



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 569 OF 2002

The State of Maharashtra
through Dy.S.P. Anti Corruption
Bureau, Jalgaon.

... Appellant

Versus

Shri Vishwasrao Wamanrao More
Age 47 years, Talathi, Saza Nimbhora,
Taluka Raver, District Jalgaon.

... Respondent
[Orig.Accused]

.....
Mr. N. D. Batule APP for the Appellant-State.
Mr. Sushant V. Dixit, Advocate for the Respondent.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 26.02.2024

Pronounced on : 06.03.2024

JUDGMENT :

1. Vide instant appeal, State is taking exception to the judgment and order of acquittal passed by learned Special Judge and Additional Sessions Judge, Jalgaon dated 18.05.2002 thereby acquitting present respondent from offence under Sections 7, 13(1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988 [PC Act] while deciding Special Case No. 6 of 2000.

2. Learned APP would submit that prosecution was launched against present respondent who was working as a Talathi. That, he had demanded illegal gratification for carrying out mutation entry on being approached by the complainant. Complainant was not willing to comply with the demand and therefore he approached ACB authorities and lodged complaint. After which Anti Corruption Bureau [ACB] authorities arranged and laid trap and accused was apprehended on demanding and accepting bribe. Learned APP therefore submits that both, demand as well as acceptance, has been cogently proved. Complainant and shadow pancha are both lending support to each other and are consistent on the aspect of demand and acceptance. Therefore, according to him, there is strong statutory presumption available under Section 20 of the PC Act. According to him, in spite of so, learned trial court has acquitted accused on the sole ground that sanction to prosecute was invalid.

According to learned APP, such view of trial court is apparently erroneous as in this case, appointing authority, who has accorded sanction, has also deposed about powers to grant sanction. However, observations of learned trial Judge, more particularly in para 47, are

erroneous and hence, he prays to allow the appeal by setting aside the impugned judgment. He seeks reliance on the provisions of the Maharashtra Land Revenue Code, 1966 [MLR Code] as well as the following ruling:

1. ***Dattatraya Laxman Bagdi v. State of Maharashtra*** 2017
ALL M.R. (Cri.) 4622 : 2017 (5) Mh.L.J. (Cri) 277.

2. ***Vikas Baburao Marathe v. State of Maharashtra*** 2015
ALL M.R. (Cri) 2988 : 2015 (4) Mh.L.J. (Cri.) 323.

3. Per contra, learned counsel for the accused would point out that there is no error or perversity in appreciation or view and conclusion drawn by learned trial court. He pointed out that it is settled law that unless there is valid sanction, guilt cannot be recorded. He pointed out that law further expects that sanctioning authority should not only be competent to appoint and remove but also should apply its mind to the prosecution documents before according sanction. Here, apparently the sanctioning authority was on first count, incompetent, and secondly, draft sanction order received from ACB authorities was reproduced by sanction order. Consequently, there is no independent application of mind. Further it

is submitted that evidence of prosecution shows that in fact there was no work of complainant with accused at the time of alleged demand or trap and therefore there is no question of seeking bribe. That learned trial court has thereby correctly appreciated and taken correct view and therefore he prays to dismiss the appeal.

ACCUSATIONS

4. On re-appreciating the evidence, here, it is not in dispute that present respondent, who was accused in the trial court, was working as a Talathi. Precisely complaint was lodged by PW1 alleging that, after purchasing agricultural land, complainant had approached accused with a request to mutate his name in the revenue record, for which accused allegedly demanded Rs.1,000/- and finally, deal was struck at Rs.500/-. PW1 lodged complaint on 01.12.1999 which culminated into trap and apprehension and on investigation, he being chargesheeted.

EVIDENCE BEFORE TRIAL COURT

5. Case of prosecution seems to be rested on following witnesses:

PW1 Padmakar, at Exhibit 10 deposed about approaching accused after purchasing agricultural land, with a request to mutate his name on revenue record. According to him, from Rs.1,000/-, demand was brought down to Rs.500/- for mutating his name in the revenue record. However, in stead, this witness approached ACB on 01.12.1999 and lodged complaint Exhibit 11 which he identified to be on his behalf. His testimony is about explanation of procedure by ACB authorities in presence of panchas, application of anthracene powder to the currency, meant to be paid on demand, demonstration about glittering of tainted currency and instructions to pancha to accompany him and accordingly, they reached Nimbhora around 12.00 to 12.30 noon. Raiding party followed them. He and pancha Patil approached accused. Complainant asked accused about the 7x12 extract, upon which accused asked whether he brought money and on it being handed over, it was accepted by accused in his right hand and thereafter, signal was given and raiding party apprehended accused.

Above witness is subjected to extensive cross and initially he is questioned about situation of that office. He is asked whether accused was also doing collection of amount towards small savings. He denied that extracts were handed over to him on 30.11.1999 itself. He is questioned about time of reaching at office of accused, how many

persons were sitting there, whether separate panchanama was drawn about demonstration of application of anthracene powder, about nature of work undertaken by accused that day and questions about events that took place after raiding party entered the office and apprehended accused.

PW2 Jijabrao, who was working in health department of Jalgaon Zilla Parishad, deposed about being asked to visit ACB office, introduction of complainant, being briefed about the demand, he going through the complaint, signing it, procedure of application of anthracene powder, demonstration under UV light after application of said powder to the currency and its appearance and panchanama being drawn. He deposed about accompanying complainant, they both meeting to accused, accused questioning about money, it being handed by complainant and apprehension of accused by raiding party.

