

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1338 OF 2006

The State of Maharashtra

...Appellant

vs.

1. Abhiman Shankar Suryavanshi
Age Adul, Occ. :- Service
R/. Panchapakhadi, Plot No. 17,
Thane (West)

2. Bharat Laxman Sonare,
Age Adult, Occ. : Service
R/o. Suyash Apartment
Block No. 101, Bhayander (West)

...Respondents

Mr. Y. Y. Dabke - APP for the Appellant-State
Mr. Kuldip Pawar a/w Ms. Chandni Sachade - Advocate for the
Respondents

CORAM : S. M. MODAK, J.

DATE : 24th FEBRUARY, 2023

JUDGMENT. :-

1. Heard learned APP Shri Dabke and learned Advocate
Shri Kuldip Pawar for both the Respondents-accused.

2. The issue involved in this appeal is whether the
appreciation done by the trial Court is proper or not and is there any

perversity in the findings which requires interference by this Court. The prosecution case about demand of illegal gratification on 12/03/2003 and 08/04/2003 (prior to approaching the Anti Corruption Bureau) was not accepted by the trial Court on the basis of other available materials on record and there were variances in the testimonies of the Complainant and averments in the complaint. The evidence on the point of reiteration of the demand at the time of trap was not believed in view of the inconsistencies in between the evidence of the Complainant-PW 3-Tessia Joseph Galbav and trap panch PW. No. 4-Vaishali Kolge. Even sanction was not proved by the prosecution on account of non application of mind by two sanctioning authorities. In two separate sanction orders, there is no specific reference about payment of illegal gratification.

3. Both the sides took me through the evidence of these five witnesses and the findings. The Respondent No. 1 is working as administrative officer in Mira-Bhayandar Municipal Corporation. Whereas the Respondent No. 2 was working as clerk in the said Corporation. They were entrusted with work of supervision over the schools. The Complainant P.W. No. 3 – Smt. Tessia Joseph Galbhav

was Director of St. Joseph Memorial Society and Head Mistress of “Our Lady of Fatima” school situated at Mira Road. The approval to the said school was pending. Proposal was forwarded from the Zilla Parishad to Mira-Bhayandar Municipal Corporation. The Respondents were entrusted with that job.

4. Both of them visited the school on 12/03/2003 and pointed out certain deficiencies. As per the complaint lodged to the Anti Corruption Bureau in fact there is no reference of demand of money by the Respondents on 12/03/2003. However, when she gave evidence before the Court she has referred about payment of money. On the ground of improvement, it was disbelieved by the trial court and rightly so. If at all there is a demand on 12/03/2003, she ought to have mentioned it in the complaint.

5. On 08/04/2003, for follow up the complaint visited the office of the Corporation, she has submitted compliance report. The Respondent No. 1 still demanded Rs. 10,000/-. Whereas after deliberation with the Respondent No. 2, it was reduced to Rs. 6,000/-. Both the Respondents were going to visit the school on

10/04/2003. On being annoyed with this attitude, she has approached the Anti Corruption Bureau on 10/04/2003 and lodged the complaint.

6. Pre-trap formalities were completed and trap was arranged on 10/04/2003 in the school premises. Both the Respondents came there and done their official work of inspection. P.W. No. 4-Vaishali Kolge attended that proceedings as trap panch. During initial inspection there is no demand at the instance of the Respondents. However when both were about to leave the school premises, the Respondent No. 1 reminded the Complainant about the compliance of money. He hold her to pay an amount to the Respondent No. 2. However the Complainant refused to pay to the Respondent No. 2. On the instructions of the Respondent No. 1, she paid the amount of Rs. 6,000/- to the Respondent No. 2. The Complainant gave signal and raiding party members arrived there. Both the Respondents were searched. The Respondent No. 1 was found tainted currency of Rs. 5000/- and the Respondent No. 2 was found with Rs. 1000/-. On this bifurcation, the trial Court has laid emphasis and according to him, there is no evidence how and when

this bifurcation took place particularly when entire amount of Rs. 6,000/- was paid to the Respondent No. 2. After that F.I.R. is lodged and after obtaining the sanction both the prosecuted.

