

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 356 OF 2004

The State of Maharashtra
Through ACB Jalgaon.

Appellant

Versus

Walmik Baburao Amrutkar
Age : 51 years, occ : service
Working as Asstt. Accountant
M.S.E.B. Office at Jamner,
District Jamner.

Respondent

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Mr. P.M. Kulkarni, A.P.P. for the appellant - State.
Mr. Satej S. Jadhav, Advocate for the respondent.

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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 30th August 2023

Judgment pronounced on : 4th September 2023

Judgment :

1. This is an appeal against acquittal of the accused i.e. the present respondent Walmik Baburao Amrutkar in Sessions Case No. 12/2001, at the hands of the learned Special Judge and Additional Sessions Judge, Jalgaon (hereinafter referred to as "the learned trial Court") under judgment and order dated 16.12.2003, preferred by the appellant – State. The respondent has been acquitted from the charge under Sections 7, 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act ("the Act" for short).

2. The prosecution story is that the complainant Shivraj Kadu Patil was the consumer of electricity and having electricity meter in his house. Initially it was used for domestic purpose, but subsequently he purchased one floor mill which he used to run on single phase. Since the electricity bills issued to him were excessive, he stopped using the said electric floor mill. The bill issued to him was of huge amount of Rs. 8,700/-. He also tried to get it reduced by making number of applications to the concerned officers, but in-vain. Then he met with the present respondent who was serving as an Assistant Accountant in the Office of M.S.E.B. at Jamner. As per the complainant, the respondent demanded bribe of Rs. 2,500/- for reducing the bill amount, but on negotiation it was settled to Rs.1,200/-. On 03.05.2001, the complainant paid the said amount of bribe to the respondent in one Maharaja Pineapple Juice Centre, Jamner in presence of panch witnesses. The members of raiding party apprehended the respondent and the said amount of bribe was recovered. Thereafter on completion of investigation, charge-sheet under the aforesaid Sections was filed against the respondent. After framing charge, the learned trial Court conducted the trial and recorded evidence. However, the learned trial Court acquitted the respondent.

Hence, this appeal.

3. The learned A.P.P. for the appellant – State submits that the prosecution has examined in all five witnesses and all of them have corroborated each other on material aspects, such as demand and acceptance. He also pointed out that the bribe amount was recovered from the respondent / accused and therefore, as per presumption under Section 20 of the Act, the learned trial Court should have convicted the respondent. According to him, the learned trial Court erred in ignoring the evidence of prosecution witnesses and also the recovery of bribe amount from the respondent. He further submitted that the evidence of complainant i.e. PW-1 Shivraj Patil remained unshattered even in the cross-examination and the trial Court, despite holding that PW-1 and panchas corroborated each other, acquitted the respondent wrongly.

4. On the contrary, learned Counsel for the respondent / accused strongly opposed the submission made on behalf of the appellant State. According to him, the very demand of bribe amount by the respondent is not at all proved in this matter and since it is not proved, no presumption under Section 20 of the Act gets attracted. He

pointed out vital portion from the cross-examination of PW-2 whereby it was transpired that the alleged demand was suspicious. According to him, the learned trial Court has rightly acquitted the respondent/accused since the prosecution could not prove the case beyond all reasonable doubts. He summed up with the argument that suspicion, howsoever grave, cannot replace strict proof which is required for conviction against the accused in criminal prosecution. As such, he prayed for dismissal of appeal. In support of his submission, he relied on the judgment of Hon'ble Apex Court in the case of *State of Maharashtra vs Dnyaneshwar Laxman Rao Wankhede* reported in (2009) 15 SCC 200.

5. Heard rival submissions. Also perused entire evidence on record in the light of the rival submissions.

6. From the record it is evident that in support of its case the prosecution has examined five witnesses. PW-1 Shivraj Kadu Patil is the complainant whereas PW-2 Vana Shankar Shirsale is panch No.1. PW-3 Ganesh Kisan Amodkar is panch No.2. PW-4 Chandresh Katpuri is the Sanctioning Authority and PW-5 Ashok Patil is the Investigating Officer. As against this, the accused in support of his defence has also examined two witnesses i.e. DW-1

Shriniwas Gangadhar Choudhari i.e. the employee of M.S.E.B. and PW-2 Datta Madhukar Jain i.e. the tailor who allegedly was present in the Maharaja Juice Centre at the time of raid.

7. The learned A.P.P. is claiming that the complainant and panch witnesses have corroborated each other on the material aspects, such as demand and acceptance. Moreover, recovery of bribe amount has also been established, and therefore, the respondent / accused should have been convicted. On going through the evidence of these three witnesses, it is evident that all of them have corroborated each other. Further, the respondent/accused had also not disputed that the alleged amount of bribe was recovered from him, but it was his defence that the complainant had in fact given the said amount being part amount of the bill of Rs. 8,700/- for restoring his electric connection which was disconnected for non-payment of the bill. He has also stated in his written submission that he never demanded any amount from the complainant as an illegal gratification for reduction in the amount of bill. According to him, he was not having any authority or power to reduce such amount. Considering the defence of accused,

it was obvious that he had accepted certain amount from the complainant in Maharaja Juice Centre. Therefore, the fact of recovery of the said amount from respondent/accused appears to be admitted. However, only it is to be seen that the respondent/ accused had accepted the same being part amount of the disputed bill or it was in form of bribe for reduction of the amount of said bill.

