rs.7,000/- by was of bribe and after some conversation it was reduced to Rs.4,000/-. However, these facts were not mentioned in his complaint and he could not explain why these facts were not mentioned in his complaint. He had also not mentioned in his complaint that on 16.3.2004 he had made a telephonic call to the appellant and had decided to meet at Thunder Point Juice Center and that he was to give message to the appellant on his mobile phone. He accepted omission from his statement recorded by the ACB officer regarding the statement that PW-1 had given telephonic message to the appellant telling him that he had brought money and that the appellant upon accepting money told PW-1 that he would do PW-1's work. He could not explain as to why this fact was not mentioned in his statement before the ACB officers. He has further accepted that he was knowing the appellant since two years before this incident. One month before the incident PW-1 had met with an accident and had sustained fracture to his right leg and during that period his financial condition was not good. He admitted that he had obtained Rs.5,000/- from the appellant by way of a help. He also admitted that the appellant had demanded that amount from him but he did not have money to repay that amount. He further deposed that the appellant had raised doubt regarding 7/12 extract produced by him before the appellant in respect of Deshpande. Because of the doubt raised by the appellant, PW-1 became suspicious as to whether the names of Deshpande and Nikam would be entered in the revenue record.

6. PW-2 Hafiz Pathan was a pancha who had accompanied PW-1 at the time of the trap. He has deposed that he was working as a Junior Clerk in the office of Deputy Director of Health Center at Nashik. On 17.3.2004, his Head of Department asked him and the co-pancha to accompany the officers from Anti-Corruption Bureau to act as panchas. He went at 10.15 a.m.. The Dy.SP introduced them to the complainant who told about his grievance. After that, demonstration for anthracene powder was shown. It was applied to the currency notes. Pre-trap panchnama was prepared, which was produced on record at Exhibit-16. Then all of them went near the Juice Center.

PW-2 and PW-1 went inside the Juice Center. PW-1 gave telephonic message to the appellant. Within five minutes, the appellant came in the Juice Center. PW-1 conversed with him. They all sat in the Juice Center. PW-1 then asked the appellant when his work would be done. The appellant replied that he would tell the date after looking at the calendar. The appellant asked the complainant as to whether he had brought the money. The complainant replied in the affirmative. The appellant told the complainant to give that amount to him. The complainant took out currency notes from his pocket with his left hand and gave them to the appellant. The appellant accepted the amount and counted it by both hands and then kept that amount in his shirt-pocket. The complainant came out of the Juice Center. He took out the handkerchief from his pocket and cleaned his face by using that handkerchief. Thereafter the staff of the ACB entered the Juice Center. They closed the doors. They asked the pancha about the accused. PW-2 told them that the appellant had accepted the amount. The other pancha was asked to take out that cash amount from the pocket of the accused. PW-2 has further deposed that at that time he found anthracene powder on the currency notes as well as on both hands of the accused. The ACB officers then tallied the currency note numbers with the pre-trap panchnama. Then all of them went to Krushi Nagar Police Chowky. The notes were kept in one envelope. It was sealed. After that post-trap panchanama was prepared. PSI Patil then lodged complaint at Sarkarwada police station. The appellant was arrested. Then they went to the house of the appellant and search was taken. The post-trap panchnama was produced on record at Exhibit-20.

In the cross-examination, he deposed that his statement was recorded by the enquiry officer on 16.9.2008 in the departmental enquiry held against the appellant. He admitted that in that statement before the enquiry officer he had stated that the officers of Anti-Corruption Bureau took him to the Juice Center without disclosing anything. He also accepted that in that statement before the enquiry officer he had stated that he was not knowing the appellant till reaching the Juice Center and till then he was not knowing his name. He had also stated in his statement before the enquiry officer regarding the procedure followed by the ACB officers before effecting the trap and after effecting the trap.

The panchnama regarding house-search of the appellant was produced on record at Exhibit-19. The house-search panchnama mentions that the documents regarding the sale transaction pertaining to Shekhar Deshpande and Manisha Nikam were seized. Apart from that many registers bearing Book numbers from 1 to 11, the register regarding 7/12 extracts entries and 8-A entries were also seized from his house.

