IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 519 OF 2005

Rangnath s/o Radhakishan Vyavahare,
Age 46 years, Occ. Service,
Junior Clerk, District Education and
Training Institute, Osmanabad. … Appellant
[Orig. Accused]

Versus

The State of Maharashtra … Respondent

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Mr. R. N. Dhorde, Senior Advocate i/by Mr. Milind M. Patil Beedkar and Mr. S.P. Katneshwarkar, Advocate for the Appellant.
Mr. S. M. Ganachari, APP for Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 21.02.2024
Pronounced on : 27.02.2024

JUDGMENT :

1. The judgment and order passed by learned Special Judge, Osmanabad in Special Case (AC) No. 12 of 1999 is hereby taken exception to by original accused who stood convicted by the judgment and order dated 30.06.2005 for offence punishable under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 [PC Act].

PROSECUTION IN TRIAL COURT IS ON FOLLOWING FACTS

2. Accused, who joined services in Education Department, was promoted from class IV cadre to class III cadre and he was assigned the work of collecting admission fees of students, to make distribution of scholarship, to prepare and issue bonafide certificates, leaving certificates and as such, he was a public servant. One Sulakshana i.e. sister of complainant submitted application for seeking admission to D.Ed. Course. On 15.08.1999, her brother i.e. complainant Dayanand visited the office of accused to verify the selection list and there he came in contact with accused and also made inquiry with respect to the procedure for getting specific training center at Tuljapur. According to prosecution, accused assured to do the needful but on paying bribe of Rs.7,000/-. Accused assured complainant that he need not meet anyone and that on payment, his sister would be getting admission at Tuljapur training center. After negotiations, demand was brought down from Rs.7,000/- to Rs.5,000/-. On 18.08.1999, complainant and his sister remained present for facing interview. There again accused asked complainant as to whether he has brought amount. Complainant answered that he could not arrange whole amount of Rs.5,000/- but has brought Rs.2,000/-, upon which

accused told to pay at least Rs.4,000/-. Complainant assured him that he will arrange remaining Rs.2,000/- till the evening. Thereafter Sulakshana was called for interview. However, there was some defect in the certificate appended by her regarding she to be under the category of daughter of Ex-Serviceman. Complainant went to the concerned office, got the certificate rectified. That time, complainant was assured by the accused that on payment of remaining amount of Rs.2,000/-, work would be done.

3. As complainant was not willing to pay any illegal gratification, he approached Anti Corruption Bureau [ACB] authorities, who entertained his complaint. Pancha was arranged, complaint was got verified and after drawing pre-trap panchanama, pancha was made to accompany complainant. There were directions to the complainant to hand over money on demand and pancha to watch it. As planned, they reached office of R.P. Collage, Osmanabad and entered the premises. Thereafter complainant, pancha and accused all came out of the institute and proceeded to a hotel. Demand was made. Complainant handed over the tainted currency and thereafter gave pre-planned signal and thereafter accused was apprehended by ACB authorities, who carried out further procedure of lodging complaint.

4. Accused was duly chargesheeted and tried by Special Judge, who held the case of prosecution as proved and convicted appellant as spelt out in the operative part of the judgment.

Above judgment and order is now taken exception to by filing instant appeal.

SUBMISSIONS

On behalf of Appellant :

5. Learned senior counsel for the appellant would point out that prosecution has miserably failed to establish the charges. Learned senior counsel appraised this court about accused, his posting, about sister of complainant applied for D.Ed. course from Ex-Serviceman category, about accused assuring specific Tuljapur center but on payment of amount. Learned senior counsel would submit that though there was handing over and acceptance of amount, it was not at all illegal gratification or bribe as is posed by prosecution. Rather it was a hand loan and that, since inception, i.e. immediately after trap, case of loan was made out by giving statement. That, not only such defence is taken during trial, but even prosecution’s own witnesses

are admitting that there were talks of hand loan, more particularly for treatment of wife of accused who was suffering from deadly deceased like cancer. Therefore, according to learned senior counsel, the amount so accepted was borrowed as hand loan with assurance to repay the same. Learned senior counsel took this court through the testimonies of all prosecution witnesses and even answers given by them in cross in support of above case that there was no demand of illegal gratification, rather it was a case of hand loan. He also invited attention of this Court to the statement of accused recorded immediately upon arrest.

