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

Criminal Appeal No.461 of 2019

The State of Maharashtra, through Dy. S.P. (ACB), Chandrapur
vs.
Varunkumar Janardhan Sahare & another

with

Criminal Revision No.225 of 2018

Chandu Ramchandra Bagale
vs.
State of Maharashtra, through Dy.S.P. (ACB), Chandrapur & others

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

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Ms H.N. Jaipurkar, A.P.P. for the Appellant in Criminal Appeal No.461/2019 and for Respondent No.1 in Criminal Revision No.225/2018
Mr. S.O. Ahmed, Advocate for the Revision Applicant in Criminal Revision No.225/2018.
Mr. R.M. Daga, Advocate for Respondent No.1 in Criminal Appeal No.461/2019 and for Respondent No.2 in Criminal Revision No.225/2018.
Mr. M.B. Naidu, Advocate for Respondent No.2 in Criminal Appeal No.461/2019 and for Respondent No.3 in Criminal Revision No.225/2018.

CORAM : SURENDRA P. TAVADE, J.
DATE : 13th JANUARY, 2022.

The original complainant and the State have preferred the present appeal and the criminal revision respectively to challenge the judgment and acquittal order passed by the Judge, Special Court & Additional Sessions Judge, Chandrapur in Special (ACB) Case No.1/2015, dated 10/08/2018.

02] Original accused No.1 was charged for the offence punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, whereas original accused No.2 was charged for the offence punishable under Section

12 of the said Act. On full fledged trial, the Special Judge, Chandrapur held that the prosecution has failed to prove the charges levelled against the accused. Hence, the State as wall as the original complainant have preferred the appeal and the revision respectively.

03] It was the case of the prosecution that complainant-Chandu was having a Government Fair Price Shop (Ration Shop) at Chandrapur. From 01/08/2012 to 08/08/2012, the market of Chandrapur was closed to show the protest against the imposition of LBT by the Municipal Corporation Chandrapur. Accused No.1 was working as Tahsildar at Chandrapur. He had given oral direction to all the owners of the fair price shops to keep the shops open on 07/08/2012, but the complainant closed his shop as he was not feeling well. Hence, On 08/08/2012, at about 10:30 am, accused No.1 and his peon reached the shop of the complainant by Government vehicle and put seal on the shop on the pretext that the complainant did not follow the directions given by the Collector.

04] On 11/08/2012 at about 09:30 am, the complainant received a phone call from Baban Dongre, who was also a fair price shop owner. He asked the complainant whether he wants to get his work done from accused No.1. The complainant answered in affirmative. Baban Dongre gave assurance to the complainant that his work will be done from accused No.1. Baban had a discussions with the accused No.1 and in turn he told the complainant that he is required to pay Rs.60,000/- to accused No.1 for de-sealing the shop. On the same day at about 11:00 am, accused No.1 and Supply Inspector Mr. Ajay Khanke reached the shop of the complainant and asked the complainant to open the seal. Accordingly, the complainant opened the shop by breaking the seal. Accused No.1 and the Supply Inspector prepared Inspection Note and checked the quota of ration articles, viz. Kerosene.

05] It was further case of the prosecution that on 14/08/2012 at about 09:00 am, the complainant received a phone call from accused No.2-Rakesh, who informed him that accused No.1 asked him to pay Rs.30,000/- at his bungalow. Accordingly, the complainant and accused No No.2 went to the bungalow of accused No.1. The complainant paid Rs.30,000/-, which accused No.1 had accepted. Thereafter, the complainant assured that he would pay the remaining amount within a month, probably on 14/09/2012 or 15/09/2012. Thereafter, accused No.2 again gave a call to the complainant and told him that he will have to make arrangement of remaining amount either on 14/09/2012 or 15/09/2012.

