

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.722 OF 2003

Ghalu Belappa Tale	]	..	Appellant
vs.			
State of Maharashtra	]	..	Respondents

Mr.Swaraj Jadhav a/w Vijay Garad for the Appellant.

Ms.M.R. Tidke, APP for the State.

CORAM : BHARATI DANGRE, J

RESERVED ON : 3rd November, 2023.

PRONOUNCED ON : 9th November, 2023.

JUDGMENT :-

1] The Anti Corruption Bureau (ACB) at Solapur received a complaint from Smt.Saraswati Pradeshi, widow of Krishnaji Shankarrao Pardeshi, who alleged that her husband retired from his service as primary school teacher in Village Jintur, District Parbhani, three years back and he expired on 07.06.2001. He was getting pension and on his death, as his widow she was entitled for family pension.

Subsequent to his death, she visited the Treasury Office, Solapur in connection with her pension case, where she met the Appellant who was working as a clerk in Treasury Office.

It is her case that on 21.06.2001, the Appellant told her to pay Rs.700/- and submit papers like death certificate, pass book and other documents, for availing the pensionary benefits.

Upon her narration, the complaint was recorded by PW 4 Dy. SP Dhananjay Bhange, who was attached to ACB, Solapur at the relevant time. Her complaint was reduced into writing and a trap was laid on 22.06.2001 by introducing the panchas.

After completing the necessary formalities the raiding party proceeded to the Treasury Office, when the complainant and Panch, proceeded to Treasury Office to be followed by the Investigating Officer. They entered into the Office and the complainant, Panch and accused came out of the Treasury Office and proceeded to Ambika Juice Centre. Since the complainant gave a signal, the raiding party who was waiting outside, questioned the accused and the bribe amount was recovered from the pant pocket of the accused.

The post-trap procedure of matching the notes with their numbers etc. was carried out. The necessary papers relating to the pension work of the complainant were obtained from the cupboard of the office of accused.

On completion of necessary formalities, complaint lodged in Sadar Bazar Police Station by the Investigating Officer (PW 4) being registered as Crime No.3444/2001, was investigated.

The accused was arrested on 25.06.2001 and after obtaining the necessary sanction from the Sanctioning Authority, the charge-sheet was filed against the accused.

2] The Accused, a Junior Clerk attached to District Treasury Office, Solapur faced the following charge :

“That you accused, working as Junior Clerk, attached to District Treasury Office at Solapur and being public servant had on 20.06.2001 demanded Rs.700/- from complainant, Smt.Saraswati Krishnaji Pradeshi as – gratification other than legal remuneration for clearing her family pension – papers and further on 22.06.2001 at about 12.45 hours at Solapur had demanded, accepted and had obtained sum of Rs.700/- from complainant, Smt.Saraswati Krishnaji Pardeshi as gratification as reward for doing official act and thereby committed offence punishable under Section 7 of Prevention of Corruption Act, 1988.

That you accused being public servant had on 22.06.2001 at 12.45 hours at Solapur had obtained Rs.700/- from complainant, Smt.Saraswati Krishnaji Pardeshi by corrupt or illegal means and by abusing your position as public servant and committed criminal misconduct and thereby committed offencen punishable under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.”

The accused pleaded not guilty and hence was tried by the Special Judge, Solapur in Special Case No.5/2001.

3] In support of the prosecution case, the complainant entered into witness box as PW 2, the shadow Panch was examined as PW 1, the Sanctioning Authority was examined as PW 3 and the Investigating Officer is examined as PW 4.

The deposition of the complainant, PW 2, before the Court is that, she met the accused, a clerk of Treasury Office on 21.06.2001 who told her to bring Death Certificate, Passbook and other documents and he demanded Rs.700/- by way of bribe, which constrained her to lodge the complaint. She has not thrown any light as to when the bribe amount was asked to be paid and whether the accused, working as a clerk in the Treasury Office was the person, competent to the sanction pension in discharge of his official duty.

It is also not disclosed either in her complaint or in her deposition before the Court as to on which date she was called by the accused in the office alongwith the bribe amount.

4] On allegation that the bribe was demanded on 21.06.2001, she immediately approached the ACB Office on the same day and was called in the office by Mr.Bhange on 22.06.2021 and on the same day a trap was laid.

As per PW 2, when she accompanied with the pancha met the accused, he asked her to wait and he questioned if the amount was

brought, to which she responded in the positive. The accused told her that they will have tea and they came to Ambika Raspan Griha. The version of PW 2 is recorded in the following words :-

“Myself and accused had come to Ambika Raspan Griha, where Panch had ordered for juice. Pancha paid bill of juice. Accused again questioned whether I had brought amount. When I told that I had brought amount, accused told me to pay the same. I removed the amount by right hand and paid it to accused. Accused accepted it by right hand and kept it in his right side pant pocket. I therefore made signal. Raiding party came there and caught accused.”

In her cross-examination, she deposed as under :

“It was my wish that I should finish my pension work and return to my residence. It is true that accused had told me that I had to supply pass-book, photos, consent letter and my affidavit. It is true that after I made an application, accused endorsed the date of receipt and also brought endorsement of his superior. It is true that accused had told me to bring that document and he would get the work done. He also told me that he would place all the papers before his officer and obtain orders. I was also told that amount would be credited to my account by cheque. I have told accused that if my work is done immediately, I would save expenses on travelling on that day. It is true that accused told me that unless all relevant documents brought, no work would be done. It is true that I had return back and I was unhappy. From there, I had gone directly to ACB Office. I had told Mr.Bhande that accused was not doing my work immediately.”

