



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 319 OF 2005

Chaitram Natthu Shinde,
Age 49 years, Occu. Clerk,
44, Deochand Nagar,
Near Ramnagar, Dhule.

... Appellant

Versus

The State of Maharashtra
Through Police Inspector,
Anti-Corruption Borough,
Dhule.

... Respondent

.....
Mr. B. R. Warma, Advocate for the Appellant.
Mr. S. M. Ganachari, APP for Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 09.12.2024

Pronounced on : 16.12.2024

JUDGMENT :

1. In this appeal, there is challenge to judgment and order dated 02.05.2005 passed by learned Special Judge and 2nd A.S.J., Dhule in Special Case No. 5 of 2002, returning guilt of the appellant for offence punishable under sections 7 and 13(2) of the Prevention of Corruption Act, 1988 [PC Act].

BRIEF BACKGROUND OF THE CASE

2. PW1 complainant approached appellant, who was working as a clerk in Sakri Tahsil Office, for getting possession of land which came to his share by virtue of a decree, i.e. on 15.05.2000. Accused/appellant demanded Rs.1,500/- and after negotiations, brought down the amount to Rs.500/-. Therefore, complainant approached ACB and lodged report, on the basis of which, ACB authorities planned and arranged trap, panchas were called, complainant and pancha were appraised about the procedure of trap and instructions were given to pay tainted currency on demand and thereafter rely signal. Accordingly, shadow pancha PW2 and complainant PW1 approached appellant and on his demand, bribe amount was handed over and after acceptance, signal was given and accused was apprehended. ACB officer PW5 lodged report, carried out investigation and chargesheeted accused. Appellant-accused was duly tried by the Special Court vide Special Case No. 5 of 2002 and on appreciation of evidence, conviction was recorded.

Hence instant appeal.

SUBMISSIONS

On behalf of the appellant :

3. Learned counsel for the appellant pointed out that prosecution failed to prove the charges beyond reasonable doubt. According to him, appellant had not put up any demand, nor accepted the amount. He submits that complainant himself had not supported and so, was required to be declared hostile by prosecution. According to prosecution, currency was handed over to a private person, who was a real estate agent, and said person is already discharged and thus, according to learned counsel, case of prosecution about acceptance becomes redundant. Learned counsel took this Court through the charge and would point out that in the charge which was framed and explained, there was no reference of demand. That, report under Section 169 of Cr.P.C. has already been forwarded by the investigating machinery against co-accused Sanjay Agrawal. Therefore, in view of above submissions, it is his case that Section 7 does not survive. There being no acceptance and accused having not taken currency in his hand nor even touched it, there is no acceptance and for all above reasons, he questions the findings recorded by learned trial court.

Learned counsel for the appellant has sought reliance on the ruling of the Hon'ble Apex Court in *K. Shanthamma v. State of Telangana* 2022 GoJuris (SC)197 : 2022 AIR (SC) 1134.

On behalf of the respondent-State :

4. In answer to above, learned APP pointed out that there is no denial that accused was working as clerk and there is no denial about complainant approaching him. That, on 15.05.2000, first, demand of Rs.1,500/- was raised and after negotiations, figure was brought down to Rs.500/-. Date of payment was fixed on 16.05.2000 and before that, complaint was lodged with ACB, who planned and arranged trap and it was executed. On behalf of accused/appellant, one Sanjay Agrawal (co-accused) had accepted the currency and they both were caught red handed. Learned APP pointed out that though PW1 complainant did not support and was required to be declared hostile, his entire evidence need not be discarded and that much part of his evidence which helps prosecution can definitely be taken recourse to. He further submits that prosecution evidence gets support from the evidence of PW2 as well as panchanama Exhibit 25 and as such, he supports the conviction and prays to dismiss the appeal.

EVIDENCE BEFORE THE TRIAL COURT

5. In support of its case, prosecution has examined in all 5 witnesses. Their role and status and the sum and substance of their evidence can be summarized as under :

PW1 Avshya Mavachi is the complainant. The sum and substance of his testimony at Exhibit 9 is that, he has agricultural land. By virtue of civil proceedings, he has got share in the ancestral land and for that purpose, he had approached appellant, who was working as clerk in Tahsil office, and had requested him to decide the application for getting possession. However, for the same, appellant demanded Rs.1,500/-. After negotiations, amount was brought down to Rs.500/-, but instead of paying, complainant approached ACB and lodged report. ACB, in presence of panchas, planned and arranged trap and it was executed. However, according to him, money was handed over, at the instance of appellant, to one person sitting next to him and he does not remember the name of the said person. After panchanama, he claims that he directly went home. Thereafter, learned APP, after seeking permission of learned trial court, declared him hostile and subjected him to cross-examination.