6. Learned senior counsel further submitted that even otherwise, there was a specially constituted committee which alone was authorized to allot center and accused being a mere class III personnel, posted in the capacity of junior clerk, was not authorized to allot specific center and therefore there was no question of assuring said center and obtaining illegal gratification.

7. Next attack of the learned senior counsel on prosecution case is of invalid sanction. He invited attention of this court to the testimony of PW2 Deshmukh, who has accorded sanction for prosecution and it is submitted that this witness has candidly answered that he had not

gone through the material documents and more over, had used a draft while granting sanction. Therefore, there is no proper application of mind while according sanction.

8. Learned senior counsel has placed reliance on the following rulings :

1. ***State of Maharashtra v. Devidas s/o Narayanrao Bobde*** 2016 ALL MR (Cri) 2837.

2. ***State of Maharashtra v. Dnyaneshwar Laxmanrao Wankhede*** (2009) 15 SCC 200 : 2009 AIR SCW 5411.

3. ***Mahesh Ramesh Jadhav v. State of Maharashtra*** 2019 (3) Bom.C.R. (Cri.) 789 : 2019 ALL.M.R.(Cri.) 4056.

4. ***P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another*** (2015) 10 SCC 152.

5. ***Subash Parbat Sonvane v. State of Gujarat*** AIR 2003 SC 2169.

6. ***M. R. Purushotham v. State of Karnataka*** (2015) 3 SCC 247.

7. ***Ayyasamy and another v. State through the Inspector of Police Vigilance and Anti Corruption Erode*** 1996 Cri.L.J. 119.

8. ***Mohd. Iqbal Ahmed v. State of A.P.*** AIR 1979 SC 677.

9. ***The State of Maharashtra v. Ramesh Chhabulal Borse*** 2013 ALL MR (Cri) 3450.

10. ***Prabhat Kumar Gupta v. State of Jharkhand and another*** (2014) 14 SCC 516.

11. ***C.M. Girish Babu v. CBI, Cochin, High Court of Kerala*** (2009)3 SCC 779.

12. ***B. Jayaraj v. State of Andhra Pradesh*** (2014) 13 SCC 55.

9. For all above reasons, learned senior counsel prays that interference at the hands of this court is necessary for allowing the appeal.

On behalf of State :

10. Per contra, learned APP pointed out that accused had demanded illegal gratification. Defence set up is false and without any support or foundation and no medical documents in support of ailment of mother of accused are placed on record. That accused had demanded money by assuring to give specific center to the sister of complainant. Complainant was not willing to give illegal gratification

and he had promptly approached ACB authorities who had laid trap, arranged independent shadow pancha and both complainant and shadow pancha had visited and met accused. He had made demand in presence of shadow pancha. Shadow pancha deposed to that extent. Both complainant and shadow pancha are categorical and consistent about demand being made and amount being accepted. According to him, even sanction is valid and therefore, learned trial court has rightly convicted accused and hence he prays to dismiss the appeal for want of merit.

11. In the light of above submissions, evidence is put to scrutiny.

12. On going through the available evidence, the following witnesses are examined by prosecution and sum and substance of their testimony is as under:

PW1 Dayanand, complainant stated that his sister took education up to 12^{th} standard and she was desirous of getting admission for D.Ed. Course. That, accordingly he had approached District Education Training Center, Osmanabad to make inquiries on 15.08.1999. He found name of his sister displayed in the list at serial no.1 in the category of daughter of Ex-Serviceman. According to him, accused was serving as clerk. He met accused in the office but he was unaware of the post of accused. Therefore, he contacted accused to inquire to ascertain whether his sister would get specific center at Tuljapur for training, upon which accused told him to submit application and further told him that expenses to the tune of Rs.7,000/- would be required and on query, accused allegedly told him that it was required in routine course. Accused allegedly told that if amount is not paid, there would be no guarantee of his sister getting specific Tuljapur center.

