



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

CRIMINAL APPEAL NO. 304 OF 2006

Syed Zulfequaroddin Syed Bashiroddin
Age: 41 years, Occu.: At present Nil,
R/o. Dadarao Plot, Iqbal Nagar,
Parbhani, District Parbhani.

....Appellant
(Original Accused)

Versus

The State of Maharashtra

.....Respondent

.....
Advocate for Appellant : Mr.S.P.Chapalgaonkar
APP for Respondent : Mrs.Uma S.Bhosale

.....
CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 24 JUNE, 2024

PRONOUNCED ON : 02 JULY, 2024

JUDGMENT :-

1. Judgment and order passed by the learned Special Judge, Parbhani dated 04-04-2006 in Special Case (ACB) No.1 of 2006, thereby convicting present appellant under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, is questioned by appellant by way of instant appeal.

FACTS LEADING TO THE TRIAL

2. PW1 Balasaheb, complainant approached ACB and lodged

report alleging that accused, a clerk in the Tahsil Office, demanded Rs.200/- for completing procedure of surety on account of complainant's involvement in Criminal Case No.282 of 2005 under Section 107 of the Code of Criminal Procedure. Accused finally agreed to do the needful on payment of bribe of Rs.100/-. As complainant was not willing to meet unlawful demand, he lodged complaint.

3. On receipt of complaint, PW5 Jadhav (PI) summoned two Panchas, introduced them to complainant, showed complaint to them and thereafter, trap was planned, panchanama was drawn, details of the tainted currency to be given were noted and complainant and one PW2 Mohammad were directed to carry tainted currency note to be paid on demand to accused and on acceptance, relay necessary signal to the raiding party.

Accordingly, on 24-10-2005, PW1 Balasaheb, complainant and PW2 Mohammad, shadow pancha walked to the Tahsil Office. Accused demanded and accepted Rs.100/- and pocketed it. Complainant gave signal and raiding party apprehended accused, who was found in possession of tainted currency and therefore, complaint was lodged.

After accused was chargesheeted, he was tried before learned Special Judge, Parbhani vide Special Case (ACB) No.1 of 2006. Trial culminated into conviction, resulting into filing of instant appeal.

SUBMISSIONS

On behalf of appellant :

4. Learned Counsel for the appellant would submit that prosecution has failed to establish the case. That not only complainant did not fully support prosecution, rather he gave self contradictory version on the point of actual amount demanded. That even PW2 Mohammad, independent pancha, who had allegedly accompanied complainant, has not supported prosecution. Therefore, entire case of prosecution has collapsed. That there was mechanical sanction i.e. without application of mind. According to learned Counsel, still learned trial Court recorded conviction by applying evidence of PW3 Vithal, who was not party to the conversation of demand. Therefore, according to learned Counsel for appellant, there is erroneous approach both in appreciation of evidence as well as in arriving to conclusion. That settled law has not been taken into account and therefore, learned Counsel prays to

set aside the impugned judgment by allowing the appeal.

On behalf of State :

5. Canvassing in favour of impugned judgment, learned APP submitted that illegal gratification of Rs.200/- was demanded by accused. Finally, he agreed to accept Rs.100/-. That complaint was received from PW1 Balasaheb and trap was arranged and planned. PW2 Mohammad and PW3 Vithal, who acted as panchas, are examined in trial Court. Learned APP pointed out that though PW2 Mohammad did not support prosecution case, PW1 complainant's testimony finds corroboration from evidence of PW3 Vithal. Therefore, offence is complete and established. That there is proper sanction and therefore, learned trial Court rightly held present appellant guilty and so she prays to dismiss the appeal for want of merits.

SUM AND SUBSTANCE OF PROSECUTION EVIDENCE

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

PW1 Balasaheb Yeshwant Sawne is complainant. He testified

that as he was in need of surety, he was required to approach Tahsil Office. Accused was Incharge Clerk and he demanded Rs.200/- for tea alongwith Rs.20/- for xerox copies. That accused finally demanded Rs.100/- but as he was not willing, he approached ACB and lodged report. ACB authorities obtained Rs.100/- from complainant, arranged two Panchas and all of them were explained the procedure regarding trap. Accordingly, complainant and PW2 Mohammad visited the office of accused and on his demand, gave him Rs.100/-, which he pocketed apart from Rs.20/- towards xerox and so he went out and gave signal to raiding party, who came and apprehended accused.

PW2 Mohammad Sayeed Md.Wahidoddin, deposed that he acted as shadow pancha and on information and instruction of ACB Officer, he accompanied complainant, but according to him, he did not hear the conversation between complainant and accused. He further deposed that complainant forcibly thrust amount in the pocket of accused. Hence, finding him not supporting, he was declared hostile and cross-examined by APP.

