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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.439 OF 2005

Kashiram Nhanu Amonkar] .. Appellant
vs.
State of Maharashtra] .. Respondent

Mr. M. Kocharekar a/w Omkar Nagwekar for the Appellant.
Ms.M.R. Tidke, APP for the State.

CORAM : BHARATI DANGRE, J

RESERVED ON : 4th November, 2023.
PRONOUNCED ON:9th November, 2023.

JUDGMENT :

1] The Appellant, a public servant working as Shop Inspector and attached to Bombay Shop & Establishment Department, A Ward, BMC, Mumbai, came to be charged for demanding and attempting to obtain a sum of Rs.60,000/- i.e. Rs.10,000/- each for 6 galas from the complainant, Mohammed Iqbal Abdul Karim Shaikhani on 03.08.2000, which was further reduced to Rs.30,000/- i.e. Rs.5,000/- each for 6 Galas, after negotiation.

It is the case of the prosecution that the Appellant agreed to accept the said amount after 4-5 days, which was by way of a gratification other than legal remuneration for showing favour to the complainant for issuing registration certificate (Gumasta Licence), under the Bombay Shop and Establishment Act, 1948 for 6 Galas

which were situated at Meharban Mansion, Near Food-In-Hotel, Shahid Bhagatsingh Marg, Colaba, Mumbai, in Ward 'A' of the Municipal Ward.

He, therefore, faced the charge for committing the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and since he accepted a sum of Rs.30,000/- from the complainant as gratification for showing favour in the exercise of his official function, for issuing registration certificate and since he abused his position as a public servant, he also faced the charge under Section 13(1)(d) punishable under Section 13(2) of the PC Act.

2] Since the Appellant did not admit the charge and chose to be tried, he was tried for the aforesaid accusations in Special Case No. 90/2001 by the Special Judge, at Greater Bombay and by the impugned Judgment dated 15.03.2005, stood convicted under Section 7 of the PC Act and sentenced to suffer RI for one year and to pay fine of Rs.2000/-, in default to undergo RI for 2 months. On his conviction under Section 13(1)(d) read with 13(2) he is sentenced to suffer RI for two years and to pay fine of Rs.3000/-, in default to undergo RI for 3 months.

On the Appeal having been admitted on 29.04.2005, the Appellant was directed to be released on bail.

3] I have heard the learned counsel Mr.Kocharekar a/w Omkar Nagwekar for the Appellant and Ms.M.R. Tidke, the learned APP for the State.

It is the case of the prosecution that the complainant (PW 1) had taken 6 galas in Meherban Mansion, Colaba, on rent and in the year 1999, and he applied to the BMC for registration certificate and paid the necessary registration fee, in the office.

However, despite his repeated visits to the BMC Office, he could not procure registration certificate and as per the prosecution case, when on 03.08.2000 he went to the BMC Office, he met the accused who told him that if he intended to have Gumasta Licence, he shall have to pay Rs.10,000/- for each gala, which, after negotiation was reduced to Rs.5,000/- and the complainant took 4-5 days for arranging the amount.

On 08.08.2000, the Appellant called the complainant and inquired whether he could arrange the amount and when he answered in the affirmative, he asked him to be ready with the amount at his shop at 6.00 p.m., as he was coming with the licences. Since the complainant was not willing to give the bribe amount to the Appellant, he approached the ACB Office, Mumbai and lodged the complaint, in furtherance of which, on completion of necessary formalities, a pre-trap panchanama was prepared and trap was arranged with the aid of the independent panchas, at the shop of the complainant.

At about 6.00 p.m. the present Appellant and one Wairikar arrived at the shop of the complainant with the Gumasata Licences, which were handed over to the complainant and a demand of the bribe amount was made by the Appellant. As per the direction issued, the complainant kept the bribe amount in his briefcase, which was closed but some portion of the currency note was protruding out and it was pushed inside by the accused by his right ring finger and the briefcase was shut once again. The complainant, thereafter, requested the Appellant to return Rs.2000/- out of that amount and he was insisting for the same and hence the Appellant put the briefcase on the floor and took the complainant outside the shop on the road and Mr.Wairikar who remained inside the shop took out the amount from the briefcase and counted the notes. When the complainant signaled as instructed,

the Appellant as well as Mr.Wairikar came to be apprehended.

It is the case of the prosecution that before they were apprehended, Mr. Wairikar had already kept amount inside the briefcase and closed it and the amount as per the prosecution came to be recovered from the briefcase and the Anthracene powder was seen on the right ring finger of the Appellant as well as both hands of Mr.Wairikar as well on the front portion of his pant.

It is pertinent to note that Mr.Wairikar who was initially arraigned as accused No.2 in the subject CR was not charge-sheeted as there was no demand of bribe from him and the only role attributed to him was of opening the accused no.1's brief case and counting the bribe amount.

