



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 205 OF 2005

The State of Maharashtra
(through, P. I., ACB, Ahmednagar)

..Appellant
(Ori. Complainant)

Versus

Ashok Shivram Dinkar
Age: 53 yrs., Occu.: Service,
ASI, Pathardi Police Station,
Dist.Ahmednagar, R/o. New
Police Line, Pathardi,
Dist.Ahmednagar.

..Respondent
(Ori. Accused)

...

APP for Appellant : Mr.Aftab Khan

Advocate for Respondent : Mr.R.S.Deshmukh, Senior Counsel i/b.
Mr.Devang Deshmukh

....

CORAM : ABHAY S. WAGHWASE, J.

DATE : 11 JUNE, 2024

JUDGMENT :-

1. State has taken exception to the judgment and order dated 20-12-2004 passed by learned Special Court, Ahmednagar, in Special Case No.6 of 2001, acquitting present respondent from charge under Sections 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act.

FACTS IN BRIEF LEADING TO TRIAL

2. Father of complainant Dnyandeo had lodged complaint against his own son, as a result of which, complainant was admonished. Accused working as ASI at Pathardi Police Station, Dist.Ahmednagar, summoned complainant and demanded Rs.500/- to not to take action on the complaint of his father. As complainant was unwilling to comply the demand, he approached ACB and lodged complaint followed by ACB authorities arranging Panchas, drawing pre-trap panchanama and carrying out raid. Complainant and Pancha visited Police Station to comply with the demand and after complainant handed over demanded amount, pre-determined signal was relayed and raiding party, who was waiting in lay apprehended accused and this was followed by complaint by ACB authorities and after investigation, accused was chargesheeted.

Defence of accused is that there was no demand of illegal gratification as alleged by complainant, rather demand was of hand-loan as they usually used to give and take money and in that backdrop amount was accepted.

In the light of case and counter case, trial was conducted before learned Special Court, Ahmednagar before whom prosecution has adduced evidence of four witnesses. Defence also adduced

evidence of DW1 Eknath Bhaurao Avhad and on appreciating both prosecution evidence and defence evidence, learned Special Judge reached to a finding that prosecution has failed to prove the charges beyond reasonable doubt and thereby acquitted accused by its order dated 20-12-2004.

The above order of acquittal is taken exception to by prosecution on various grounds spelt-out in the appeal memo.

SUBMISSIONS

On behalf of State :

3. Learned APP would submit that complaint was received from PW1 Dnyandeo . Thereafter, all required formalities and procedure were completed. That entire exercise of arranging Panchas, apprising them about complaint, carrying out pre-trap panchanama, was duly conducted. That tainted currency was carried by complainant, who was accompanied by Panchas. That accused accepted illegal gratification. That he was immediately apprehended and was found in possession of tainted currency and therefore, prosecution has established the charges beyond reasonable doubt. He pointed out that though complainant had not supported prosecution, the testimony of Pancha witness, Investigating Officer ought not be

doubted or overlooked by trial Court. Investigating Officer had narrated and deposed all steps taken by him since receipt of complaint till apprehension of accused. Sanctioning authority, who accorded sanction, has also stepped in the witness box and therefore, with such evidence, learned trial Court ought not to have acquitted the accused. According to learned APP, there is apparently improper appreciation of evidence and non-consideration of settled law and for all above reasons, he prays to set aside the impugned judgment and order by allowing appeal.

On behalf of Respondent accused :

4. In answer to above, learned Senior Counsel appearing for respondent accused pointed out that there is false implication. That prosecution has miserably failed to establish the case. According to him, accused has not disputed obtaining money, but it was towards hand-loan and not gratification. That due to previous relations, there used to be give and take of hand-loan and such fact has been candidly admitted by complainant in cross-examination. That there was no reason for demanding illegal gratification. That out of annoyance and anger, complainant has lodged false complaint of demand of illegal gratification and in cross-examination, he admitted

to that extent. Therefore, when essential ingredients of demand was not proved, prosecution case had collapsed. He further pointed out that Pancha witness did not participate or accompany complainant and he is not party to demand, therefore, there is no corroboration to the prosecution story. Therefore, according to learned Senior Counsel, prosecution having miserably failed to bring home the charges and there being no trustworthy and legally acceptable evidence, there is no error on the part of learned trial Court in acquitting accused by holding that prosecution failed to establish demand and acceptance. Lastly, he submitted that there is no merit in the appeal and therefore, he prays to dismiss it.

