



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 165 OF 2006

The State of Maharashtra
Through Mr. Manikrao Kashinath Akolkar,
PI, ACB, Ahmednagar. ... Appellant

Versus

Arjun Tukaram Bhabad
Age 52 years, Occu. Service,
ASI, Topkhana Police Station,
Ahmednagar. ... Respondent
R/o Police Hqs, Ahmednagar. [Orig. accused]

.....
Mr. N. D. Batule, APP for the Appellant-State.
Mr. Satej S. Jadhav, Advocate for the Respondent.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 02.02.2024

Pronounced on : 09.02.2024

JUDGMENT :

1. The State had preferred instant appeal on account of acquittal of respondent by judgment and order dated 28.11.2005 in Special Case (A/C) No. 5 of 2002 which was tried for the offence punishable under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

2. Learned APP would point out that complainant is a history-sheeter. There was externment action initiated by police authorities. That, present accused respondent, who was a police officer attached to Topkhana Police Station, had assured to clear applicant's criminal track record and had thereby demanded Rs.5,000/-. That, complainant agreed to initially pay amount of Rs.1,000/- and remaining amount of Rs.4,000/- was to be paid later on and thereafter complainant had approached Anti Corruption Bureau [ACB] authorities. His complaint was entertained, trap was laid and accused was apprehended. That, demand and acceptance was also proved examining pancha witness. However, learned trial court has unfortunately acquitted accused on the grounds that **firstly**, timing of demand and acceptance stated by complainant and shadow pancha is distinct and there is variance; **secondly**, accused was not at all authorized to give clean chit as is alleged by complainant; **thirdly**, some false defence of loan transaction and its repayment was put forth but there is no distinct evidence to that extent.

Learned APP submits that such grounds were contrary to the evidence. Demand was made, its verification was done, trap was laid, independent witness like shadow pancha had accompanied complainant. Amount was also accepted by accused and kept in his

pocket and thereafter he was apprehended. Therefore, offence was complete and evidence of complainant, shadow pancha and Investigating Officer was itself sufficient to hold conviction. Even sanction was duly accorded after application of mind, but all such aspects are not considered by learned trial court and therefore the findings being contrary to the evidence, he prays to set aside the judgment and allow the appeal.

3. In answer to above, learned counsel for the accused would submit that prosecution miserably failed to establish charges beyond reasonable doubt. He pointed out that apart from material omissions and contradictions in the prosecution witnesses, it has come on record that accused was not at all authorized to clear accused of his criminal history or to protect him from externment order. Thus, he pointed out that therefore, there is no question of demanding money to favour complainant. There is false implication by complainant, who has a history or crimes against him. In fact, the so called money transaction was pertaining to a loan. Such defence has been correctly appreciated and learned trial Judge has rightly held that prosecution failed to establish the case by adducing clear, cogent and reliable evidence. Therefore, there is no illegality or perversity and hence he prays to dismiss the appeal for want of merit.

4. In the light of above submissions, record before the learned trial court is put to scrutiny. It seems that in support of its case prosecution has, apart from documentary evidence, adduced evidence of in all five witnesses.

5. **PW1** Sahebrao is the complainant and his evidence is at Exhibit 9. Sum and substance of his evidence is that there were 21 criminal cases lodged against him. That, at the instance of accused, he was externed for a period of one month. On 27.02.2022, accused met complainant and told him that he should pay Rs.5,000/- and accused would clear his earlier record. Complainant pleaded to him that he is poor and not in capacity to pay the said amount, but assured to give Rs.1,000/- and would pay remaining Rs.4,000/- later on. Complainant approached ACB on 01.03.2002, lodged complaint Exhibit 10 after which pancha was called in whose presence complaint was verified. Thereafter, pancha and this witness again went to Topkhana police station and met accused during which accused allegedly asked whether amount of Rs.5,000/- was brought and complainant allegedly told him that he had Rs.1,000/- today and remaining amount would be paid after three to four days. Thereafter, them came back to ACB office.

