



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.61 OF 2004

Mohd. Irfanuddin S/o. Mohd. Riyazuddin,
Aged: 37 Years, Occu.: Service,
R/o.: Manzoorpura, Aurangabad,
District: Aurangabad

.. Appellant
(Ori. Accused)

Versus

State of Maharashtra

.. Respondent

...
Advocate for Appellant: Mr. Nasim R. Shaikh
APP for State: Mrs. Chaitali Choudhari-Kutti
...

CORAM : ABHAY S. WAGHWASE, J.
Reserved on : 01.07.2024
Pronounced on : 16.07.2024

JUDGMENT:

1. The Judgment and Order dated 06.01.2004, passed by the Special Judge, Aurangabad in Special Case No.35/1999, convicting the present appellant for offence under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (**PC Act**) is assailed in the present appeal.

FACTS LEADING TO TRIAL

2. The subject matter of challenge in this appeal is that complainant – Ganesh Bhagat was in need of Medical Certificate. Therefore, he approached District Tuberculosis Hospital (**T.B. Hospital**).

He approached Dr. Misal, who directed him to accused, who was working as a Clerk for issuing required certificate. As illegal gratification was demanded, for same Complainant approached A.C.B. and lodged report, on the basis of which ACB Authorities planned and arranged trap. Complainant was accompanied by panch. Both the complainant and panch approached accused in the Hospital, accused demanded money for issuing certificate, complainant handed over the cash and it was accepted by the accused. Predetermined signal was relayed and accused was apprehended, complaint was lodged, which was investigated and finally he was charge-sheeted.

Learned Special Judge conducted trial vide Special Case No.35/1999 for commission of offence under Section 7, 13(1)(d) and 13(2) of the PC Act.

After appreciating the oral and documentary evidence, the judgment and order dated 06.01.2004, in Special Case No.35/1999, the Special Judge, Aurangabad held appellant guilty for offence under Sections 7, 13(1)(d) and 13(2) of PC Act. Hence, instant appeal.

SUBMISSIONS

On behalf of the appellant:

3. Learned counsel for the appellant pointed out that here is a classic case, wherein in spite of very complainant not supporting

prosecution, case of prosecution has been accepted on the testimony of panch witness and other witnesses like Sanctioning Authority and Investigating Officer, who are interested witnesses. He further submitted that the *sine qua non* for attracting the charges i.e. demand and acceptance is not proved, as required by law. That, main accused, who had allegedly demanded illegal gratification is not charge-sheeted and tried for the best reasons known to the Investigating Agency. According to learned counsel, present appellant is mere subordinate staff, who was not authorized to issue any certificate. He pointed out that, in fact, required certificate is issued by specially constituted board comprising of several responsible officers. Therefore, the appellant ought not to have held guilty for the above charges. That, complaint was specifically against Dr. Misal, but he was spared. Therefore, present appellant, who is made a scapegoat, ought not to have been charge-sheeted and tried. According to him, learned trial judge has misconstrued role of appellant and has not correctly appreciated evidence as required and, hence, he seeks interference.

On behalf of the State:

4. On the other hand, learned APP supported the judgment by stating that though complainant initially did not supported but subsequently he has supported prosecution. Demand was made to him

and, therefore, he lodged complaint. That, complainant was accompanied by shadow panch. They both are consistent not only about demand but also about acceptance. Tainted currency is accepted and is in possession of appellant, of which there is no plausible explanation and, hence, according to learned APP conviction recorded is just and proper.

EVIDENCE BEFORE THE TRIAL COURT

5. Role and status of the prosecution witnesses and the sum and substance of their evidence is as under :

PW-1 Madhuri, Sanctioning Authority, who accorded sanction - Exhibit 13.