PW2 Ramesh Pujari, who acted as shadow Pancha, in his evidence at Exhibit 23 stated that he was called to ACB office and accordingly, he and one Sonawane went there. They were

informed about the complaint received regarding demand of bribe. He and said Sonawane agreed to act and pancha and were introduced to the complainant. They went through the complaint regard demand of Rs.500/- for issuing order of partition of survey no. 20/1 and 61/1. He further deposed about Investigating Officer Borse giving necessary instructions, giving demonstration of application of anthracene powder to the currency and instructions were given to pay tainted currency on demand. They all reached Sakri. He and complainant went to the office of accused. Complainant asked accused about his work and as to what happened in his matter. He identified accused in the court. He further deposed that, after informing complainant, accused told him to call his Advocate and to bring specific orders and thereafter accused asked complainant whether he brought amount, and when complainant replied that he had brought the amount, appellant pointed towards one person with directions to give the amount to said person. Accordingly, complainant gave currency notes to the said person and then gave signal, after which police party came and apprehended both accused.

PW3 Gulabrao Parid was the Naib Tahsildar at Sakri. He deposed that on 06.04.2000 and 07.04.2000, he was on casual leave and therefore papers of complainant were received by in-charge Naib Tahsildar Shri Baisane, i.e. the matter pertaining to partition of agricultural land. He deposed about the procedure of partition and paper work.

PW4 Sanjay Sethi, Collector, who claims to have carefully studied the papers and accorded sanction, which he identified to be at Exhibit 29.

PW5 Ashok Borse, P.I., is the Investigating Officer.

ANALYSYS

6. The fundamental grounds raised before this Court is that **firstly**, there is no convincing evidence about demand being raised as there is no demand verification panchanama. **Secondly**, accused has not accepted or even touched the tainted currency. **Thirdly**, alleged acceptance is by a private person, who is already discharged by invoking Section 169 of Cr.P.C. Hence, learned counsel for the appellant prays for interference by setting aside the impugned judgment.

7. Here, on complete re-appreciation, it is emerging that PW1 complainant deposed about approaching appellant on 15.05.2000 for his work and appellant allegedly demanded Rs.1,500/- for the work and on negotiations, brought down the demand to Rs.500/- to be paid next day. Instead, complainant claims to have approached ACB.

However, in his substantive evidence, he stated that when they approached appellant in his office, he was asked whether he brought money and when he was about to hand it over, appellant allegedly directed it to be paid to one person who was sitting near him. Witness stated that he accordingly gave it to such person after which he gave signal. However, complainant himself stated that he is unable to give name of the person to whom he handed over money and further stated that after police caught appellant and said person, complainant went home. After such testimony, learned APP, after seeking permission from the court, seems to have cross-examined complainant.

8. Thus, from the evidence of complainant it is emerging that complainant offered money, but it was not accepted by appellant. Rather, it was accepted by a private person. Submissions made that, said private person who accepted the money is already discharged by investigating machinery by invoking Section 169 of Cr.P.C., is neither disputed nor refuted by prosecution. Papers to that extent, dated 14.03.2001, are placed on record. Therefore, here, as pointed out, there is no demand verification by the Investigating Officer and as such, the aspect of demand is not substantiated.

9. Secondly, appellant has not taken currency in his hand and it is said private person, who is discharged, had allegedly accepted the money. Though second pancha Sonawane was there, he is not examined by prosecution. Therefore, there is force in the submission of learned counsel for the appellant that there is no evidence about demand and acceptance, which are *sina qua non* for accepting the case of prosecution for commission of offence under Section 7 of the PC Act. Though there is evidence suggesting sanction, as stated above, crucial aspects like demand and acceptance are not cogently proved. In fact, there is no acceptance of currency. Law is fairly settled that mere demand is not sufficient and even case to the extent of acceptance is to be proved beyond reasonable doubt. This aspect is patently and palpably missing from the evidence. Therefore, in the considered opinion of this Court, is is a case of benefit of doubt. Hence, following order is passed :

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellant Chaitram Natthu Shinde by learned Special Judge and 2nd A.S.J., Dhule in Special Case No. 5 of 2002 under Sections 7, 13(2) of the Prevention of Corruption Act, 1988, on 02.05.2005 stands quashed and set aside.

- III. The appellant Chaitram Natthu Shinde stands acquitted of the offence punishable under Sections 7 and 13(2) of the PC Act.
- IV. The bail bonds of the appellant stand cancelled.
- V. 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 regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]

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