On expressing inability to pay Rs.7,000/-, he deposed that accused agreed to accept Rs.5,000/- and unwillingly he agreed to pay the same. On 18.08.1999, he and his sister visited the office. Around 2.00 to 2.15 p.m. accused asked him whether amount has been arranged, to which complainant replied that amount is not arranged but he brought Rs.2,000/- only. Accused immediately accepted the same and directed to bring additional amount of Rs.2,000/- up to 4.00 p.m.. Therefore, on 20.08.1999, complainant approached ACB authorities, lodged complaint Exhibit 27 and on same day, panchas were called, necessary instructions were given, demonstration of tainted currency was given in presence of pancha, who accompanied him and they were followed by ACB authorities to R.P. Collage. After they entered D.Ed. College, accused was found sitting in a room adjoining to the Principal's chamber. There, accused told that he was hungry and he was going to take meals and he even offered meals to complainant and while they were proceeding, accused asked him whether amount has been brought. Thereafter, he himself, pancha and accused entered hotel. Meals were ordered. After finishing meals, accused demanded Rs.2,000/-. Amount was taken out from pocket and handed over to accused, who accepted the amount and kept it in the right pant pocket. ACB authorities reached there and accused was apprehended.

PW2 Madhav is the sanctioning authority and he deposed about receiving papers from ACB authorities and after studying the file, he deposed that, he applied his mind and finding *prima facie* material, he accorded sanction.

PW3 is the pancha and he deposed about being called by ACB authorities, being introduced to complainant and briefed about the proposed trap, he verifying complaint and pre-trap panchanama being drawn and he accompanying accused to D.Ed. College. There, while complainant, he himself and accused were sitting on the table, complainant asked accused whether the work pertaining to the admission of his sister was complete, upon which accused gave assurance. After meals accused asked complainant as to whether remaining amount is brought and complainant handed over cash, accused accepted Rs.2,000/-, complainant went out, gave signal and raiding party reached and apprehended accused and they all went to ACB office.

PW4 PI Suryawanshi is the Investigating Officer, who reiterated all details since receipt of complaint from PW1 till filing of chargesheet.

13. Here, judgment of conviction for commission of offence under PC Act is taken exception to, primarily on the ground that **firstly**, accused being junior clerk, was not at all authorized to allot training center. Rather a specially constituted committee was to look after it and it has so come in the evidence of prosecution itself. **Secondly**, amount demanded and accepted was mere a hand loan for the medical treatment. Immediately after arrest, statement to that extent had been given and even prosecution's own witnesses, including shadow pancha, are admitting about talks of hand loan. **Thirdly**, there is invalid sanction.

14. On above lines, evidence is to be scrutinized to ascertain whether the amount so accepted was at all illegal gratification or a hand loan as put forth by accused.

15. On visiting evidence of PW1 complainant, it is noticed that in para 2 he deposed about approaching office of District Education Training Center, Osmanabad. He specifically states that when he contacted accused, who was clerk, for making inquiries to ascertain whether his sister would get center at Tuljapur for training, accused allegedly told that “expenses” of Rs.7,000/- would be required for that purpose. He further asked whether it was prescribed legal fee, upon which accused allegedly told him that it was not legal fee but required in routine course. He further deposed that accused told him that if he does not pay the amount, then he cannot give any guarantee that his sister would get the training center at Tuljapur only. Thereupon, when complainant expressed his inability to give Rs.7,000/-, accused agreed to accept Rs.5,000/- for the work.

In para 4 also, he deposed that on 18.08.1999, accused asked him whether he arranged the amount and asked him to pay Rs.2,000/- immediately and to bring additional amount of Rs.2,000/- at 4.00 p.m. He has also deposed that as he could not arrange the amount, accused told him to bring Rs.2,000/- on 20.08.1999 and in the event of failure, he would not give any assurance of giving Tuljapur training center and therefore, as he was not willing to pay, he approached ACB authorities.

