



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

CRIMINAL APPEAL NO. 226 OF 2005

The State of Maharashtra
Through Public Prosecutor,
High Court, Bench at AurangabadAppellant

Versus

Shri Rajendra Bhanudas Patil
P.H.C.B.1030, Age: 47 years,
Occu.: Service, Yermala Out-post,
Taluka Kallam, Dist.Osmanabad.Respondent

.....
APP for Appellant : Mr.K.K.Naik
Advocate for Respondent : Mr.Joydeep Chatterji
.....

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 27 JUNE, 2024
PRONOUNCED ON : 05 JULY, 2024**

JUDGMENT :-

1. State is hereby questioning the acquittal awarded by learned trial Judge to present respondent by its judgment and order dated 20-12-2004 in Special Case (A.C.) No. 1 of 2000.

FACTS LEADING TO THE TRIAL

2. Present respondent was made to face trial on the premise that he, being a Police Head Constable, demanded bribe of Rs.700/- for

returning keys of the four wheeler vehicle owned by complainant and for not taking action for plying excess passengers and violating traffic rules. Complainant PW2 Ankush was not willing to meet the illegal demand and therefore, he lodged report with ACB office on 28-10-1999.

ACB authorities accordingly planned and arranged trap, Panchas were called, complainant and Panchas were explained procedure of trap. Complainant and shadow pancha approached accused. Accused demanded bribe amount and kept in his rexine cover affixed to the two wheeler. He was apprehended by raiding party, who was waiting in lay. Accused was arrested and after investigation, accused was chargesheeted for commission of offence under Sections 7, 12, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act.

At trial, prosecution has adduced evidence of in all six witnesses and also relied on complaint, pre-trap panchanama, post-trap panchanama etc. Defence of accused is of false implication and thrusting bribe for not taking action.

3. After appreciating oral and documentary evidence and on hearing both sides, learned trial Judge reached to a finding that

prosecution failed to establish the charges and acquitted the accused by its judgment and order dated 20-12-2004 resulting into present appeal by State.

SUBMISSIONS

On behalf of State :

4. Learned APP would apprise this Court about the status of the parties and the nature of the complaint. According to him, accused was a Policeman. That complainant owned a four wheeler vehicle to ply passengers from Yermala to Kallam by appointing Driver. That on 24-10-1999, accused took away the keys of vehicle. That driver reported it to complainant and therefore, complainant approached accused with a request to return the keys. That time accused demanded Rs.900/- for returning the keys and for not taking action. Learned APP pointed out that finally, accused agreed to accept Rs.700/-. However, complainant approached ACB and they planned trap and action.

5. Learned APP pointed out that PW2 Ankush, complainant and PW3 Gopinath, shadow pancha are both examined. That they were together when they approached accused. That accused demanded

bribe amount and it was paid and accepted by accused in presence of pancha witness. That immediately thereafter, accused was apprehended and was found in possession of tainted currency. Therefore, according to learned APP, trap was successful. That there was proper sanction and as such all necessary ingredients were fulfilled, but still learned trial Court did not accept the case of prosecution and according to him, learned trial Court erred in acquitting the accused. Hence, he prays for re-appreciating the evidence and to allow the appeal.

On behalf of Respondent Accused :

6. Canvassing in favour of judgment passed by the learned trial Court, learned Counsel for respondent accused submits that prosecution has miserably failed to prove the charges. He pointed out that demand has not been proved. That accused had not accepted the amount, rather amount was kept by complainant in the rexine bag. According to learned counsel for respondent, material witnesses like driver of the vehicle and witness, who allegedly collected and took out tainted currency from the rexine cover are not examined. That versions of complainant and pancha witnesses are not consistent and therefore, learned trial Court rightly disbelieved

prosecution case. He further pointed out that Sanctioning Authority has not applied its mind and has rather accorded sanction in mechanical manner. Therefore, according to him, prosecution story was hopelessly weak on all counts and therefore, according to him, learned trial Court committed no error in acquitting the accused. He lastly pointed out that accused being acquitted, there is strong presumption in favour of accused and no good case or ground being made out, he prays to dismiss the appeal.