7. PW-3 PI Nana Patil was the investigating officer. On the date of trap he was working as Dy.SP in the Anti-Corruption Bureau, Nashik. He deposed the procedure which was followed after PW-1 approached them. He had brought two panchas. They were introduced to the complainant. They were told about the facts of the case. The demonstration of anthracene powder was given. The power was applied to those notes. The complainant was instructed about what he had to do. Pre-trap panchnama was prepared between 10.30 a.m. to 11.45 a.m.. All of them then went to the Juice Center. After some time, the appellant came to

the Juice Center. At 12.20 p.m., the complainant came out of the Juice Center and gave a signal which was previously decided between them. The ACB staff then entered the Juice Center. They caught both hands of the appellant. Anthracene powder was found on both his hands and on the shirt-pocket. The other pancha Kokani was asked to take out the notes from his pocket. The notes also showed presence of anthracene powder under ultraviolet lamp. They were kept in a packet. It was sealed. During all this while, one Tapi Sarkar was present in the juice center. He had cooperated by closing the shutter. He was in-charge of the Juice Center. PW-3 then made enquiries with the appellant. He refuted the allegations. The complainant’s left hand showed presence of anthracene powder. Post-trap panchnama was prepared. The appellant was arrested. They went to his house and house search was taken. Panchnama was prepared. It is produced on record at Exhibit-19. After that crime was registered and he investigated the offence. The sanction was obtained from the Sanctioning Authority and the charge-sheet was filed.

In the cross-examination, he proved all the omissions which were put to the other witnesses. He accepted that computerization work was going on in the office of the appellant. Therefore, his office was closed and all the records were sent to Sinnar. He could not tell why the appellant had brought the remaining papers to his house. PW-3 did not carry out any inquiry whether Deshpande was an agriculturist or not. He denied the suggestion that the appellant wanted his money back and he was falsely implicated.

8. PW-4 Deepak Chavan was the Sub-Divisional Officer, Nashik at the relevant time. He was empowered to remove the Talathi. Thus, he was the removing authority for the appellant. The papers were sent to him for according sanction. He accorded the sanction as per the proposal. The sanction was produced at Exhibit-34.

. This, in short, was the evidence of the prosecution.

9. The defence of the appellant is already mentioned hereinabove.

10. Shri Satyavrat Joshi, learned counsel for the appellant submitted that there are important omissions in the depositions of PWs-1 & 2. The important omission is regarding the demand of Rs.6,000/- or Rs.7,000/- as a bribe amount. The initial demand is important and in this case it was not mentioned by the complainant in his statement before the investigating officer. He was instructed not to pay the amount unless it was demanded but his evidence does not show that the appellant demanded the money and then only he had paid it. There is important difference between the evidence of PW-1 and PW-2. The independent witness Tapi Sarkar was present inside the Juice Center and was present throughout the entire proceedings and yet he is not examined. Therefore, adverse inference needs to be drawn.

11. He emphasized that the appellant's defence was probable. The complainant has accepted that he owed money to the appellant to the tune of Rs.5,000/- and, therefore, the appellant was only expecting his money back. One of the purchasers i.e. Deshpande was not an agriculturist and, therefore, the revenue record could not be altered. The appellant has not committed any offence.

12. Learned APP opposed these submissions. According to him, the evidence of PW-1 is sufficient which is corroborated by pancha witness PW-2. The contradictions are minor. They do not go to the root of the matter. If there were some infirmities in the procedure, the appellant cannot derive benefit of those infirmities.

13. I have considered these submissions. Before discussing the evidence, it must be noted that there is no serious challenge to the sanctioning authority's evidence. PW-4's evidence is not seriously challenged. Therefore, it can be held that cognizance was properly taken.

14. As far as merits of the matter is concerned, the entire prosecution case depends on the evidence of PW-1, PW-2 and PW-3 and amongst them evidence of PW-1 is even more important. He has accepted the important omissions from the statement which he had given to the officers of Anti-Corruption Bureau. These are not minor omissions. The demand of bribe amount is important. In this case he started by saying that the appellant demanded Rs.6,000/- to Rs.7,000/- and it was brought down to

Rs.4,000/-. But, this important aspect is missing from his statement recorded during investigation and that aspect is brought on record by way of an omission which is accepted by the investigating officer. According to PW-1, that demand was made on 10.3.2004 as mentioned in paragraph-4 in his cross-examination. Even this fact was not stated by him in the complaint application which he had given to the ACB. Thus, the prosecution has failed to prove the first demand made by the appellant.