If his complaint at Exhibit 27 is perused, one does not come across specific mention of bribe amount or illegal gratification. In chief para 8 itself, he deposed that after officer Suryawanshi asked the accused as to why he accepted amount, accused allegedly told him that he took the amount as hand loan.

In cross para 11, complainant admitted that there is selection committee to decide to whom admission is to be given and where. In cross, he admitted that he cannot state whether accused had any concern with the selection committee or not. He also admitted that he had no guarantee that accused would give admission to his sister for D.Ed. Course and that there was no reason for him to get assurance regarding admission for his sister to D.Ed. Course since her name was already published in the merit list. He answered that he felt that the amount which he was about to give to the accused was likely to go to the selection committee.

In para 13, he categorically admitted that contents of pre-trap panchanama were dictated by officer Suryawanshi and further admitted that at that time accused had not demanded amount from him.

16. **PW3** Tatyarao, shadow pancha in examination-in-chief para 5 itself deposed that on that day when they met accused, accused asked complainant whether he had taken meals and they left the office room and came out for taking meals. This witness, complainant and accused went to Shri Hotel. This witness himself, accused and another peon Gaikwad took meals in the hotel and thereafter complainant asked accused as to whether work of his sister was completed, upon which accused told that he would finish the work and then asked complainant not to bother about it. Thereafter, accused asked complainant as to whether he had brought the remaining amount and complainant told that he has brought the amount and complainant removed the tainted money by his right hand from left side pocket of shirt, tendered it to the accused, accused accepted it and kept it in his right side pocket. Thereafter, complainant asked accused to count and to see whether it was Rs.2,000/- and then accused told him that it was not necessary to count money.

In cross para 10, pancha witness answered that when they went to hotel, accused stated to complainant that his parents were too old, his wife was a patient and son was taking education in 12^{th} standard. He was also saying that his financial condition was very weak. When he returned after washing hands and sat near the table, at that time accused was saying to complainant that he would repay amount of Rs.2,000/- after getting the salary in the next month. Thereafter, witness stated that when such talks were going on, members of the raiding party entered the hotel. He further candidly admitted that accused did not demand sum of Rs.2,000/- from complainant in his presence as a bribe amount for any work. Further, in para 11, he answered and admitted that accused had assured complainant that he would refund the amount collected by him. But he further added that he does not exactly know that the accused had taken hand loan from the complainant.

17. Therefore, above discussed material clearly shows that, at first count, complainant has admitted that accused was a junior clerk. On being approached by complainant for some inquiries, accused allegedly said that Rs.7,000/- would be required as expenses. He does not speak about bribe or gratification for doing the work. Complainant has candidly admitted that it is the selection committee

who is responsible for conducting interview and allotting center. Therefore, with such material, it is doubtful whether a junior clerk working in the office was at all responsible in any manner in allotting specific center for sister of complainant. Complainant himself is a teacher. He has also admitted about the procedure adopted from scrutiny of forms till conducting interview by the committee. Therefore, in the light of above material, it is doubtful whether accused was at all in any position to do the work of complainant. Further, from the answers given in cross by complainant and shadow pancha, it is also emerging that in examination-in-chief itself complainant has admitted about accused offering explanation to officer Suryawanshi about borrowing hand loan. Even shadow pancha in above discussed cross is specifically found to be agreeing about hearing accused initially informing his financial condition, health issues of his wife and again assuring to repay the amount on receipt of salary. Such answers further create doubt whether the amount so accepted by accused was by way of illegal gratification by doing any favour to the complainant. On the contrary, the defence raised about borrowing hand loan due to repeated acquaintance with accused seems to be probable. The very aspect of accused asking complainant and taking him and pancha to hotel at the time of lunch and offering them meals also further shows that they had got acquainted with each other fairly well. Complainant himself admits that he had approached accused several times. Therefore, above discussed material is lending some explanation about the money received by accused due to his difficulties and giving further assurance, which was heard by shadow pancha, about returning the amount.

