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

CRIMINAL APPEAL NO.63 OF 2013

Vishnu s/o Shivram Wadatkar,
Aged about 63 years,
R/o. Watkhed (Khurd),
Tahsil – Babhulgaon, District Yavatmal.

..... APPELLANT

// VERSUS //

The State of Maharashtra, through Anti
Corruption Bureau, Yavatmal.

.... RESPONDENT

Shri. P. R. Agrawal, Advocate for appellant.
Mrs. M. H. Deshmukh, APP for the respondent/State.

CORAM : AVINASH G. GHAROTE, J.
DATED : 14/07/2022

ORAL JUDGMENT :

1. Heard Mr. Agrawal, learned counsel for the appellant and Mrs. Deshmukh, learned APP for the respondent/State.

2. The appeal challenges the judgment dated 9.1.2013, by the learned Special Judge, Yavatmal whereby the appellant has been convicted of the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and has been sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/-, in default to suffer rigorous imprisonment two months. The appellant is also

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convicted for the offence punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/-, in default to suffer rigorous imprisonment two months.

3. Mr. Agrawal, learned counsel for the appellant, submits that the entire prosecution story is not worthy of any belief as would be evident from the complaint and the evidence of PW-1, who states that he had gone to the office of Talathi on 29.7.2006 for making an entry in the 7/12 extract in respect of a charge, on which date, he had met with the accused, who had made a demand of Rs.100/- for the purpose of making such an entry. The complainant/PW-1 thereafter had gone to the office of ACB, Yavatmal on 31.7.2006 itself whereupon he was told that the officer was not present and was told to come on 1.8.2006.

4. On 1.8.2006, the complainant is claimed to have gone to the ACB office at Yavatmal, wherein he met PW-4 Dildar Baldar Tadvı and narrated the incident to him. PW-4 is thereafter said to have secured the presence of PW-2 Nana Shirbhate, who has verified the complaint Exh.18 (page 29) from the complainant (PW-1). Thereafter, the anthracene powder was applied to a hundred rupees note, of which demonstration was given by PW-4, and the note thereafter was handed

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over to the complainant. The police party along with the complainant, PW-2 and one N. S. Chirde (the second panch) proceeded to the office of the accused. The police party stayed outside. The complainant and PW-2 went inside. After exchange of pleasantries between the complainant and the accused, the complainant is claimed to have asked the accused to give the documents, thereupon the accused is claimed to have demanded Rs.100/- which was handed over to him by the PW-1 by the right hand and it is claimed that the accused had taken it and kept it on his table whereupon the documents were handed over to the accused. All through this time, PW-2 is claimed to have been sitting on the chair at the table of the accused. The PW-1 thereafter, came out from the room and gave signal to the raiding party, whereupon PW-4 along with his staff went inside and made an enquiry with the complainant and PW-2 as to who had accepted the bribe upon which, the accused was pointed out. The ACB staff caught hold of both the hands of the accused. The complainant/PW-1 thereafter, was sent out. After some time, when he was called back, the hand and shirt pocket of the complainant PW-1 was examined under ultra violet lamp which showed them glitter. The documents claimed to have been given by the accused to the complainant were also seized under seizure panchnama Exh.19 (page 32), from the complainant. Personal search of the complainant was also taken. Panchnama No.2 (post trap) was thereafter prepared

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(page 66), charge-sheet was filed. During the course of the trial, the complainant – Mahadeo Thakre was examined as PW-1 Exh.17 (page 19); the shadow panch - Nana Shirbhate was examined as PW-2 Ex.31 (page 48); the sanctioning authority – Sarang Kodalkar was examined as PW-3 Exh.40 (page 74-A) and the Investigating Officer – Dildar Tadvi was examined as PW-4 Exh.51 (page 82).

5. A perusal of the evidence of PW-1, the complainant, indicates that he had gone to the office of the Talathi for the purpose of getting an entry of a charge recorded in 7/12 extract, as he intended to take loan from a Credit Society. In support of this story, the documents from Exh. 25 to 28 (page 38 to 47) are relied upon. A perusal of these documents would indicate that the loan was not yet availed of by the PW-1 from the society, but there was only a proposal pending for availing the loan. The declaration at Exh. 25/page 38 categorically demonstrates that the same was being executed, as the PW-1 was desirous of borrowing a loan from the said society. It is therefore apparent that since no loan was granted, the question of the complainant PW-1 approaching the accused for the purpose of insertion of a charge in the 7/12 extract did not arise at all, as, such an entry could only be taken after the loan was availed of. Nothing is placed on record to indicate that at the relevant time the loan was already availed

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of. It is thus apparent that the basic story of the prosecution as to why the PW-1 approached the accused and what services were solicited from the accused, clearly falls through. This position has not been considered by the learned Special Court as is apparent from a bare perusal of the impugned judgment.