7. They have denied the commission of any offence.

Following witnesses were examined:-

P. W. No. 1	Deputy Director	Sanctioning Authority for the Respondent No. 1
P.W. No. 2	Municipal Commissioner	Sanctioning Authority for the Respondent No. 2
P.W. No. 3	Complainant	Tessia Joseph Galbaw
P.W. No. 4	Smt. Vaishali Kolge	Panch witness
P.W. No. 5	Rajendra Kisanrao Chikhale	The Sanctioning authority

8. The defense of accused is of denial. According to the Respondent No. 1 he was on leave from 03/03/2003 upto 02/04/2003. There is no question of visiting the school on 12/03/2003. Whereas on 08/04/2003, there is meeting of all the Head Masters of the schools falling within the limits of the Municipal Corporation. It was on the background of some examination papers problem.

9. It is true that from 03/03/2003 to 02/04/2003, the Respondent No. 1 was on leave and this fact is admitted by the Deputy Director - P.W. No. 1. The order of the sanctioning medical leave was also proved during his evidence. This creates doubt about visit on 12/03/2003. I have perused the evidence of Complainant-P.W. No. 3. Though before the Court she has said about demand of Rs. 10,000/- during school visit, it does not find place in the complaint. It creates doubt. The trial Court was right in dis-believing this demand. I agree with those findings.

10. It has also come on record that on 08/04/2003, the Respondent No. 1 was busy in conducting the meeting of the Head Masters. The necessary documents were submitted alongwith statement recorded under Section 313 of the Criminal Procedure Code. This demand was made when the Complainant visited the office of the Respondent No. 1. Even during explanation the Respondent No. 2 has said that on 08/04/2003, the Respondent No. 1 was not present in the office. The burden of the Respondents is not heavy. It is preponderance of probabilities. This circumstance creates a doubt about demand on 08/04/2003 and the trial court has rightly

disbelieved the prosecution evidence on that aspect.

11. It is true that if the evidence on the point of the demand is not satisfactory, even though there is evidence on the point of the acceptance of illegal gratification, it cannot be considered. Even on the point of the incident that took place on 10/04/2003, the trial Court noticed variances in between the testimonies of the Complainant and the panch witness. On that date, both the Respondents visited the school premises for their official duty of the inspection. After that work was over, thereafter there was reiteration of the demand. P.W. No. 4-Kolge was trap panch. Now who has reiterated the demand of Rs. 6,000/-, that is to say whether it is the Respondent No. 1 or whether it is the Complainant on her own has referred the amount of Rs. 6,000/-. There is variance. As per story of the Complainant, it was the Respondent No. 1, who demanded Rs. 6000/-. Whereas as per panch witness, when the Respondent No. 1 told that their work is over but what about them. At that time, the Complainant replied that she has spared Rs. 6,000/-. So as per panch witness, it is not the Respondent No. 1, who firstly demanded Rs. 6000/-. This is one point of the variance.

12. The money was accepted initially by the Respondent No. 2-Accused No. 2 and it was given to the Respondent No. 1-Accused No. 1. Earlier there was issue who should accept the amount. Whether it is the Respondent No. 2 or whether it is the Respondent No. 1. Finally, it was accepted by the Respondent No. 2 and handed over to the Respondent No. 1. After this exercise was over, the investigating officer and other members came there on seeing the signal. Examination was done. Anthracene powder was noticed. However it is important to note that this Rs. 6,000/- was not entirely found with the Respondent No. 1. He was only found with Rs. 5000 and the Respondent No. 2 was found with Rs. 1000/-. It is surprised as to how material witnesses are silent on this aspect. They have not said anything about bifurcation done. Unless and until either of them will keep part of the amount with them, and part away other part to other accused, this is not possible. This is one of the issue due to which the evidence on the point of the acceptance is not believed.

13. There was ancillary ground to disbelieve the prosecution case. The panch witness was also called on 09/04/2003. There is

document to that effect. Though the investigating officer tried to give an explanation that she was called in another case, those details were not given. Trial court expressed doubt.

14. The trial Court has considered both the sanctions as not valid on account of non application of mind. I have read both the sanctions given by the P.W. No. 1 and P. W. No. 2. It is true that in both the sanctions, there is a general reference of payment of Rs. 6,000/- by the Respondents. It is no where says about demand on 12/03/2003 or 08/04/20203. They ought to have referred it in the sanction. If it is referred it shows application of mind. Unfortunately, it is not there. I agree with the trial court findings.

15. For the above discussion, I do not think that there is perversity in the findings. The judgment is well reasoned judgment on the basis of a proper appreciation of the evidence. No interference is warranted. Hence appeal is dismissed.

[S. M. MODAK, J.]