



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 282 OF 2002

Bhagwant s/o Shamrao Shinde,
Age : 45 yrs. Occ : Service,
Jr. Clerk, Panchayat Samiti, Sakri,
R/o- Shantiniketan Society Sec.-II,
Deopur, Dhule.

... Appellant

Versus

The State of Maharashtra

... Respondent

.....
Mr. Nilesh S. Ghanekar, Advocate for the Appellant.
Mr. S. M. Ganachari, APP for the Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 26.02.2024

Pronounced on : 01.03.2024

JUDGMENT :

1. Judgment and order dated 17.05.2002 passed by learned Additional Sessions Judge and Special Judge Dhule in Special Case No. 140 of 1996 recording guilt of the present appellant for offence punishable under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 [PC Act] is assailed by filing instant appeal.

PROSECUTION STORY IN BRIEF IS AS UNDER

2. Complainant, a primary teacher had approached appellant for releasing amount towards revised pay-scale in the backdrop of implementation of Chatopaddhyaya Pay Commission. According to prosecution, complainant approached accused couple of times with application to release revised pay-scale. However, accused demanded Rs.500/- for doing the needful. Complainant had carried only Rs.100/- and he gave the same to the accused, who accepted it and thereafter accused asked him to bring remaining amount of Rs.400/- within three days. As complainant was not willing to comply, he approached office of Anti Corruption Bureau [ACB] on 20.03.1995 and lodged complaint Exhibit 10.

3. ACB authorities completed the procedure of arranging panchas, appraising them about nature of the complaint, they went through the complaint, pancha as well as complainant were given necessary instructions and demonstration of application of anthracene powder to the currency which was to be handed over on demand. Panchanama was drawn. Accordingly, around 1.45 p.m., complainant and pancha followed by raiding party, approached accused in his

office. In presence of pancha, complainant asked accused about his work, but accused directed him to pay remaining amount first. Thereafter complainant gave him tainted currency which was accepted. Thereafter, accused was apprehended. Necessary verification was done, currency was seized and Investigating Officer lodged complaint and after investigation, chargesheeted accused.

4. On trial being conducted by learned Special Judge, Judgment of conviction was delivered and hence the appeal.

SUBMISSIONS

On behalf of the appellant:

5. Learned counsel for accused would question the judgment and order on the ground that there is improper appreciation of evidence. That prosecution had failed to establish the charges beyond reasonable doubt. According to learned counsel, in fact complainant was not at all entitled for the benefits, there being no certification of acquiring efficiency bar. Secondly, accused was not at all authorized to issue revised pay-scale, rather it was entrusted to higher authorities. Therefore, there is no question of giving assurance to do

the work of complainant or to demand illegal gratification. He further pointed out that here, even complainant in deposition is ambiguous about illegal gratification as he merely speaks of some amount being demanded. He further pointed out that there is no verification of demand made by investigating machinery. There is contradiction in the testimony of complainant as well as pancha witness. That, when superior authorities had not held him entitled, there was no question of giving any difference. That, such admissions of complainant himself show that there was no official work with accused. There are vital admissions that powers of sanctioning revised pay-scale was with one Sonawane who was superior to accused Shinde. That, taking such vital admissions of complainant into consideration, it is doubtful whether accused could demand money or illegal gratification for the work which he was not authorized to do.

6. Learned counsel further submitted that it has been the specific case of accused that there was no demand but, for deliberate implication, currency was thrust in his hands. However, learned trial court erred in accepting only the case of prosecution and overlooking the specific defence as well as answers given by complainant and pancha in cross. Consequently, it is his submission that there is improper appreciation and findings reached are not

supported by sound reasons. Hence, he prays to allow the appeal by setting aside the judgment.

On behalf of the State :

7. Per contra, learned APP, while supporting the judgment of conviction, submitted that there is unshaken testimony of complainant as well as pancha witness about demand and acceptance. That, sanction has been accorded upon application of mind and there is no dispute to that extent. Illegal gratification was demanded first on 15.03.1995 and later on, demand was made for remaining amount for making applicable the revised pay-scale to the complainant. That, evidence of complainant and independent pancha witness proves demand as well as acceptance. All required ingredients for attracting the charges being available, learned trial Judge has rightly convicted accused and hence he prays to dismiss the appeal for want of merits.