PW-2 Ganesh Bhagat / Complainant stated that he was working as a Peon in Corporation. He was suffering from T.B. He went on leave and while resuming duty he was called upon to tender certificate. Therefore, he approached T.B. Hospital and met Dr. Misal, who directed him to meet Irfan. That, during second visit when he approached Dr. Misal, he told him to give Rs.2,000/- and then certificate would be issued. In chief itself, he stated that he had Rs.2,000/- and he paid Rs.1,500/- to Irfan. In chief again he stated that no clerk of Dr. Misal demanded Rs.2,000/-. Therefore, not finding him supporting, learned APP cross-examined him by putting leading questions, wherein he deposed that he had met clerk of Dr. Misal, who had demanded Rs.1,500/-, but he again denied that he had therefore lodged report against the clerk of Dr. Misal. He again stated that he was asked to approach Irfan for

certificate. He put amount of Rs.1,500/- in the hands of Irfan and that time raiding party apprehended him.

PW-3 Ashok Belsare, Shadow Panch, stated that, on instructions of ACB authorities, he and complainant Ganesh Bhagat visited T.B. Hospital. They approached Irfan, who told to collect the certificate from Ghati Hospital or to meet Dr. Misal. After 15 minutes, Dr. Misal came in the cabin. He, complainant and Irfan jointly went in the cabin and then Irfan told Dr. Misal about demand of certificate. Then, Dr. Misal told to Irfan to prepare certificate of complainant – Ganesh Bhagat and they went out of the cabin. Irfan then stated complainant, whether he could pay Rs.1,500/- to which complainant agreed to pay Rs.1,200/- and Irfan allegedly further stated that he had already talked with Dr. Misal and he has to pay Rs.1,500/- only. That, he further stated that amount is to be paid to the *Saheb*. Complainant then went out to collect xerox copies, he returned and delivered xerox copies. At that time, Irfan demanded Rs.1,500/-, which was handed over by complainant and accused accepted it by left hand and complainant gave necessary signal and accused was caught.

PW-4 Subhash Joshi, Investigating Officer.

ANALYSIS

6. Prosecution was lodged against present appellant on allegations that, when complainant had approached T.B. Hospital for issuance of certificate to avail leave salary, bribe was demanded. Therefore, complaint was lodged by PW-2 Ganesh Bhagat. The

Authorities planned and arranged trap in presence of panch. Complainant and panch visited the Hospital and present appellant accepted bribe of Rs.1,500/- and, therefore, arrested and on investigation charge-sheeted.

7. On carefully analysing the evidence of PW2 and PW3, which is crucial, it is noticed that PW-2 complainant has not supported prosecution wholeheartedly. In initial chief itself, he has stated that he approached Dr. Misal, who asked him to pay amount of Rs.2,000/- and only then certificate would be issued. He further stated that Dr. Misal told him to pay amount to Irfan. He gave Rs.1,500/- to present appellant – Irfan and got the certificate and he was allowed to resume duties. He virtually denied in chief itself that no clerk of Dr. Misal demanded Rs.2,000/- and he was never told to pay Rs.1,500/-. He again submitted that he lodged report in ACB as Dr. Misal and the Clerk had demanded money. Then he stated that he did not lodged any complaint. He virtually denied about meeting shadow panch PW-3 and he virtually denied about handing over notes of Rs.1,500/- to Shri Joshi.

It seems from record that at such point, learned APP after seeking permission of the court put up leading questions. Therefore, on cross conducted by prosecution itself, he again stated that he had met Dr. Misal, who had asked him to pay Rs.2,000/- for his certificate. He denied having met Clerk of Dr. Misal before lodging report with ACB. He also

denied lodging report of clerk of Dr. Misal. He answered that he did not knew the name of Clerk of Dr. Misal. In para 7, he stated that when he visited Hospital and when Dr. Misal left, he and panch approached Irfan and he put amount of Rs.1,500/- in the hands of Irfan and while he was preparing certificate ACB Officer Mr. Joshi came. As such, evidence was recorded by learned trial judge on 10.10.2003 and, further chief was deferred by the court. Subsequently, further chief was resumed, on 06.11.2003 and at such time and on such date, he again supported prosecution by stating that he took treatment for T.B. That, he could not get salary and, therefore, he was called to procure certificate and, therefore, he approached Dr. Misal and as accused was serving as Clerk, he approached him and he asked to pay Rs.2,000/- to the Doctor. He was not willing to pay the amount so he lodged the report. Therefore, consequently after 2 weeks of previous statement again this witness has supported prosecution and in para 11 he stated that when they approached Hospital Dr. Misal directed irfan to issue certificate and Irfan asked him whether he brought Rs.1,500/- to which complainant stated that he had Rs.1,200/- only, but Irfan stated that Doctor has asked him to pay Rs.1,500/-.

