

SATISH
RAMCHANDRA
SANGAR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

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CRIMINAL APPEAL NO. 1218 OF 2012

The State of Maharashtra
(Through Kasegaon Police Station,
Taluka : Walva, District : Sangli,
C. R. No. 8 of 2008)

... Appellant

Versus

Vithal Balu Patil
Age : 37 Years, Occu. : Talathi,
Resident of Shirala, Taluka : Shirala,
District : Sangli

... Respondent

Mr. N. B. Patil – APP for the Appellant – State.
Mr. Kuldeep U. Nikam a/w Mr. Prasad Avhad, Advocate for Respondent.

CORAM : S. M. MODAK, J.

DATED : 1st FEBRUARY, 2023

P. C. :-

1. The only issue involved in this Appeal is ; whether the evidence adduced by the Prosecution (other than the evidence of Complainant – PW No.1 – Shankar Bhimrao Patil) is sufficient to hold the Respondent-Accused guilty for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (49 of 1988) [“PC Act”].

2. It is true that even though the Complainant has not supported the Prosecution case, still the Court can ascertain on the basis of other evidence ; as to whether that offence is proved beyond reasonable doubt. This view is clarified by the Constitutional Bench of the Hon’ble Supreme Court in the case of *Neeraj Dutta V/s. State (Govt. of N.C.T. of Delhi)* ¹.

¹ AIROnline 2022 SC 1160

3. I have heard the learned APP Shri.N.B.Patil for the Appellant-State and learned Advocate Shri.Kuldeep U. Nikam for the Respondent, at length.

4. The Complainant Shankar Patil purchased a land from one Raghunath Hindurao Patil at village Kasegaon, Taluka : Walva, District : Sangli. He was in the process of entering his name in the revenue record. At the relevant time, the Respondent was working as a Talathi at village Kasegaon and PW No.3 – Dhanaji Kisanrao Patil was working as a Sub-divisional Officer for Walva Division from 1st June, 2007 to 29th April, 2010.

5. The Complainant followed up with the Accused for doing that work. The Respondent initially demanded Rs.3,000/- which was reduced to Rs.2,000/-. The Complainant has not paid any amount. He approached the Anti Corruption Bureau – Sangli and lodged the complaint.

6. Accordingly, a trap was laid in the office of Talathi on 17th September, 2008. PW No.2 – Vijay Dhumal was the trap panch. The trap was successful. Formalities were completed. Charge-sheet was filed. Prosecution examined four witnesses. They are as follows :-

- (i) PW No.1 – Shankar Bhimrao Patil – Complainant
- (ii) PW No.2 – Vijay Hanumantrao Dhumal – Panch witness
- (iii) PW No.3 – Dhanaji Kisanrao Patil – Sanctioning Authority
- (iv) PW No.4 – Anil Shantaram Patil – Investigating Officer

7. The Complainant has not supported the Prosecution case. Learned APP was permitted to put certain questions which are permissible during cross-examination. The trial Court found certain lacunae in the evidence of panch witness so also, found sanction defective on account of non application of mind. So, the Prosecution failed on the point of demand, acceptance and validity of sanction.

8. With the assistance of both the sides, I have perused the evidence and the judgment. Though PW No.1 – Shankar Patil has stated about approaching the Anti Corruption Bureau, lodging complaint, pre-trap formalities and visiting the office of Talathi – Kasegaon, on material aspects, he has resiled from the averments in the complaint. He has also said about visiting the office of Talathi for the purpose of mutating his name. However, on the point of demand of money made earlier to filing of complaint and even about reiteration of demand at the time of trap, no material was elicited by learned APP through him. The Prosecution has taken utmost precaution in recording the voice and the interaction. However, there was no recording at the time of actual trap.

Demand by gesture

9. Learned APP invited my attention to the evidence of panch witness on this aspect. On 17th September, 2008, when the Complainant and PW No.2 went to the office of Talathi at Kasegaon in the afternoon, he was not there. He came to office at about 3.00 p.m. According to learned APP, the accused by his conduct has reiterated the demand for money. It is not acceptable to learned Advocate for the Respondent. I have perused the material evidence. The conversation is as follows :-

“The complainant asked to the accused as to whether he has done his work of entering the name in the record of rights. The accused moved his right thumb and gave hint to the complainant about money”.

It is true that the signal by thumb is in response to an enquiry about the work. The sentence “gave hint to the complainant about money” is an inference. Furthermore, the complainant responded that “आण्णासाहेब सांगितल्याप्रमाणे दोन हजार रुपये आणले आहेत.” The accused then instructed

the complainant “ठीक आहे द्या.” It was not accepted by the trial Court as an reiteration of demand. It is for the reason that no such conversation is recorded in the tape recorder. Because, the Complainant has said that he has not put on the tape recorder properly. This is stated by the panch witness in Para No.9. So, there is no corroboration to the reiteration of demand.

Place of trap panchanama

10. There is discrepancy in the place where trap panchanama was carried out. Whether it is carried out in the Grampanchayat office (next to Talathi office) or in the Police Station. These discrepancies recorded by the trial Court in Para No.17. Even in the trap panchanama, there is no reference about carrying out the panchanama partly in the Grampanchayat office and partly in the Kasegaon Police Station. According to panch witness, money was accepted by the Respondent and kept it in his pant pocket. However, this fact is not stated by the Complainant. For the above discussion, there is no convincing evidence about demand. So also, the evidence on the point of acceptance of an illegal gratification is not satisfactory. I agree with the trial Court.

Work already finished

11. It has come in the evidence that entry about transfer of land purchased by the Complainant was already taken by Accused on 28th August, 2008. This was said by the Investigating Officer – PW No.4 (Para No.15). Even he has collected copy of extract of mutation register evidencing that entry was taken on 28th August, 2008. This was recorded by the trial Court in Para Nos.18 and 19 of the impugned judgment. There can be demand of illegal gratification only when some favour is to be shown or for doing some official act. In this case, there is no pending official act with the Accused.

Mechanical sanction

12. It is true that the Sanctioning Authority has to consider the materials placed before him and then to take a decision on the point of sanction. It is not a judicial act. However, there are two aspects ; one is perusing the materials and then it has to be reflected from the sanction order. Though Sanctioning Authority has said about perusing the materials, he has accepted the draft sanction as it is. He admits that there is no difference in between the draft sanction and sanction granted by him. It means, he has accepted as it is. This is one of the factors which shows application of mind. Unfortunately, it is absent in this case. The trial Court has rightly discarded that sanction. I agree with those findings.

13. For the above discussion, the findings are not erroneous. There is no merit in the Appeal. No interference is warranted. Hence, the Appeal is dismissed.

(S. M. MODAK, J.)