Since during the course of investigation it is revealed that Mr. Wairikar was attached to New Marine Lines Area whereas the present appellant was in charge of Colaba area, on noting that Mr.Wairikar has nothing to do with the work related to the complainant, and there was no reason either to demand or accept the bribe, he was not chargesheeted.

4] In order to establish the case of the prosecution, the complainant stepped into witness box as PW 1.

In his deposition he mentioned about taking 6 galas on rent in Meherban Mansion, from where he used to run various businesses and his two servants and himself used to look after the business. He moved an application for licence required to run the business and for that purpose he visited the BMC office on many occasions but he could secure the licence only on the date of incident.

He pointed out to the Appellant in the dock of the Court and deposed that he had demanded Rs.60,000/- in his office to issue the

licence, but the amount was settled at Rs.30,000/-.

PW 1 however, do not give the details as to when he had applied for the licence and on what dates he had visited the BMC office and whether he had met the Appellant. He do not remember the date on which the demand was made by the Appellant before lodging of the complaint. However, according to him on 03.08.2000 the money was demanded and he agreed to give the money on 08.08.2000 in the evening. On the same date he received phone call from the accused inquiring whether the money was arranged and since he responded in the positive, he was told that the appellant shall be visiting his shop in the evening hours. On the complainant referred to the ACB, trap was laid with the help of the Investigating Officer and one of the Panch was directed to be continuously with him when the bribe amount would be offered to the Appellant as per his demand.

PW 1 categorically state that at 6.00 p.m, the Appellant accompanied by one Mr. Wairikar walked into his office and Appellant asked whether the money was brought and when he responded in the positive and called for cold drink, the Appellant took out 6 licences from his bag and after verifying something from the licence, they were handed over to the complainant, pursuant to which money was taken out by the complainant and tendered to the Appellant, who was asked to count the same, but he refused by saying that he trusted him. He was asked to put the money in the briefcase which was in his hand and as per PW 1 the Appellant closed the bag and was hurriedly leaving the shop, when he gave the predetermined signal and two persons from ACB rushed inside the shop and caught hold of the Appellant and Mr. Wairikar and thereafter, the panchanama was prepared. The licences were seized and exhibited at Exhibit 9 which were admitted by the defence.

5] In order to corroborate the version of the complainant, it is necessary to refer to the testimony of the Panch witness Mukhtar Gani Khan (PW 2) who acted as a shadow Panch at the time of the trap.

PW 2 corroborate PW 1 on the process that was followed before the trap was laid, and that he accompanied the complainant to his shop where the trap was given effect to, as it was the case of the complainant that the Appellant was to visit his shop to collect the bribe amount.

As per PW 2 around 5.00 to 6.00 p.m. two person from BMC office came to the shop, where he was sitting with the complainant. PW 2 gives a distinct version, when he depose that one person of those two asked the complainant to affix the board on the shop in Marathi and this person was carrying a bag and he opened the bag and took out six papers and obtained signature of the complainant on those papers. PW 1, however, has not spoken about his signatures having been obtained on the papers, as he depose that Appellant read the papers which were the licences for his shops and handed it over to him.

As per PW 2, a copy of each paper was given to the complainant (six in number) and those copies were kept in the bag and thereafter that person asked the complainant what happened about the amount of Rs.30,000/- which he had asked and the complainant responded by saying that "I had brought". Thereupon, he was asked to put the money in his bag and the person opened the bag and hence the complainant took out the amount from his left hand side shirt pocket and put it in the bag of that person, which was closed by him.

PW 2 state that some portion of one note was protruding out and hence the person again opened the bag and pushed it inside by his right hand little finger and again closed the bag.

What PW 2 thereafter depose is relevant to note :-

“Thereafter, the complainant demanded Rs.2000/- from the said person but the said person asked him to come in the office and take that amount. But the complainant insisted said person to give the amount of Rs.2000/- then and there. The another person who accompanied the said person asked him to give Rs.2000/- to the complainant. He took that bag from the said person and opened it. He started counting the notes. At that time complainant removed his cap from his head. At that time the other members of raiding party rushed there and caught hold of those two persons.”

6] The prosecution case which is sought to be proved through the two witnesses do not match as PW 1 do not make reference to the demand of Rs.2000/- by him and he also do not make reference to the notes having been counted by Mr. Wairikar by opening the briefcase.

7] Now I shall turn my attention to the cross-examination of the two witnesses,

PW 1 in the cross-examination has admitted that he had lodged three complaints to ACB office in respect of three other incidents, two against Policemen and one against the officer from BMC. He admit that for the purpose of issuing the six licences, he had paid the licence fee in the BMC Office on 03.08.2000 and he also admit that ward officer was the superior officer of the accused and he is not sure whether the Appellant signed the licences in his shop and then handed over to him.

