2024:BHC-AUG:14018

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 14 OF 2004

Tejrao s/o Natha Salve
Age: 40 years, Occu.: Service,
Police Head Constable,
R/o. Building No.26,
Room No.7, Police Line,
HUDCO, Aurangabad. ....Appellant
(Original Accused)

Versus

The State of Maharashtra .....Respondent

.....

Advocate for Appellant : Mr. S.S.Jadhavar (Appointed)
APP for Respondent : Mr.A.A.A.Khan

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 05 JULY, 2024
PRONOUNCED ON : 12 JULY, 2024

JUDGMENT :-

1. Convict for offence under Sections 7,13(1)(d) read with 13(2) of the Prevention of Corruption Act hereby takes exception to the judgment and order passed by the Special Judge, Aurangabad in Special Case No.18 of 1999 dated 17-12-2003.

PROSECUTION CASE IN SHORT

2. One Meerabai lodged complaint against Ganpat, brother of

complainant and therefore, presence of Ganpat was sought at Police Station, Gangapur. PW1 Karbhari, complainant, accordingly visited Police Station and he was told by accused, a Police Head Constable that, to avoid action against his brother, Rs.1,500/- would be required. Deal was finally stuck to Rs.700/-. Complainant PW1 approached ACB, lodged report exh.10, on the basis of which ACB, authorities planned and arranged trap. Accused Police Head Constable, who demanded amount, directed complainant to pay amount to PW3 Parasmal, a shop owner. Tainted currency was seized from PW3 Parasmal.

PW4 Borse (PI), Investigating Officer registered crime against accused and after completion of investigation, accused was chargesheeted and tried before the Special Judge vide Sessions Case No.18 of 1999.

Trial concluded in conviction of accused for above offence and said judgment and order passed by the Special Judge dated 17-12-2003, is now questioned by filing instant appeal.

SUBMISSIONS

On behalf of appellant :

3. Apprising this Court about the prosecution case in trial Court,

learned Counsel for appellant pointed out that, at the outset prosecution case itself is entirely shrouded with mystery and doubt. He pointed out that appellant is held guilty even when there is clear evidence that he had not accepted any bribe amount. He pointed out that he was chargesheeted on the premise that he had demanded bribe for not taking action against Ganpat, who is brother of complainant in the backdrop of some complaint of outraging modesty received from a lady and for not taking action, Rs.1,500/- was demanded, but it is pointed out that finally it is claim of prosecution that amount was brought down to Rs.700/-. Learned Counsel submitted that there is no evidence about any complaint lodged by said lady, nor she is examined or even the Police, who alledgely went in search of brother of complainant to the village, is not examined. Thus, according to learned Counsel, material witnesses are not examined for the best reasons known to investigating machinery.

4. It is next pointed out that, according to complainant, amount was paid to a show owner PW3 Parasmal and case of prosecution was that bribe amount demanded was directed to be paid to the shop owner to clear his previous credit dues. But according to learned Counsel, there is no distinct evidence, gathered by Investigating

Officer, about so called credit record of accused. On this point, he invited attention to cross-examination of the Investigating Officer and it is pointed out that even Investigating Officer has admitted that he did not verify credit from ledger maintained by PW3 Parasmal.

5. Learned Counsel further submitted that his presence is not marked at the time of payment of alleged bribe amount to PW3 Parasmal and even PW3 Parasmal as well as complainant admit to that extent. Thus, according to learned Counsel, there is no evidence to show that PW3 Parasmal had accepted amount, which was alleged to be bribe on behalf of accused.

6. He further pointed out that PW3 Parasmal from whom there was recovery of tainted currency is made an witness, who merely falsely implicated appellant. He pointed out that even so called receipt issued by PW3 Parasmal was not in the name of accused appellant so as to accept case of prosecution that bribe amount was used to settle previous credit. Thus, according to him, when said receipt does not carry his name, his very implication and charge of accepting bribe was itself misplaced.

7. Lastly, he submitted that there is improper appreciation of evidence by learned trial Judge that there was acceptance of bribe amount by appellant. That learned trial Court itself had entertained doubt about prosecution story, but still conviction is recorded and so he submits that such judgment cannot be allowed to be sustained.

