

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 747 OF 2022

Sheshrao Dattarao Mudhwar
Age : 55 yrs, occ : service
R/o Vishnunagar, Near Bus
Stand, Basmathnagar,
District Hingoli

Appellant

Versus

The State of Maharashtra
Through Anti Corruption Bureau,
Hingoli, District Hingoli

Respondent

...
Mr. Akash D. Gade, Advocate for the appellant.
Mr. R.D. Sanap, A.P.P. for the respondent – State.
...

CORAM : SANDIPKUMAR C. MORE, J.

Dated : 10th November 2023

Judgment :

1. The appellant i.e. the original accused in Special A.C.B. Case No.01/2023 has preferred this appeal only against Clause (7) of the operative part in the judgment and order dated 17.05.2022 passed in the aforesaid case by the learned Special Judge (ACB) and Additional Sessions Judge, Basmathnagar (hereinafter referred to as “the learned trial Court”), whereby the learned trial Court has directed the Superintendent of that Court to file complaint before the concerned Magistrate for initiating proceeding under Section

340 of the Code of Criminal Procedure against the original complainant Kishan Laxmanrao Ingewar and the present appellant / accused for the offence under Sections 193 and 196 of the Indian Penal Code.

2. Learned Counsel for the appellant submits that the learned trial Court has definitely erred in giving such direction, especially when it has already acquitted the appellant from the charges under the Prevention of Corruption Act. He pointed out that the complainant himself had admitted the letter (Exh.29) produced on record, whereby the complainant assured the appellant of giving an amount of Rs.300/- within 5 to 6 days, which was given by the appellant to him for paying fees of his daughter Neha. It appears that the said letter was shown to the complainant during his cross-examination and though the complainant Ingewar denied its contents, but admitted that the same was written by him. Thus, it was inferred that the bribe amount of Rs. 300/- which was found with the appellant during the trap, was in fact the amount of aforesaid fees of the daughter of complainant.

3. On the other hand, learned A.P.P. strongly opposed the appeal and pointed out that the learned trial Court has

explained in detail in the judgment itself as to how it had come to conclusion that there was participation of the appellant/accused also in preparing such false and fabricated letter, by joining hands with the complainant to get acquitted from the aforesaid case.

4. Heard rival submissions. Also perused documents on record alongwith the impugned judgment.

5. Admittedly, the learned trial Court has exhibited the said letter (Exh.29) during the course of the trial when it was confronted to the complainant in cross-examination. The learned trial Court has already observed in the judgment that since the complainant had admitted that he wrote the said letter (Exh.29), he was well aware of the contents thereof. Therefore, it can safely be inferred that the complainant had in fact knowingly wrote the said letter. Further, it appears that the learned trial Court has observed that the said letter was written prior to 5 to 6 days of the incident of trap and when the appellant was already knowing the same, why he did not produce the same at the earliest either before the Investigating Officer or before the Court for getting him discharged from the offence. Perhaps that is why the direction under clause (7) of the operative order in the

judgment has been given.

6. Learned Counsel for the appellant submits that the complainant had admitted the said letter being written by him, and therefore, there is no evidence of any involvement of the appellant/accused in preparation of the same. So far as the role of the complainant is concerned, it has been proved that he knowingly wrote the said letter (Exh.29) and that too prior to 5 to 6 days of the incident. It is extremely important to note that despite knowing that such letter was written by him, the complainant went ahead to lodge complaint against the appellant, participated in the trap and exchange of amount of Rs.300/- with the appellant/accused and deposed according to the prosecution story. Thus, it is clear that despite knowing that the alleged amount of Rs. 300/- was due from him to the appellant/accused in respect of earlier payment of fees of his daughter Neha by the appellant, the complainant participated in adducing evidence against the appellant/ accused. Thus, the aforesaid direction for filing complaint against the complainant Ingewar appears absolutely proper. However, it cannot be said that the appellant/accused was also involved in producing such fabricated letter.

7. The complainant, besides admitting the fact in cross-examination that he had written the said letter, in fact supported the prosecution case. It appears that the learned trial Court has directed to prosecute the appellant/accused under the aforesaid clause mainly because it suspected the conduct of the appellant/accused for not producing the said letter (Exh.29) at the earliest i.e. either at the time of trial or at the earliest when trial had began. However, it is significant to note that in the criminal trial, suspicion, howsoever grave, cannot replace the proof.

8. In the instant case, it appears that the learned trial Court has involved the appellant/accused merely suspecting his conduct of withholding the letter (Exh.29) till cross-examination of the complainant Ingewar. It is to be noted that when the complainant has admitted the fact that he wrote the said letter (Exh.29), there is absolutely no evidence on record against the appellant/accused that he had participated in preparing such fabricated letter with intent to get acquitted from the offence under the Prevention of Corruption Act. Thus, it appears that the learned trial Court has definitely erred in directing the Superintendent of the concerned Court to file complaint under Section 340 of the

Code of Criminal Procedure against the present appellant/accused for adducing false and fabricated evidence. Therefore, considering all these aspects, the appeal is hereby allowed and the direction under clause (7) of the operative part of the judgment and order dated 17.05.2022 in Special A.C.B. Case No. 01/2013 is quashed and set aside only to the extent of the appellant/accused. The said clause shall operate as it is, in respect of the complainant Kishan Laxmanrao Ingewar. The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)