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922criapl358.05

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

922 CRIMINAL APPEAL NO.358 OF 2005

Shri Deelip S/o. Kishanrao Dhutmal, **...APPELLANT**
Age-43 years, Occu-Service,
Junior Clerk, Tahasil Office, Jintur,
Dist. Parbhani

VERSUS

The State of Maharashtra **...RESPONDENT**

Mr. V. D. Sapkal, Senior Advocate i/b Mr. S. R. Sapkal, Advocate
a/w Mr. Ajit B. Chormal, Advocate for the appellant
Mr. S. K. Shirse, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 07th AUGUST, 2024

JUDGMENT

1. This appeal arises out of judgment and order dated 06-05-2005 passed by the learned Special Judge Parbhani in Special Case No. 6/2004. The learned trial court by way of impugned judgment and order held the present appellant guilty of the offences punishable under Sections 7, 13 (1) (d) read with Section 13(2) of the Prevention of Corruption Act. The accused is sentenced to suffer rigorous imprisonment for two

years and to pay fine of Rs.1500/- in default to suffer RI for two months for the offences punishable under Section 7 and for the offences punishable under Sections 13(i)(d) read with section 13(2) he is directed to suffer rigorous imprisonment for one year and to pay fine of Rs.1000/- in default to suffer rigorous imprisonment for one month.

2. The prosecution story in short is that De-facto complainant was having a dispute with one Phulchand Rathod a neighboring land owner on account of cultivation of the land and revenue entries. Such disputes were going on before Tahasildar. There was also a case under Section 145 of the Cr. P. C. going on in respect of land of the complainant before the executive Magistrate, Jintur. For geetting the work done at the earliest original complainant PW-2 Syed Akhtar Syed Nabi from village Mohadi, Tq. Jintur approached the Anti Corruption Bureau, Parbhani. It is informed that the present accused who was working as Incharge of ROR Section in Tahasil Office, Tq. Jintur demanded an amount of Rs.500/- towards bribe from the

complainant. The alleged bribe was demanded for issuing of notice to the respondents in the matter pending before the Tahasildar in respect of revenue entries. First demand was allegedly made on 06-02-2004 for issuing notice of spot inspection by Tahasildar. He approached the ACB, Parbhani on 07-02-2004 and filed a complaint. ACB authority called panchas and fixed a trap by following usual procedure. Trap was decided to be laid on the same day. Panchas were called. They were informed about the procedure of the trap.

3. After informing the panchas about the procedure to be followed for the trap the raiding party including the complainant, panchas and police proceeded to Jintur by police jeep. As decided the complainant and one panch Syed Iqbal went to the Tahasil office and approached the accused and at that time raiding party stayed at some distance. About actual incident it is stated that PW-2 complainant waited in the office of the accused and offered Namaskar. On that accused asked as to whether amount is brought. The complainant told that he has

brought an amount. They both alongwith panch after some formal talks about issuance of notice started towards a photo copy centre for taking a photo copy of the notice. At that place the accused accepted the amount from the complainant and the trap was successful. Other formalities of drawing panchanama and etc were completed in the office of the Tahasildar. After completion of the investigation and after obtaining the sanction charge-sheet came to be filed and case was tried.

4. Learned trial court on recoding evidence and on the basis of document proved that the prosecution has established a case and imposed sentence by convicting the accused. Hence, this appeal before this court.

5. The appeal is argued vehemently by the learned senior counsel Mr. V. D. Sapkal. His submissions, in short, are that in the present case no demand of the bribe amount is proved. There is no corroboration to the demand on 06-02-2004. The prosecution has not proved that the amount which

was allegedly given was a bribe amount. The sanctioning authority has not applied its mind to the case and has mechanically granted sanction. He submits that in the office of Tahasildar at the time of alleged demand, there were other persons present still not a single person is examined by the prosecution which leads to inference of suppression of evidence by the prosecution. He makes further submission that it is highly improbable that bribe would be demanded in presence of other persons in the office. He submits that prior to this complaint, complainant had lodged a one complaint against Nayab-Tahasildar but in that case trap had failed. The complainant is a habitual complainant. His evidence thus can not be believed. He thus prays for allowing the appeal by quashing and setting aside the impugned judgment and order.