In cross, he admitted that on the last date of his chief, he was told to give evidence as per the documents on record and he was threatened so that he would loose his service if he deposed otherwise. In

cross, he admitted that accused Irfan never demanded money and that he had given currency notes on his own at the instance of Joshi.

Resultantly, very complainant has taken a flip flop stand. Initially, he supported then retracted then again supported and again retracted and finally in cross denied demand by the appellant.

8. PW-3 Ashok Belsare / panch, who allegedly accompanied complainant, in para 4 of the chief stated that he accompanied complainant to the Hospital. He, complainant and accused jointly visited the chamber of Dr. Misal. Therefore, this accused told Dr. Misal about demand of certificate and further complainant himself told that he wanted to go to Ghati Hospital. That, Dr. Misal asked him why he had came here and, therefore, again Dr. Misal told appellant to prepare certificate for Bhagat Therefore, it is seen that there were no talks of money in the chamber of Dr. Misal. He further stated that when they went to the cabin of Irfan there he allegedly asked complainant, whether he could pay Rs.1,500/-. His such testimony shows that it was merely asked whether he had capacity to pay and when Bhagat agreed to pay Rs.1,200/-, accused allegedly told him that he had talked with Dr. Misal and that complainant has to pay Rs.1,500/- only. Panch witness further stated that appellant asked complainant to bring xerox of plain certificate and after complainant went, he had contacted with accused and that time

accused told him to inform complainant to hand over the money, as it is to be paid to *Saheb*. Again, when complainant returned with xerox, Irfan demanded upon which complainant handed over tainted currency and it was accepted by the accused by his left hand and pocketed it in the shirt and, then, complainant went and gave signal.

Above witness, in cross, admitted that in complaint PW-2 had alleged demand of money by Dr. Misal. He answered that at the time of verification of complainant himself had told Dr. Misal that he wanted to meet the Clerk and Dr. Misal has stated that Clerk cannot issue certificate and it needs signature of Civil Surgeon. He further admitted that appellant told Dr. Misal that signature of other 2 Doctors were required on the certificate and, hence, it cannot be issued. He further answered that when complainant had been to obtain xerox, he himself was taking the round outside the door and, that, after giving white card to appellant, complainant – Ganesh Bhagat transmitted signal.

Therefore, testimony of shadow panch also does not show that there was any direct demand by the appellant. There seems to be some conversation between the shadow panch and appellant to which complainant is not a party. Shadow panch has answered in cross that there was some complaint against Dr. Misal and that Dr. Misal had told that Clerk cannot issue certificate and it is the Civil Surgeon who issues it. Therefore, taking such answers in the cross of shadow panch it is

doubtful as put forth by the learned counsel for the appellant that appellant herein was competent to issue certificate. Admittedly, certificate is issued by a Doctor comprising of several other Doctors. Therefore, when there is doubt about authority of appellant to issue certificate, the further story of prosecution also comes under shadow of doubt. Here, as stated above, complainant has also not supported prosecution. Therefore, solely on the basis of testimony of shadow panch, when complainant is hostile, case cannot be said to be proved beyond reasonable doubt. It is the fit case for extension of benefit of doubt.

9. Learned trial judge has failed to consider and appreciate the above aspects and has accepted prosecution version only on the basis of testimony of shadow panch alone. Therefore, on such approach taken by the trial judge, case cannot be said to be appreciated correctly and, hence, appeal deserves to be allowed.

ORDER

I) Criminal Appeal No.61 of 2004 is allowed.

II) The conviction awarded to appellant Mohd. Irfanuddin S/o. Mohd. Riyazuddin in Special Case No.35 of 1999 by the learned Special Judge, Aurangabad, on 06.01.2004 for the offence punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 stands quashed and set aside.

III) The appellant stands acquitted of the offence punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988.

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.

[ABHAY S. WAGHWASE, J.]

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