EVIDENCE ON BEHALF OF PROSECUTION IN TRIAL COURT

7. In support of its case, prosecution has adduced evidence of in all six witnesses. Sum and substance of their evidence is as under :

PW1 Anup Kumar Singh is Superintendent of Police and he is Sanctioning Authority. He testified that he received file alongwith draft sanction. He studied the file and granted sanction exh.35.

PW2 Ankush Nivratti Late, complainant stated that he owns Jeep bearing no. MH-25 A-343, which was used for plying passengers by employing driver. That on 24-10-1999, his driver came and told that accused retained the keys of the Jeep and demanded Rs.900/-

towards illegal gratification. He approached accused and finally he agreed to minimize the amount from Rs.900/- to Rs.700/-. But he approached ACB and lodged report exh.37. That pre-trap panchanama drawn in presence of Panchas. That when he and Pancha went to accused, accused asked whether amount is brought. That he removed it from pocket and kept it in the front side of petrol tank in the rexin cover. That accused counted it and kept it. That raiding party apprehended accused.

PW3 Namdeo Gopinath Sasane, shadow Pancha also stated that he was called to ACB office, introduced to complainant, made aware of complaint and given instructions to accompany complainant at the time of demand. That he and complainant went. That accused came on Motorcycle alongwith another Policeman and asked complainant whether he brought amount. That complainant removed the money from pocket and tendered it to the accused, who accepted it and counted it. That raiding party apprehended accused.

PW4 Bajrangsingh Ratansingh Thakur (ASI) is the Police Official, who registered crime. **PW5** Nagnath Ghalappa Gaikwad is Dy.S.P. **PW6** Kalidas Shankarrao Suryawanshi (PI.), is Investigating

Officer.

ANALYSIS

8. After considering submissions of both sides, here it is noticed that there is charge of demand of Rs.700/-. PW2 Complainant's evidence shows that bribe amount was demanded first to driver, but he is not examined. PW2 Complainant's evidence shows that he and Pancha both went towards Yermala Outpost to pay bribe amount on demand. But PW2 Complainant's evidence shows that accused was not present and it was learnt that he had been towards ST Stand side. Therefore, PW2 complainant and PW3 Pancha proceeded in that direction. According to PW2 complainant, they saw accused and one P.C.Pawar coming on Motorcycle from ST Stand side. Accused was rider but complainant deposed that on seeing accused, he himself signaled accused to stop and take the vehicle off the road. Therefore, complainant has apparently made accused halt. Further complainant has taken out money and himself kept it in the rexine cover affixed on the petrol tank of the two wheeler. Therefore, even there is no acceptance. It further appears that this witness has been cross-examined by learned APP himself finding him not supporting. Thus, complainant has not apparently supported prosecution.

9. Evidence of PW3 Namdeo, shadow pancha shows that he is not supporting complainant because according to him accused accepted the currency allegedly tendered by accused. Very complainant had spoken about he himself inserting the amount in the rexine cover but as stated above, pancha gave different version about accused accepting the currency notes.

10. PW5 Bajrangsingh, Dy.S.P. has made Panch No.2 Narute to take out the currency notes from rexine cover and even according to PW3 shadow pancha witness, second Pancha namely Narute removed the amount, but in Cross-examination itself PW3 shadow Pancha further admitted that Dy.S.P. asked accused to remove amount which he had kept. Therefore, witnesses are not consistent.

11. Cross-examination of PW1 Singh (S.P.), Sanctioning Authority shows that contents of sanction order are identical to draft sanction order and the Sanctioning Authority has merely filled the blanks in his own handwriting. Therefore, it is doubtful whether there is independent application of mind by such authority.

12. Therefore, the above discussed material clearly shows that case

of prosecution is not free from doubt. PW2 Ankush, Complainant has not supported prosecution case. Version of PW3 Namdeo, shadow pancha witness and PW2 Ankush, complainant are not consistent. Acceptance is not proved. Material witnesses are not examined. Therefore, no fault can be found in the judgment of the trial Court acquitting the accused. No case being made out for disturbing the judgment, I proceed to pass following order.

ORDER

Criminal Appeal No.226 of 2005 is dismissed.

(ABHAY S. WAGHWASE)
JUDGE