

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.477 OF 2007

Dilip Rajaram Patil	]	..	Appellant
vs.			
State of Maharashtra	]	..	Respondent

Mr.Manohar Mandavkar, for the Appellant.

Mr.S.R. Agarkar, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 2nd November, 2023.

JUDGMENT :-

1] The present Appeal is filed by the Appellant on 15.05.2007, being aggrieved by the Judgment passed by the Special Judge, Islampur, in Special Case No.14/2005 on 25.04.2007, under which the Appellant is convicted for committing an offence Section 7 of the Prevention of Corruption Act, 1988, and on being sentenced to suffer Rigorous Imprisonment for one year and to pay fine of Rs.5,000/- in default to undergo RI for six months and also having been convicted under Section 13 (1) (d) read with 13(2) of the Prevention of Corruption Act, directed to undergo RI for one year and to pay fine of Rs.5,000/-, in default to suffer RI for six months.

The Appeal is admitted on 25.05.2007 and on being directed to be heard expeditiously, it is heard, on receipt of the Record and Proceedings.

2] I have heard Mr.Manohar Mandavkar, the learned counsel for the Appellant and Mr.S.R. Agarkar, the learned APP for the State.

The Appellant working as Talathi of Village Nerle, Taluka – Walva, District Sangli, from 08.12.1995 to 07.09.2001, was charged for demanding illegal gratification other than legal remuneration, from the complainant, Sarjerao Baburao Chavan (PW 2), for mutating his name in the Record of Rights, as he had purchased a parcel of land for a period of 7 years, alongwith his friend Vilas Anuse.

He was charged of demanding an amount of Rs.1500/- when the complainant approached him for the said purpose on 04.09.2021 and though he had taken an entry in the Record of Rights, he refused to issue the 7/12 extract, unless the amount was paid. On negotiations, it is alleged that the Appellant agreed to accept an amount of Rs.1,000/-, provided the balance amount is paid later on.

As decided on 07.09.2001, once again the amount of Rs.1,000/- was demanded from the complainant as illegal gratification and it was also obtained in presence of the panchas and hence he faced charge under Section 7 of the PC Act. Being a public servant, on obtaining

pecuniary advantage from the complainant for himself he also face charge of committing criminal misconduct under Section 13(1)(d) which is punishable under Section 13(2) of the Act of 1988.

The Appellant pleaded not guilty and hence he was tried by the Special Judge, Islampur in a Special Case where the prosecution examined four witnesses.

3] The complainant is examined as PW 1, followed by the shadow Panch as PW 2, the Sanctioning Authority as PW 3 and the Investigating Officer is examined as PW 4.

The complainant reiterated his version in the complaint lodged by him on 07.09.2001, alleging that the amount of bribe was demanded by the Appellant for mutating his name in the 7/12 extract pursuant to purchase of the land for a period of 7 years, for a consideration of Rs.1,20,000/- from one Balasaheb Patil.

PW 1 deposed before the court that he alongwith Vilas Anuse had taken land of Balasaheb Patil for cultivation for 7 years and since he effected this transfer by registered document, he presented it to Talathi, for mutation of the entry and after 15 days when he visited the Talathi, he was informed that the entry is taken, but a sum of Rs.1,500/- will have to be paid for obtaining the 7/12 extract. This resulted in the complainant approaching the ACB Office at Sangli and a trap was laid.

It is version of the complainant that on the day of trap he approached the office of Talathi alongwith Panch witness and he was asked to come inside, to the inner side of the room as the Talathi was initially found to be working in Chawadi. In the room, he was asked, whether the amount was brought and he was asked to give the amount, pursuant to which he took the notes which were smeared with Anthracene powder, from his bundy pocket and gave it to him.

As per the complainant, Patil (PW 2) was standing in front of the door , looking towards him when the accused counted the amount and put in the left side pocket and on giving necessary signal, the raiding team caught hold of the accused and the procedure was carried out.

In his cross-examination, the complainant has admitted that no application was given either by him or by Vilas Anuse for recording their names on the land purchased by them.

He improved his case narrated to the ACB, when he deposed before the Court that when he gave xerox copy of the document of registration of the land in his name to the Talathi, he told him that, "he takes minimum Rs.5,000/- and that he will not do my work in less amount". Thereafter, when he visited the Talathi, he was told to bring the signature of the landlord. Once again when he met the Talathi, he was informed that his name is mutated, but for delivery of the 7/12 extract, the money should be paid.

In the cross-examination he admit that prior to this incident, he had purchased land and mutation entries were made by the same Talathi and each time Rs.5,000/- were taken by him on each occasion.

He is extensively cross-examined on the location of the room where the bribe amount was demanded and paid and whether PW 2 Panch had an opportunity to be a witness to the said incident.

