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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.155 of 2002

Madhukar Vinayak Baravkar] .. Appellant

vs.

State of Maharashtra, through ACB, Nasik] .. Respondent

Mr. Harshad Bhadbhade i/b Vidhya Mangavde, Shweta Redij for Appellant.

Mr. Y.M. Nakhawa, APP for the State.

CORAM : BHARATI DANGRE, J

RESERVED ON : 10.04.2023
PRONOUNCED ON : 27.04.2023

JUDGMENT :

1] The Appellant stood convicted for committing offence punishable under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act ("PC Act" for short), vide Judgment and order dated 31.01.2002 passed by the Special Judge, Nashik, in Special Case No.3 of 1995.

On being convicted for offence under Section 7 of the PC Act, he is sentenced to suffer RI for 6 months and to pay fine of Rs.500/- i.d. he is directed to undergo RI for 15 days. Upon conviction under Section 13(1)(d) read with 13(2) of the PC Act, he is sentenced to suffer RI for 1 year and to pay fine of Rs.1000/- i.d. he is directed to undergo RI for 1 month.

2] The Appellant was serving as Head Constable at Igatpuri Police Station in the year 1994 and it is the case of prosecution that the complainant, an Agriculturist, was resident of village Manikkhamb, Taluka – Igatpuri. There was some dispute between him and one Gopal Kadu and Govind Kadu, on account of share in ancestral property, and the complainant made grievance that rice crop in his portion was reaped by Gopal and Govind and, therefore, he instituted Civil Suit No.392/1994 and obtained temporary injunction.

As per the complainant, despite injunction, Gopal and Govind continued with reaping of the crop and, therefore, he approached Igatpuri Police Station and PSI Chaudhari instructed him to file appropriate application. Thereafter, on 12.11.1994, he went to the Police Station alongwith his Application and an order of injunction.

It is the case of the complainant that, on his visit to the Police Station, he met the Appellant who informed that he was beat Hawaldar and he would get his work done, but he demanded a sum of Rs.300/- and as per the complainant, Rs.100/- was paid to him.

As per the complainant, on 14.11.1994, the accused met him on S.T. stand of Manikkhamb and raised a demand of the balance sum of Rs.200/- and the complainant assured that he would pay with the amount on 14.11.1994 in the Police Station.

Since the complainant was not desirous of paying the bribe amount, he approached Anti Corruption Bureau on 14.11.1994 and lodged the complaint against the accused.

3] PI Thube of ACB called for two panchas from the office of Animal Husbandry and on explaining the procedural formalities, a trap was laid on 15.11.1994. Pre-trap Panhanama was prepared and the raiding party bifurcated in two groups. The complainant and one of the Panch

Kamlakar Vispute, proceeded towards Police Station while the remaining raiding party followed them at a distance. On reaching the Police Station, the accused was not present there, but later on accused arrived on motorcycle as pillion rider. The complainant greeted the Accused and made enquiry about his application. He was asked to wait, while the accused entered the Police Station and returned in a while asking them to join for a cup of tea, in a nearby tea house. The Panch also accompanied the complainant and once they reached there and sat on a bench, once again the complainant asked about his work and the accused is alleged to have replied that the work was done, but whether the cash was brought and this query was responded in the affirmative. The accused demanded the amount and thereafter the complainant took out tainted notes by his right hand from the left side chest pocket of his shirt and the accused accepted this amount by his left hand and put it in the left side chest pocket of his shirt. He went out of the hotel and gave signal to the raiding party, when the accused was caught and taken to the Police Station.

4] The statement of the complainant was recorded on the next day. For corroborating the version of the complainant, PW 2, shadow Panch entered into the witness box and the inconsistency in the version of two witnesses, is pressed into service by the learned counsel for the Appellant Mr.Harshad Bhadbhade, as he would submit that the complainant being an interested witnesses, in absence of corroboration to his version by an independent witnesses, the case of the prosecution cannot be said to be believed.

5] When the cross-examination of PW 1, the complainant is perused, on being confronted with an earlier application submitted by

him on 27.10.1994 and this document being exhibited as Exhibit 21, he admit that he had visited the Police Station and lodged the complaint in respect of incident dated 27.10.1994 when the accused persons had cut crop from the field belonging to him and it was alleged that a loss of approximate Rs.5000/- was caused to him, as it would not filled 10 sacs of rice.

PW 1 admit in the cross-examination that, after the complaint was given for enquiry and chapter case was filed against Gopal and his brother Govind. He, however, deposed that he intended that cognizable offence should have been registered against them and rice crop should have been attached from them. The learned Judge specifically recorded as under :-

“(The witness did not answer when he was asked that it was the say of the accused because of pendency of civil suit rice crop could not be attached.)”

In the cross-examination, he categorically admit as under :-

“I was annoyed with the accused because he was not registering cognizable offence nor attaching rice crop from Gopal and others.”

He also admit that till 14.11.1994 when accused met him on the S.T. Stop, he had no idea about the enquiry on his application.

6] Another important admission in the cross-examination, reads as under :-

“I stated before A.C.B. officers that accused told that my work was done and whether I had brought the amount and thereafter I told that I had brought the amount. I cannot say why it is not so mentioned in my statement.”

The aforesaid omission could not be proved as the concerned officer could not be examined, as he was no longer alive at the time of trial.

7] When I turn to the testimony of PW 2, a Panch witness, as regards the incident of demand is concerned, he reiterated on the aspect that after greeting the accused, the complainant asked him about his work and accused responded by saying that his work was going on and asked him to wait there.