18. Learned senior counsel invited attention of this court to Exhibit 54 which is a statement of accused recorded immediately after his arrest. The defence taken is of taking hand loan. This statement is immediately recorded on being asked by ACB officer as to for what purpose he has accepted the amount. Even investigating officer does not deny the contents of statement Exhibit 54 to be false. As such, though there is presumption available under Section 20 of PC Act, accused is expected to offer an explanation and if the explanation is probabilized, then the same needs to be considered. Such law is spelt out in ***State of Maharashtra v. Dnyaneshwar Laxmanrao Wankhede*** (supra) and ***Mahesh Ramesh Jadhav*** (supra), relied by learned senior counsel.

19. In above citations, it has been categorically held that accused is merely expected to probabilize his said defence. Here, in the considered opinion of this court, by virtue of Exhibit 54 and answers

elicited from complainant and shadow pancha, the theory of obtaining hand loan and assuring to repay it is clearly brought on record by the defence. Therefore, with such quality of material in cross, there is no hesitation to hold that defence has succeeded in probabilizing its case of hand loan.

20. The second criticism raised by learned senior counsel is on the point of no valid sanction which vitiates the entire trial. On this count, if evidence of PW2 is visited, the sanctioning authority has answered in para 5 and 6 of the cross as under:

> "*5. It was for the first time that I have issued the sanction order for launching the prosecution. It is not true to say that before issuing the sanction order there was consultation between myself and the officers of the Bureau. I had received the draft sanction order in a sealed envelop from S.P., A.C.B. Aurangabad. It is true that my name in sanction order at Ex. 47 was typed subsequently. It is true that after receiving the draft sanction order where it was mentioned as "Name" I got typed my name in the sanction order at Ex. 47. It is true that at the foot of the draft sanction order where it was typed "Mohar", I put the seal of my office. The Date in the sanction order is written by ink.*

6. I have not received the original file pertaining to Osmanabad City P.S. Crime No. 61/99 under the provisions of the Prevention of Corruption Act. It is true that I did not request the A.C.B. Office to sent the file for my perusal. The documents which I received for issuing the sanction order were one set of Xerox file and a draft sanction order in the sealed envelop. It is true that my clerk had written the date in his own handwriting and also typed my name on the draft sanction order received from S.P., A.C.B. Aurangabad and thereafter by putting signature on the said draft sanction order, I sent it to S.P., A.C.B. Aurangabad and it is Ex.47. I have not mentioned the grounds of subjective satisfaction on which I felt it proper to accord sanction for launching the prosecution against the accused. It is not true to say that I have issued the sanction order casually and mechanically without studying the file and without applying my mind."

21. Taking above answers into consideration, it is again doubtful whether there is proper application of mind before according sanction.

22. The rulings relied by learned senior counsel are very categorical that if it is shown that there is no proper application of mind while according sanction, entire trial is vitiated. Here, above answers given

by PW2 clearly show that draft order has been issued by making necessary correction, that too by subordinate staff. Consequently, sanction cannot be said to be valid or to be upon proper application of mind. This aspect also, which is crucial, further weakens the case of prosecution.

23. In the light of above discussion, in the considered opinion of this court, learned trial court seems to have lost sight of above crucial aspects. Therefore, interference at the hands of this court becomes necessary. Accordingly, I proceed to pass following order:

ORDER

I. The appel is allowed.

II. Conviction awarded to the appellant Rangnath s/o Radhakishan Vyavahare by learned Special Judge, Osmanabad in Special Case (AC) No. 12 of 1999 under Sections 7, 13(1)(d) r.w. 13(2) of the Prevention of Corruption Act, 1988 stands quashed and set aside.

III. The appellant stands acquitted of the offence under Sections 7, 13(1)(d) r.w. 13(2) of the Prevention of Corruption Act.

IV. The bail bonds of appellants sand cancelled.

V. Fine amount deposited, if any, be refunded to the appellant after 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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