15. The next important issue in this case is about the actual events which took place during the trap. There are certain important aspects regarding those events. There is important omission from his statement recorded during investigation. He had not stated in that statement that he gave telephonic message to the appellant that he had brought money and that he should come to the Thunder Point Juice Center and that by accepting money the appellant told him that he would do PW-1’s work. Though he has deposed that he had stated these facts in his statement before the ACB officers, he could not explain why these facts were missing from his statement. All these facts are important and, therefore, these omissions are not minor omissions. They are important omissions.

16. As far as acceptance of money in the Juice Center is concerned, he has deposed that after the appellant came to the Juice Center, he told the appellant that he had brought the money. Thereupon the appellant told him that he would do his work. He gave currency notes to the appellant with his left hand. His right hand was in plaster. The appellant accepted the amount and kept it in the pocket of the appellant's shirt. Importantly thereafter the complainant (PW-1) has deposed that after all this, he along with pancha and the appellant entered the Juice Center for taking juice and "after" sitting on the bench he gave signal to the officers of Anti-Corruption Bureau by showing handkerchief. This particular part is important. Thus, from his evidence it does appear that when he gave a signal he was sitting on the bench inside the Juice Center and that place was visible to the Anti-Corruption Bureau officers. Therefore, the ACB officers could also see the entire events right from the time the appellant had reached the Juice Center; but the investigating officer has not stated about the delivery of notes, their acceptance and the appellant keeping hem in his pocket. Serious doubt is, therefore, created about these particular events. This will have to be compared with the evidence of PW-2, who has deposed that after acceptance of the amount by the appellant, the complainant came out of the Juice Center and gave a signal by taking out handkerchief and by cleaning his face. Then the ACB officers came inside the Juice Center. Even PW-3 has deposed likewise. Their evidence is thus materially different on this aspect from that of PW-1. This again is not a minor contradiction between the depositions of these witnesses.

17. Apart from that the signal with handkerchief assumes importance. The signal was given by the complainant after the money was accepted by the appellant. Admittedly, PW-1's right hand was in plaster and, therefore, he could use only his left hand. By the same hand, he had given that amount to the appellant and after that he had given that signal. Therefore naturally the anthracene powder should have also appeared on the handkerchief which was used for giving the signal. But the prosecution evidence does not show that the handkerchief was showing any traces of anthracene powder. This is another important issue against the prosecution.

18. As rightly submitted by Shri Joshi, the person incharge of the Juice Center i.e. Tapi Sarkar, who was present right from the beginning till the end when this trap was completed, was not examined and in this particular case he could have explained a lot many things. Therefore, in the facts of this case, his non-examination also works against the prosecution and in favour of the defence.

19. PW-2 has accepted that he was not told by the ACB officers about the accused and the case, till he was taken to the Juice Center. This he has admitted in his statement recorded in departmental enquiry. This again throws serious doubt on the prosecution case about pre-trap panchnama. He has not spoken about the post-trap panchnama in that statement. Thus preparation of both these panchnamas is doubtful.

20. Finding of the documents regarding sale transaction in the appellant’s house is also not incriminating because not only these documents but the entire record including the registers were found in his house. The explanation was offered by the appellant that his offence was closed because of work of computerization. The investigating officer has accepted that the work of computerization was going on and, therefore, the appellant's office was closed. Hence, the entire record was in his house and, therefore, finding of those documents in his house also is not an incriminating piece of circumstance against the appellant.

21. In this background, the defence of the appellant will have to be tested. It is his specific defence that the complainant had taken his financial help to the tune of Rs.5,000/-. The complainant had accepted this in his cross-examination. He has admitted that he had obtained Rs.5,000/- from the appellant by way of help and, therefore, it was not improbable that the appellant was expecting repayment of that amount and, therefore, he could have accepted Rs.4,000/- which was lesser than the amount of Rs.5,000/-. Thus, the appellant has sufficiently probabalized his defence and his burden to that extent is discharged.

22. Considering all these aspects, sufficient doubt is created about the prosecution case and on the other hand the defence of the appellant appears to be more probable. Therefore, benefit of doubt must go to the appellant. With the result, following order is passed:

:: O R D E R ::

i. The Appeal is allowed..

ii. The judgment and order dated 25.4.2011 passed by the Special Judge, Nashik in Special Case No.8/2004 is set aside.

iii. The appellant is acquitted from all the charges in this case. He is on bail. His bail bonds shall stand discharged.

iv. Criminal Appeal is accordingly disposed of.

(SARANG V. KOTWAL, J.)

Deshmane (PS)