



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

CRIMINAL APPEAL NO. 654 OF 2005

Babruwan Pandurang Jadhav
Age: 56 years, Occu.: Service,
R/o. Ausa, Tq.Ausa, Dist.Latur.

....Appellant

Versus

The State of Maharashtra

.....Respondent

.....
Advocate for Appellant : Mr. Joydeep Chatterji
APP for Respondent : Mr.N.D.Batule

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

RESERVED ON : 27 FEBRUARY, 2024

PRONOUNCED ON : 08 MARCH, 2024

JUDGMENT :-

1. Convict for offence under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act (PC Act) is hereby assailing judgment and order dated 05-09-2005 passed by the Special Judge, Latur in Special Case No.1 of 2001.

FACTS IN BRIEF LEADING TO TRIAL

2. Prosecution was launched against present appellant, a Talathi, alleging that he demanded Rs.500/- from complainant for taking mutation entry in the revenue record. On receipt of complaint, Anti

Corruption Bureau (ACB) Authorities noted the complaint, planned trap, summoned Panchas, explained both complainant and Panchas the procedure, handed over tainted currency to complainant, instructed him to pay it on demand and Pancha to accompany complainant and to observe demand as well as acceptance. Accordingly, complainant approached accused for his work, at that time, accused demanded money and it was duly paid in presence of Pancha and thereafter, raiding party caught accused with the currency. After investigation, appellant was chargesheeted and tried and finally held guilty.

It is the above judgment and order of conviction that is taken exception to by convict.

SUBMISSIONS

On behalf of appellant :

3. Learned Counsel for appellant submits that there is no dispute that at the relevant time, accused was working as Talathi. According to him, there is also no denial that accused has demanded and accepted amount, but his specific defence is that said amount is not accepted towards bribe or illegal gratification for doing any official work, rather it was a hand-loan transaction and amount was received after it was returned by complainant. According to learned Counsel,

such specific defence has been taken up since inception till answering questions under Section 313 of the Code of Criminal Procedure. Learned Counsel took this Court through the cross-examination of PW1 Baswaraj – complainant and PW2 Surendra - Shadow Pancha and pointed out to the answers given by them in cross-examination and would strenuously submit that it has clearly come in their evidence and clear admission by complainant that he had borrowed hand-loan from accused and the amount paid that day was repayment of the said amount. However, learned trial Court has still recorded the guilt. Therefore, he prays to allow the appeal and set aside the impugned judgment.

On behalf of State :

4. Supporting the judgment of the learned trial Court, learned APP submitted that complainant had approached accused, a Talathi, to enter name of wife of complainant in the revenue record and for such work bribe was demanded and therefore, prompt complaint was lodged. According to him, PW1 Baswaraj, complainant and PW2 Surendra, Shadow Pancha are unanimous in examination-in-chief about demand. During trap, again there was demand and on payment of bribe, accused was apprehended. Learned APP pointed

out that unfortunately PW1 Baswaraj, complainant and PW2 Surendra, Shadow Pancha also found to be supporting accused while under cross-examination, however, it is his submission that learned trial Court has correctly appreciated their such cross-examination and held that defence so put up is false. That there is correct appreciation of evidence as well as law. Therefore, findings and conclusion drawn by learned trial Court cannot be faulted at and hence, he prays to dismiss the appeal.

5. Perused the record. It seems that at trial, prosecution has adduced evidence of **PW1** Baswaraj Bhimashankar Burande, complainant, **PW2** Surendra Limbajirao Salunke, Shadow Pancha, **PW3** Sudhakar Bapurao Telang, Sanctioning Authority as well as **PW4** Deelip Chintamanrao Shepal,

EVIDENCE ON RECORD

6. Sum and substance of testimony of **PW1** Baswaraj, which is at exh.27, is that when he approached accused, a Talathi, to enter his wife's name in revenue record on 01-08-2000, accused raised demand of Rs.500/-, therefore, he approached ACB, gave complaint exh.28. He deposed about Panchas being called, Pancha being

apprised about nature of complaint, procedure being explained to them and Pancha accompanying him, complainant questioning about work, accused making demand, complainant handing over the money and it being accepted by accused, followed by signal and trap by ACB.