PW3 Vithal Tukaram Chavan, second pancha, stated that he and PW2 Mohammad worked in the same office. They were called to

ACB Office, introduced to complainant and made aware of the complaint and proposed trap. This witness stated that he was with the raiding party when complainant and PW2 Mohammad went in the Tahsil Office. According to him, after complainant gave signal, they entered the Office and complainant told that accused demanded and accepted money and this witness was directed to remove the currency from pocket of accused and he did as directed and found Rs.100/- currency note and accused to be arrested.

PW4 Madhukar Sukhdev Choudhari is the Sanctioning Authority and according to him, he studied the papers received from ACB and granted sanction.

PW5 Prakash Daulat Jadhav (PI) and **PW6** Pandit Govardhan Kendre (Dy.S.P.) are Investigating Officers.

ANALYSIS

7. On re-appreciating the evidence, it is emerging from testimony of **PW1** Balasaheb, complainant that he was required to approach Tahsil authority for surety papers to be furnished in Criminal Case No.282 of 2005 under Section 107 of the Code of Criminal

Procedure initiated against him. It is his testimony that for said work, present appellant, a Clerk, demanded Rs.200/- for the work. Finally, he agreed to accept Rs.100/- and therefore, complainant lodged report with ACB to arrange plan.

In **cross-examination** his above testimony has not been disturbed except the fact that there was demand of Rs.200/-, but in report he conveyed about demand of Rs.100/-. As to when and where amount was reduced to Rs.100/-, there is no clarification, because according to him, after initial demand of Rs.200/- on 20-10-2005, he had already left Tahsil Office. In cross-examination, he answered that he never produced surety papers in the proceedings. Therefore, on what count amount was paid, is not explained by the prosecution.

8. It is fairly settled position that complainant being interested witness, there has to be sufficient corroboration from independent corner. Here, shadow pancha PW2 Mohammad, who allegedly accompanied complainant to the office of accused, stated that he could not hear conversation between complainant and accused and they both went out of the office. He further stated that complainant forcibly thrust money in the pocket of accused. Therefore, the main

pancha PW2 Mohammad, who had accompanied complainant and was expected to be party to the alleged conversation of demand between complainant and accused, has retracted.

9. Learned trial Court seems to have relied and taken recourse to the testimony of PW3 Vithal, second pancha to reach to conclusion and finding, but apparently said panch was waiting outside with raiding party and he was not present during actual conversation between complainant and accused regarding demand. Though amount has been recovered from accused, PW2 Mohammad had already deposed that complainant had thrust the amount in the pocket of accused.

10. It is fairly settled that demand has to be cogently proved. Mere possession of currency is not sufficient to record guilt. Here case of prosecution was rendered doubtful because there was no corroboration to the testimony of complainant on the point of actual demand.

CONCLUSION

11. Perused the judgment under challenge. Though learned trial Judge has accepted that PW2 Mohammad has not supported

prosecution case, only by relying on testimony of PW3 Vithal, who was not party to the actual conversation of demand, conviction has been recorded. Even trial Court, in paragraph 35, has observed that there is some variance in the quantum of amount, which is alleged to be demanded and which is reported in the complaint, but still, prosecution version is accepted that subsequently demand was of Rs.100/- and therefore, said amount was reflected in the complaint. Lastly, trial Court has held that accused has not based his defence on his immediate statement made before Trap officer. Here learned trial Court seems to have deviated from settled and cardinal principle that prosecution has to discharge the burden of proving the guilt beyond reasonable doubt and accused is entitled to remain silent.

Even before applying presumption available under Section 20 of the Prevention of Corruption Act, learned trial Court did not consider that prosecution has not proved the foundational facts or discharged the initial burden of proving demand and therefore, there is erroneous approach in employing provisions of Section 20 of the Prevention of Corruption Act. For all above reasons, finding it a case of benefit of doubt, the impugned judgment requires to be interfered with. Accordingly, I proceed to pass following order.

ORDER

- I) Criminal Appeal No.304 of 2006 is allowed.
- II) The conviction awarded to appellant Syed Zulfequaroddin s/o Syed Bashiroddin in Special Case (ACB) No.1 of 2006 by the learned Special Judge, Parbhani on 04-04-2006 for the offence punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under Sections Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act.
- IV) **The bail bond of appellant stands cancelled.**
- V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of muddemal.

(**ABHAY S. WAGHWASE**)
JUDGE