

Shiv/Satish

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1278 OF 2012**

The State of Maharashtra

... Appellant

Vs.

Shriram Suka Choudhari

R/at Sector 29

Trishila Society, Vashi

Navi Mumbai. District Thane

... Respondent

Mr. Y. Y. Dabke APP for the Appellant-State.

Mr. Ganesh Gole with Mr. Bhavin Jain for the Respondent.

CORAM : S. M. MODAK, J.

DATED : 8TH FEBRUARY 2023

JUDGMENT :

1. The Respondent-accused, who was working as A.P.I. and attached to Nerul police station was acquitted by the Special Judge (Anti Corruption) Thane for demanding and accepting illegal gratification and for other allied offences.

2. The evidence on point of demand was not accepted by the trial Court in view of other available material on record. Whereas evidence on point of acceptance was not accepted in view of variance in evidence of witnesses. There is challenge to correctness of those findings at the instance of the Appellant-State. So the issue involved in this Appeal is whether there is any perversity in those findings.

3. I have heard learned APP Mr.Dabke for the Appellant and learned Advocate Mr. Ganesh Gole for the Respondent-accused. I have perused the record with their assistance. In fact there is no merit in the Appeal. Many a times the prosecution case is not accepted as there is not consistency in testimony of witnesses, however, in this case, I find that there is not only inconsistency but there are other circumstances on record which itself creates doubt about overall prosecution case. The trial Court has rightly emphasized on it and has passed judgment of acquittal. I agree with those findings. I will give the reasons hereinafter.

4. The complainant-Sanjay Agrawal is an Advocate by profession. He stays at Nerul along with his family. He was beaten by one Surindersingh Gyanchand Chhabra. On the complaint of Shri.Agarwal, Nerul police have registered an offence on 11th January 2004, under Sections 325 and 504 of IPC. The present Respondent was an Investigating Officer in that offence. In fact, when the complainant has approached the police for redressal of his grievance, instead of remedying that, he was required to approach Anti-Corruption Bureau in respect of misdeeds committed by Respondent. Under the garb of assisting the complainant, Respondent-accused demanded illegal gratification of Rs.5000/- from the complainant. The first demand was made on 12th January 2004. Again this demand was reiterated on 16th January 2004, when the complainant visited police station for purpose of follow up. There, he paid Rs.3000/-. Though during trial, the complainant has stick up to his version, both the demands were not proved. Because, unfortunately or to the fortune of Respondent,

there are materials on record which suggest that in fact the Respondent was not present in the police station on 12th January 2004 and on 16th January 2004.

5. Again there was reiteration of demand on 21st January 2004. However, on this occasion the place was not the police station but house of the complainant, the Respondent-accused visited his house in the morning hours and reiterated the demand. It is but natural for the complainant to be annoyed by such conduct of Respondent and hence, the complainant approached Anti Corruption Bureau on 21st January 2004.

6. Then, after completing the pre-trap formalities, the trap was laid on 21st January 2004 at about 6 pm in the house of the complainant. The Respondent was called there. However, the venue was changed and all the raiding party members went to hotel which is called as Biryani and Kabab corner. In that hotel, the complainant offered a bribe of Rs.2000/-. Though the Respondent initially accepted the tainted currency notes, after apprehending about some foul play, tried to escape from the spot. He was caught at a distance. However, those notes could not be found with him. Though the trap panch PW No.2 was examined, the trial Court found certain variances, such as, who went inside the hotel, where the money was kept and what were the talks when Respondent along with the complainant sat in the hotel, were some of the areas of variances. Hence, the evidence on the point of acceptance was not believed.

7. The raiding party members tried to search for the tainted

currency notes in and around the hotel, but they could not be traced out. There are witnesses from the hotel on the point of searching of tainted currency notes, however, even they could not search it out. Even the Respondent was medically examined in order to ascertain whether he has swallowed those notes. However, nothing was found during his internal examination.

8. After the trap, the formalities were completed and FIR was lodged for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of Prevention of Corruption Act. Additionally, Sections 353 and 201 of IPC were also applied.

9. During the trial, the prosecution made every attempt to bring on record the evidence and on every aspect, they have examined in all 20 witnesses. However, it could not satisfy the conscious of the trial Court. Except the sanction, the prosecution could not prove the ingredients of the offences charged. That is why there was a judgment of acquittal dated 19th May 2012, passed by the learned Special Judge, Anti Corruption Bureau, Thane. It is challenged at the instance of the State.

10. The Prosecution has taken liberty to examine the witnesses on every aspect. It includes a witness who has registered a complaint under the provisions of Prevention of Corruption Act. It includes the witness who has handed over the papers of investigation which was investigated by the Respondent-accused under the Indian Penal Code. In fact, they are not the material witnesses. The witnesses can be classified into two categories. One category deals with the witnesses

on the point of proof of an offence under the Prevention of Corruption Act. Second category deals with witnesses on the point of proof of offences under the Indian Penal Code. So far as proof of sanction is concerned, the prosecution examined the Sanctioning Authority - PW No.18 – Director General of Police – Kamal Kashyap. At the relevant time, he was Director General of Police, Maharashtra. As the Respondent was working as Assistant Police Inspector, Nerul Police Station, he was competent to grant sanction. The trial Court gave finding that the sanction is proper and by the Competent Officer. This is not seriously challenged before this Court.