In the cross-examination suggestion is given to him that he was conversant with the process to be followed by the ACB, once the complaint is lodged and therefore he had the amount of Rs.30,000/- with him, which was returned to him by ACB after six months of the trap. The bribe amount in other three cases which he had offered was of Rs.17,000/- which was also received by him from ACB.

8] Some significant inconsistencies have featured through his cross-examination. He admit that he did not check up when he received the licences as to who had signed them. He admit that when he had a talk with the Appellant, Mr.Wairikar was present there and the talk between him and the accused took place in the passage. What is most relevant, is the following admission appearing in his deposition.

“When I put the amount in the bag of the accused, the accused was in the passage. All the six stalls are within the passage and attached to the wall. Money was given in the passage of Shop no.'C'. The road is at the distance of 5 to 6 spaces from the shop. The accused was caught in the passage and not on the footpath. When the police caught hold of the accused he was standing in front of Shop No.C. Wairikar was also present there.”

Another relevant admission from the complainant is that he made an application for licence on 03.08.2000 and therefore his version that he was repeatedly visiting BMC office for licences, many times, stand contradicted. He denied the suggestion that he had made application for licence in the month of June 1999 and thereafter one Pawar from BMC office had visited his shop. But on perusal of the complaint he correct himself by stating that in the year 1999 he made application to BMC “A division’ and in connection with the application, Mr Pawar had visited his shop, 8 days after the application was made when he was absent from the shop. He further state that he did not make any inquiry about the report made by Mr. Pawar to BMC. He also contradict his earlier statement that he had made an application for licence on 03.08.2000 and when he state that he met the accused in connection with the licence 10 to 15 times and after his visited the accused made demand of money.

9] Now turning to the cross-examination of PW 2 the shadow Panch, on the happenings at the trap, he state that when he accompanied the complainant they sat outside the shop as there was no place to sit inside. Even PW 2 in his cross-examination state that there was public road in front of the shop and the shop was outside the building at one corner and there were other shops nearby. He, however, state that the shop was not inside the building in the passage and he gives the following admission which contradicts the version of PW 1,

“It is true to say that when the ACB Hawaldar caught hold of this accused he was at some distance from the shop on footpath. Now I say that he was not on footpath when he was caught. This accused was just near the complainant and at the distance of 2 to 3 feet from me when he was caught hold of. Today I do not remember whether after coming of these persons to the sop they had walked away from the shop before the Hawaldar came there.

10] PW 2 has further admitted that the ACB Officer prepared Panchanama in Colaba Police Station and he did not dictate the contents of Panchanama.

Another relevant admission which surfaces through his cross-examination is to the following effect :

“I do not remember whether I had come across the contents of the panchanam to the effect that after putting the brief case which was on his legs on the floor the accused brought the complainant Shekhani on the footpath of the main road which was near that shop. Now I say that I do not remember whether these contents are correct but as they are written in the Panchanama, they are true. Even after reading the Pnachanama Exhibit 19 I do

not remember whether the accused was on the footpath at some distance from that shop.”

PW 2 did not recollect during his evidence that when the Havaladar came to the shop on giving signal and whether the person accompanying the accused (Wairikar) was counting the notes. But he state that when Havaladar caught hold of that person the bag was in closed condition and he categorically state that the bag was closed by the person who had accompanied the accused and he had kept the bag down.

11] The inconsistencies in the version of PW 1 and 2 has evidently made the case of the prosecution doubtful.

As per PW 2, it is the other person who was accompanying the appellant who started counting the notes, but as per PW 1 after accepting the bribe amount, the accused closed the bag and hurriedly left the shop when he gave the indicates signal and the persons from ACB came inside the shop and caught hold of the accused.

The version of PW 2 do not match with this version and according to him, the person accompanying the accused took the bag from him and opened it and he started counting the notes when the signal was given and the raiding team caught hold of the accused as well as the person accompanying him i.e. accused No.2 who was not chargesheeted.

12] The above version make the case of the prosecution extremely doubtful. The post-trap panchanama (Exhibit 19) which is signed by PW 2 record that when the shadow panch and the complainant reached the shop as the appellant was to visit the shop for accepting

the demanded bribe amount, two servants of the complainant were present in the shop.

While they were sitting on the two chairs in the Veranda, the Appellant accompanied with Mr.Wairikar arrived and a conversation is recorded in the Panchanama alongwith the happenings, in the words of PW 2 since it was he who was privy to the conversation and it was revealed that after demanding the amount the Appellant directed the same to be placed in a briefcase which was opened by him and kept on his thighs and the briefcase was shut. The Appellant once again opened the briefcase and pushed the note inside. At that time, the complainant demanded Rs.2000/- back, but the Appellant told him to come to the office, but he insisted that it should be paid then and there and at that time the Appellant kept the briefcase on the ground and brought the complainant on the footpath of the main road, next to the shop and Mr. Wairikar was present in the shop and he opened the briefcase by keeping it in his lap and took out the bundle of notes and started counting it. At this time when the signalled the raiding team caught hold of the Appellant and also Mr. Wairikar, who had shut the briefcase after counting the notes in it.

