



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

CRIMINAL APPEAL NO. 282 OF 2005

Narayan S/o Ambadas Lokhande
Age: 53 years, Occu.: Service,
R/o. Salunke Nagar, Bembli Road,
Osmanabad, Taluka and
District Osmanabad.

..Appellant
(Original Accused)

Versus

The State of Maharashtra

..Respondent

...

Advocate for Appellant : Mr.N.K.Kakade h/f. Mr.V.G.Sakolkar
APP for Respondent : Mr.N.B.Patil

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 30 SEPTEMBER, 2024

PRONOUNCED ON : 04 OCTOBER, 2024

JUDGMENT :-

1. Convict appellant Narayan is challenging judgment and order passed by the Special Judge, Osmanabad, dated 11-04-2005 in Special Case No.6 of 2001 recording guilt of appellant for offence under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act.

FACTS LEADING TO THE TRIAL

2. Complainant PW1 Suresh, who was a beneficiary of award on account of acquisition of his land, was due to receive cheque. To complete the formalities, he approached Treasury Office. Appellant,

a clerk, posted therein was approached on 09-02-2001 by complainant and requested to issue necessary certificate for encashment of cheque. Complainant conveyed urgency. However, appellant, to do it with priority, demanded Rs.500/-. Complainant himself, being a Police Officer, was against giving bribe and therefore, he approached Anti Corruption Bureau (ACB) authorities and lodged report exh.14.

PW4 Kalidas Shankarrao Suryawanshi (Dy.S.P.), ACB Officer, noted the report, planned trap by engaging panchas. Entire procedure was explained and demonstrated with specific instructions to complainant to pay amount on demand. Accordingly, on 09-02-2001, at around 04:00 p.m., when complainant was accompanied by PW3 Ram Mahadeo Narule, accused put up demand and accepted tainted currency. Necessary signal was relayed by complainant and raid was executed.

After investigation, appellant was tried by Special Judge, Osmanabad vide Special Case No.6 of 2001 and guilt was recorded for aforesaid offence by rendering judgment. Hence, instant appeal.

SUBMISSIONS

On behalf of appellant :

3. Learned Counsel for appellant criticized and questioned the

impugned judgment by submitting that prosecution has miserably failed to prove the charges beyond reasonable doubt. He took this Court through the evidence of PW1 Suresh, complainant and emphasized that there is deliberate entrapment because ego of complainant was hurt while interacting with appellant. Learned Counsel emphasized that in this case, complaint is not noted by PW4 Investigating Officer, rather admittedly it is recorded by subordinate of the Investigating Officer namely Mane (PHC), but such person is not examined and therefore, learned Counsel questions the authenticity and credibility of accusations. That evidence of complainant itself demonstrates his such attitude.

4. He pointed out that, it is fairly settled law that in cases of such nature, complainant being interested witness, law requires sufficient corroboration before or accepting complainant's version. Learned Counsel emphatically submitted that in the case in hand, complainant was accompanied by his nephew Dhananjay during visit to the Office of appellant. However, such important witness has not been examined by prosecution to support complainant's version. Therefore, it is his submission that sole testimony of complainant regarding demand of gratification cannot be straightaway accepted.

On this count, learned Counsel seeks reliance on the case of ***B. Jayaraj v. State of AP [(2014) 4 S.C.R. 554]***.

5. Learned Counsel for the appellant submitted that even otherwise there is no direct demand of illegal gratification and there is mere allegation of conversation as to whether amount is brought. According to learned Counsel, such version is ambiguous in nature and no specific meaning could be attributed to such version. That moreover, testimony of complainant is not fully supported by PW3 shadow pancha as according to learned Counsel, he was not present when there were talks going on between complainant and accused in the passage, outside the cabin of Treasury Officer. He further elaborated that complainant in cross-examination himself admitted in paragraph 23 that there were no talks between himself and accused. Thus, according to learned Counsel, evidence of complainant itself is unworthy of credence. On this point, he seeks reliance on the case of ***Ashok Kumar Bhagchand Wardhani v. State of Maharashtra, 2003 ALL MR (Cri) 88*** (Nagpur Bench), wherein ruling of Hon'ble Apex court in the case of ***Jaswant Singh v. State of Punjab AIR 1973 SC 707*** has been taken recourse to.

6. He pointed out that, it is a case of thrusting money for

deliberate implication. That amount was thrown after appellant realized it being thrusting forcibly. Learned Counsel submitted that, independent witness DW1 Shrihari Rangnath Akoskar on behalf of appellant has been examined, but according to him, unfortunately such testimony has not been appreciated by learned trial Judge. On this count, he seeks reliance on the ruling of the Hon'ble Apex Court in the case of *Babu Lal Bajpai v. State of U.P.*, AIR 1994 SC 1538.