6. There is yet another material contradiction between the evidence of PW-1, the complainant and that of PW-2 the shadow witness. PW-1 in his deposition (para 11 page 25) states that when he reached the office of the accused, at that time he was sitting and one boy was sitting behind him in the same room. He also states that at that time PW-1, the accused and the said boy were the only persons present in that room, as against which in his chief (para 6) he states that PW-2 was present at the time when the currency note of Rs. 100/- was handed over.

7. PW-1 further in his evidence states that on the fateful day, after the exchange of pleasantries when the accused was asked to give his documents by the PW-1, there was a demand by the accused of Rs.100/-, which was handed over to him by the PW-1, with his right hand which currency note was received by the accused by his right hand and he had kept that currency note on his table and handed over to

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PW-1, the documents at Exh. 25 to 28, at which time PW-1 states that the panch No.1 (PW-2) was present and sitting on the chair. As against this, PW-2 though in his examination in chief (para 6, page 50) has supported the above stand of PW-1, however in his cross examination (para 9 page 52) he has stated as under:

“..... I also owns agricultural land. It is true if certified copy of any document is required from Talathi then one has to pay the requisite fees to him. It is true the accused after handing over the requisite documents demanded the fees from the complainant. It is true at that time the complainant handed over the currency note of Rs.100/- to the accused by way of fees. It is true he kept that currency note of Rs. 100/- on the table of accused and told that he has no change of it. The complainant also told that he has also no change. It is true the accused gave hundred rupees note to one boy who was sitting nearby the table for change. It is true meanwhile the raiding party came there and caught hold the hands of accused...”

It would thus be apparent that the evidence of PW-2, the shadow punch would indicate that it does not support the evidence of PW-1, rather on the contrary, he admits in his cross examination that the documents Exh. 25 to 28 were already handed over by the accused to PW-1 after which the accused has demanded the fees from the complainant whereupon the currency note of Rs. 100/- was handed over to the accused by the complainant (PW-1) by way of fees, which note was kept on the table of the accused, whereupon the accused is stated to have said that he had no change and the complainant also expressed that he also did not have any change, whereupon the said currency note was handed over to a boy who was sitting nearby the table, for procuring the change. This

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evidence would indicate that the receipt of the currency note of Rs. 100/-, by the accused was not on account of any illegal gratification, but was on account of fees to be paid by the complainant for receiving the documents at Exh. 25 to 28. It is thus apparent that there is a contradiction and variance between the story put forth by the PW-1 and the shadow punch PW-2 who was on the spot.

8. The perusal of the impugned judgment would indicate that evidence of PW-2 has been discussed by the learned Special Court in paras 8, 9, 11 and 12, however perusal thereof does not indicate what has been stated by PW-2 in his cross examination, as quoted above to have been considered. In my considered opinion, what has been stated by PW-2 in his cross examination as quoted above was material as it destroyed the credibility of the evidence of PW-1 and so also of the prosecution story, for the reason that in cases of such type, the conviction ought not to be based upon the sole testimony of the complainant as he always has an axe to grind against the accused and therefore, there has to be an independent corroboration which is the reason why the presence of the shadow punch is deemed necessary, so that there can be an independent corroboration. Non consideration of what has been stated by the PW-2 in his cross examination at para 9 as quoted above, in my view would vitiate the entire judgment as the same indicates that the

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prosecution story, has not been proved at all, as PW-2 categorically admits that the receipt of the currency note of Rs.100/- was not on account of any illegal gratification, but was on account of fees which is further substantiated from the conversation as expressed by PW-2 in which the necessity of change of the currency note of the denomination of Rs.100/- was expressed, which would indicate that the fees was something less than Rs.100/-.

9. This being the position, in my considered opinion the impugned judgment cannot be sustained, as it does not consider material contradictions in the prosecution story. In light of what has been discussed above, there is no need to consider the evidence of PW-3 who is the sanctioning authority, or of the I.O. PW-4, as admittedly he was not present inside the room and was not privy to what has happened there.

10. The appeal is allowed. The impugned judgment is hereby quashed and set aside and the appellant is acquitted under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988. His bail bond stands cancelled. No costs.

Rvjalit

JUDGE
Digitally signed by RAJESH
VASANTRAO JALIT
Location:
Signing Date: 15.07.2022 14:40