



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 120 OF 2002

1. Mahadeo S/o. Sawalaram Tingre
age 54 year, occ. Service (Talathi)
R/o. Behind Teacher's Credit Co-op.
Society, Kaij, Tq. Kaij,
District Beed.
**[Appeal abated as against
Appellant No.1 as per Court
order dated 30.09.2016]**

2. Bhimrao S/o. Rambhau Bhute
age 32 years, occ. Business
owner of Visawa Tea house,
R/o. Teacher colony, Kaij,
Tq. Kaij, Dist. Beed.

... Appellants

[Orig. Accused Nos. 1 & 2]

Versus

The State of Maharashtra

... Respondent

.....
Mr. Joydeed Chatterji, Advocate for the Appellants.
[Appeal abated against Appellant No.1]
Mr. S. M. Ganachari, APP for Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 12.02.2024

Pronounced on : 21.02.2024

JUDGMENT :

1. The judgment an order dated 28.02.2002 passed by learned Additional Judge and Special Judge, Ambajogai, District Beed in Special Case No. 04/2000 is assailed by filing instant appeal by both accused, Mahadeo and Bhimrao, questioning their conviction for

offence under Sections 7, 13(1)(d) r/w 13(2) and Section 12 of the Prevention of Corruption Act, 1988, respectively.

It needs to be noted that during pendency of appeal, original accused no.1 Mahadeo died and as such, appeal stood abated against him. Therefore, original accused no.2 Bhimrao is the only surviving convict.

FATS LEADING TO PROSECUTION IN TRIAL COURT

2. Complainant Chatrabhuj Chandanshiv owns agricultural land in survey no. 76 of Uttreshwar Pimpri, Taluka Kaij. He had dug a bore well in his land. Therefore, on 29.12.1999, he approached accused no.1 i.e. Mahadeo, a Talathi with a request to take corresponding entry of the bore well in the 7x12 extract of his land. Accused no.1 obtained his signature on a blank paper and demanded Rs.2,000/- for reflecting the entry in 7x12 extract. On intervention of one Manik and Tukaram, after negotiations, amount was brought down to Rs.1,000/- and accused no.1 asked complainant to pay the amount. Complainant at that time was having Rs.550/- only and he gave the said amount and assured to repay the remaining amount on entry being effected in the 7x12 extract. Thereafter, accused told him to approach him on Friday with remaining amount.

3. As complainant was not willing to pay, he approached Anti-Corruption Bureau [ACB] office on 30.12.1999 and gave complainant Exhibit 34. ACB authorities called panchas and verified the complainant. Complainant and pancha were explained the procedure of trap. Tainted currency was handed over to complainant to be paid on demand and pancha was directed to accompany complainant. On 31.12.1999 around 11.30 a.m., complainant and pancha reached the premises of Kaij Tahsil office. They approached accused, who met them there. Complainant made inquiry about his work, upon which accused asked complainant whether he has brought money. Complainant removed currency notes from his shirt pocket and accused asked complainant to pay the amount to the hotel owner i.e. accused no.2. Accused no.2 accepted the amount. Predetermined signal was given and raiding party apprehended both accused.

4. After completing the formalities, PW5 IO Deshmukh lodged complainant Exhibit 48 and after investigation, both accused were chargesheeted and tried before learned Sessions Judge, who on appreciating evidence held the charges proved and convicted both accused as spelt out in the operative part of the order.

SUBMISSIONS

On behalf of the appellant:

5. Learned counsel for accused no.2 would strenuously submit that present appellant is a private person. Therefore, he is not a public servant. He pointed out that accused no.2 was completely unaware of alleged demand by deceased accused no.1. He claims to be completely oblivious of the previous talks between complainant and accused no.1, being not party to the conversation of alleged demand. Therefore, it is submitted that accused no.2 had no concern with either the work of complainant or the duty of accused no.1. He pointed out that even there is no evidence suggesting previous talks between accused no.1 and accused no.2 so as to accept the case of prosecution version that he had accepted the amount from complainant on behalf of accused no.1. According to learned counsel, there is nothing to show that present appellant knew that the amount received by him that day was at all illegal gratification. On this count he took this court through the substantive evidence of complainant as well as shadow pancha.