In the cross-examination he admit that though the talks between him and the appellant took place inside the Chawadi, in presence of many persons, he was called in a room and the Panch kept standing outside the door. He specifically admit that “the persons outside the Chawadi were not visible from where we were standing, our talk was also not audible from outside.”

4] When a corroboration is to be looked for the version of the complainant, from the shadow panch i.e. PW 2, who deposed that the Appellant obtained signature of the complainant on a register and the complainant was asked to follow him and they went inside the room behind the bench where they were sitting, he stood in the door of that room. He deposed that Appellant asked complainant whether he has brought the amount he had asked for and the complainant answered in the affirmative and took out the bundle of notes and handed it over to the Appellant.

The above version contradict the complainant, who had deposed that it was not possible to hear the talks between him and the Appellant, by a person standing outside the room.

5] The learned counsel for the Appellant has also invited my attention to other minor discrepancies in the version of two witnesses, which has affected the credibility of the prosecution case. According to him the most significant aspect of the matter is the grant of sanction and since I am convinced that the sanction granted to prosecute the Appellant was not valid, I refrain myself from focusing on the contradictions and inconsistencies that have appeared in the version of PW 1 and PW 2.

6] The sanctioning authority, Deputy Collector Pradip Kaduskar, stepped into the witness box as PW 3. He has deposed that he was working as Sub Divisional Officer at Islampur and he is the Authority competent to appoint or remove Talathi from the post and hence when the papers for the sanction were produced before him, he read them and formed an opinion, that it was a fit case to accord sanction.

In the cross-examination, he categorically admit that the sanction order was without outward number, as he handed it over to ACB Pune. He also admit as under :

“ I will have to see if this Talathi was appointed by an officer of the level of sub-Divisional officer. It is true that if Talathi was appointed by collector he cannot be removed by S.D.O. Now, I am shown appointment order of the accused made by collector Kolhapur on 5.1.83. So also another order about his Temporary appointment made by collector Kolhapur dated 13.9.1982. Both orders are marked Exh.19 and 20. True to say that I issued the sanction order without verifying as to who had appointed the accused as Talathi. Not true to say that, I have issued the sanction order even though I have no authority to issue sanction order in case of the accused.”

7] Exh. 20, on the record is an order under the signature of the Collector of Kolhapur dated 13.09.1982, which is an appointment order of the Appellant alongwith three other candidates who were selected for the post of Talathi and their appointment was effected on temporary basis and on usual terms and conditions on successful completion of the training prescribed for them. The order also proceed to state that for regular appointment they will have to get themselves selected through the Regional Selection Board in due course.

By the said order, the candidates mentioned in the list are directed to report to Collector, Satara for training.

The above order is under the signature of one Shri I.S. Patil, for the collector of Kolhapur.

Another document at Exh. 19, is the order issued under the signature of Collector of Kolhapur and this is issued pursuant to the first order, after the candidates selected as Talathi had undergone necessary training, were found to be entitled for posting as Talathi. Hence, they were allotted to each of the sub divisions in the district shown against their names for appointment and detailed postings and the Sub Division Officer was directed to issue orders of posting to the trained Talathi candidates.

8] The above two documents exhibited through the sanctioning authority alongwith the admission recorded in the cross-examination, make it clear that the sanction is granted by an Officer, who was not competent to appoint the Appellant. Section 19 (1)(c) clearly contemplate that the sanction to prosecute a public servant shall be granted by an authority competent to remove him from his office and in terms of Article 311 of the Constitution of India, it is an Authority who is competent to appoint, is the one who can remove an employee from his office/post.

For the aforesaid reason, the sanction accorded to prosecute the Appellant is clearly invalid and since grant of valid sanction is a sine qua non for prosecution of a public servant, the trial conducted with the aid of an invalid sanction is nonest and thus the finding of conviction

recorded and the sentence imposed cannot be upheld as the question of sanction goes to the root of the matter.

The Sanctioning Authority for the Talathi, being a Collector, but the sanction having been accorded by the Sub Divisional Officer is not a sanction in the eyes of law. This important aspect is completely ignored by the learned Special Judge who has erroneously derived at a conclusion that the Sub Divisional Officer is the appointing authority.

This glaring error has grossly affected the prosecution and deserve correction by setting aside the impugned Judgment dated 25.04.2007.

9] In the wake of above, the impugned Judgment and order dated 25.04.2007 passed by the Special Judge, Islampur, in Special Case No.14 of 2005 is quashed and set aside.

The Appellant stand acquitted of the charges, for which he was tried in the special case.

Appeal is allowed in the aforesaid terms.

[BHARATI DANGRE, J]