

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.788 OF 2003

Kishor Shankarrao Hile	]	..	Appellant
vs.			
State of Maharashtra	]	..	Respondent

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WITH
CRIMINAL APPEAL NO.661 OF 2003

Pandurang Babu Kumbhar	]	..	Appellant
vs.			
State of Maharashtra	]	..	Respondent

Mr.Rahul Kate for the Appellant.

Ms.Anamika Malhotra, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 24th April, 2023.

JUDGMENT :

1] The Appellants in two Appeals placed before me stand convicted in Special Case No.6/1997, by the Additional Sessions Judge, Raigad, Alibag, through the Judgment delivered on 25.04.2003.

2] Accused No.1 Kishor Hile (in Criminal Appeal No.788/2003), before the learned Judge, who was working as Talathi, stood convicted for committing an offence punishable under Section 7 and 13(i)d) read with 13(2) of the Prevention of Corruption Act, 1988. He was sentenced to suffer RI for 6 months on being convicted under Section 7

and to suffer RI for 1 year, on being convicted under Section 13 of the Prevention of Corruption Act.

Accused No.2 Pandurang Kumbhar (in Criminal Appeal No.661/2003), who was working as Circle Officer is convicted for committing offence under Section 7 as well as under Section 12 of the Prevention of Corruption Act and sentenced to suffer RI for 6 months.

The substantive sentences in case of both the accused were directed to run concurrently.

3] During the pendency of these Appeals, the Appellant Pandurang Kumbhar has expired and this fact is confirmed by the learned APP and hence Criminal Appeal No.661/2003 stands abated.

It leaves me with Accused No.1 Kishor Hile, who has filed Criminal Appeal No.788/2003, calling in question his conviction. During the pendency of the Appeal, he was released on bail.

4] The Appellant Kishor Hile was working as Talathi of Saja Pashane at Neral, Taluka-Karjat, District-Raigad, at the relevant time.

The prosecution has alleged that the Complainant, who was resident of Chembur, Mumbai, had purchased an agricultural land at village situated at Mouje Pashane, Taluka-Karjat, having Survey No.211/5 and 211/3A-1 and he constructed two farm houses admeasuring 20x30 ft. and 18x30 ft., for use of labourers and storing agricultural equipments. The necessary permission was obtained from the Sarpanch of the concerned Grampanchayat.

It is the case of the prosecution that, on 21.05.1996, the accused persons working as Talathi and Circle Officer visited the village of the complainant and enquired as to whether he has obtained an order for converting the said land into non-agricultural use(NA). When he

showed the permission from the Grampanchayat, he was told that the said permission is not as per the prevailing law and therefore, his construction will have to be demolished. Upon the said version coming from the accused persons, the complainant requested for regularizing the construction and it is alleged that Accused No.1 Hile told him that if amount of Rs.10,000/- is paid, no action shall be taken.

5] As per the complainant who stepped into witness box as PW 1, once again the duo visited his field on 23.05.1996 and demanded the amount of Rs.10,000/- , but the demand was reduced to Rs.8,000/- and the complainant was asked to make the payment before 30.05.1996.

Once again on 30.05.1996 by visiting the field, the demand was reiterated, but the complainant expressed his inability to pay the amount and sought time for making the payment, which was permitted to be paid, on or before 07.06.1996.

Again on 06.06.1996, there was visit and it was agreed that the amount of Rs.3,000/- shall be paid initially in the office at Neral and remaining balance shall be paid at later point of time.

6] The complainant approached the Anti Corruption Unit at Thane and lodged the complaint. Dy. Superintendent of Police Bharat Sarvade, Alibag, received the complaint, who obtained signature of the complainant and also affixed his signature and thereafter arranged for two employees of Sales Tax Department to act as Panchas. This Officer has stepped into witness box as PW 3, and deposed about the trap.