5. In support of its case, prosecution has examined as many as four witnesses in trial Court. Sum and substance of their evidence is as under :

SUM AND SUBSTANCE OF PROSECUTION EVIDENCE

PW1 Dnyandeo Dada Akolkar is complainant. His evidence is at exh.10. He deposed that his brother's son namely Shrikant demanded Rs.50/-, which resulted into quarrel between them and so he slapped Shrikant, who in turn informed it to his mother. Shrikant also informed about this incident to his grandfather i.e. father of

complainant. Thereafter, father of complainant beat complainant and also lodged complaint at Police Station Karanji Outpost. Complainant was called at Police Station and according to him, accused beat him. After 4-5 days, accused met him and once again told him not to quarrel. He deposed that accused did not tell him that he should pay him Rs.500/-. He again deposed that it did take place that accused told him that he should pay Rs.500/- otherwise he would put him behind bars. As accused demanded money from his father also, this witness approached ACB and lodged complaint exh.11. ACB authorities planned trap by arranging pancha. He and pancha went to accused. He called accused outside by signaling. Accused came out. He paid the amount to accused and accused accepted the amount and went in his room and immediately thereafter, raiding party apprehended accused.

Finding him not supporting, learned APP with the permission of the Court, cross-examined prosecution witness himself. Defence also cross-examined complainant and he admitted about regular hand-loan transactions between him and accused, he filing complaint in anger and there being no direct demand to him by accused.

PW2 Rajesh Anna Kuskar is Pancha. His evidence is at exh.13.

He deposed about being summoned by ACB office, introduced to complainant, going through the complaint, signing it, drawing of pre-trap panchanama exh.14. He deposed about accompanying complainant to the Police Station. He stated that other Pancha namely Mungase, who had expired, had accompanied complainant to the Police Station. He also followed them, but he lodged complaint of missing his own purse. He deposed that there were some talks between complainant and accused and accused asked complainant whether he brought the amount and thereafter, complainant and accused went out of the Police Station. After some time, raiding party arrived and caught accused. During search of accused, he was found in possession of Rs.500/-.

PW3 Ramrao Narayanrao Wagh is Sanctioning Authority. His evidence is at exh.20. He deposed about receiving papers from ACB, studying the papers and according sanction exh.21.

PW4 Manohar Shankar Joshi is the Investigating Officer. His evidence is at exh.22. He deposed about receiving complaint from PW1 Dnyandeo, calling Panchas, arranging pre-trap panchanama, explaining procedure of trap, and on receipt of signal from complainant, apprehending accused, who was found in possession of

tainted currency and therefore, complaint being filed, it being investigated and after obtaining sanction, accused being arrested.

ANALYSIS

6. On re-appreciating and re-analyzing above evidence, it is emerging that PW1 Dnyandeo, complainant is a flip-flop witness. Initially, he supported prosecution to some extent i.e. by deposing about accused demanding Rs.500/- and therefore, he approaching ACB, who on his complaint, planned and arranged trap, however, subsequently, while deposing about main trap, he does not speak about demand being made by accused. He straightaway deposed that after reaching Police Station, he called accused outside and without making demand, he paid him amount. Therefore, he was cross-examined by prosecution itself. Therein he has again supported prosecution. While under cross-examination at the hands of defence, he admitted that there were loan transactions between him and accused. He admitted that he lodged complaint in anger and annoyance and he candidly admitted that accused did not demand any amount from him.

With above quality of evidence, the testimony of very complainant was unworthy of credence.

7. It appears from testimony of PW2 Rajesh, who is second pancha, that he and another pancha Mungase were called by ACB, who acted as Panchas in the trap. However, pancha namely Mungase, who actually accompanied complainant to Police Station, is unfortunately expired and not available for adducing evidence. PW2 Rajesh is the second pancha and his testimony discussed above shows that, he is not party to the actual conversation between complainant and accused. He merely speaks about conversation between complainant and accused and they both going out. Resultantly, even testimony of this witness is of no avail to the prosecution.

8. PW3 Ramrao and PW4 Manohar are Sanctioning Authority and Investigating Officer respectively. Their evidence cannot be taken aid of unless foundational facts are proved. As stated above, complainant has not supported prosecution. Main pancha namely Mungase, who accompanied complainant to Police Station, is not available on account of his demise. PW2 Rajesh, second pancha, is not aware of the conversation regarding demand. Resultantly, essential ingredients for attracting charges for which respondent was booked and tried, being patently missing, prosecution's case fails.

CONCLUSION

9. In the light of quality of above discussed evidence, no fault can be found in appreciation of evidence by learned trial Court and holding that prosecution failed in proving the case beyond reasonable doubt. There is no merit in the appeal of the State and hence, I proceed to pass following order :

ORDER

Criminal Appeal No.205 of 2005 is dismissed.

(ABHAY S. WAGHWASE)
JUDGE