7. Next attack of learned Counsel is on the aspect of validity of sanction accorded by PW2 Narayan Bhaskar Ringne. Learned Counsel submitted that in this case, such authority was not authorized to accord sanction as he had not appointed appellant. Learned Counsel pointed out that appointment of appellant was by Collector. Therefore, Collector being appointing authority, was only competent to remove or accord sanction. Therefore, sanction is not valid. He also criticized the evidence of PW2 Ringne by pointing out that there is total non-application of mind before according sanction. Learned Counsel submitted that his cross-examination shows that he has not studied the papers and has not applied mind and has not assigned reasons and grounds for granting sanction. Learned Counsel pointed out that it has also emerged from the evidence of this witness

that draft sanction has been used without independent application of mind by this authority and so learned Counsel questions the sanction itself. On this count, he seeks reliance on ruling of this Court in the case of *Vinod s/o. Savalaram Kanadkhedkar v. The State of Maharashtra*, 2016 ALL MR (Cri.) 3697 and judgment of Hon'ble Apex court in the case of *C.B.I. v. Ashok Kumar Aggarwal*, AIR 2014 SC 827.

8. Learned Counsel would strenuously submit that the complainant was himself a superior Police Officer. Investigating Officer is also his old acquaintance and colleague. That entire investigation was under influence of such relation with sole intention to implicate appellant. In support of above submission and contentions, learned counsel took this court through the evidence of both PW1 complainant and PW4 Investigating Officer and answers given by them in cross-examination. Learned Counsel also pointed out that in this case, PW4 Investigating Officer has not placed on record any written communication to seek engagement of Pancha witnesses. That there is admission to that extent and therefore, learned Counsel submits that there is every reason to doubt participation of independent shadow pancha witness.

9. Lastly, concluding and summing up his arguments, learned Counsel submits that case is not proved beyond reasonable doubt. That there are several infirmities and lapses coupled with non-examination of material witnesses. That defence witnesses version is not taken into account by learned trial Judge and therefore, he seeks indulgence at the hands of this Court by allowing the appeal.

On behalf of State :

10. In answer to above, learned APP submitted that there is clear demand. That PW1 complainant has deposed to that extent in substantive evidence paragraph 5 and 6. That there was prompt lodgment of complaint. That there is again demand and acceptance in presence of PW3 shadow panch. Leaned APP submitted that evidence of complainant finds complete support from independent witness shadow pancha. He also submitted that PW2 Sanctioning Authority was authorized to appoint appellant. Therefore, he was equally competent to accord sanction. That this witness has studied the file and thereafter accorded sanction. Consequently, learned APP submitted that there is convincing and cogent evidence of complainant supported by evidence of shadow pancha and therefore, according him, learned trial Court committed no error in recording

guilt and he prays to dismiss the appeal.

EVIDENCE IN TRIAL COURT

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

11. **PW1** Suresh Baliram Kandle, complainant, who deposed about approaching appellant for issuing certificate for encashment of cheque received towards acquisition of his land. That appellant, a clerk at Treasury Office, demanded illegal gratification of Rs.500/- for expeditiously doing the necessary work. As he was not willing to pay bribe, he lodged report with ACB, who planned and laid trap. That in presence of PW3 shadow pancha, accused demanded money and amount on being tendered was accepted and accused was trapped for accepting bribe.

Relevant **cross-examination** of above witness is as under :

That he retired as Assistant Commissioner of Police and he admitted about lodging another case in ACB and the same to be *sub judice*. He admitted that he is well acquainted with the Investigating Officer. He admitted that he received first installment of compensation to the tune of Rs.1,10,000/- in 1999 and at that time, no one demanded gratification for issuing cheque. He admitted that

he was aware of the procedure regarding collection of cheque of compensation. He admitted that further enquiry regarding passing of cheque was required to be made at the counter itself by returning token as per the procedure and he also admitted that it was not expected from him to contact accused for his work. He admitted that he was anxious to collect the cheque early and therefore, in anxiety he contacted accused. He admitted introducing himself to the accused. He answered that when accused demanded Rs.500/-, he did not feel it necessary to make complaint to the next superior but he made up mind to approach ACB and lodge complaint against accused. He admitted that he was knowing well that giving bribe and accepting bribe, both are offences. He admitted that accused was not competent authority to pass cheque and that it was not within the powers and means of accused either to pass or refuse to pass the cheque. He also admitted that perhaps in normal course, if he would have met Treasury Officer with a request for passing cheque by disclosing identity then cheque would have been passed. He answered that after he lodged complaint, PW4 Investigating Officer took decision within half an hour to hold the trap against accused. In paragraph 18 he admitted that complaint is not in his own handwriting. He admitted that usually date and time of receiving

complaint is required to be mentioned by Police Officer after recording the complaint and he also admitted that time of lodging complaint is not noted in exh.14. He admitted that several other persons were present in the office at the time of trap. He admitted that he contacted accused only to see that he gets the cheque after passing it immediately. In paragraph 23, he answered that after entering the Treasury Office, he first alone proceeded towards the accused whereas shadow pancha stood at a distance of 2-3 feet away from him. **He admitted that no talks took place between him and accused.** He denied that when accused was peeping in the chamber of Treasury Officer, he inserted amount in the pocket of accused from back side.