6. He next submitted that the primary charge against accused no.2 is of abetting, but according to him, even necessary ingredients for attracting said charge of abetting are not made out as evidence of

prosecution is absolutely lacking in that regard. He pointed out that mere taking money in the hands, that too while conducting hotel business, unaware as to whether the amount was any bribe, would not be sufficient to rope him also for said charge. For all above reasons, he submits that guilt and conviction of accused no.2 being unwarranted, is required to be set aside by allowing the appeal.

On behalf of the State:

7. In answer to above, learned APP pointed out that accuse no.2 was acquainted with accused no.1 and there is no dispute to that extent. That, accused no.1 used to receive amount through accused no.2. He comes under the offence of abetment. That, learned trial court has correctly appreciated the evidence of complainant and pancha and has believed their testimony. There is no infirmity or perversity in the findings about guilt of accused nos. 1 and 2 both, and so he prays to dismiss the appeal.

ANALYSIS

8. The point which falls for consideration of this court on hearing submissions of both sides is whether accused no.2 is liable for abetting commission of offence under Section 7 of the PC Act and thereby committed offence under Section 12 of the PC Act.

9. On hearing the above submissions, there does not seem to be any dispute that deceased accused no.1 was Talathi and was alone a public servant. Admittedly, accused no.2 being running a hotel, does not fall under the definition of public servant and is rather a private person.

10. The sum and substance of accusation is that complainant approached deceased accused no.1 with a request to enter details in the 7x12 extract about digging bore well in his agricultural land and for that, it is alleged that, accused no.1 had put up demand of Rs.2,000/- and finally agreed to receive Rs.1,000/-. It is also the case that on that day, amount of Rs.550/- was paid and remaining Rs.450/- was balance. According to the prosecution, thereafter complainant being not willing to pay amount, had approached ACB authorities and had lodged complaint, leading to laying trap and paying tainted currency of Rs.450/- on demand.

11. Learned counsel for the appellant has taken us through the evidence of complainant **PW3** at Exhibit 33 wherein he narrated about having agricultural field, approaching Talathi to take entry of bore in 7x12 extract, accused Talathi Tingre demanding Rs.2,000/- and on intervention of Manik and Tukaram, demand amount was

reduced to Rs.1,000/-. He further deposed about paying Rs.550/- that time and requesting accused to do the work early and accused asking him to come after two days with remaining amount. Thereafter, he stated that he approached ACB office, lodged complaint Exhibit 34 and that he was called on next day and at such time two panchas had come there. He gave their names and he briefed them about complaint. That time he had Rs.475/-. Out of the same, Rs.450/- were taken by ACB officer. He was explained the procedure of application of anthracene powder, its visibility under ultra violet light. Panchanama of all this was drawn and he was instructed to go with pancha and they reached Kaij at 11.30 a.m. He deposed that in the Tahsil office, **they saw accused outside the Tahsil building**, they met accused and he himself, accused and pancha went to the hotel. According to him, he asked accused whether work was done, upon which accused inquired with him whether he brought the amount and when he took out the currency notes, accused asked him to give amount to hotel owner and further asked the hotel owner to accept the money from him. Said hotel owner namely Bhima (present appellant) accepted the notes and after counting it, kept it in his shirt pocket. He further deposed about giving signal and ACB authorities apprehending hotel owner with tainted currency of Rs.450/-.

12. Complainant is subjected to extensive cross. Only relevant part is dealt herein.

There are questions about his family, date of expiry of his father, brothers, their holdings, complaint against him for cheating, its case pending and land revenue dues towards his father. He admitted that he did not carry documents of the bore when he visited Talathi office. He denied that when he requested accused to take entry of the bore well in 7x12 extract, amount of Rs.426/- was due towards arrears as land revenue against his father. Then he is questioned about the events that took place in the hotel, details of hotel, surroundings of the hotel. Rest is all denial. He has specifically denied the suggestion that accused had asked the hotel owner accused no. 2 to give Rs.24/- back to him. He also admitted that when he offered money to accused no.1, accused no.1 called accused no.2 **while he was preparing tea**. He also admitted that after accepting the money, accused no.2 started walking towards counter of the hotel and before he reached the counter, he was apprehended.