There is no reference of the above narration in the version of PW 1 and there is no consistency in the prosecution case as after the Appellant went out on the foot path, Mr. Wairikar opened the bag and counted the notes. There is a possibility that the notes are planted in the said briefcase by him or any servant of the complainant since the panchanama mention that two servants of the complainant were present in the shop. It creates a doubt about the version of the complainant and the benefit must, therefore, be given to the accused.

13] The Sanctioning Authority Mr.Srivastava, working as

Commissioner for BMC is examined as PW 3 and he deposed that the Shop Inspector of BMC were empowered to issue licence under the Shop and Establishment Act and he received the papers in respect of Shop Inspector Kashiram Amonkar from ACB in respect of the trap case. A request was made to him to accord sanction for his prosecution and he forwarded the papers to the Chief Officer Inquiry for verification and they were resubmitted to him. He also received letters from the complainant, the accused and one social worker that the accused is innocent and the complainant had mentioned that he was withdrawing the complaint.

Therefore, he addressed a communication to the ACB seeking opinion whether to proceed ahead or not and the ACB gave the reply that they should proceed ahead.

The paper book also contain the letter addressed by the complainant to the Director, ACB, Municipal Corporation Brihan Mumbai stating that due to some misunderstanding and under ill advise he had lodged a complaint with ACB against the Appellant had not demanded any money and he was desirous of withdrawing of his complaint.

This evidence indicate that the complainant himself had addressed a communication to the Sanctioning Authority seeking withdrawal of the complaint, but since the ACB which was interested in the prosecution and ultimately seeking his conviction, persisted and this clearly indicate that the Sanctioning Authority was under the influence of the ACB and did not apply its mind independently, before according the sanction. This is one more ground where the prosecution has faulted.

14] PW 4 PI Prasad Khandekar, Investigating Officer is also

extensively cross-examined and what is important to note is, he noticed traces of Anthracene powder on the hands of Mr.Wairikar on both hands and both palms and as per PW 2 since he was counting the notes, the possibility of the notes having been planted, cannot be ruled out.

When the Appellant is examined under Section 313 of the Code, to the question as to why the prosecution witnesses have deposed against him, he had categorically answered by stating that it was the business of the complainant to falsely involve the Government servants, therefore he implicated him falsely in the case. In his additional say, the Appellant has stated as under :

“ The complainant was in habit of making false complaints. He had made false complaint to J.J. Marg Police Station against the owner of one shop which was near about the shop of the complainant. He had made complaint that the said owner was demanding Rs.22000/- from him but when the police made inquiry it was found that the said complaint was false. In respect of that complaint “B” summary is filed by the police in Mazgaon Court. It is pending. The two cases of theft of electricity to the tune of RS. 7 Lakhs, 29 thousand and another of the amount of Rs.11000/- are pending against the complainant in Dongri Police Station. The accused produced one Article in newspaper “Samana”. It is kept on record.

15] The prosecution has thus failed to establish the sine qua, non for establishing the charge under Section 7 of the PC Act, being the ‘Demand’. The complainant is completely wavy as to the date on which the demand was made and though at one point he has stated that he had visited on 15-16 occasions in the office of the BMC and met the Appellant, there is no reason why the demand should have been raised

only on 03.08.2000. Apart from this inconsistency which has evidently appeared from the evidence of PW 1 and 2, the prosecution has also failed to establish the case of the prosecution that there was demand of an amount by the Appellant for issuance of licence and the amount was accepted. The prosecution has failed to establish its case by cogent and reliable evidence, establishing the demand as well as its acceptance.

The complainant appears to be a person who has lodged various cases with the ACB against the Government officers and has expended an amount of around Rs.17,000/- which was received back by him and he had nothing to loose.

There is also one ACB case pending against him and he came to be arrested at Dongri Police Station as he tried to offer bribe to the police officer who had lodged the complaint against him.

Since the prosecution has failed to discharge the burden by establishing the demand and acceptance of the bribe amount, the charges levelled against the appellant are not conclusively proved and hence the finding of conviction recorded against him alongwith the sentence imposed under the impugned Judgment dated 15.03.2005 cannot be sustained, and it is liable to be quashed and set aside.

The Appellant is entitled for acquittal from the charges levelled against him by allowing the Appeal.

Criminal Appeal No.439/2005 is allowed in the aforesaid terms.

Since the Appellant was directed to be released on bail, the bail bonds of the Appellant stands cancelled.

[BHARATI DANGRE, J]