

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1260 OF 2002

Pravin Vasantrao Shelke .. Appellant
Versus
The State of Maharashtra .. Respondent

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Mr.Aniket Nikam i/b Piyush Toshnival for the appellant.
Mr.S.R. Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.
RESERVED : 27th MARCH 2023.
PRONOUNCED : 18th APRIL 2023.

JUDGMENT:-

1 At the instance of one Shri Navnath Jagtap (PW 2), the ACB set it's machinery rolling, when it was intimated that the accused Pravin Shelke, working as Jr.Engineer, had demanded bribe for supply of cable wire to the complainant. The complainant reported to the ACB that his agricultural land is irrigated through a well situated in the field, and there is an electric motor fitted on it. On receipt of the electric connection after four years of his application, the electric connection was carried from an electric pole in the field to the pump fitted on the well.

As there was no availability of the cable wire, the accused asked him to bring the cable and he was told that on receipt of cable wire from the Electricity Board, he would replace it.

As per the complainant, he contacted PW 4, (Jr.Engineer) of MSEB, for change of cable wire when he had visited his village and he was told to meet the accused. He was also told that if the cable is supplied by the accused person, he would fit the cable wire.

2 As per the advise given by Mr.Balasaheb More (PW 4), the complainant visited the accused at Kurudwadi, as the accused was acquainted with the complainant, and he was told that, as and when the cable is received, it shall be provided to him. As per the complainant, a demand was raised for Rs.300/- but when the complainant expressed hesitancy, he was told that it would be required for his expenses. Ultimately, the deal was struck at Rs.200/- and when the complainant informed, that he has not brought the money, he was told that he should visit with money. As per the complainant, when he made inquiries in the village, he was informed that accused is regularly demanding money for getting the work done for the villagers, and that is how he reported to the ACB Office and narrated the demand to Dilip Panse (PW 5) and his complaint came to be recorded vide Exhibit-30.

3 The statement of the complainant was recorded on 24/9/1998, pursuant to which a pre-trap panchnama was prepared on 27/9/1998, in the presence of two panchas i.e. Ashok S. Chavan, who came to be examined as PW 1 and one Vijay Kumar Jingade, who acted as other panch.

4 The pre-trap panchnama was exhibited as Exhibit-30 through PW 1 Ashok Chavan, who deposed about its execution and the process to be followed before the actual trap was laid, and his deposition highlight the necessary particulars of laying the trap and it's execution.

PW 1 narrated the incident by deposing that he himself as well as the complainant led by PW 5 – Investigating Officer, approached the MSEB Office, as decided, and he accompanied the complainant inside the office of the accused. They were told to sit on the chair and the accused is alleged to have questioned the complainant, as to what happened and the complainant informed him that he had come for his work.

Accused thereafter, informed that there is no cable available for supply, but when the complainant protested by stating that two days earlier, he had assured, that the cable wire would be supplied.

According to PW 1, the accused then asked the complainant whether he has brought the money and received a

positive reply. Accused further questioned as to how much amount he has brought and it was told by the complainant that he had brought Rs.200/- and was asked to pay the amount. The complainant, thereafter, removed Rs.200/- from the pocket of his shirt by right hand and handed over to the accused, which was kept by him in his left chest pocket.

As per PW 1, the accused then called More (PW 4) and asked him to take out fuse and cable, and when the complainant was about to leave the room/office, accused asked him to sit down and told him that he would ask the Jr.,Engineer to accompany with cable and fuse, so that his work can be accomplished. As the complainant was not in a position to get out and give signal, as pre-decided. PW 1 came out and signalled the raiding party by removing his cap and thereafter, PI Bagwan – Dy.S.P. Panse, and the second panch came inside the room, and on the Investigating Officer introducing himself to the accused, the amount was recovered from his pocket. The notes which were smeared with Anthracin powder glittered blue, number of the notes were tallied, with the one mentioned in the pre-trap panchnama and the fingers of accused when checked under ultra-violet lamp, were found to have possessed traces of Anthracin powder.

After following the procedural formalities, the trap panchnama was prepared and came to be exhibited through PW 1 as Exhibit-32, which comprise of the minute details of the trap.

5 Shri Panse (PW 5) lodged the complaint and the investigating machinery which was set into motion, and statement of the witnesses including the panch witness were recorded.

6 In support of the case of the prosecution, the complainant was also examined as PW 2, who reiterated the version of PW 1, the panch witness.

The complainant, in great detail, divulged the demand by the accused, which he specifically reproduced in his complaint, lodged with the ACB and he specifically deposed before the Court about the demand of Rs.300/- for supply of cable on the guise that it is for his expenses. He reiterate that the accused told him that he should visit him only when he has the money to pay, which was now reduced to Rs.200/- after negotiation.