On behalf of State :

8. In answer to above, learned APP also took this Court through the testimonies of complainant PW1 Karbhari, PW2 Limbaji, shadow pancha, PW3 Parasmal and would submit that this was unique tactic adopted by accused to demand bribe but to apply the same to settle previous credit. Learned APP pointed out that there was demand of bribe for not taking action against brother of complainant. That in presence of shadow Pancha, accused took complainant to shop of PW3 Parasmal and after making demand of bribe, directed it to be paid it to PW3 Parasmal on his behalf. PW3 Parasmal, who accepted amount on his behalf has testified in the Court. Therefore, offence is complete as there is demand as well as acceptance but on behalf of accused. Thus, according to learned APP, learned trial Court rightly held the charges proved and prays not to disturb such sound and reasoned judgment and findings.

EVIDENCE BEFORE TRIAL COURT

9. Prosecution has adduced evidence of four witnesses in support of its case. Sum and substance of their evidence is as under :

PW1 Karbhari, complainant stated that Meerabai lodged complaint against his brother Ganpat. That Police visited to secure presence of Ganpat for registration of crime. That PW1 Karbhari, brother of Ganpat, approached Police Station as well as accused, who demanded Rs.1,500/- to avoid registration of case. That finally accused agreed to accept Rs.700/- and asked complainant to come next day. That he approached ACB, who arranged plan and he, shadow pancha accompanied by accused visited to the shop and there, on directions of accused, he paid Rs.700/- to shop owner as there was credit of accused, which had remained unpaid and he gave tainted currency to shop owner, who accepted it. That he gave signal, raiding part apprehended show owner and brought him to the Police Station. That crime was registered.

PW2 Limbaji Sukhdeo Shinde, Shadow Pancha also stated that he was called to ACB Office, introduced to complainant, he verified the complaint, preparation of pre-trap panchanama being done and he and complainant explained procedure and there was demonstration of currency being tainted, which was to be paid on demand. He accompanied complainant initially to the Police Station and thereafter, accused taking them to shop of PW3 Parasmal to whom accused directed amount to be paid, and said shop owner accepted it at the instance of accused.

PW3 Parasmal Shantilal Chaged, shop owner deposed at exh.17 that he run cloth shop namely Hindustan cloth and ready-made center. That his brother Subhash jointly run the shop and Subhash used to write the account. That he know accused. That he had opened a credit account in his shop.

He stated that on 23-12-1998 at about 12:00 Noon, accused alognwith one person came came to his shop. That accused suggested this witness to collect Rs.700/- from that person towards the balance of his credit money. That the said person told his name Karbhari Shinde. That he paid this witness Rs.700/-, which this witness put in the pocket of his shirt. That accused had then left. That this witness then issued a receipt of Rs.700/-. He identified receipt exh.18 to be in his handwriting and bears his signature. That after some time, some Policemen came in plan dresses and asked about said receipt of Rs.700/-. This witness said yes. Then this witness was taken to Police Station and tainted notes of Rs.700/- were collected from him.

PW4 Ashok Ganpat Borse (PI) is the Investigating Officer.

ANALYSIS

10. In short gist of prosecution case is that, accused a Police Constable demanded illegal gratification to refrain from taking any action against brother of complainant in the backdrop of complaint received from one Meerabai for outraging her modesty by Ganpat. It is a specific case of prosecution that demand was of Rs.1,500/- but subsequently accused agreed to accept Rs.700/- and when complainant and pancha approached him, he took them to the shop, where he had maintained credit and directed PW1 complainant to pay the bribe amount to settle his previous credit.

11. Admittedly, what is emerging from above story is that, accused appellant has not directly accepted the bribe and prosecution even does not dispute the same. As pointed out that, to substantiate that there was demand of bribe for not taking penal action against brother in consequence to complaint received from Meerbai, neither

said lady is examined, nor the Police personnel, who allegedly went for a look out for Ganpat are examined. These were the foundational facts, which were expected to be demonstrated by prosecution to accept the version that for not taking action against Ganpat, bribe was demanded from his brother PW1 Karbhari.

12. Even very complainant speaks that when he approached accused, accused made queries regarding Ganpat and asked where was he as his presence was necessary to cause signatures on Police papers. Such version of complainant goes to show that accused had sought and tried to secure presence of Ganpat against whom complaint has been received. Such questioning by accused reflects some other intention of accused. Had it been a case as is put forth by prosecution, then to prevent action against Ganpat, his presence ought not to have been insisted upon by accused. Therefore, the above material coming on record, also does not confirm and support prosecution version of bribe being demanded to avoid action against Ganpat.