ANALYSIS

8. Case of prosecution is that in spite of complainant's name finding place in the said list, he did not receive revised pay-scale and therefore he had approached Block Development Officer Vasave who

directed him to present accused. Evidence of PW1 complainant shows that he had approached accused on 15.03.1995 along with application, upon which accused allegedly told him that his work would be done and for that purpose, he will have to pay Rs.500/-. Rs.100/-, which was available with complainant, were accepted by accused, further asking him to arrange for Rs.400/- within three days. Therefore, PW1 claims to have approached ACB authorities and lodged complaint Exhibit 10.

9. Sum and substance of evidence of PW1 is that he had approached panchayat samiti for making inquiries regarding pay scale revision and one Vasave directed him to accused. Consequently complainant approached him on 15.03.1995 and told him about the purpose of his visit. Thereafter accused allegedly told that work would be done but for that purpose, some amount would be required to be paid. Accused demanded Rs.500/-. However complainant was carrying only Rs.100/- and requested accused to accept it. Accused further told that he should give remaining amount within three days and therefore, after borrowing Rs.400/- from others, complainant approached ACB office and gave complaint Exhibit 10. He deposed about panchas being called, introduced to the complainant, pancha signing over the complaint, instructions being given to him as well as

to pancha by ACB officer, about demonstration of application of anthracene to currency which was to be paid on demand, and thereafter he and pancha approaching accused around 1.45 p.m., again accused demanding him remaining amount and on amount i.e. tainted currency being handed over, it was accepted and raiding party apprehended accused. Finger tips of accused had blue shining and there was blue shining to even shirt pocket as well as his own fingers.

10. PW2 at Exhibit 12 deposed that he was directed to visit ACB office on 20.03.1995. He and other pancha More were briefed about the nature of complaint, nature and purpose of demand, about the proposed trap and demonstration of application of anthracene powder and instructions being given to him as well as complainant to pay the amount on demand and to give signal. He deposed about panchanama of this being drawn and finally he and complainant visiting panchayat samiti office around 1.45 p.m., approaching accused, complainant asking about his work, accused demanding remaining amount, tainted currency being paid by complainant and accepted by accused and raiding party apprehending accused.

11. There is nothing in the cross of PW1 or PW2 to disbelieve their version. Mere suggestions given to PW1 are about his work to be in the hands of superiors, and there to be no certificate of efficiency bar, etc. However, crucial aspect of previous receipt of Rs.100/- and raising demand of remaining amount and it being paid and accepted, has virtually remained unshaken. Accused was apprehended in his office. His hands contained traces of anthracene powder which was applied to the tainted currency. There is no convincing explanation for the same. Both PW1 and PW2 are lending support to each other on all aspects of approaching accused on 20.03.1995, complainant questioning about his work, accused raising demand of remaining amount and accepting it on payment by complainant. Therefore both, demand as well as acceptance, are cogently proved.

12. Only defence taken by the accused is of thrusting, however, evidence of complainant supported by that of independent witness PW2, belies the said defence as there is nothing to show that amount was deliberately thrust. In case of thrusting, there would be no powder to the hands of accused, because here, second pancha had taken out the currency from the pocket of accused. There is no suggestion to PW2 that amount was deliberately thrust. On the

contrary, independent shadow pancha speaks about prior demand and thereafter acceptance. Resultantly, there is no force in the defence about tainted currency to be forcibly thrust in the hands or pocket. Hence, said defence cannot come to the rescue of accused.

13. After completing investigation, the Investigation Officer seems to have forwarded the same to PW3 Chief Executive Officer Bobade, who is sanctioning authority. He deposed in his evidence about receiving papers from ACB office, he going through the same. After considering the papers, he has accorded sanction. Therefore, even sanction is valid. There is nothing adverse in cross of this witness.

SUMMATION

14. Therefore, here, there is evidence on behalf of prosecution in the trial court regarding illegal gratification being demanded by accused as well as amount being accepted on two occasions. As a result, presumption comes into play in view of Section 20 of the PC Act. The same has not been successfully rebutted. Sanction accorded under Section 19 of the PC Act is also perfectly valid and therefore no fault can be found in the appreciation at the hands of learned trial court. Charge being squarely proved, guilt is rightly recorded. No

perversity or illegality is brought to the notice of this court in appeal so as to interfere. Hence, I proceed to pass the following order:

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

15. 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.

16. Learned APP strongly opposes the same.

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

[ABHAY S. WAGHWASE, J.]