11. The first demand by the Respondent on 12th January 2004 when the complainant visited Nerul Police Station, was not proved. If at all demand is made, the Respondent ought to be in the police station. The evidence of PW No.9 API – Patale suggest that on 12th January 2004, the Respondent-accused was not present in the police station. The complainant-Sanjay Agarwal came there at about 10.00 to 10.30 a.m., but the Respondent was not there but in fact, he was on Naka-bandi duty and he left the police station at 10.20 a.m. Even there is an entry to that effect in Station diary. The true copy of that station diary entry is filed on record. This is not a document which is prepared by the Respondent-accused but entry must have been taken by Station House Officer. The trial Court has rightly disbelieved the evidence in respect of that demand. If the Respondent was on Naka-bandi duty, how he could remain present in the police station. To the misfortune of the complainant, this documentary evidence assist the Respondent-accused. I am inclined to believe it as it has been done by the trial Court.

12. The trial Court has also not believed evidence on the point of demand dated 16th January 2004. At that time also, the complainant visited Nerul Police Station. This time also to the misfortune of the complainant, there is record which suggest that the Respondent was on casual leave. Even the timings of meeting the Respondent on 12th January 2004 is earlier and timing of leaving police station for Naka bandi duty is later. It is important to note that demand was made after both returned to police station by visiting the spot. So the timing of demand must be after 10.20 a.m., and the money was demanded in order to make the case strong. The reasoning find place in para 17 of the judgment under challenge. If there is record in the form of an order at Exh.90, how the complainant can be believed that he visited police station on 16th January 2004 and paid Rs.3000/- by keeping it in drawer of the table. Exh.90 shows that the Respondent was permitted to leave headquarter at 5.30 p.m., on 16th January 2004, whereas, the timings of visit are in between 6.00 to 7.00 p.m The prosecution has not challenged this document. The trial Court rightly disbelieved evidence on this point for demand.

13. On the point of demand of 21st January 2004, we have got the evidence of the complainant and his wife PW No.6 – Amerjeetkaur Agrawal. If we read their evidence, we may find that the Respondent-Accused has visited his house and reiterated the demand for remaining amount of Rs.2000/-. The evidence on that aspect is very cryptic. No details are given.

Evidence on the point of acceptance

14. Here, we have got evidence of the complainant, PW No.2 – Kalpana Nikhade. About completing the post trap formalities, we have got the evidence of PW No.3 – Anil Waghmare, another panch and raiding party members PW No.5 – Prakash Warke, PW No.8 – Dilip Daund, PW No.20 – Investigating Officer Shri Pramod Tambe.

15. PW 1 and PW 2 were cross examined at great length. I have gone into those details. It is for the reason that evidence on point of demand is falsified on the basis of documentary evidence. It was decided that the Respondent will come to house of the complainant on 21st January 2004. The raiding party was ready and they have hidden themselves in the flat, however, the Respondent-accused did not turn up there. As per telephonic discussion, he told the complainant to come to Food corner. Accordingly, all of them went there.

16. The complainant was again required to call the Respondent on mobile. Then after few minutes he came there. There was discussion amongst themselves as to why he was late. There was discussion about making arrangement by panchas. Then the accused also enquired about cash of Rs.2,000/-. The complainant assured that he has brought it. They went towards footpath and at that point of time, money was offered. The accused accepted those tainted currency notes, however, the complainant took some time in giving signal, instead he personally went and met PI Tambe. Then PI Tambe and other members went towards the Respondent-accused. The Respondent-accused tried to escape. He was caught at some distance

and PI Tambe enquired about the amount with the Respondent-accused. The Respondent did not replied. The examination was done under ultra violet light and anthracene powder was found on the shirt, pocket and hands of the Respondent-accused.

17. So far as above incidents are concerned, the trial Court observed that there is variance in between evidence of PW 1 on the one hand and PW 2 on the other hand. If both were witness to same incident atleast they were supposed to depose on the same line. If there is variance on major particular they cannot be believed, if there is variance in respect of minor particulars it can be said to be natural.

18. The trial Court noticed variance on the material particulars and that is recorded in paras 19 and 20. According to panch witness PW 2, the complainant and Hawaldar Mullik went inside hotel and talk took place there. Whereas according to the complainant, he alone went inside hotel. So this creates doubt as to whether it is complainant only or he along with panch witness went inside the hotel. During cross examination, PW 2 stated that initial talk took place inside hotel and he was present there and thereafter they went out of hotel.

