



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CRIMINAL APPEAL NO. 154 OF 2005
WITH
CRIMINAL APPLICATION NO. 1258 OF 2022
IN CRIMINAL APPEAL NO. 154 OF 2005**

Mohammad Abdul Salim
s/o Mohammad Abdul Halim,
Age 54 years, Occu. Service,
R/o. Akhadabalapur, Tq. Kalamnuri,
District Parbhani.

... Appellant
[Orig. Accused]

versus

The State of Maharashtra..

... respondent

.....
Mr. Shailesh S. Chapalgaonkar, Advocate for the Appellant.
Mr. N. D. Batule, APP for Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 31.01.2024

Pronounced on : 07.02.2024

JUDGMENT :

1. Convict for offence punishable under Sections 7, 13(1)(d) r/w 13 (2) of the Prevention of Corruption Act, 1988 [PC Act] is hereby assailing the judgment and order passed by Special Judge, Parbhani dated 28.02.2005 in Special Case No. 8 of 2002.

2. PW2 Shivaji had approached the appellant-convict on 19.10.2001 with a registered sale deed requesting convict, a Talathi, to give effect to the transaction by carrying out mutation entry. But accused did not certify it. Again on 31.12.2001 PW2 approached accused with similar request to carry out and certify mutation i.e. while accused was at Yeldari and that time accused demanded amount Rs.800/- for certification of mutation in the name of his brother Rajaram. Finally, after negotiations accused reduced the amount to Rs.400/-. On the same day, complainant paid Rs.150/- to the accused and assured to repay the remaining amount of Rs.250/- on 09.01.2002.

Thereafter PW2 approached Anti Corruption Bureau [ACB], Parbhani and filed complaint which was entertained and investigated by PW4 after deploying PW3 Chandrakant as a pancha and accordingly, pre-trap panchanama was drawn and accused was approached by complainant and shadow pancha as decided and accused was apprehended while accepting amount and hence he was chargesheeted and tried by the court of Special Judge, Parbhani, who on appreciating the oral and documentary evidence, after trial, held charges proved and recorded conviction, which is now assailed before this Court.

3. Learned counsel for the appellant would submit that there is no cogent, reliable and convincing evidence. He pointed out that demand and acceptance is not proved. He took this Court through the evidence of prosecution witnesses and also answers given by them in cross and submitted that evidence is not convincing. He submitted that prosecution witness PW1, a Bank Official, has not supported prosecution. That, learned trial court has only considered evidence of pancha PW3 Chandrakant. Sanction is also without proper application of mind and is rather accorded in a mechanical way i.e. without verifying documents. According to him, mutation entry was already sanctioned and therefore there was no question of demand of money for effecting any mutation entry. He pointed out that ACB authority has forcibly obtained signature on the statement of accused. As essential ingredients for attracting none of the above offences were available, conviction was not warranted, however learned trial court has straightway accepted the case of prosecution and has recorded guilt and he prays to set aside the same.

4. Opposing the above appeal, learned APP would submit that there is overwhelming evidence regarding complainant approaching accused for getting mutation entry done which was official duty of accused who was Talathi, but he demanded bribe. That, part payment

was made and it was accepted and thereafter complainant approached ACB. That, ACB authorities noted the complaint, laid trap by drawing both, pre-trap and post-trap panchanama. Complainant's evidence as well as evidence of PW3 pancha is consistent and both witnesses are corroborating each other. There is demand as well as acceptance of illegal gratification. That, learned trial court has elaborately dealt and discussed the entire oral and documentary evidence. Sanction is also after application of mind and as all necessary ingredients for attracting charges were available, learned trial Judge has correctly appreciated the evidence and has committed no error whatsoever in convicting accused. Thus, he prays that, as there is no merit in the appeal, the same be dismissed.

5. Heard. Perused the papers. Record shows that in support of its case, prosecution has examined following five witnesses:

PW1 Fakirrao, a bank official, deposed about bank premises being used by accused that day for doing his work by occupying a table it being bazar day and about police party conducting raid and apprehending accused.

PW2 Shivaji is the complainant and sum and substance of his evidence is that his brother had purchased land and for effecting mutation entry, this witness had approached accused, a Talathi, and put up an application. His version is that accused had demanded Rs.800/- for doing the needful but finally accused negotiated and brought down the amount to Rs.400/-. Therefore this witness paid Rs.150/- that time and assured to pay remaining Rs.250/- later on and thereafter, he approached ACB office, informed ACB authorities and lodged complaint.