12. **PW2** Narayan Bhaskar Ringne is Sanctioning Authority, who claims to have received file and papers from ACB and after going through the same, according sanction exh.31 to prosecute. That accused was on surrender leave, however, he attended duty on the date of trap in the office.

In **cross-examination**, he admitted that it was not duty of accused to pass cheque for payment. He answered that once cheque is issued by Land Acquisition Officer in the name of any person, then

said person has to present the cheque at counter for passing and collect the token. He admitted that from the muster roll, presence of accused cannot be seen to be on duty. He admitted about receiving draft sanction and that after going through it, he came to know about relevant sections. He admitted about not receiving original file from ACB, but received xerox copies. He admitted that he had no legal knowledge about provisions of Prevention of Corruption Act. He admitted about not mentioning grounds of satisfaction for according sanction for prosecution. He also did not mention about papers received in the file, which were perused, while issuing sanction. He admitted that he perused the draft sanction order and after making little modification therein, he issued sanction. He admitted that accused was appointed on recommendation of Collector and that interview call was issued by Collector. He also admitted that one Shri Kavathekar, Assistant Account Officer typed the sanction order in the computer and typing work was done by referring draft sanction order.

13. **PW3** Ram Mahadeo Narule is the shadow pancha. According to him, he was called to ACB office, introduced to complainant, going through the complaint, being apprised about the proposed trap, its

procedure, pre-trap panchanama being drawn. He deposed that he accompanied complainant to the Treasury Office and in his presence, accused demanded and accepted money, after which complainant relayed predetermined signal and trap being successfully carried out by catching hold of appellant.

He admitted that he received mere oral instructions to attend ACB office and **did not receive written order**. He answered that PW4 Investigating Officer (Dy.S.P.) compelled him to act as pancha and after receiving witness summons, complainant told him to give evidence properly and he fairly admitted that in case if he did not give proper evidence, complainant told him that he would be proceeded against and that Dy.S.P. told him that trap must be successful and that his superior asked him to do as instructed by Police Officer. He admitted that he did not ascertain contents of the complaint. In paragraph 11, he answered that they entered Treasury Office at 4.05 p.m. **He admitted that no talk took place near the table of accused**. He denied the suggestion that complainant inserted amount in the pocket of accused. Rest are all denial.

14. **PW4** Kalidas Shankarrao Suryawanshi is Investigating Officer, who narrated all events since receipt of complaint, till he himself

laying down trap, executing it, apprehending accused, lodging complaint, investigating the same and chargesheeting accused.

15. Defence has adduced evidence of two witnesses i.e. **DW1** Shrihari Rangnath Akoskar and **DW2** Satwaji Piraji Shinde.

ANALYSIS

16. The first and fundamental challenge is that here there is no demand and there is no corroboration to testimony of complainant as both witnesses admit that previous to trap, there were no talks between accused and complainant.

In the background of above submission, if PW1 complainant's evidence first put to minute scrutiny, though he in paragraph 9 deposed that after reaching Treasury Office and approaching accused, he told that within 2-3 minutes he would come out of the office and then he came and told to come out of the office, they came in the passage of the office and when no one was present there, when accused was asked whether cheque is ready, accused answered that it was ready and further asked complainant whether he brought the amount and then asked him to pay the amount.

PW3 Ram, shadow pancha, in para 4 of examination-in-chief itself deposed that seeing complainant, accused got up from his chair

and thereafter, complainant and accused began to proceed from western side door of the Treasury Office and stood in some space near the cabin of Treasury Officer and at that time, he stood 5-6 feet away from them and thereafter, “**some talk**” took place between complainant and accused. Thereafter, complainant took out cash and gave it to accused. Thus, as pointed out by learned Counsel for appellant, PW3 shadow pancha has not deposed about hearing talks taking place between complainant and accused while only they two were outside the chamber of the Treasury Officer. This shadow pancha, who is independent witness, in paragraph 11 of the cross-examination has already admitted that no talks took place near the table of accused. Therefore, as pointed out, there is no material suggesting demand of bribe at the time of visit of complainant and shadow pancha at around 04.00 p.m.