19. Furthermore, the trial Court noticed one more variance on material particular in respect of accepting tainted currency notes and where the Respondent-accused had kept it. According to the complainant, he kept it in his left hand side pocket of safari. Whereas according to panch witness, the money was kept on right hand side pocket of safari. It is true that place where tainted currency notes are

kept is very important. This is also more important particularly when tainted currency notes were found and when both have witnessed the incident, they must speak in tandem where the money was kept. This certainly varies in material particular. According to Investigating Officer Mr.Tambe after currency notes were not found all went to Nerul police station and at that time examination was done with the help of ultra violet light and trap panchnama was prepared there. Whereas panch witness PW 2 stated that panchnama was typed at the spot of incident and signatures were taken in the police station. There may be consistency in between Investigating Officer Mr.Tambe and another panch PW 3 relating to formalities completed after trap but the fact remains and it is that, there is variance in respect of incident that took place earlier to trap and about actual trap.

20. PW 5 Prakash Warke was police constable attached to Anti Corruption Bureau, Thane whereas PW 8 Dilip Daund was also attached to Anti Corruption Bureau, Thane. They were members of raiding party. Their role started after there was offer. They were witness to the incident, after trap, PW 8 went to Nerul police station along with PI Tambe and accused. Whereas witness Daund also went to police station but he went along with complainant. PW 4- Mahendra Utekar, is the Manager of Dolphine Hotel whereas PW 11 Mohd. Hafiz was owner of the Hotel Dum Biryani. At the time of trap both these persons were present in their respective establishments. So their evidence is not much useful to the prosecution.

21. So admittedly, the tainted currency notes were not recovered during investigation. Even the Respondent was medically examined at

Thane Civil Hospital. There are two witnesses called from Civil hospital. They are PW 12 Dr. Vijay Kalvade and PW 13-Dr. Tejaswini Bhagat. Though the Respondent was sent and initially examined by PW 12 Dr. Kalvade, he has not taken X-ray but he sent it to radiologist. Dr. Bhagat took X-ray of abdomen and pelvis. She has not noticed any foreign body however, for the second opinion she has sent accused to J. J. Hospital. Even PW 14 Dr. Nirupama from J.J. hospital, has also not noticed any foreign body in the body of accused. The prosecution made every attempt to search for tainted notes, but they were neither found with the Respondent nor anywhere at the spot or swallowed by the Respondent-accused.

22. The tainted currency notes is important piece of evidence which corroborates acceptance of illegal gratification by the Respondent-accused. Unfortunately, this piece of evidence is not available and benefit has to be given to the Respondent-accused. It is true that when the hands and clothes of the Respondent-accused were examined in ultra violet light, they noticed anthracene powder. However, this piece of evidence only creates doubt but does not conclusively establish that the Respondent-accused having accepted tainted currency notes. Further more, as noticed earlier there was variance in the testimony of PW 1 and PW 2 on material aspects. So the trial Court has rightly discarded evidence on the point of acceptance.

23. It is true that PI Tambe and other raiding party members followed the Respondent-accused when he tried to escape from the spot. It is true that they were not in uniform. So piece of this

evidence leads to conclusion that the Respondent-accused has obstructed the raiding party members in discharge of their official duty. There may be various reasons for escaping from the spot. It is difficult to gather that the Respondent-accused tried to escape after having caught by the raiding party members, who were public servants. This evidence is absent. The trial Court rightly discarded evidence so as to prove the offence under section 353 of the Indian Penal Code.

24. A person can be convicted if he destroys piece of evidence. In this case, the evidence in form of tainted currency notes were destroyed or disappeared at the instance of the Respondent-accused. However, when evidence on the point of trap is not satisfactory, the Respondent-accused cannot be blamed for disappearance of evidence. The trial Court rightly discarded that piece of evidence.

25. The prosecution also made an attempt to prove conversation in between the complainant and the Respondent-accused by producing call details report. On that aspect we have got evidence of PW 16- P.R. Rao, who is the Vigilance Officer in MTNL. The evidence of PW 17-Padmakar Naik, who is Head of Security in Mats Telephone Pvt. Ltd. and PW 19 - Serjerao Sakpal, who is subscriber. Through PW 16 Mr.Rao the details of mobile number 98693 74908 were brought on record. The subscriber is PW 19-Serjerao Sakpal has deposed something different. Though he purchased the sim card for mobile number 98693 74908, when he opened his mobile, he noticed that his mobile number is 98693 74913. Whereas mobile number 98693 74908 belongs to the complainant Sanjay Agarwal. This

confusion is not cleared by the prosecution whereas PW 17-Padmakar Naik was examined to prove details of call from mobile number 98207 68535. It belongs to the Respondent-accused. I do not think this piece of evidence will be useful to the prosecution.

26. Considering the above discussion, it cannot be said that the findings of the trial Court are perverse or it cannot be said that the trial Court has drawn conclusion after wrongly evaluating evidence. The view taken by the trial Court is possible view. The circumstances brought on record are not sufficient to prove evidence against the Respondent-accused beyond reasonable doubt. The judgment of acquittal cannot be interfered with just because another view is possible. The view taken is probable view. Hence, I find no merits in the Appeal and hence, it is dismissed.

(S. M. MODAK, J.)