13. **PW1** is the shadow pancha and his evidence is at Exhibit 16. He deposed about visiting ACB office, meeting complainant, going through the complaint, ACB authorities explaining him the procedure

and he being directed to accompany complainant. Regarding the occurrence he deposed that he and complainant both went to Tahsil office and accused **Talathi was found in the canteen.** Complainant made inquiry with accused whether entry of bore well was taken and accused Talathi inquired complainant whether remaining amount is brought and then complainant told that he brought the money and further inquired with accused whether he should given the amount and accused told that the amount should be given to the hotel owner and thereafter complainant took out the notes and gave it to the hotel owner, after which complainant gave signal and ACB team came, made inquiry with this witness and he told that hotel owner has accepted the amount and therefore, hotel owner was apprehended and on examination of his hand under Ultra Violate light, traces of powder were seen.

While under cross, he is subjected to questions about his posting, employment, location of Tahsil office, its geographical directions, location of compound, nature of the structure of canteen, its walls and placement of tables etc. He admitted that at that time, many persons were present there and that hotel owner was preparing tea. He stated that when complainant told that he brought money, **Talathi called hotel owner outside the hotel.** He answered that he did

not hear Talathi asking hotel owner to give Rs.24/- back to the complainant. This witness further answered that Talathi asked the hotel owner to keep the remaining amount with him. He further admitted that when Deshmukh [IO] enquired Talathi about the said amount, he told that said money was towards land revenue due against father of the complainant and even accused told Deshmukh to come to the office and he would show receipt and thereafter accused no.1 opened his office. He further stated that while giving statement before ACB officer Deshmukh, he had stated that complainant inquired with Talathi accused whether he should give money, but he was unable to assign reason why such material is not appearing in his statement. He further answered that he had informed in his statement that accused no.1 asked complainant to give the amount to hotel owner, but he was unable to assign any reason as to why it is not appearing in his statement.

14. **PW2** Kamlakar Kulkarni, a revenue official holding additional charge of Hanumant Pimpri, where accused no.1 was serving as Talathi, admitted that he had no occasion to see the receipt book of Talathi. He also answered that amount due towards father of complainant was Rs.369/-.

15. The sanctioning authority **PW4** Pandurang Kulkarni deposed about receiving communication from ACB office and responding to it.

16. **PW5** is the Investigating Officer.

ANALYSIS

17. On evaluating the above evidence, here is a case wherein two accused were chargesheeted for above offence, however, during appeal, main accused no.1 Mahadeo, who was a Talathi and who had demanded bribe, being a public servant, expired and consequently appeal stood abated against him.

18. As regards present appellant accused no.2 is concerned, there is no dispute that he runs a hotel in the premises of Talathi office. The only question which falls for consideration of this court is whether, on behalf of deceased accused no.1, he had accepted bribe amount from complainant and is thus also a party to the occurrence.

19. On considering the answers given by complainant and pancha, it is emerging that except testimony of complainant about accused

no.1 making demand of Rs.2,000/- and finally agreeing to accept Rs.1,000/-, there is no other evidence or witness on this count. According to prosecution, Rs.550/- were paid on the previous date and remaining amount of Rs.450/- was to be paid and and thereafter trap was laid.

20. It is emerging on scrutiny of evidence of complainant and pancha, i.e. PW3 and PW1 respectively, that though both reached Talathi office at Kaij around 11.30 a.m. or so, according to complainant, they saw accused **outside the Tahsil building** and thereafter he himself, accused and pancha went to the hotel. Whereas, according to PW1 pancha, when they reached Tahsil office, **Talathi was already found to be sitting in the canteen**. Consequently, complainant and pancha are not consistent about where deceased accused met them when they reached Talathi office.