As per PW 2, when they went to Tea stall, accused asked the complainant, whether he had brought the amount and he answered in the affirmative. He asked to pay the amount, if he had brought it. It is pertinent to note that neither the tea stall owner nor any independent witness, has been examined by the prosecution, particularly when it is admitted by PW 1 that the Tahsil Office of Igatpuri is situated in the same compound of Police Station, which is a crowded place. There is no clarification offered by PW 1 or PW 2 over the word "work".

In the cross-examination of PW 2 he has specifically deposed that, he had stated before ACB Officers that in the hotel accused asked the complainant, whether he had brought the amount of "his work", but he could not assign any reason as to why the words "his work" are not mentioned in the Trap Panchanama (Exhibit 27) as well as in his statement.

8] From the case of the prosecution, it can be inferred that the first demand by the accused was made on 12.11.1994 and it was partly satisfied. The second demand was made on 14.11.1994, when the balance amount of Rs.200/- is alleged to have been demanded by the accused. 15.11.1994 is the date, on which trap was laid while accepting the alleged amount of demand. No evidence is brought on record by the prosecution for establishing the demand of 12.11.1994 and 14.11.1994 and the submission of the learned counsel that it is not proved, deserve acceptance.

9] For attracting offence under Section 7 of the PC Act, it is imperative for the prosecution to establish the 'Demand' by positive evidence and on perusal of the evidence brought on record, the demand of 12.11.1994 and 14.11.1994 is not at all proved.

As regards the demand and acceptance of the amount on 15.11.1994 is concerned, it is not established that the amount has been accepted pursuant to the demand, as there is inconsistent version of PW 1 and PW 2 about the purpose for which the amount was paid and as PW 2 state that the accused asked whether the amount of his work has been brought, which happened to be an omission.

10] It is, therefore, necessary to see whether there was any work which was pending at the level of the accused, who was working in Igatpuri Police Station. But the question is, whether he could have seized the crop, which the complainant expected from the accused.

It is pertinent to note that, PW 1 himself has admitted that he had earlier approached the Police Station on 27.10.1994 and action was already initiated on his complaint. However, since he wanted the accused to register a cognizable offence and attach the rice crop, which power was not available to the Accused, there was no question of he demanding the amount for the purpose of attaching the rice crop. On the date of the trap, no complaint filed by the complainant was pending, as the complaint submitted to the police Station on 27.10.1994 had resulted in a charge case being filed against Gopal and Govind. The question that arises is, whether the amount could have been demanded for granting any favour to the complainant and whether it was within the power of the accused to show any favour/ disfavour to him.

11] Another important aspect is the manner in which the statement of the accused has been recorded under Section 313 of the Cr.P.C. When the said statement is perused, it can be seen that he is only confronted with the evidence coming from the complainant (PW 1). Question Nos. 1 to 5 arise out of the deposition of PW 1, but incriminating material which has come on record through PW 2, the shadow panch, the Investigating Officer, has not at all been put to the accused, while his statement was being recorded.

Apparently, there is grave infraction of the Section 313 of the Code, as it is imperative that every incriminating circumstance which has come on record through the witnesses, is put to the accused for the purpose of enabling him to explain the circumstances, that have come on record. The object of cross-examination under the said Section is to give the accused an opportunity to explain the case made out against him by the prosecution and his statement can be taken into consideration for judging innocence or guilt.

12] It is well settled position of law that, it is not sufficient compliance of the Section to see when a long series of facts are put to him and the accused is asked what he has to say about them, but what is expected is, that every material circumstance which is intending to be used against him shall be put to him in a question form, which he is capable of understanding and responding. The whole object of Section 313 of the Code is to invite the attention of the accused to specific points in the charge and to the evidence on which the prosecution claims that the case is made out against him, so that he may be able to offer explanation as he desires to give.

13] The object of Section 313 of the Code, is to establish direct

dialogue between the Court and the Accused, and if the conviction of the accused is to be based upon it, he must be given an opportunity to explain every circumstance that has come before the Court through the testimony of the witnesses, examined by the prosecution.

The examination of the accused under Section 313 of the Code, however, grossly fall short of the said requirement, as it can be seen that the evidence that has come on record through PW 2 to PW 4 is not at all put to him, which has definitely prejudiced him while convicting him under Section 7 read with Section 13(1)(d) and 13(2) of the IPC.

The above infraction on the procedural aspect of examining the accused under Section 313 having been clearly flouted, has proved fatal to the case of prosecution.

14] The prosecution has failed to satisfactorily establish the demand of 15.11.1994 and since the complainant has specifically admitted that he had a grudge against the accused, because he refused to attach the crops, the case of the complainant appears to be dubious.

Apart from this, since the prosecution has not brought on record any material to establish that some work of the complainant was pending with the accused for which, the amount by way of bribe was demanded, a huge dent is created in the prosecution case. The Loopholes in the case of the prosecution has created doubt and benefit of this doubt must definitely go to the Accused.

The learned Special Judge, however, has failed to take note of the loop sided version of the complainant and failed to consider the infraction in recording statement under Section 313 of the Code, which goes to the root of the matter and without consideration of the said facts, he has recorded finding of guilt and imposed sentence, which cannot be sustained.

15] For the above said reasons, the Judgment dated 31.01.2002, in Special Case No.3/1995 passed by the Special Judge, Nashik, is quashed and set aside. The Appellant stand acquitted of the charge, levelled against him.

Appeal is allowed.

Bail bonds of the Applicant stand cancelled.

[BHARATI DANGRE, J]