06] The complainant was not willing to pay the bribe to accused No.1, hence, he went to the Office of Anti Corruption Bureau (ACB) to lodge complaint, but the ACB Officer was not available. He went again to ACB Office on 15/09/2012 and narrated the incident to the ACB Officer Mr. Sirsat, who recorded the complaint (Exh.19). He called panch-witnesses and asked the panch-witness Mr. Anup Wankar to accompany the complainant to the office of accused No.1. Accordingly, the complainant was provided one memory card with voice recorder. The complainant kept the voice recorder inside his shirt and went to the Office of accused No.1 along with the panch Mr. Wankar. The panch was not allowed to enter into the office of accused No.1, but the complainant went inside the office of accused No.1. He had a discussions about the transaction. Accused No.1 reduced the demand from Rs.30,000/- to Rs.20,000/- and asked him to pay the said amount on the next day to accused No.2.

07] The complainant and panch-witness returned to the ACB Office. The complainant handed over the voice recorder to ACB Officer, who heard the voice recorded in the voice recorder, wherein it was revealed that accused No.1 had demanded money from the complainant. Hence, it was decided to lay trap on 17/09/2012. The complainant went to the ACB Office and tendered 40 currency notes in the denomination of Rs.500/- each. Their serial numbers were recorded. The ACB Officer demonstrated the Sodium Carbonate test and prepared panchnama. The complainant was again instructed to visit the office of accused No.1 and handover the bribe to accused No.2 and after acceptance of the bribe amount by accused No.2, to give pre-determined signal. Accordingly, the complainant and panch Mr. Wankar went to the campus of District Collector. The complainant had called accused No.2, who came there and met the complainant. The complainant and accused No.2 went to a tea stall near the Tahsil Office. Accused No.2 asked about the amount to be paid to accused No.1. Accordingly, the complainant took out the marked currency notes from his pocket and handed over it to accused No.2. Thereafter, he gave a pre-determined signal to raiding party members, who rushed to the spot and caught hold both hands of accused No.2 and took him to the cabin of accused No.1. Thereafter, the panchnama was prepared. The marked currency notes were seized from the possession of accused No.2 under panchnama. The accused were put under arrest. After completion of investigation, charge-sheet came to be filed.

08] The prosecution examined in all five witnesses, including the complainant, panch-witness, trap laying officer and the Investigating Officer.

09] The charge was framed. Thereafter, the trial Court disbelieved the evidence of the complainant and the witnesses and held that the prosecution has failed to prove the demand of money. Therefore, on appreciation of the evidence, the trial Court acquitted the accused.

10] The learned A.P.P. for the appellant as well as the learned Counsel for the revision applicant submitted that the trial Court has not appreciated the evidence in the proper perspective. The trial Court has not also considered the transcript of conversation between the complainant and accused No1. Similarly, the trial Court has not considered the forensic report of voice recorded and come to an erroneous conclusion. It is contended that the prosecution has proved the demand of bribe by accused No.1. The prosecution has also proved that at the instance of accused

No.1, accused No.2 accepted the bribe amount, which was seized from his possession. Therefore, the offence was proved against the accused, but the trial Court has acquitted them.

11] On the other hand, the learned Counsel for the accused strongly supported the judgment of the trial Court. It is submitted that the prosecution has miserably failed to establish the demand of bribe. Similarly, there were other flaws in the prosecution evidence. It is contended that both the accused have undergone full fledged trial for about seven years. Therefore, the aspect of grant of leave shall be considered with all seriousness. The learned Counsel for the accused also submitted that it is the settled principle of law laid down in various judgments on the point of appreciation of evidence in appeal against the acquittal.

12] In this case, the evidence of the complainant and panch-witness is very crucial. If the story put up by the complainant is seen, it can be said that one Baban Dongre had asked the complainant that he would discuss the matter with accused No.1. Accordingly, he had a discussion with accused No.1 and thereafter said Baban told the complainant that accused No.1 was demanding Rs.60,000/-. Then, the complainant agreed to pay the said amount. So, as far as the first alleged demand is concerned, the crucial witness was Baban Dongre, who is not examined in this case. Similarly, there was no conversation between accused No.1 and the complainant regarding the demand of money for de-sealing the shop of the complainant. It is also the case of the complainant that on 14/08/2012 at about 09:00 am, he received a telephone call of accused No.2. He informed the complainant that accused No.1 had called him (complainant) at his bungalow along with Rs.30,000/-. It is deposed by the complainant that he went to the bungalow of accused No.1 along with accused No.2 and paid Rs.30,000/-. But, except the bare words of the complainant, no evidence is led to prove payment of Rs.30,000/- to accused No.1.