In paragraph 7 of **cross-examination**, he had admitted that previously accused was Talathi of village Gondhri and at that time in 1997, he had purchased agricultural land in his own name and mutation entry of said land was sanctioned and accused had issued 7/12 extract. He admitted that he used to frequently go to AUSA. He has candidly answered that “prior to incident, I have obtained Rs.500/- from the accused as hand-loan”. He stated that “it is correct that on 01-08-2000 he had been to accused for making enquiry as to whether mutation entry of his wife is sanctioned or not”. In paragraph no.8 of cross-examination, he has answered and admitted that “it is true that Tahasildar is empowered to sanction mutation entries. He admitted that he was keen in getting 7/12 extract in the name of his wife as early as possible and he had approached accused in connection with 7/12 extract. He fairly admitted that accused was demanding “refund” of Rs.500/- which was given to him” and that accused told that he will get sanction of mutation entry and to give

amount to him. He is unable to give numbers of currency handed over to ACB, which were tainted and handed over to accused. He further stated in paragraph no.9 that “it is correct that accused accepted amount from him as his own amount.” In paragraph no.10, he further admitted that under misunderstanding and as mutation entry was not sanctioned, he approached ACB office. In the same paragraph, he also admitted that “it is correct that the accused demanded amount which was given by him”.

7. **PW2** Surendra, Shadow pancha, in his evidence at exh.32 deposed about accompanying accused after understanding procedure and receiving instructions from ACB authorities. He deposed that he was asked to accompany complainant while visiting to accused and observe. In his presence, complainant made enquiry regarding the work upon which accused asking whether amount is brought and thereafter, accepting the amount from complainant.

Cross-examination of this witness is in paragraph no.9 onward. He admitted that it did happen that when he and PW1 Baswaraj were inside the room of accused, accused asked PW1 Baswaraj as to whether “his amount is brought or not” and that was the only talk in respect of amount. In further cross-examination, he answered that

while they were sitting on the platform, there was discussion during which PW1 Baswaraj was saying to another person present there that some amount is to be given to accused. Witness again corrected and stated that Rs.500/- was to be given to accused and he admitted that PW1 Baswaraj was discussing about the amount borrowed as hand-loan and thereafter, he talked about giving the same to the accused. He further admitted that after the trap, on interrogation by PW4 Shepal, accused has explained that he has not demanded the amount as gratification.

8. **PW3** Telang is the Sanctioning Authority.

9. **PW4** Shepal is the Investigating Officer, who deposed about receipt of complaint from PW1 Baswaraj, entertaining it, summoning Pancha, explaining both of them procedure of trap, drawing Panchanama of the same, handing over tainted currency to complainant, instructing him to pay it on demand and instructing Shadow Pancha to accompany complainant, observe and then give predetermined signal and on receipt of the same, accused apprehended after accepting the tainted currency and he being chargesheeted.

ANALYSIS

10. Learned Counsel for appellant, while criticizing the judgment of conviction, took a fundamental defence that amount accepted that day was an amount due towards complainant taken by way of hand-loan.

11. On carefully sifting the evidence of **PW1** Baswaraj, it is emerging that, while in witness box, he has narrated that he approached accused with application for mutation of his wife's name in consequence to purchase of agricultural land at Gut no.166, situated at Ausa. He also gave name of vendor. According to him, on 01-08-2000, when he approached accused at Ausa, accused demanded Rs.500/- for carrying out mutation. He is very categorical that he disliked the demand and therefore, he approached ACB. He is party to the explanation to PW2 Surendra, a Shadow Pancha, verification of his complaint, ACB authorities explaining the procedure, making demonstration of application of powder, carrying the tainted currency as instructed and to pay on demand while in the company of PW2 Surendra, Shadow Pancha. It is worth noting that his such testimony was recorded by trial Judge on 15-10-2004. Cross-examination seems to have resumed on 25-10-2004 and as pointed

out, complainant himself has favoured accused by virtually admitting to all suggestions put like seeking hand-loan previously to the tune of Rs.500/-, form no.4 already signed by vendor, accused demanding Rs.500/-, which was given by him and that accused accepted the amount as his own. Therefore, within a gap of 10 days between examination-in-chief and cross-examination, much water has flown and complainant seems to have been apparently won over. Not only complainant but so called independent witness i.e. PW2 Surendra, Shadow Pancha has also supported accused by admitting to all suggestions regarding hearing complaint, informed another person regarding hand-loan taken by him from accused and that he wanted to return the same.