The complainant reiterate the happenings leading to the execution of pre-trap panchnama and coming to the incident when the trap was laid, when he was accompanied by PW 1 to the office of the accused, he deposed that accused made specific inquiry about the person accompanying him, and also asked him whether he has brought the amount of the material, which was answered in the affirmative, and thereafter, he removed the cash from his pocket and handed over to the accused, who accepted the same and kept it in his pocket. PW 2 specifically reiterate that the amount was paid by way of bribe. According to him, police

party arrived at the spot and caught hold of the accused. Thereafter, the procedural formalities were completed as per the complainant.

In the cross-examination, the complainant has specifically asserted that he had visited the accused, for atleast two months for procuring the material, which was required to be replaced, and though he admit that there was arrears of electric charges for almost one year, he specifically deny the suggestion that all the articles as per the quotation for electric connection were supplied to him, and there was no need for supplying additional article. He also deny the suggestion that the accused had told him that the amount was required for supply of additional material as per the government rate. He deny the suggestion that accused had given him challan for payment of Rs.200/-, and also deny the suggestion that the accused told him that he will have to pay Rs.200/- to the Bank by challan. He deny that he paid an amount of Rs.200/- as expenses of cable wire to the accused, and he was angry for not repairing the DP Box and since the accused was demanding arrears of electric charges, a false complaint was lodged against him.

7 The Jr. Engineer Balasaheb More is examined by the prosecution as PW 4, who deposed that he had met the complainant, two to four times in the village, who had informed him that his motor wire has to be changed, when he was asked to meet the accused.

Referring to the incident dated 25/9/1998, he submitted his report to the accused, and while he was leaving, the complainant arrived there with one person and in presence of those persons, the keys of the cupboard were given to him by the accused and he was asked to bring the fuse.

8 This witness deposed as under :-

“Before I came, the complainant paid something to accused. Accused accepted and kept in his pocket. I do not know what was given by the complainant to the accused”.

PW 4 is not a witness on payment of bribe and in his cross-examination, he categorically admit that once electric connection is given, it is not the job of MSEB to give additional wire, unless charges are paid. He further clarified that payment of charges means, challan is given, which is to be paid in the Bank. He denied the suggestion that the complainant was visiting the office of the accused for last two to three months and the accused had told him that he will have to pay the charges and then only the wire would be supplied.

9 In order to establish the case of prosecution, the Investigating Officer Mr.Panse was examined as PW 5, and he deposed about the procedure carried out before laying a trap and also deposed about procedure followed during trap.

He is not a witness to the demand or the acceptance, but he deposed that complainant and panch disclosed that the accused had accepted the amount.

In his cross-examination, PW 5 admit that the complainant did not produce any document or receipt despite being told to show proof of payment of electric charges, or as regards installation of the electric motor. He also admit that the Chairman of Vitthal Sahakari Sanstha had accompanied the complainant when he visited his office and disclosed that bribe was demanded by the accused, but he did not record the statement of the said person.

There is also admission from this witness that there is failure to ascertain the details of the Officer, who had provided connection to the complainant and despite he visiting the spot, he was unable to ascertain whether the wire was private wire or the one belonging to MSEB, but he specifically deposed that the motor pump was working.

No written document was prepared by PW 5 about his visit to the well in the field of the complainant. He also candidly admit that he has made no inquiry as to the manner in which the amount of cable wire is to be paid to MSEB.

10 In order to diffuse the case of the prosecution, the accused produced two relevant documents on record, and in his statement u/s.313 of the Cr.P.C, sought permission to explain the

circumstance of recovery of tainted money from him and accordingly, he filed a written statement, he specifically took a stand that, in the year 1996, when electric connection was given to the complainant by the Electricity Board, the necessary provision for supply of cable was also arranged for.

Prior to the incident, complaint was lodged for a transformer having caught fire through the Sarpanch and other villagers, which included the complainant, and though he assured to get the transformer repaired, he had also directed clearance of the electricity arrears, and that is why he was falsely implicated in the case, is the specific stand. It is a specific statement that the cable was already provided to the complainant and therefore, there was no need for additional/substitute cable. It is stated in the written statement, that since the complainant expressed that he was not aware as to how the challan had to be paid, he offered the money for being submitted in the Bank and pursuant to this, he had directed Shri More to supply the material.

11 Apart from this, accused has placed on record two documents in form of challan/demand note dated 23/9/1998 and the bill for the cost of the material of the same date. It came to be exhibited as Exhibit-35/1 and 35/2. Exhibit 35/2, which bears the signature of the Section Officer MSEB record that Shri Jagtap, who is complaining about not being in receipt of the material to his agricultural pump, is asked to pay Rs.200/- against the cost of material because, he is demanding receipt of energy bill.