13] Similarly, it is not the case of the complainant that when he met accused No.1, on his demand, he paid Rs.30,000/-. So, in the first part of the story, the prosecution has failed to establish the demand of Rs.60,000/- and acceptance of Rs.30,000/- in persuasion of illegal demand of money by accused No.1. It has also come in the evidence of the complainant that he was not willing to pay the remaining amount, but he received a telephonic call from accused No.2. He asked him to pay remaining amount of Rs.30,000 to accused No.1 on 14/09/2012 or 15/09/2012. It has also come in the evidence that he was not willing to pay the balance amount of bribe on 14/09/2021, hence, he rushed to the ACB Office and lodged complaint. It has also come in the evidence of the complainant and the witness Mr. Wankar that ACB Officer asked them to visit the office of accused No.1 for confirmation of demand of bribe. The complainant went to the office of accused No.1 along with voice recorder. According to the complainant, he had a discussions about transactions, wherein accused No.1 reduced the demand from Rs.30,000/- to Rs.20,000/-. Accordingly, he came back to the ACB Officer. The conversation recorded in the memory card of the voice recorder was heard by the complainant, panch-witness and the Officers. The said conversation was reduced into writing. The said memory card was sent to the Chemical Analyser for analysis. The C.A. Report is on record at Eh.62, but it was not considered by the trial Court. It appears that the trial Court has considered the script of the conversation and come to the conclusion that the prosecution has failed to prove the demand of bribe amount by accused No.1.

14] On perusal of recorded version, it appears that the complainant had asked accused No.1, how much amount is required to be paid, wherein accused No.1 told him to pay Rs.20,000/- to accused No.2. The said conversation was very crucial, but it does not prove the illegal demand of bribe by accused No.1. In fact, it appears that the complainant had inquired with accused No.1 as to how much amount is required to be paid. So, the conversation shows that there was no demand of money. It is pertinent to note that the conversation recorded in the memory card was reduced into writing and which was properly considered by the trial Court. Therefore, even if the C.A. Report regarding the memory card is kept aside, it does not make any difference to prove the alleged demand of bribe by accused No.1.

15] The learned Counsel for the revision applicant has vehemently submitted that the trial Court ought to have considered the report of forensic lab, which is admissible in law under Section 293 of the Code of Criminal Procedure. To substantiate his point, he relied on the ratio laid down in the case of ***Pradeep Ramniklal Bhat vs. State of Maharashtra,*** reported in ***2006(2) Mh.L.J.(Cri.)995,*** wherein the Apex Court has held thus -

> *"10. It may be noted that section 293 of the present Code is replication of section 510 of the old Code. The Apex Court has noted in no uncertain terms that if certificate of the Chemical Analyser was placed before the Court, the same is admissible in evidence. Suffice it to observe that the argument that non-examination of the Chemical Analyser would render the said Certificate inadmissible, has been negated in this decision. Indeed, that does not mean that the Certificate so filed on record (under section 293 of the Code) is a conclusive proof of the fact stated therein. It is always open to the accused to rebut the position stated in the said Certificate."*

16] There is no dual opinion about the above legal position in the present case. The report of Chemical Analyser was produced on record at Exh.62. It was not considered by the trial Court, but I have already observed that the trial Court has considered the script of conversation recorded in the memory card, wherein there is no demand of illegal gratification at the instance of accused No.1. The said conversation does not establish that accused No.1, at his own, demanded bribe amount from the complainant. The trial Court has rightly considered the evidence of the complainant as well as panch-witness Mr. Wankar on the point of demand of bribe.