6. Learned APP on the other hand had submits that in this case demand is specifically proved by the prosecution. The complainant PW-2 was accompanied by a panch witness PW-1 who, in clear terms, has stated that there was a specific demand

of bribe by the accused. He further submits that there is no suggestion put to the witnesses that the accused was not concerned with the work for which alleged bribe amount was demanded. The learned trial court has rightly appreciated the evidence. So far as sanction is concerned, he submits that sanction order itself is self explanatory which shows the application of mind while according sanction. There is no dispute that amount is found in possession of the accused. He submits that discrepancies in the evidence are not such to discard the version of the prosecution. He thus, prays for dismissal of the appeal.

7. This court has considered the arguments. PW-2 is the complainant and therefore, his evidence is discussed first. The complainant in his evidence stated about the demand on 06-02-2004 when he visited the office of the accused. He thereafter lodged the complaint on 07-02-2004. In his evidence he deposed that the accused was entrusted with the work of issuance of notice for spot panchanama as he happened to be Incharge of

ROR section in the office of Tahasildar. He deposed that at the time of incident on 07-02-2024 he went into the room of the accused alongwith PW-1. He offered Namaskar. The complainant made an enquiry with the accused about issuance of notice. The accused told him that he has prepared a notice for 27-02-2004, but the signature of the Tahsildar is not obtained on it. On that the complainant requested the accused to obtain the signature and at that time there was a demand of amount. On that accused took out a notice from the file and asked the complainant to accompany him for taking out photo copies of the notice. While going towards the photo copy centre, accused asked as to whether the complainant has brought the amount. The complainant answered in affirmative. On that accused asked to pay the amount. The complainant took out the amount from his right side arm pocket of his shirt and with his right hand gave it to the accused. The accused accepted the amount and kept the same in his left side chest pocket of shirt. After giving the amount, he gave signal to the Police Patil. The Police Patil immediately came and made an enquiry with PW-2 as to

whether accused demanded an amount. Panch replied in affirmative. Police thereafter, caught hold the hands of the accused and on that accused removed the amount from his pocket. The accused was taken to Tahasil office. The police asked the complainant to go out of the room and after sometime again called him and checked the inner-side of the shirt pocket under the ultra violet lamp and found greenish. His hands also found shining greenish.

8. In the cross-examination this witness accepted that there was a long history of litigation between the parties and in pursuance to the orders by superior officer entries were taken in 7/12 extract for the year 2002-2003 after spot inspection. He accepted that there was a chapter case bearing No.1/2003 registered by Bamni Police Station against himself and his brother and Rathod his opponent in the litigation. He accepted that on 21-02-2003 Tahasildar had passed an order for attachment of the land and crop in the disputed land. He received the notice in the chapter case directing him to appear

before the Tahasildar on 29-03-2003. He was attending the Tahasildar's Office since 1997 in respect of ROR entries. He had seen the Tahasildar on 06-02-2004 at 03.00 pm. Tahasildar had again called accused in his chamber and directed to put up file before him. He could not tell the exact time. He did not make any complaint to Nayab-Tahasildar or Tahasildar. Talk between accused and the complainant took place in normal voice. When talk took place some persons were present nearby where the incident took place. The police had examined his hands before asking him to go outside the room. Importantly he accepted. He had filed one complaint against Nayab-Tahasildar, Jintur alleging that he had demanded bribe amount of Rs.2500/- but in that case trap had failed as the Nayab-Tahasildar did not accept the amount.

9. Panch was examined as PW-1 about exact incident. He deposed that after going to the office of the accused, the complainant made an enquiry about his work. The accused told him to provide photo copy of the order to the complainant by

asking as to whether the complainant had brought an amount. The complainant replied that he has brought amount. Thereafter complainant and the accused went out of the room to take photo copy of the order. This witness followed them. While walking, the accused demanded the amount from the complainant. The complainant took the amount of Rs.500/- from his pocket and gave it to the accused. The accused collected the amount with his right hand and kept the same in his left chest pocket of the shirt. After giving a signal police party arrived. This witness told the PI as to where the amount is kept. On that PI caught hold the hands of the accused and took him to Tahasil Office. The complainant was told to stop out side the room. The police examined hands of the accused under the light of ultra violate lamp. His hands were found greenish under the ultra violate lamp. Hands of the panch Mahajan were also found shining under the ultra violate lamp. Thereafter the complainant was called in the room. His fingers were also found greenish under the ultra violate lamp. There another panch Mahajan removed the amount from the pocket of the accused.