The list of material include the G.I. Pipe, WP wire, 4 mm (2) and kitkat fuse 16 AMP.

12 A specific question is put to the complainant, PW 2 about issuance of the challan shown to him at Exhibit-35 and he deny the suggestion that the challan was given to him and he was asked to pay Rs.200/- to the Bank by challan. The accused/appellant has taken a specific stand before the trial Judge and the complainant was specifically confronted with the said document, but the issuance of the document in form of challan and the cost of material to the tune of Rs.199/- is not established, as the document is merely exhibited and not proved.

13 The prosecution, in order to establish it's case, must firstly establish the demand of bribe and then it's acceptance. The Investigating Officer has not verified the allegation in the complaint, which specifically allege that an electric connection was given to him, but the wire carrying the electricity, was to be provided by MSEB, and he persistently asked the accused to replace the said wire for which a demand was raised. The accused has adopted a specific stand in his written statement, which has to be tested on the parameter of probability and need not be necessarily proved by evidence, which is conclusive in nature, where he has specifically stated that while the connection was provided, the cable wire was also arranged for.

14 PW 5 – the Investigating Officer has stated before the Court that the Electric pump was operational when he visited the spot. The statement of PW 2, that there was no availability of cable, and hence he was asked to bring the cable, but the wire which was brought by him, would prove to be dangerous and therefore he was repeatedly requesting the accused to replace the wire has no proof. The said statement is, however, specifically denied by the accused who, in his written statement, has averred that while the electric connection was provided to the complainant in the year 1996, all the necessary requirements were complied with, and cable wire was also provided. At that relevant time, the accused was not the Officer in charge and with the statement coming from PW 4, Shri Babasaheb More, that once electric connections are given, it is not the job of MSEB to give additional wire unless charges are paid, assumes significance. Shri More has also admitted that the payment is to be made in the Bank by Challan and the accused has placed on record, a challan of Rs.200/- though it has not been proved, but the learned Judge has exhibited the same during the course of trial.

The Investigating Officer has not bothered to ascertain whether the wire, which was used for passing the electricity, belong to the MSEB, or was arranged through a private supplier.

15 In the aforesaid circumstances, the case of the prosecution becomes doubtful, as it is imperative for the prosecution in order to establish the charge u/s.7 of the Prevention of Corruption Act, to establish that a public servant has obtained any gratification other than the legal remuneration, as the motive or reward for doing, or for bearing to do any official act, in exercise of his official functions by favouring or disfavours any person, or for rendering any service. The prosecution has failed to establish that the amount was demanded for replacing the electric wire to the box of the complainant as, admittedly, the electric connection was provided to the complainant and PW 5 has deposed that the connection was operational. In absence of the demand being conclusively established in form of an illegal gratification, it's mere acceptance is of no consequence,

 “Gratification” as contemplated u/s.7 would necessarily indicate acceptance of something to the pleasure or satisfaction of the recipient. The prosecution has not proved its case conclusively to the effect that it was for supply of electric wire to the complainant, which the accused was duty bound to provide, and he had refused to arrange for the same without the amount being paid to him.

The inconsistency in the version of PW 1 and 2 is also apparent, since PW 1 has deposed that the complainant was not in a position to go and signal to the raiding party and therefore, he came out and signalled the raiding party by removing his cap, whereas PW 2 has specifically deposed that after paying the amount to the accused, by way of bribe, he removed his cap and thereafter the police party arrived. About the actual words in which the demand is raised by the accused, the narration of PW 1 and PW 2 is, that the accused questioned if the amount of material is brought and to this question, PW 2 responded in the positive.

16 In the backdrop of Exhibit-35/1 and Exhibit-35/2, which bear the date as '23/9/1998', the date on which the trap was laid, the case of the prosecution becomes doubtful and necessarily, the benefit must go to the appellant.

The prosecution has failed to establish the charge u/s.7 and 13(1)(d) of the Prevention of Corruption Act, 1988 by adducing conclusive proof in support of the charge, and in this background, I must record that the learned Judge has failed to appreciate the lacuna in the case of the prosecution, and on finding these lacunae, the benefit must necessarily be passed in favour of the accused.

The impugned judgment dated 24/10/2002, under which the appellant has been convicted for committing an offence

u/s.7 and 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 and he has been sentenced to Rigorous Imprisonment for two years, on both counts deserve to be set aside.

The appeal stand allowed as above.

The appellant shall continue to enjoy his liberty, since he is already released on bail. His bail bond stand cancelled.

(SMT. BHARATI DANGRE,)