Complainant further deposed that, again they were called on next day at 9.00 a.m. Trap amount applied with anthracene was given. Demonstration regarding effect of Ultra Violate (UV) light was shown. **Then witness stated that accused had called him at Amar Hotel between 2.00 to 3.00 p.m.** and it was agreed that on demand and acceptance, necessary signal by wiping face with handkerchief would be given. Accordingly, at 9.30 a.m., he and pancha went to Amar Hotel and they were waiting inside the hotel till 2.30 p.m., whereas raiding party sat in the jeep. Around 2.30 p.m., accused came, asked complainant to bring liquor bottle and then questioned complainant whether amount was brought upon which complainant told accused that he had brought Rs.1,000/- and would pay Rs.4,000/- later on. He removed the amount and gave it to the accused. Accused accepted the same, counted it and **kept it in his purse.** Thereafter, raiding party apprehended accused.

6. **PW2** Girdhar, who acted as shadow pancha, stated that he was called at ACB office around 5.30 p.m. He read the complaint Exhibit 10 and also caused signature and agreed to act as pancha. Police officer told this witness to accompany complainant to Topkhana Police Station. He and complainant went to the police station. According to him, accused questioned complainant about identity of

this witness and it was disclosed that he was complainant's maternal uncle. Then accused questioned complainant whether he had brought the amount, upon which complainant allegedly told him that he had not brought the amount and accused told to pay on the next day. He Stated that accused told that the amount should be brought at Amar Hotel. Thereafter, verification panchanama was drawn and as told, next day around 9.30 a.m. again they visited the ACB office. Tainted currency was handed over to be paid on demand. Pre-trap panchanama Exhibit 15 was drawn and thereafter they left ACB office around 11.30 a.m. Complainant and this witness went in Amar Hotel. Accused had not reached there. Around 2.15 p.m., accused came and complainant asked accused whether he would take anything, upon which accused named his brand. He stated that again accused asked introduction of this witness and complainant told that he was his maternal uncle. Then, accused questioned complainant whether he brought Rs.1,000/- upon which complainant removed the amount and handed the same to accused. Accused accepted and kept it in the **pant pocket**. Complainant went out, gave signal and raiding part came and apprehended accused and on examining under UV light, anthracene powder was reflected on hands and shirt pocket of complainant and also on pant pocket and fingers of accused. Thereafter, post-trap panchanama Exhibit 16 was drawn.

7. **PW3** Manik Akolkar, PI, was the Investigating Officer, who narrated about stapes taken after receipt of complaint and investigation being handed over to PW5.

8. **PW4** Tukaram Chavan, Additional Commission was the sanctioning authority who accorded sanction.

9. **PW5** Ali Ahmad Kaze was the subsequent Investigating Officer, who after completion of investigation, chargesheeted accused.

10. Therefore, sum and substance of the prosecution case is that complainant is a criminal against whom externment action was initiated by Topkhana police station. It is specific case that present accused, who was working as A.S.I. in Topkhana police station, assured complainant to clear his criminal history on payment of Rs.5,000/-. Therefore, complainant had filed complaint followed by trap being laid.

11. Whereas, defence of accused is that it is false implication. That, accused accepted the amount believing it to be loan returned by one Pawalas Awchite who was neighbour of complainant. That, there was

no assurance of clearing criminal history and moreover, accused was not competent also to do so and hence complaint is apparently false.

12. According to prosecution, demand was made by accused on 27.02.2002. Complainant assured to pay Rs.1,000/- by way of advance and remaining amount of Rs.4,000/- would be paid subsequently. But he instead approached ACB and lodged complaint Exhibit 10. It seems that on receipt of complaint, ACB authorities called PW2 pancha. Verification was done followed by pre-trap panchanama, visit of complainant and pancha to Amar Hotel and there, demand again made and amount was accepted, followed by post-trap panchanama and apprehension of accused.

13. Considering the nature of accusation, evidence of PW1 and PW2 is of significance. In cases of such nature, admittedly, complainant is treated as accomplice and therefore strict corroboration by way of independent witness is insisted upon. It is to be verified that evidence of complainant and his companion shadow pancha must be consistent and lending support to each other. Therefore, there evidence is placed in juxtaposition and put to scrutiny, including answers given by them while facing cross.

14. On minute scrutiny of evidence of PW1 and PW2, though there is shown to be conversation initially at Topkhana police station at the time of verification, for what purpose amount was demanded, is not stated by pancha. Even evidence of pancha witness is found to be silent about the sum of money demanded which is specified by complainant. Evidence of pancha witness is absolutely silent about accused demanding Rs.5,000/- or about complainant informing about arranging Rs.1,000/-. Therefore, as pointed out by learned counsel for respondent, here, evidence of complainant and shadow pancha is not consistent on material count.