8. It is extremely important to note that to establish the offence under Sections 7, 13 (1) (d) read with Section 13 (2) of the Act, the prosecution has to establish three important things i.e. demand, acceptance and recovery of the bribe amount. Demand of illegal gratification is sine qua non for constituting the offence. However, it is equally important to note that if the demand is not proved, then the effect of presumption of Section 20 of the Act stands washed out. From the evidence on record, it appears that though the complainant i.e. PW-1 Shivraj Patil has deposed as per the prosecution story, but in the cross-examination he has given vital admissions. From his cross-examination it reflects that prior to approaching the respondent/accused, he had made several attempts to reduce the amount of his bill. He had also given applications to various officers, but finally came to

know that it was not possible. He has also admitted in his cross-examination that he was convinced after such attempts that his bill could not be reduced as informed by one Shri N.N. Patil. He has also accepted that since 1999 he was having meetings with the respondent/accused, but till the alleged incident of raid, the accused had not done his work. He has also accepted in the cross-examination that he could not tell the details that in which meeting the amount was demanded by the respondent / accused. Though he has stated that initially the accused demanded Rs. 2,500/- on first occasion, but reduced the same on second occasion to Rs. 1200/- and on the third occasion he demanded Rs. 1200/-, however he has clearly admitted that the respondent/accused had not demanded the money on the fourth occasion when the alleged raid was conducted. It has also come in his evidence that he was well aware of filing application for reducing the bill and he was knowing that he was to submit such application to the other officers and not the accused. He has clearly admitted the fact that his electricity connection was disconnected due to non-payment of electricity bill and he had asked the respondent / accused to reconnect his supply. Though he denied the suggestion that the respondent accused had already told him to pay at least 25% amount of

the bill for reconnecting the same, but the evidence of DW-1 Shrinivas Choudhari i.e. the Sub Engineer working in the office of M.S.E.B. at Jamner at the relevant time clearly indicates that since the financial position of M.S.E.B. was delicate due to arrears of bills from the consumers, the policy was set by M.S.E.B. to recover the bill amounts either fully or partially. It is the defence of respondent/accused that he had accepted the amount of Rs. 1200/- from the complainant being partial payment of the disputed bill.

9. Further, though panch No.1 i.e. Vana Shankar Shirsale who had accompanied the complainant at the time of alleged trap stated as per the case of prosecution in respect of acceptance and recovery of bribe amount from the accused, but so far as demand is concerned, he has specifically admitted in his cross-examination that when they went to the said Juice Centre, there were so many customers present and the waiters used to give shouts about the bills whenever any customer approaches to the counter. He further accepted that there was rush and noise in the Juice Centre and the person sitting on the front bench was not able to hear the other persons sitting in front of him. He has admitted that he was not sitting by the side of the complainant and most

importantly, he admitted that he could not hear the conversation between the complainant and accused. Thus, there is no trustworthy and reliable evidence as regards the demand on the basis of which the prosecution story rests. Therefore, merely acceptance and recovery of amount of illegal gratification from the accused cannot be relied upon to arrive at a conclusion that necessary ingredients of the charge against the accused stood proved.

10. The Hon'ble Supreme Court in the case of ***State of Maharashtra vs Dnyaneshwar Laxmanrao Wankhede*** (supra) has recorded the following observation :

“16. Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-à-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on

the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt”.

In the instant case also, the admissions given by the complainant and panch witness Vana Shirsale in respect of demand of bribe amount clearly indicate that there was no demand from the respondent / accused for acceptance of amount as bribe or illegal gratification. Thus, the defence raised by the respondent / accused that he did not accept the alleged bribe amount for reducing the bill amount, but accepted the same as partial payment of the said bill, appears more probable. The respondent in this case has not only offered such explanation, but also examined two witnesses and one of them is Sub Engineer of M.S.E.B. Further, there is nothing on record to show that the respondent / accused was having any authority to reduce the bill. On the contrary, some other officer was empowered for the same.

11. Further, the learned Counsel for the respondent/ accused has also argued that the sanction in this matter accorded by the Sanctioning Authority i.e. PW-4 Chandresh Katpuri i.e. the Director of Accounts in M.S.E.B. Mumbai, was an empty formality without application of any mind.

Admittedly, if the sanction is found empty formality and without application of mind, it readily vitiates the trial. PW-4 Chandresh Katpure, who was the Sanctioning Authority, has clearly admitted in his cross-examination that he prepared his sanction order (Exh.21) on the basis of draft sanction order sent to him alongwith the papers. He further admitted that the draft sanction and sanction prepared by him are identical except his name. He also admitted that he did not make any changes in the sanction order issued by him, except changing the designation and adding his full name. Such admissions on his part clearly indicated that he did not accord the sanction by going through the necessary incriminating documents in respect of the accused and without application of mind issued the same.

12. Thus, from the entire evidence on record, it appears that the prosecution has not established the guilt of accused beyond all reasonable doubts. On the contrary, defence raised by the respondent/accused appears more probable to the extent of accepting the alleged bribe amount as part payment of the disputed bill. It is evident that the learned trial Court, by considering all these aspects in proper perspective, has finally acquitted the respondent/accused.

Therefore, I do not see any reason to interfere with the acquittal of the respondent/accused. In the result, the appeal stands dismissed.

(SANDIPKUMAR C. MORE, J.)