He further deposed that thereafter panchas were called and they were made aware of the contents of the complaint and on due satisfaction, panchas caused signature. He further deposed that he had Rs.300/- and he handed it to police who returned Rs.50/-. After making some demonstration of application of anthracene powder, he was instructed to pay the amount on demand. That, a pre-trap panchanama was drawn. Thereafter, he deposed that he himself and PW3 pancha both went towards Yeldari. It was a *bazar* day. They found accused sitting on the varanda of the bank and on reaching there, complainant asked accused whether extract of mutation and 7 x 12 extract are ready, to which accused answered in affirmative and also questioned whether amount was brought. Complainant claims

that he removed the tainted currency but accused asked him to place it on his table and thereafter accused placed paper over it and thereafter complainant removed handkerchief, which was a signal and then police party entered the veranda and this witness went outside and after 30 minutes he was called back.

PW3 Chandrakant was working as a clerk in District Employee office Parbhani and he deposed about being called to act as a pancha and he agreeing and accordingly he was introduced to the complainant and was appraised about nature of the complaint. This witness stated that he verified the contents of the complaint and thereafter caused signature over it. He further deposed that at ACB office, ACB authorities made some demonstration about application of anthracene powder and examination of hands in Ultra Violet [UV] light and thereafter amount of Rs.250/- being handed over to complainant and he and complainant both going to Yeldari on 09.01.2002 and in his presence accused was asked by complainant whether documents are ready and accused answered in affirmative and further he put up demand of money and thereupon accused placed the currency on the table followed by placing of paper by accused over it and thereafter complainant giving signal upon which police conducted raid and apprehended accused.

PW4 Rangnath Nagare, PI was the Investigating Officer who deposed about all steps taken by him since lodgement of complaint by **PW2** till apprehension of accused and seizure of currency notes.

PW5 Jagdish Maniyar was the sanctioning authority.

6. On re-analysis and re-appreciating the evidence of above five witnesses, it is emerging that **PW2** complainant and **PW3** pancha are consistent about complaint being lodged, verification being done by shadow pancha, pre-trap panchanama being drawn and complainant carrying tainted currency to be handed over on demand and on 09.01.2002, accused, while sitting on the table, asked complainant whether amount was brought and demanded the same, upon which **PW2** placed the tainted currency on the table over which accused allegedly placed paper and on predetermined signal given by complainant, police came.

7. Both these witnesses have given detailed account of the sequence of events that took place i.e. **PW2** approached accused on 30.12.2001 and accused demanded Rs.800/- and finally brought down the bribe amount to Rs.400/- out of which Rs.150 being paid

and remaining Rs.250/- to be paid later on, and therefore complainant approached ACB authorities and lodged complaint and as per directions of ACB authorities, PW3 being called and on his agreement to act as pancha, he accompanying complainant to Yeldari on 09.01.2002.

8. PW3 pancha had also narrated about the events that took place i.e. in the ACB office after verification of complaint, demonstration being carried out, currency being handed over to complainant meant to be further handed over to accused.

9. Though both these witnesses are subjected to extensive cross, except the suggestion that money was kept on the table when accused had bent down to gather documents, there is no other effective cross. In fact, such suggestion itself clearly shows that the meeting between accused and complainant that day is not disputed. Accused was found in possession of tainted currency notes. He was immediately apprehended. Nothing doubtful has been brought in the cross of PW2 and PW3. PW3 is an independent witness. He has completely supported prosecution. Both complainant PW2 and pancha PW3 are found to be unequivocal about all the sequence of events which took place at ACB office till accused being apprehended. Therefore, as

there being nothing to disbelieve their version, there is no hesitation to hold their testimony as credible and trustworthy.

10. **PW5** Jagdish Maniyar was the sanctioning authority and he has deposed about receiving papers, he verifying the same and thereafter according sanction. Nothing adverse has been brought to show that there was non application of mind or sanction accorded mechanically, as is alleged before this court.

11. The offence of demand and acceptance is complete. There is cogent and reliable evidence to that extent. Accused had demanded illegal gratification to perform his official duty and he was apprehended with the tainted currency. Therefore, pre-trap panchanama as well as post-trap panchanama were drawn. Complaint as well as both panchanamas were proved and exhibited. All witnesses had stuck up to their version. At no point their cross was shaken.

12. After going through the impugned judgment, this court has found that all evidence is dealt and discussed in detail and there is proper appreciation. The legal requirements for attracting the charges are very much available. Therefore, findings which are reached are

found to be supported by sound reasons. No case on merits being out, appellant fails and appeal requires to be dismissed. Hence, I proceed to pass the following order:

ORDER

- I. The appeal is hereby dismissed.
- II. In view of dismissal of the Appeal, the application also stands disposed of.

[ABHAY S. WAGHWASE, J.]

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