The pre-trap Panchanama was prepared on 07.06.1996 under the signature of two panchas, Sandeep Ekbote and Anil Vaidya between 11.45 hours to 14.15 hours.

7] The prosecution case, which surfaces through the complainant is, on the pre-trap Panchanama being drawn and the procedural formalities being completed, he accompanied by PW 2, reached Talathi Office, Neral. When he entered his Office, he greeted Accused Hile and they occupied the bench situated nearby. Accused Hile made enquiry about the person accompanying the complainant and also made enquiries whether he had come alone or is accompanied by any other person. The version of the complainant before the Court is as under :-

“Then I said to him that I had brought money. I said that I had brought amount of Rs.3000/-.”

As per the PW 1, he was asked to accompany Mr.Hile (Accused No.1) for having tea and in the meantime Accused No.2 also reached there, when Mr.Hile told Accused No.2 that the complainant had come and brought the amount of Rs.3000/-.

Thereafter, they entered into a Cold-drink house and on reaching there, Circle Officer Mr. Kumbhar made enquiry as to whether the amount was brought and the complainant answered in the affirmative and took the amount from the left side pocket of his shirt by right hand and produced before him. The Circle Officer instructed Mr.Hile, the Talathi, to accept the amount. According to him, Talathi received the amount by his right hand and it was assured by him that he has nothing to worry. Thereafter, the Circle Officer and Talathi came out of the hotel followed by the complainant and PW 2. A signal was given as decided and raiding party reached the spot. The raiding party caught hold of wrist of Mr.Hile and took him inside the hotel. Since the notes were smeared with Anthracene powder, fluorescent colour was noticed on his right hand as well as on the right hand of Mr.Hile, when inspected under special lamp.

8] The version of PW 2, the shadow witness, corroborate the events narrated by PW 1, once they stepped into the office of Talathi. PW 2 also corroborated the version of PW 1, when he stated that it is PW 1 who disclosed to Mr.Hile that he had brought the money as per his instructions. He also corroborate his version that in Hotel Raja Cold-drink House, the complainant reiterated that he brought the money and took out the money from his pocket before Co-Accused Mr.Kumbhar and held it in his hand. Mr.Kumbhar then said that the amount be given to Mr.Hile, who accepted the amount from the complainant.

PW 2 deposed as under :-

“Hile was holding the said amount in his hand which he had received from complainant Patil.

“ Currency notes were found in hand of Hile when personal search was taken by Vaidya.”

9] In this whole version, several discrepancies have surfaced amounting to gross lacuna.

In cross-examination the complainant PW 1 admit that there were several people in the hotel and while they were seated, almost 25 customers had visited the hotel. He admit that at that time, when he gave signal from the veranda of the hotel, the accused persons were standing on the road These two admissions, carry great significance.

It has also surfaced on record that when Kishor was caught by raiding officer, the amount was with him inside wrapper of newspaper and Anthracene powder was noticed on hand of Kishor.

The theory of notes being received by Mr.Hile in newspaper, is not revealed, either by PW 2 or it also do not find mention in the post-trap panchanama.

The Post-trap Panchanama record that the complainant took out the notes smeared with Anthracene powder, kept in the left pocket of

his bush shirt and he held the notes before Accused No.2 Mr.Kumbhar and at that time, Mr.Hile took notes from the hand of the complainant by his right hand. As per the Post-trap Panchanama, the complainant came on the road from Varanda and gave desired signal and he was followed by the accused persons and Panch witness Ekbote. The Panchanama further record that, when Mr.Hile was apprehended, he was carrying bundle of Rs.100/- notes in his right hand.

The complainant, PW 1, himself has deposed in his examination-in-chief that the the bunch of currency notes was folded and was kept in left side pocket of his shirt. But, in the cross-examination he has come up with a version that when Mr.Hile was caught by raiding party the amount with him was inside the wrapper of newspaper.

