



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 69 OF 2016

The State of Maharashtra,
Through Dy. Superintendent of Police,
Anti Corruption Bureau, Ahmednagar,
[C.R. No. 3038/2010]

... Appellant
(Orig. Complainant)

Versus

Manikrao Bappasaheb Dhakane,
Age : 49 years,
Occu. : Service as Agricultural Supervisor,
Circle Agriculture Office, Bodhegaon,
Tq. Shevgaon, R/o. In the room of Rakhmaji
Shelke, Khandobanagar, Shevgaon,
Originally R/o. Nagalwadi, Ladjalgaon,
Tq. Shevgaon, Dist. Ahmednagar.

... Respondent.

...
Mrs. Ashlesha S. Deshmukh, APP for Appellant – State.
Mr. K. D. Bade Patil, Advocate for Respondent – Sole.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 30th APRIL, 2024

PRONOUNCED ON : 09th MAY, 2024

JUDGMENT :

1. Feeling aggrieved by the judgment and order of acquittal dated 26.03.2015 passed by learned Special Judge (ACB), Ahmednagar in Special Case (ACB) No. 07 of 2011, State has come in appeal by filing instant appeal.

CASE OF PROSECUTION IN TRIAL COURT IN BRIEF IS AS UNDER

2. Complainant Dnyandeo Kondiba Chemte was a beneficiary of subsidy for taking field pond under special Government Scheme. He approached accused, who was working as a Supervisor in agriculture department for clearing the bills. Accused demanded Rs.5,000/- out of the subsidy. Complaint was lodged by Dnyandeo. ACB authorities arranged planned and conducted raid. Complaint was lodged by Investigating Officer and accused was charge-sheeted and tried by Special Judge. Evidence adduced by prosecution was recorded and put to analysis by learned trial Judge. Learned trial Court reached to a finding and conclusion, that, prosecution failed to establish the charges and vide its judgment and order dated 26.03.2015, acquitted the accused.

Resultantly, State has come up in appeal against said Judgment by filing instant appeal on various grounds raised in appeal memo.

SUBMISSIONS

3. According to learned APP, accused a Supervisor demanded bribe of Rs.5,000/- for clearing bill of complainant, who was beneficiary of a subsidy. That, there were repeated demands and finally complaint was lodged. That, trap was planned and

arranged in presence of independent shadow panch. Both complainant and shadow panch were apprised about the procedure. They both went together to pay bribe on demand. That, demand was made followed by acceptance. According to learned APP, both complainant and panch witness are lending support to each other. That, their evidence has remained unshaken. Therefore prosecution had proved both demand as well as acceptance.

4. Learned APP further pointed out that, even sanctioning authority has been examined. Sanction was accorded upon due application of mind and all necessary ingredients for attracting the charges were established and proved, it is her submission that, case was proved beyond reasonable doubt. However, learned trial court failed to appreciate the evidence in proper perspective and did not apply the settle law. Therefore according to her, such judgment and order is liable to be set aside by allowing the appeal.

5. Supporting the judgment, learned counsel for accused submitted that, prosecution miserably failed to establish the charges. That, neither demand nor acceptance is cogently proved. Answers given by complainant and panch witness while under cross rendered the case of prosecution doubtful. According to

learned counsel, even sanction is improper and not valid. Therefore, learned trial court committed no error in refusing to accept the case of prosecution. According to him, there is no merits in the appeal and so he prays to dismiss the appeal.

GIST OF EVIDENCE IN TRIAL COURT

6. **PW1** Krishnarao at Exh.19 deposed that, he was Divisional Joint Director of Agriculture. He had authority to appoint and remove accused an Agriculture Supervisor. He received papers from ACB, Nashik. He verified the same and on getting satisfied about sufficiency of evidence, accorded sanction at Exh.20.