Another significant version surfacing through her cross-examination reads thus :

“When we were sitting in cold drink house, Mr. Bhangе was standing outside. Accused questioned me if I had brought papers. I had shown the papers to Mr. Tale. Accused told he would place all the papers before his Officer. He also told me that cheque would be credited to my account. It is not true to say that Mr. Tale had ordered for juice. After taking cold drink, Mr. Tale proceeded ahead and I followed. At that time, I recollected that I should pay Rs.700/- to Mr. Tale. It is not true to say that I thrust the amount in the pocket of accused. It is not true to say that accused never demanded Rs.700/- as bribe amount. It is not true to say that accused never accepted amount of Rs.700/- as bribe.”

5] In the cross-examination, PW 2 state that, in her complaint she mentioned that she had met the accused on 21.06.2001, which is not mentioned in her complaint. She also admit that she had stated in her complaint that on 21.06.2001, accused had demanded Rs.700/-, but she cannot give reason as to why there is no specific mention, that demand was being made on 21.06.2001.

This omission was put to the Investigating Officer in the cross-examination and he has deposed as under :-

“I have recorded statement of Sarswati Pardeshi. She had not stated that on 21.06.2001 she had met accused. She has also not stated before me that on 21.06.2001 accused

demanded Rs.700/-. Complainant did not state before me in her statement 23.06.2001 that on the date of raid accused had demanded, papers and amount in the office, and she disclosed that she had brought the papers and amount.”

6] The Shadow Panch i.e. PW 1 Bibhishan Sabale, who accompanied the complainant, when she approached the Appellant, has deposed before the Court, that he alongwith the complainant met the accused before the Court, who told them to wait outside and he narrated the happenings in the following words :

“ We came and sat on bench in the premises of Treasury Office. We were sitting about 25 minutes. After 25 minutes accused came. Accused told that we should go out and have tea. We came out of gate and went to Ambica Raspan Colddrink house. Accused ordered three glasses of juice. Complainant questioned as to what had happened about her work. Accused questioned if she had brought amount. Accused also questioned if she had brought all the papers. Complainant told that she has brought papers. Accused perused papers. Accused questioned if as told by him Rs.700/- was brought. Accused told the amount be paid. Complainant opened her purse, removed Rs.700/- and held the same in front of accused. Accused accepted the same with his right hand, counted them and kept the same in his right pant pocket. All this discussion had taken place after we had taken the juice. Complainant came out and signaled raiding party.”

7] On most important aspect as regards demand of bribe, amount of Rs.700/-, the material inconsistencies in the prosecution case are evident.

The prosecution has failed to establish that the amount was demanded by the accused/appellant by way of any gratification, other than the legal remuneration, as a motive or reward for doing for forbearing to do any official act, in exercise of the official functions shoving favour or disfavour, or for rendering or attempting to render any service to the complainant.

It is not the case of prosecution that the clerk in the Treasury Office is the sanctioning authority for pension and he has categorically stated that he told the complainant that he would be required to keep the papers before Superior Officer and, therefore, the charge under Section 7 of the PC Act cannot be said to be proved, unless it is shown that he was capable of getting work of the complainant done in exercise of his official functions and that he had powers to sanction the pension.

Apart from this, the omission in her statement given to the police, has been proved through the Investigating Officer that she never deposed that on 21.06.2001 the amount of Rs.700/- was demanded by way of bribe amount.

8] The prosecution has also failed to prove the charge that the bribe amount which was demanded was accepted, as the complainant has dithered in her cross-examination when she stated that after coming out of the juice centre, she realised that she had to pay the amount to the accused and therefore she ran after him with the amount. She denied the suggestion that she thrust the amount in the pocket of his pant.

The above discrepancy in the evidence of PW 2 has made the case of the prosecution capable of doubt, as the prosecution has failed to prove the demand of bribe amount as well as its acceptance by cogent and reliable evidence and since the case of the prosecution appears to be doubtful as the prosecution has failed to establish its case beyond reasonable doubt, the benefit accruing, must be passed on to the accused. It is to be noted that the accused working as a clerk in the Treasury Office was not competent to get the work of the complainant done, as he was only a clerk who was to forward the papers to the Treasury Officer, who was competent to sanction the pension.

Hence, since the ingredients of Section 7 of the PC Act are not satisfied, the impugned Judgment which has recorded that the accused as a public servant, by corrupt or illegal means, obtained a sum of Rs.700/- for himself by abusing his position and is guilty of criminal

misconduct, cannot be sustained.

9] In the wake of above, since the findings rendered in the impugned Judgment are not based on legal principles of Demand and Acceptance of bribe, for the aforesaid reasons, the same is liable to be quashed and set aside, as the learned Judge has failed to consider the inconsistencies in the case of prosecution.

By allowing the Appeal, the Appellant is entitled to be acquitted of the charges levelled against him. The impugned Judgment dated 02.05.2003 is quashed and set aside.

Since he was directed to be released on bail, during the pendency of the Appeal, his bail bonds stand cancelled.

[BHARATI DANGRE, J]