The above version create doubt in the case of prosecution as if the notes according to the complainant were accepted by Mr.Hile in a newspaper wrapping, then it means that he has not touched the notes and therefore the prosecution case that his right hand reflected fluorescence is not the true version.

10] Another important aspect of the matter, which has missed the attention of the learned Judge, is about the demand of bribe, not being proved. PW 1 has given distinct dates, when according to him, accused persons visited his field and demanded the amount. There is no verification of the demand and he has categorically admitted in cross-examination that, when the demand was raised, no other person was present near him and therefore, it is only the complainant who has to be relied upon for establishing the demand. The prosecution has not established conclusively, as to who made the demand i.e. whether it was Accused No.1 or it was Accused No.2.

Even on the date of the trap, when the complainant entered into

the chamber of Mr.Hile, he did not ask for the money, but it is the complainant who on his own, disclosed to him that he has brought the money. Moreover, when they walked out for having a cup of tea, Mr.Kumbhar, Circle Officer joined them and as per the case of prosecution, at the instance of Circle Officer, the amount was handed over to Mr.Hile by the complainant.

11] The demand being sine qua non for establishing the charge under Section 7 is not conclusively established by the prosecution by cogent evidence, as on all alleged visits of the accused to the complainant's field, the demand was raised, but not a single witness has been examined to prove the demand. On the day of said trap, it is not the version of PW 1 or PW 2, that on entering the office of Mr.Hile, he demanded the bribe, but on the contrary, it is the complainant, who informed Mr.Hile, that he has brought the money. Therefore, even at this juncture, the demand is not proved.

12] Another important aspect of the matter being acceptance of the gratification in respect of an official act, as it is evident that, Section 7 of the Prevention of Corruption Act, punishes an act of a public servant, taking gratification other than legal remuneration, is contemplated to be in respect of an official act.

Section 7 specifically prescribe that, whoever being a public servant obtains or accepts or attempts to obtain from any person, any undue advantage for himself or for another person, any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to

any person, with the Central Government /State Government etc, the offence is committed.

13] In order to establish charge under Section 7 of the Prevention of Corruption Act, the prosecution has failed to bring on record any evidence to establish that it is the Accused No.1, who in his official capacity was capable of rendering any service to the complainant. Accused No.1 i.e. the Appellant was working as Talathi and it is not the case of the prosecution that Talathi was competent authority for grant of permission or he had any authority to demolish the structure, which was erected after obtaining permission of Grampanchayat. Nothing has been brought on record to reflect that the Circle Officer and Talathi were capable of showing any favour to the complainant, as he has not been served with the notice for demolition of the said structure nor any objection was notified about, it being illegal/unauthorized.

The complainant in his cross-examination has clearly admitted that he did not obtain any permission from Collector and, therefore, he was afraid that his house would be demolished, but no notice has been produced on record reflecting any action on the part of the Collector to demolish the farm houses.

14] The prosecution has failed to prove its case under Section 7 and also under Section 13 of the Prevention of Corruption Act, which punishes an act of criminal misconduct of a public servant, who is alleged to have obtained pecuniary advantage by abusing his position, as a public servant.

The prosecution has failed to prove its case beyond reasonable doubt and has failed to establish the demand for establishing offence under Section 7 as well as Section 13(i)(d) read with 13(2) against the

present Appellant and the learned Judge has failed to take into consideration the gross deficiency and loopholes in the prosecution case and that it has failed to prove its case beyond reasonable doubt.

As a result, the impugned Judgment and order passed by the Additional Sessions Judge, Raigad on 25.04.2003 in Special Case No.6/1997, deserve a reversal.

15] In the wake of above discussion, Criminal Appeal No.788/2003 is allowed. The conviction and sentence imposed upon the Appellant in the impugned Judgment is set aside. He is entitled for acquittal from the charges levelled against him under the Prevention of Corruption Act.

Criminal Appeal No.661/2003 stands abated.

[BHARATI DANGRE, J]