13. Prosecution evidence themselves speak that complainant PW1 Karbhari and shadow pancha PW2 Limbaji on the day of trap

approached accused. According to PW1 Karbhari, they first had tea and then visited Xerox Center, came back to the Police Station and then accused asked them to come out and took them to cloth shop of PW3 Parasmal. However, it is complainant's version that he took them to the cloth shop and there told that he is in arrears of some charges of the said shop and to pay the money there and resultantly currency were offered to shop owner and not to accused. Therefore, as pointed out, accused has himself not accepted the tainted currency. Complainant himself deposed in paragraph 5 that PW3 shop owner collected the currency and put it in his own pocket and at that time Salve had already left them.

14. PW2 Limbaji, shadow pancha, who accompanied complainant, in paragraph 3 of his examination-in-chief has stated that accused asked complainant about his brother and then took them to Xerox shop. There according to this witness, accused asked complainant whether his work was done. Such version is not stated by complainant himself. According to this witness, complainant asked accused whether he should pay. Even such version is not coming from the very complainant, who was actually having conversation with accused. Therefore, complainant and shadow pancha witness

are not lending support to each other inspite of claiming to be together on the aspect of demand.

15. PW3 Parasmal, who has infact accepted the currency deposed that he knew accused, who had credit account in his shop. According to him, on 23-012-1998 accused came with a person to his shop. Thus, PW3 does not speak about presence of PW2 shadow pancha and he only marks presence of accused and complainant. He stated that accused suggested him to collect Rs.700/- from that person towards the balance of his own credit. He took that money and kept it in his pocket and accused went away and therefore, he issued receipt of Rs.700/-. It is pertinent to note that the receipt, which is collected by Investigating Officer for payment of Rs.700/- does not stand in the name of accused, rather it is issued in the name of PW1 Karbhari. Even PW3 Parasmal, in his very examinaion-in-chief has stated that he issued receipt in the name of PW1 Karbhari.

Thus, if at all according to prosecution, the bribe amount was towards settlement of previous credit of accused, then there was no reason for PW3 Parasmal to issue receipt in the name of complainant, who had no transaction with PW3. Consequently, very case of prosecution of PW3 Parasmal accepting bribe on direction of accused, itself come under shadow of doubt. **Article-A (exh.18)** receipt is not towards settlement of previous credit so as to accept prosecution version that bribe amount was applied towards previous credit. PW4 Investigating Officer has admitted that he did not gather ledger or credit record of accused maintained in the shop of PW3.

16. It is also pertinent to note that PW3 Parasmal is the recipient of tainted currency and there is recovery of the same from him but he is not arrested on 23-12-1998, rather his statement is recorded next day and he is made prosecution witnesses.

For above reasons, here it is apparent from the prosecution evidence itself that there is no convincing evidence both on the point of demand of bribe to prevent action against brother of complainant and acceptance of bribe by accused. Admittedly, accused has not been apprehended while in possession of tainted currency. Therefore, case of prosecution has come under shadow of doubt.

CONCLUSION

17. Perused the impugned judgment. The findings arrived at by the trial Court are reflected from paragraph 19 onwards. It is noticed that after discussing the prosecution evidence, even learned trial

Judge, in paragraph 23, has observed that PW3 Parasmal has not been arrested. Trap Officer Borse's conduct has been noted by expressing doubt over manner of adducing evidence. It is categorically observed that there is no document in support of outstanding dues of accused towards PW3 Parasmal and therefore, learned trial Judge has in clear terms expressed doubt over implication of sole appellant. Even in paragraph 25 of the judgment, learned trial Judge has observed that Investigating Officer did not collect evidence to ascertain alleged credit of accused in the same shop. Therefore, the very case of prosecution that bribe demanded was applied towards the credit of accused, itself is doubted by trial Judge. However,, absence of accused till 11-01-1999 is taken recourse to, to draw adverse inference on his conduct. Such approach of the trial Court propels this Court to hold that inspite of no clear evidence about demand and acceptance, guilt of appellant has been recorded. Conclusion drawn is contrary to the findings and observations. Hence, interference at the hands of this Court is called for. Accordingly, I pass following order :

ORDER

I) Criminal Appeal No.14 of 2004 is allowed.

II) The conviction awarded to appellant Tejrao s/o Natha Salve in Special Case No.18 of 1999 by the learned Special Judge, Aurangabad on 17-12-2003 for the offence punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, stands quashed and set aside.

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

IV) **The bail bonds of appellant stand cancelled.**

V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.

VI) It is clarified that there is no change as regards the order in respect of disposal of muddemal.

VII) Fees of the learned Counsel appointed for the appellant be paid through the High Court Legal Services Sub-Committee, Aurangabad as per Rules.

(ABHAY S. WAGHWASE)
JUDGE

SPT