21. Further, according to pancha, accused inquired with complainant whether remaining amount has been brought and further complainant inquired with accused **whether he should give the amount**. This is not coming from the mouth of complainant himself, as to whether he should pay the amount. In cross, omission has been brought from the pancha about deceased accused no.1

asking complainant to give amount to the hotel owner, which according to complainant, was said by accused no.1 when he offered money to him. In fact, in cross, complainant has stated that when he offered money to accused no.1, he called accused no.2 from the place where he was preparing tea. If such version of complainant is taken into account, and more particularly in absence of any other evidence to show that accused no.2 was directed previously itself by accused no.1 to accept the money on his behalf, it cannot be straightway held that accused no.2 was aware that he was receiving bribe amount on behalf of accused no.1. Here, when according to complainant, accused met him outside the canteen and thereafter they entered hotel and further accused directed complainant to pay amount to accused no.2, it is difficult to attribute knowledge about actual conversation between accused and complainant i.e. before they entered the hotel.

22. At Exhibit 57, say of accused no.2 is very categorical that on 31.12.1999 between 11.30 a.m. to 12.00 noon, accused no.1 had come to his canteen followed by arrival of a unknown persons coming and sitting next to accused no.1. He gave statement that there was rush of customers in the hotel and therefore he was preparing tea and because of noise of the stove, he could not hear the conversation

between them. On being called by accused no.1, he went there and the person sitting there handed him four currency notes of Rs.100/- each and a currency note of Rs.50/-, upon which accused no.1 told him to keep the money with him and to return Rs.24/- back and that remaining amount would be gathered by him while going back from office, He further stated that while he was going to bring the change of Rs.24/-, three/four unknown persons came and made inquiries with him.

23. Therefore, taking the above say of accused no.2 into consideration, there is force in the submission of learned counsel for the appellant that accused no.2 was completely unaware that the amount he was directed to receive by accused no.1 was in fact a bribe amount. There is no material to show that on that day both accused had met and had agreed that on payment being made, accused no.2 was to accept the amount on behalf of accused no.1.

24. Admittedly, present appellant is a private person, being running a hotel. According to prosecution, he has received amount of bribe on behalf of main accused no.1. It has to be therefore essentially proved by prosecution, that too, beyond reasonable doubt, that accused no.2 voluntarily accepted the money, specifically knowing that the amount

received by him was bribe amount or any illegal gratification. In the complaint, demand is only attributed to accused no.1. Therefore, whatever apparently happened on that day, i.e. on the day of laying trap and apprehending accused, is that accused no.2 was not at all in picture.

25. Apparently, accused no.2 is charged for commission of offence punishable under Section 12 which deals with punishment for abetment of offences. Here, prosecution evidence patently lacks material to show that accused no.2 appellant intentionally abetted deceased accused to accept bribe. In fact, present appellant is shown to be merely running a hotel in the premises of Tahsil office where main accused was said to be working. As discussed above, when there is nothing on record suggesting appellant to be hand in glove with main accused and it is he who has abetted deceased accused no.1 to take illegal gratification, the charge itself is misdirected. Necessary ingredients to hold abetment are clearly missing from the prosecution evidence. Therefore, learned trial court ought not to have, more particularly in absence of legally acceptable evidence, held appellant guilty for said charge. Consequently, appellant no.2 succeeds. Accordingly, I proceed to pass the following order:

ORDER

- I. The appeal of appellant no.2 is allowed.
- II. The conviction of appellant no.2 Bhimrao Rambhau Bhute for offence under Section 12 of the Prevention of Corruption Act, 1988, awarded by learned Additional Sessions Judge/Special Judge, Ambajogai in Special Case No. 04 of 2000 on 28.02.2002, is hereby quashed and set aside.
- III. The appellant is acquitted of the offence punishable under Section 12 of the Prevention of Corruption Act, 1988.
- IV. 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 made clear that there is no change in the order of the trial court as regards disposal of *muddemal* is concerned.

[ABHAY S. WAGHWASE, J.]