10. In the cross-examination he accepted the panchanama Exh.21 was already typed before panchas reached the office of ACB. Paper was in possession of PI Jadhav. When they left the Parbhani for Jintur at 1.00 pm, he accepted that there are two doors to the Tahsil Office one of the doors is facing towards South and another door is facing towards North. Some other employees were working in the said room. 4-5 persons were standing in front of the table of the accused. It is panch Mahajan who was holding the notes collected from the accused. A Pen and diary was also found in his left chest pocket. However, said were not examined by the police under the ultra violate lamp. He denied the suggestion that trap was arranged for Tahasildar. He also denied that the complainant thrust the notes in the pocket of the accused as the Tahasildar was not present in the office at that time.

11. PW-3 is the sanctioning authority i.e. Collector, Parbhani. In his evidence he stated that he received the

documents and proposal for sanction and after going through the documents, he accorded sanction for prosecution. In the cross-examination this witness accepted that he had received a draft sanction order alongwith letter from the ACB, Nanded. He denied the suggestion that he forwarded the letter and documents to RDC for preparing order of sanction. He stated that he scrutinized the documents after receiving the same from the SP, ACB, Nanded and forwarded it to RDC to put up the matter before him alongwith his notice. He accepted that RDC prepared a note and after going through the said note he approved it. Notes were regarding the facts as reveals from the documents placed for consideration. He also accepted that he directed the RDC to prepare a sanction order. He denied suggestion that RDC prepared a draft sanction order. He denied that contents of draft sanction order are in verbatim same. However, he had not brought office record in respect of sanction order. He denied suggestion that he has not mentioned the grounds for his satisfaction while according sanction.

12. PW-4 is the Investigating Officer who prepared panchanama Exh.21. He stated that same was prepared after panchas arrived in the office. About the demand he stated that he had not verified earlier demand and no demand verification panchanama was prepared. After the trap he made an enquiry with PW-1 as to who demanded and accepted the amount. It was replied by PW-1 that person standing before them wearing a blue shirt had demanded and accepted the amount. On that this witness and Police Constable Wakode caught hold the hands of that person by disclosing their identity. He offered personal search. However, accused declined to take personal search. Thereafter, they examined the hands of the panchs and members of the raiding party under ultra violet lamp. No shining was found on their hands. It is, thereafter, he directed panch Mahajan to remove the amount from the left chest pocket of shirt of the accused on that panch Mahajan removed the amount from the pocket of accused. A copy of application dated 06-02-2004 filed by the complainant was produced by Peshkar namely Shri Paikrao from the cupboard of inward section and the same

was attached.

13. In the cross-examination he accepted that he did not feel it necessary to verify the correctness of the contents of the complaint. He also did not make an enquiry as to whether Tahasildar was present in the office. He accepted that pen and telephone diary were found in the pocket of shirt of the accused. He examined diary and pen under the ultra violet lamp. However, no further question was asked as to whether it was found greenish shining or not. He accepted that he did not record the evidence of Tahasildar at the time of incident. He denied that it transpired during the investigation that the complainant himself had thrust the amount in the pocket of the shirt of the accused and the accused was returning the said amount by saying no. He accepted that he did not ask for explanation from the accused in writing. He accepted that he had asked panch Mahajan to remove the amount from the left chest pocket of the shirt of the accused.

14. In the argument learned Senior Counsel Mr. Sapkal submits that there are three versions about demand and acceptance of the amount and it is clear case that the amount was thrust in the pocket of the accused. There was no demand of bribe amount.