PW2 Dnyandeo, complainant claimed at Exh.22 that, he is a member of joint family and they have agricultural land. Proposal for creating pond in the field was sanctioned. That work was completed, and therefore, they had applied for subsidy. In that connection, he approached accused and requested to issue cheque. Accused visited the field and informed complainant that Rs.82,000/- has been sanctioned and handed over cheque of only Rs.73,000/-, which was in the name of his sister-in-law. For remaining amount of Rs.9,000/-, accused demanded Rs.5,000/-. Therefore, complaint at Exh.23 was lodged. He and panch were

introduced to each other and they were explained the procedure of trap. In presence of panch, he received call from accused and it was decided to meet at Bodhegaon at Hotel Apna. Accordingly, he and panch went and their accused made demand, tainted currency was offered and accepted and signal was relayed and accused was apprehended.

PW3 Suresh, shadow panch also stated about being introduced to complainant by ACB authorities and about he and complainant explained about the procedure, they reached at Shevgaon and call being made by accused to complainant and thereafter, they being called by accused to Bodhegaon in a hotel. Accused demanded Rs.5,000/-. It was paid by complainant and an amount was accepted and on signal was being given by complainant, accused was apprehended.

PW4 PI Sham Shinde is the Investigating Officer, who narrated all steps taken during investigation, till filing charge-sheet.

ANALYSIS

7. On evaluating the entire evidence, it seems to be the complaint of PW2 Dnyandeo that having constructed field pond under scheme, he was entitled to subsidy to the tune of

Rs.82,000/-. But, accused initially issued cheque of Rs.73,000/- and for remaining amount of Rs.9,000/-, he demanded Rs.5,000/- and hence, he approached ACB authorities. ACB also seems to have arranged PW3 Suresh to act as a panch and they both allegedly visited accused and there were talks in a hotel.

8. However, as pointed out by learned counsel for respondent accused, documents placed on record, more particularly, report of actual work executed and done, measurement of the pond was carried out for constructing pond admeasuring 30 x 30 x 3 mtr. and after measurement and inspection, though amount sanctioned was Rs.82,240/-, as per measurement, amount was shown to be sanction to the tune of Rs.73,693/-.

9. PW2 Dnyandeo complainant is unable to state in cross whether the size of the pond on actual measurement was 30 x 30 x 3.5 mtr. and therefore the amount of subsidy was reduced to Rs.73,000/- from Rs.82,000/-. The above material clearly shows that, complainant was entitled only to the tune of Rs.73,000/- for the work executed and he has already admitted about receiving cheque to the tune of such amount, which is also drawn in favour of his sister-in-law. Therefore, there is no material that, amount

sanctioned was of Rs.82,000/- and only Rs.73,000/- were paid by way of cheque and deliberately cheque of Rs.9,000/- withheld with sole intention to receive bribe of Rs.5,000/-.

10. Secondly, apart from above, sanctioning authority PW1 Krishnarao in paragraph 2 of his cross has candidly admitted that, prima facie on going through the papers of investigation, no case for offence under section 7 of P.C. Act was made out, and therefore, he did not accord sanction to prosecute accused under section 7 of P.C. Act.

11. Thirdly, it seems that, according to complainant, demand of Rs.5,000/- was made one month prior to the complaint. Therefore, complaint is also not lodged promptly. Complaint has been lodged only after receipt of cheque of Rs.73,000/-. He seems to be expecting of Rs.82,000, which according to him sanctioned, but in fact, on inspection and verification, as per work he was only entitled for Rs.73,000/-. Therefore, complaint seems to be motivated on some misconception of facts.

12. Complainant claims that, after demand, accused accepted the amount and kept it in his shirt pocket. But, shadow panch has admitted in cross that there are no traces of anthracene to the shirt pocket of accused.

13. Consequently, in the light of above short falls, fatal lapses and lacunas, learned trial court, in the considered opinion of this court has not committed any error in appreciating the evidence or there is any perversity while acquitting the accused. Resultantly, no case being made out, I proceed to pass following order :-

ORDER

The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)