On visiting his cross, he is questioned about time spent in reading the complaint, whether anthracene powder was shown at the time of reading complaint, timing of demonstration, condition of the cupboard, the pocket of complainant in which constable kept the amount, time required to reach office of Talathi, number of persons sitting before accused, location of doors and windows to the office

and whether currency was counted by both hands. He is unable to state whether work of filling up forms of small savings was also being done on that day. Rest is all denial.

PW3 Amol is the second pancha who accompanied PW2 shadow pancha to ACB office and he also deposed on the same lines as that of PW2, but he did not accompany complainant and PW2 on the day of trap.

PW4 Kisanrao is the sanctioning authority and his evidence at Exhibit 19 is that while he was working as Sub-Divisional Officer [SDO] at Bhusawal, on 21.02.2000 papers were received from ACB thereby seeking permission to prosecute accused and according to this witness, he being disciplinary authority, he went through the papers and accorded sanction which he identified to be at Exhibit 20.

While under cross, he admitted that along with the papers, a draft sanction order was sent to him. He is unable to state whether he had prepared the sanction order as per the draft or made any changes in that. He admitted that initial appointment of accused was by Assistant Collector and that he did not inquire with collector as to who is the disciplinary authority. He admitted that there were orders from Government to undertake small saving work in December 1999.

He admitted that in sanction order Exhibit 20 he has not stated the documents which he read but merely stated that he has gone through the documents in general. Rest is all denial.

PW5 Ashok Patil, Dy.S.P., Anti Corruption Bureau was the Investigating Officer who stated all steps taken by him since inception, i.e. since receipt of complaint till apprehending accused and charge-sheet being filed against him.

ANALYSIS

6. Therefore, on minute scrutiny of evidence of complainant and shadow pancha PW2, case of prosecution is about complainant approaching accused with a request to enter his name in the 7x12 extract in the light of sale transaction and accused demanding Rs.1,000/-, settling the amount to Rs.500/-, complainant approaching ACB authorities, lodging complaint, panchas being called and both, complainant and panchas being given necessary demonstration and instructions, complainant and pancha approaching accused in his office, on query about 7x12 extract, accused demanding money, complainant handing and accused accepting it. Such testimony is consistently stated by both these witnesses.

7. Here, defence of accused is that there was no work of complainant with accused at relevant time and secondly, the amount accepted was towards small saving, and third objection is PW4 to be incompetent to grant sanction and more particularly, sanction so accorded is in mechanical manner, there being no independent application of mind as there is use of draft sanction order received from Anti Corruption Department.

8. Learned trial Judge has acquitted the accused primarily on the ground that PW4 being SDO, was incompetent to accord sanction and hence case of prosecution suffers on such count.

9. Learned APP has relied on the provisions of MLR Code as well as judgment of this Court reported in *Dattatraya Laxman Bagdi* (supra) and *Vikas Baburao Marathe* (supra) to buttress his contention that SDO is competent to accord sanction.

10. On going through the record, it is noticed that there is no dispute that accused was officiating as a Talathi. Record shows that he was appointed as a Talathi by virtue of a select list under the signature of the then Assistant Collector. His service record also

carries noting to that extent. Therefore, apparently, there is no distinct appointment order in favour of complainant. PW4 who has accorded sanction, is no doubt SDO. Definition of SDO as provided in MLR Code provides that Assistant Collector and SDO are same ranking officers.

11. Taking into consideration the view of this Court in *Dattatraya Laxman Bagdi* (supra) and *Vikas Baburao Marathe* (supra), taken recourse to by learned APP, it cannot be said that PW4 was incompetent, more particularly in the light of provisions laid down in Section 19(1)(c) of the PC Act.

12. However, here, there is specific argument by learned counsel for respondent that apart from incompetency, there is also non application of mind by PW4 before according sanction and that it being in mechanical manner, the sanction is invalid.

13. In light of above specific defence, and on re-visiting the evidence of PW4, it is emerging that he merely deposed about receiving papers and going through the same and according sanction. In cross he candidly admitted that along with the papers received from ACB, he also received a draft sanction order. He is unable to

state whether he prepared sanction order as per the draft. He has not categorically denied that he did not issue sanction as per the draft itself. He is found to be specifically admitting receipt of draft sanction order. In further cross, he is unable to state the nature of documents which he allegedly verified and applied mind to, while granting sanction. Therefore, there is doubt whether before granting sanction, there is proper application of mind.

14. Law is fairly settled that when draft is put to use, there are doubts about independent assessment before according sanction. The relevant ruling on the above point are *Mohd. Iqbal Ahmed v. State of A.P.* (1979) 4 SCC 172, *Bhagwan Mahadeo Sathe v. State and Another* 2011 All.M.R. (Cri.) 1221 and *CBI v. Ashok Kumar Aggarwal* (2014) 14 SCC 295. Resultantly, when there is no denial by PW4 about receipt of draft sanction, there are serious doubts about independent assessment of the documents while according sanction.

15. Therefore, though here, employment of accused is shown by virtue of select list issued by Assistant Collector and sanction is accorded by SDO, in view of non availability of material regarding independent application of mind and further, use of draft, case of prosecution suffers jolt.

16. Hence, here, though prosecution has shown that there was demand and acceptance, sanction is not valid. Consequently, appellant fails. Accordingly, I proceed to pass the following order:

ORDER

The appeal is hereby dismissed.

[ABHAY S. WAGHWASE, J.]

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