

Shiv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1259 OF 2008**

State of Maharashtra	... Appellant
Vs.	
Ashok Laxman Garad & Anr.	... Respondent

Mr. H. J. Dedhia APP for the Appellant-State.
None for the Respondent.

CORAM : S. M. MODAK, J.

DATED : 4TH JANUARY 2023

PC:-

1. Heard learned APP Mr. Dedhia for the Appellant-State.
2. There are two Respondents. Respondent No.1 – Ashok Garad is clerk in RTO Office, Pune. Whereas Respondent No.2 – Dastagir Inamdar is a private person, who has accepted bribe amount of Rs.1,000/- from the complainant. Respondent No.2 is no more. Whereas inspite of service of bailable warrant, Respondent No.1 has not appeared.
3. Learned APP Mr. Dedhia has apprised me about the matter. On hearing him, I find that there is no merit in the Appeal and hence, I have heard him finally, even though Respondent No.1 was not present.

4. The criminal law was set in motion on the complaint of one Arvind Champakrao Kachdhane, rickshaw driver. He was not owner of rickshaw but one Rajendra Damdere was owner of auto rickshaw. The duration of permit had expired and inspite of that said Kachdhane was plying auto rickshaw and he was caught by local police on 20/12/2001. The complainant was asked to go to the office of RTO. There he paid certain amount of fine and refused to pay entire amount and that's why he was asked to go to Court for compliance. In that process, he met Respondent No.1-Garad. Respondent-Garad had demanded bribe of Rs.1,000/- for issuing letter thereby releasing auto rickshaw. In the meantime, the complainant has also deposited amount of Rs.1600/- towards fine imposed by the Court.

5. The complainant was fed up and hence, he approached Anti Corruption Bureau on 18/01/2002. The complaint was reduced into writing as a result of which panch was called and pre-trap panchnama was prepared.

6. When the raiding party went to the office of RTO, bribe amount was offered to accused No.2, on the instructions of accused No.1. That is how trap was successful and both accused were tried for the offence punishable under sections 7, 12, 13(1)(d) and 13(2) of the Prevention of Corruption Act.

7. The prosecution in all examined four witnesses. They are PW 1 – Arvind Kachdhane-complainant, PW 2 – Jayram Dagala, panch witness; PW 3 – Laxman Khade, sanctioning authority; PW 4 – Nandkumar Pinjan, Investigating Officer.

8. After evidence, both accused were acquitted. When the judgment was perused, one can gather that there is acquittal for reason of variance in between testimony of PW 1 and PW 2. The complainant was asked to go from one table to another in RTO office and he was victim of red tapism. Though the trap was successful when stage of giving evidence had come, there was certain inconsistencies. They were noticed by the trial Court. There is severe criticism over conduct of the complainant. Finally, benefit was given to both the accused.

9. It is true that variances are bound to occur in the testimony of two witnesses, however, whether they are minor or major is an issue. The trial Court considered them as major variance/inconsistencies. As per duty list of RTO office, it was not job of Respondent No.1-Garad to give letter for releasing auto rickshaw but in fact it was job of the clerk-Sonawane. That is also admitted by the sanctioning authority PW 3. The trial Court gave benefit of this work allocation while disbelieving evidence of the complainant. There was one more area wherein variance was noticed by the trial Court. It is in respect of what happened on the date of trap.

10. According to PW 1, he and panch witness, first went to cabin of Mr. Garad. He was not there but was in canteen and after meeting him at canteen they returned to cabin of Mr.Garad. This chronology of events as per PW 1, whereas PW 2 has given different chronology. No doubt Mr. Garad was not there in his cabin but as per panch witness they have not met Mr.Garad in canteen. So there is variance in

chronology of events between these two witnesses. Certainly it is major variance.

11. The trial Court also emphasized on one more variance in between testimony of PW 1 and PW 2. It is on the point of how bribe was offered. As per PW 1, accused-Garad instructed him to pay the amount to person standing there, whereas panch witness has said that accused instructed PW 1 to pay amount to person having beard and standing there.

12. The trial Court has seriously commented on conduct of the complainant. He had earlier also made attempt to lay trap against one Gaikwad madam serving as Superintendent in RTO office. So the complainant was aware about procedure of trap. From above, it is clear that the judgment by the trial Court is well reasoned judgment. I do not find any perversity in those findings. There is finding that the complainant was interested in release of auto rickshaw without paying total fine amount and that too when he was not owner of auto rickshaw. So the complainant himself was at fault in plying auto rickshaw without following the law and then expecting the officers to comply with the provisions of law. That's why his evidence was considered doubtful. So there is no merit in the Appeal and it is dismissed.

(S. M. MODAK, J.)