15. It seems that during initial talk between complainant and accused, i.e. on 27.02.2002 itself, complainant had informed accused that he would pay Rs.1,000/- and remaining Rs.4,000/- will be paid later on. Therefore, there was no question for accused again asking him on 01.03.2002 to pay Rs.5,000/-. Therefore, there seems to be a deliberate attempt on the part of complainant to show that, in presence of pancha also demand was made of Rs.5,000/- and again he told accused that he had Rs.1,000/- and would pay Rs.4,000/- later on.

16. Further evidence of complainant is that they were called at Amar Hotel between 2.00 to 3.00 p.m., but PW2 deposed that they went to Amar Hotel around 11.30 a.m. i.e. even when complainant spoke about he being called between 2.00 to 3.00 p.m. Even complainant has stated that accused came around 2.15 to 2.30 p.m. Therefore, such version of PW1 and PW2 also clearly shows that desperate attempts were made to trap accused by complainant. PW2 in cross has admitted that it is accused who had telephoned complainant to come at Amar Hotel. Therefore it is doubtful whether accused himself had asked complainant to come with money at Amar Hotel. It is also pertinent to note that according to PW1 complainant, after accepting amount, accused kept it in purse and he kept the purse in his pant pocket, but PW2 pancha does not specify about amount being kept in purse. Therefore, as pointed out, there are variances in the testimony of PW1 and PW2.

17. As regards the defence raised by accused is concerned, that complainant had called accused to pay the amount which Pawalas Awchite had send and hence, believing complainant, amount handed over was accepted and it was not at all bribe amount. In support of such defence, even said person named Pawalas Awchite is examined as DW1 by accused who has deposed that he had taken Rs.1,000/-

from accused as hand loan and hence towards it repayment, he had asked complainant to pay the accused and complainant had agreed to pay Rs.1,000/- to accused. While complainant is cross-examined, in para 13, one comes across specific suggestions about DW1, but complainant has denied knowing him, he to be residing near his house and about DW1 giving him amount to be paid to the accused. DW1 in his testimony has deposed about he to be acquainted with accused, that they were working together and that there used to be transactions between them for borrowing loan from each other. DW1 also deposed that he had taken hand loan of Rs.1,000/- and assured to repay it personally or through person named Kate, who was neighbour. He further specifically deposed that he told accused that he will send amount through Kate and even further informed complainant that he was making arrangement for the amount and that he should further pay to the accused.

Resultantly, here, evidence has been adduced by accused in support of his defence. Law is fairly settled that accused need only probabalize his case. Here he has gone beyond probabalizing by adducing very evidence of DW1.

18. Therefore, on going through the evidence of PW1 and PW2 and answers given by PW2, it is clear that accused had not, on his own, suggested spot of Amar Hotel for payment of money. Rather pancha witness had admitted that complainant had telephoned and called accused. Therefore, such quality of evidence creates doubt about version of prosecution about accused raising demand by way of illegal gratification to clear accused.

19. It is further pointed out by learned counsel for respondent accused that here, accused was mere ASI ranking officer and he had no authorization to clear criminal history and is is rather a job of higher police officers. There is force in such submission. When accused was not at all in a position to clear history and when there is no other material to show that the amount was to be paid to other person for getting record clear, it is difficult to accept version of prosecution that accused had demanded bribe to clear criminal history of complainant.

20. Therefore, there are several shortfalls in the evidence of prosecution. As stated above, testimonies of PW1 and PW2 are not tallying and corroborating each other on material counts. There is material suggesting acceptance for some other loan transaction and

not bribe. Therefore, it is a case of benefit of doubt as prosecution has failed to establish its case beyond reasonable doubt.

21. After going through the impugned judgment, this Court is convinced that learned trial Judge has correctly appreciated the case of prosecution as well as defence. Finding evidence of PW1 and PW2 to be not supporting each other and differing on material count, their testimonies have not been accepted. Hence, no fault can be found in the appreciation as well as conclusion reached at. Accordingly, I proceed to pass the following order:

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]