Hence, virtually, time gap between examination-in-chief and cross-examination has been utilized to turn the complainant and Shadow Pancha hostile.

12. Law is fairly settled that even if a witness turns hostile, still his so much part of the testimony, which can be taken recourse to and relied by the prosecution can definitely be taken aid of. Relevant rulings on this point are as under:

- (a) ***Shyamlal Ghosh v. State of W.B.***, (2012) 7 SCC 646.

“Mere fact that two witnesses had turned hostile in present case would not affect prosecution case adversely. Moreover, even statements of these witnesses, who had turned hostile, partially supported case of prosecution.”

- (b) ***Bable v. State of Chhattisgarh***, (2012) 11 SCC 181.

“Once registration of the FIR is proved by the Police and the same is accepted on record by the Court and the prosecution establishes its case beyond reasonable doubt by other admissible, cogent and relevant evidence, it will be impermissible for the court to ignore the evidentiary value of the FIR. Herein, the FIR was duly proved by the statement of PW10 (SI). According to him, he had registered the FIR upon statement of PW1 and it was duly signed by him. The FIR was registered and duly formed part of the records of police station which were maintained in normal course of its business and investigation. In any case, the FIR by itself is not a substantive piece of evidence but it certainly is a relevant circumstances of evidence produced by the investigating agency. Merely because PW1 turned hostile, it cannot be said that the FIR would lose all its relevancy and cannot be looked into for any purpose.”

- (c) ***Prem Singh v. State (NCT of Delhi)***, (2023) 3 SCC 372.

“such part of the evidence of a hostile witness which is found to be credible could be taken into consideration and it is not necessary to discard the entire evidence.

(d) ***Neeraj Dutta v. State (NCT of Delhi)***, (2023) 4 SCC 731.

“It is for the Judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared “hostile” does not result in an automatic rejection of his evidence. Even the evidence of a “hostile witness” if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a “hostile witness” testimony if corroborated by other reliable evidence.”

13. Here precisely, as discussed above, examination-in-chief, which is unequivocal about complainant approaching accused Talathi for mutation, he demanding Rs.500/-, complainant approaching ACB as he was unwilling to meet the illegal demand, lodging complaint, ACB authorities arranging Panchas, they verifying complaint, all explained the procedure of trap, carrying tainted currency and even paying on demand clearly shows that the amount carried by complainant was only and only to be paid to the accused on demand as a bribe amount and nothing short of it.

14. Neither PW1 Baswaraj, complainant nor PW2 Surendra, Shadow Pancha are elaborating as to when was said hand-loan given and for which purpose. Substantive evidence of complainant is

focused only on mutation entry, visit to accused, illegal demand raised by him and therefore, he approaching ACB. The moot question that crops up for consideration is that, when relations of accused and complainant were of such nature that they were lending financial support to each other, why at all was there any need to approach ACB authorities at Latur. This is beyond comprehension. As stated above, in furtherance to the illegal demand, complainant has accompanied independent Shadow Panch and he is party to the demand and acceptance. Version of PW2 Surendra, Shadow Pancha about hearing conversation between complainant with another person, is apparently a concocted version as this independent Shadow Pancha has also deposed in examination-in-chief about demand being made and tainted currency being handed over by complainant and it being accepted by accused. Subsequently, on receiving sufficient time to manage PW1 Baswaraj and PW2 Surendra, these witnesses seem to be apparently won over for favouring accused. But as stated above, examination-in-chief of these two witnesses can definitely be not only taken recourse to but also relied.

15. Consequently, the sine-qua-non of demand and acceptance being complete, charge is brought home.

CONCLUSION

16. After considering the impugned judgment, it appears that learned trial Court has correctly appreciated evidence on record. The view adopted by learned trial Court that defence has not been probalilized and witnesses are won over, is rightly entertained. No fault can be found in such appreciation. Hence, no need for any interference in the impugned judgment. Accordingly, I proceed to pass following order :

ORDER

Criminal Appeal No.654 of 2005 stands dismissed.

(**ABHAY S. WAGHWASE**)
JUDGE

17. On pronouncement of this Judgment, learned Counsel for the appellant prays for four weeks time to surrender so as to enable him to approach the Hon'ble Apex Court.

18. Learned APP strongly opposes the same.

19. Considering the above request made by learned Counsel for the appellant, four weeks time is granted for the appellant to surrender.

(**ABHAY S. WAGHWASE**)
JUDGE