17] I must mention here that the panch-witness Mr. Wankar had no opportunity to hear the conversation between the complainant and accused No.1 as he was not allowed to entered in the office of accused No.1. So, there was evidence of complainant on the point of demand, but it was not cogent and clinching to prove the demand of bribe. If the complaint is read as it is, it appears that the complainant came with a story that Baban Dongre negotiated with accused No.1 on his behalf on 11/08/2012. The said conversation is not brought on record. In view of the said discussions, the shop of the complainant was de-sealed on 11/08/2012. The complainant came with a story that accused No.2 called him on 14/08/2012 and asked him to pay Rs.30,000/- to accused No.1 at his residence. Accordingly, he paid the said amount and agreed to pay remaining amount within a month on 14/09/2012 or 15/09/2012. So, the complainant knew that he was required to pay the remaining amount within a month, but he did not visit the office of ACB for lodging complaint. He went to office on 15/09/2012 and lodged report. There is no explanation as to why there was delay in lodging report. The said aspect is also considered by the trial Court and came to the conclusion that there is no cogent and cognate evidence on record to prove the demand of bribe at the instance of accused No.1.

18] Learned Counsel Mr. Daga for the accused has submitted that the illegal demand is an essential ingredient to prove the offence. To substantiate his point, he relied on the ratio laid down by the Apex Court in the cases of ***V. Sejappa vs. State by Police Inspector Lokayukta, Chitradurga,*** reported in ***(2016) 12 SCC 150*** and ***Satvir Singh vs. State of Delhi,*** reported in ***(2014) 13 SCC 143.*** In these cases, well settled proposition has been reiterated that the prosecution is bound to prove the demand of bribe and mere recovery of money is not enough to bring the statutory presumption under Section 20 of the Prevention of Corruption Act. Moreover, in catena of decisions, it is observed that the demand of illegal gratification is *sine qua non* for constituting an offence under the Prevention of Corruption Act. In that regard, on mere perusal of the evidence of prosecution witnesses, it reveals that there is no material to construe that there was monetory demand at the hands of accused. The learned trial Court has rightly considered the said aspect in paragraphs 11, 12 & 13 of the judgment and also considered vital admissions given by the witnesses in cross-examination.

19] The learned Counsel for the accused also submitted that while exercising the appellate jurisdiction in case of appeal against the acquittal, the Court shall be mindful of the fact that unless there is perversity, the order of conviction cannot be revert. To substantiate his point, he relied on the ratio laid down in the case of ***Mohd. Akhtar Alias Kari & others vs. State of Bihar & another***, reported in ***(2019) 2 SCC 513.*** He invited my attention to paragraph 17 of the judgment wherein, the principles of appreciation in like cases has been reiterated. It is settled law that the Court in appeal can not reverse an order of acquittal on the matter of fact, except in cases in which the lower Court has obstinately blundered or misread the evidence or recorded a perverse finding. Merely because, another view is possible, the Appellate Court could not reverse the finding of acquittal. On reading the impugned judgment in context to the evidence laid by the prosecution witnesses, it is clear that the view expressed by the Trial Court is a reasonable view of the facts of the case, it cannot be said that the conclusions reached by the Trial Court are palpably wrong or based on erroneous view of the Law or fact.

20] The learned Counsel for the respondents also relying on the ratio laid down in the case of ***State of Rajasthan vs. Ram Niwas,*** reported in ***(2010) 15 SCC 463*** has submitted that at the time of deciding the aspect of grant of leave, the Court has to keep in mind the principles applicable for dealing the appeal against acquittal. As noted above, bare perusal of the evidence, it reveals that the aspect of demand of bribe has not been established by the prosecution. The Trial Court has rightly appreciated the said aspect in proper perspective. Unless, there are sufficient reasons, the Court shall not grant a leave even on looking the matter from the view point of preliminary hearing. It is apparent that, there is no worth in continuing the proceeding in appeal. Rather it was the legislative intention to cut shot un-meritorious litigation and therefore, the provisions of grant of leave has been incorporated in the statutes books. Already the respondents have faced a trial for the period of 8 years. There is no purpose in again requiring the respondents to face the litigation for next few years especially when the First Court on sound reasons recorded the finding of acquittal. In short, the Trial Court has considered the evidence in the right perspective and appreciation of evidence cannot be held to be faulty, perverse or arbitrary therefore, there is no merit in continuing the proceedings by granting leave to the State to proceed with the Appeal. In view of that, leave to appeal as sought by the prosecution under Section 378(3) of the Code of Criminal Procedure stands refused and proceeding is hereby terminated and consequentially appeal as well as the revision application is disposed of.

JUDGE

*sandesh