It is fairly settled and there are catena of judgments that demand is *sine qua non* in cases of such nature. But above discussed material creates doubt about demand. Another distinct feature of this case is that there is no demand verification got done by PW4 Investigating Officer, which is also held to be necessary and mandatory. Therefore, aspect of demand, for above reasons, comes under shadow of doubt.

17. The manner of answers given by PW1 complainant, a retired Assistant Commissioner of Police, shows that he has admitted acquaintance with Police Officer. PW3 shadow pancha in cross-examination has admitted that he was pressurized to depose in the manner in which Police Officer told him and he was even threatened to see that trap is successful and on its failure, he would be proceeded against and even his immediate superior asked him to do whatever Police Officer asks him to do so. Such answers show that this witness has not deposed voluntarily or independently, on the contrary, he is shown to be under control of PW1 complainant, PW4 Investigating Officer as well as his own Boss.

18. Learned Counsel for the appellant also submitted that material witnesses are not examined i.e. very nephew of complainant, who was party to the first demand. That even panch, who allegedly took out tainted currency is also not examined. Indeed here it is noticed that so called nephew of complainant namely Dhananjay, who was party to first visit during which there was said to be demand of Rs.500/-, is not made a witness. Similarly, pancha, who took out currency from the pant pocket of accused has not been examined. Reason for not examining them are also not assigned by prosecution.

19. Another attack is on the ground that, there is invalid sanction as PW2 Sanctioning Authority was not competent to accord sanction and moreover, there is non-application of mind by this authority while issuing exh.31.

On above lines, if evidence of PW2 Sanctioning Authority is visited, it is noticed that he is Treasury Officer. In paragraph 3 of cross-examination, he admitted that it was not duty of accused to pass cheque for payment. In paragraph 5, he admitted that accused was appointed on the recommendation of Collector, but interview call of the accused was issued by Collector. Apparently, there is no appointment letter under the signature of this witness. Recommendation is admitted by him, which is given by Collector therefore, it is doubtful whether this witness was the appointing authority, more particularly, when there is no specific appointment letter of accused under his signature.

Another ground of attack on above witness is that there is mechanical sanction. In view of such objection, if cross-examination of this witness, more particularly paragraph 4 is visited, we find him answering that he did not go through original file. He is handed over mere xerox copies. He has also candidly admitted about receipt of draft sanction and using the same by making little modification. In

paragraph 5, he has admitted that he did not mention grounds of satisfaction and documents referred by him before issuing sanction order. Rather subordinate officer, at his instance, by referring draft sanction, typed the sanction order. His such answers further creates doubt as to whether really before according sanction, there is due satisfaction or subjective satisfaction upon application of mind. Therefore, there is force in the submission of learned Counsel for appellant that in mechanical manner, sanction has been accorded. There are series of judgments of the Hon'ble Apex Court insisting for according sanction only after due satisfaction and in absence of same, sanction cannot be said to be valid.

20. Specific defence of accused is that complainant was expecting special treatment being retired Senior Police Officer while he had approached accused for immediate release of certification for cheque and he has orchestrated the trap. That money was deliberately inserted in his pocket. DW1 Shrihari Rangnath Akoskar, who is also a staff of the same office, is examined by accused and he deposed about seeing unknown person inserting money and accused throwing it on the floor. His evidence to such extent has not been rendered doubtful in cross-examination at the hands of learned APP.

Consequently, defence so taken has been probabalized and that is all accused is expected to do as per settled law.

SUMMATION

21. To sum up, here there is weak evidence about demand. PW3 Shadow panch witness is not party to the actual demand. Therefore, there is no corroboration on the point of demand. Material witnesses are not examined. There is no verification panchanama prior to trap. PW3 Shadow pancha has acted and deposed at the instance of PW1 complainant, PW4 Investigating Officer and his own superior Officer. Sanction is not free from doubt. Therefore, it is a case of benefit of doubt.

22. Perused the judgment challenged here. Learned trial Judge has failed to notice above aspects. Mere substantive evidence of PW1 complainant and PW4 Investigating Officer seems to have taken into consideration. Answers given by them in cross-examination and more particularly, aspect of validity of sanction are not correctly appreciated necessitating interference at the hands of this Court. Accordingly, I proceed to pass following order.

ORDER

- I) Criminal Appeal No.282 of 2005 is allowed.
- II) The conviction awarded to appellant – Narayan S/o Ambadas Lokhande for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, by the learned Special Judge, Osmanabad on 11-04-2005 in Special Case No.6 of 2001, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.
- IV) **The bail bonds of appellant stand 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