15. So far as legal position he relied upon the judgments which are discussed below. In the judgment reported in 2011(1) AIR Bom R 479 in the case of Bhagwan Mahadeo Sathe Vs State of Maharashtra and another. The question was about application of mind while according sanction to the prosecution. This court considered that sanction was not given after proper application of mind by discussing the purpose of obtaining sanction under Section 19 of the Act by relying upon the judgment reported in AIR 1979 SC 677 in the case of Mohd. Iqbal Ahmed Vs State of Andhra Pradesh. In the said case, draft sanction order was received by sanctioning authority. When a draft sanction letter was forwarded to the sanctioning authority. Actual sanction which was granted by the verbatim of the draft sanction. The

court thus held that it clearly disclosed that there was non-application of mind while granting sanction to prosecute. Second judgment on the point of sanction cited is the judgment reported in 2021 (3) ABR (Cri) 792 in the case of Anand Murlidhar Salvi Vs State of Maharashtra. In the said case it was apparent on the record that sanction was mechanically granted without application of mind. The authority had received a draft sanction order brought with clerical mistake and without perusing the investigation papers sanctioning authority merely signed the order by correcting grammatically mistakes. It was admitted by the sanctioning authority that it had received the draft sanction order prepared by administrative officer. He relied upon two more judgments on the point of sanction i.e. reported in 2017 ALL MR (Cri) 4184 in the case of Dattatraya Rajaram Thaokar Vs State of Maharashtra and 2010 Cri L. J. (NOC) 544 in the case of the State of Maharashtra Vs Kashinath Shridar Wani.

16. On the point of demand he relied upon the judgment

in the case of Dattatraya Rajaram Thaokar (supra). In the said case demand was made in simple words as to have you brought money. To this question, the complainant answered yes and handed over the money. This court held that such wording would not decisively and conclusively prove a demand of illegal gratification. The court had relied upon the judgment in the case of P. Satyanarayana Murthy Vs District Inspector of Police, State of Andhra Pradesh and another reported in 2015 10 SCC 152.

17. Thus, coming to the facts of this case in the light of above judgment, this court finds that in the present case, sanctioning authority has clearly accepted that it had received draft sanction order. After the papers were received alongwith draft sanction order, he directed the RDC to prepare a note. It is not the case that sanction order was dictated by the sanctioning authority or that he had prepared a note on his own. Sanction order though reflects wording that sanctioning authority has gone through the papers, however, it is not reflected as to what made him to form an opinion that a case is made out to accord

sanction for prosecution. This coupled with an admission in the cross-examination that sanctioning authority had given papers and draft sanction order to his subordinate officer to prepare note. A doubt is certainly created about application of mind by the sanctioning authority.

18. While scrutinizing the evidence of PW-2 and PW-1 with evidence of PW-4 it is clear that there are three different versions about the demand and acceptance of the amount and actually handing over of the amount by the accused persons. There is also contradiction in respect of collecting the amount from the pocket of accused. The accused took out the notes from his pocket. PW-1 i.e. panch witness has stated that amount was taken out by another panch Mahajan from the pocket of the accused, whereas the Investigating Officer also stated that the amount was taken out by another panch Mahajan. Thus, there is contradiction apparent on the record.

19. So far as preparation of panchanama dated 07-02-

2004 also panch witness has clearly stated that when he went to ACB office panchama was already prepared, whereas in the evidence of Investigating Officer PW-4 it has come that panchanama was prepared after panch were called to the office.

20. Thus, there is variance in the evidence of the witness on the material point i.e. preparation of panchanama Exh.21 and secondly about taking out of notes from the pocket of the accused. Another basic question is as to whether merely utterance the words that have your brought the amount whether is sufficient to hold that it was amount of bribe. The answer in view of the judgment in the case of *Dattatraya (supra)* is 'no'. So far as the sanction in view of the judgment this court is also persuaded to hold that sanction is without application of mind. On this count, this court finds that prosecution has failed to prove the case beyond reasonable doubts. This court thus finds that the impugned judgment and order dated 06-05-2005 deserves to be quashed and set aside by acquitting the accused of the charges. Hence, the following order:-

ORDER

- a] The appeal stands allowed.
- b] The impugned judgment and order dated 06-05-2005 passed by learned Special Judge, Parbhani in Special Case No. 6/2004 is quashed and set aside.
- c] The accused-appellant stands acquitted of the charges under Section 7, 13 (1)(d) read with Section 13 (2) of the Prevention of Corruption Act.
- d] Necessary consequences to follow.
- e] Appeal stands disposed off.

[KISHORE C. SANT, J.]