



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 389 OF 2007

Mohd. Asif Yusuf Kadari
Age: 46 years, Occu.- Service (Peon),
Civil Hospital Dhule,
R/o. Anjanshah Data Society,
Plot No.25/B, Chalisgaon Road,
Dhule.Appellant
Versus

The State of Maharashtra
Through Dy. Supt. of Police,
Anti-Corruption Borough,
Dhule.Respondent

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Advocate for Appellant : Mr. B.R.Waramaa
APP for Respondent : Mr.N.D.Batule
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CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 05 FEBRUARY, 2024
PRONOUNCED ON : 14 FEBRUARY, 2024**

JUDGMENT :-

1. Appellant, who is convicted by Special Judge, Dhule in Special Case No.256 of 2004 on 05-09-2007 for offence under Section 7, 13 (2) read with 13(1)(d) of the Prevention of Corruption of Act and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/- for each of the offences, is hereby assailing the said judgment by filing instant appeal.

CASE OF PROSECUTION IN BRIEF

2. Complainant PW1 Nakul Patil, who was serving as Security Guard in State Bank of India (SBI) met with an accident on 29-02-2004 and incurred expenses for the treatment. He set up claim for medical reimbursement from his employer i.e. SBI. The authorities demanded injury certificate issued by Civil Hospital authorities and therefore, he approached Civil Hospital, Dhule and the RMO directed him to record room i.e. to the Clerk posted therein. However, the said Clerk was not present there and therefore, complainant approached accused who was available in record room. According to the complainant, after searching record, accused demanded Rs.150/- and stated that unless he pays said amount, his injury certificate would not be issued. Complainant assured to pay amount after 2-3 days, so again on 24-03-2004 he went to accused for certificate. Again accused questioned him whether he had brought Rs.150/- or not and further told him that he should not inform Doctor. Complainant told him that he had no money and he asked name of Doctor. Accused told him that it is not necessary to meet Doctor and if he pays Rs.150/-, he would get certificate and therefore, complainant approached ACB and lodged complaint

exh.19.

That was investigated by PW4 Sunil Gosavi and on completion of investigation, accused was chargesheeted and tried and finally held guilty by the learned trial Judge. Hence, appeal.

SUBMISSIONS

On behalf of appellant :

3. Learned Counsel for the appellant would submit that prosecution had miserably failed to establish demand. That it was the crucial aspect in the light of nature of accusations. Learned Counsel submitted that what was demanded was fees towards issuance of injury certificate. That very Sanctioning Authority has admitted that as per Gazette, required fees has to be deposited for seeking copies of injury certificate. That precisely case is set up that Incharge of record room demanded said amount, however, there was no illegal demand or illegal gratification or bribe. That even very complainant had not stated about bribe amount being demanded. That even pancha witness has admitted that he has not party to actual conversations of demand and therefore, learned Counsel submitted that here demand has not been proved and whatever amount was paid by complainant was towards fees / charges for

injury certificate. However, same is considered as bribe and accused is unnecessarily arrested and chargesheeted for commission of offence under Prevention of Corruption Act. Hence, he prays to allow the appeal.

On behalf of State :

4. In answer to above, learned APP pointed out that complainant has approached Clerk of the record room, but as Clerk was not available, he met accused for getting injury certificate. That accused had demanded Rs.150/- for issuing injury certificate. That accused had categorically stated that unless demanded amount is paid, injury certificate will not be issued. That on several occasions, complainant had approached for injury certificate, but the similar demand was reiterated and therefore, finally complainant approached Anti Corruption Bureau (ACB) authorities, who entertained complaint and laid trap. Complainant was made to accompany independent pancha. He has also been examined. Accused, on relevant day, demanded money and accepted the same and therefore, offence being complete, he was arrested and tried. Nothing adverse has been brought in the cross-examination of any of the witnesses and as the case of prosecution was established beyond reasonable doubt, he

submits that no fault can be found in the appreciation of evidence and he prays to dismiss the appeal.

5. In support of its case, prosecution has examined **PW1** Nakul Shamrao Patil, who is complainant, **PW2** Dattu Sakharam Chavhan, Pancha, **PW3** Dr.Nandkumar Vishwanath Dravid, Sanctioning Authority and **PW4** Sunil Devji Gosavi, Investigating Officer.

SUM AND SUBSTANCE OF EVIDENCE BEFORE TRIAL COURT

6. **PW1** Nakul, complainant deposed at exh.18 that he met with an accident and therefore, for medical claim he was asked to furnish injury certificate issued by Civil Hospital and therefore, he visited Civil Hospital Dhule and came in contact with accused. He told his name and address and thereafter, accused searched record for his case and demanded Rs.150/- saying that unless he pays, injury certificate will not be issued. Accused told him to bring money and then come. Against on 24-03-2004, the concerned Clerk was not present and on enquiry with accused regarding certificate, he was told that it was not prepared and further questioned whether he brought Rs.150/- or not. Complainant claims that he asked name of Doctor, who treated him, upon which accused told him that it is not

necessary to disclose the name of Doctor and if he pays Rs.150, he would be given certificate and as he was not ready to pay, he approached ACB and lodged complaint exh.19. ACB authorities laid trap after arranging pancha and after instructions, both complainant and PW2 Dattu Chavhan went to accused. Again accused told him that his certificate is not ready and asked whether he brought money or not and on answering in affirmative, accused demanded money, kept in pocket and asked complainant to come tomorrow for certificate and he was subsequently trapped and apprehended by ACB authorities.

On going through his entire **cross-examination**, its tenor is about initial interaction with RMO, that he did not submit application for obtaining copies of documents, name of the Medical Officer, who treated him, location of the record room, position of cupboard rack tables. In his cross-examination, it has been brought that Incharge Clerk was one Muktikar, whereas accused was a peon. He is unable to remember whether accused asked him Rs.150 as charges/fees towards copies or not, but he admitted that accused had asked him to deposit the amount and then come tomorrow.

7. Further it appears that learned APP has sought permission of

the Court to re-examine PW1 Nakul on the point as to whether accused had demanded Rs.150/- as corruption for charges of certified copies and learned trial Court has, after considering the objection, allowed APP to reexamine during which this witness has answered that accused has demanded the amount as corruption.

8. **PW2** Dattu Chavhan, shadow panch also deposed about he being called to act as pancha., he agreed to act as pancha, after introducing him to complainant, details were provided to him and he was instructed to accompany complainant to the office of accused and to keep watch on the events. Even according to him, when he reached to accused at around 05:05 p.m., complainant asked accused whether his certificate is ready. When the Peon therein kept the file in front of the accused, accused verified it and told that, that certificate is not ready and accused kept the file by the side of the rack. Thereafter, complainant told that certificate is required urgently, upon which accused asked complainant as to whether he brought Rs.150/- as told and when complainant told that he brought Rs.150/-, he was asked to pay the amount that day and that he would obtain signature of the Doctor on the certificate and then take it away. Complainant took out Rs.150/-. Accused took amount by his

right hand and kept in his shirt pocket and thereafter, on signal of complainant, raiding party came and apprehended accused.

In **cross-examination**, he answered that he was not told what accused was serving as and he on his own did not enquire. He answered that he does not know whether complainant met accused prior to 25-03-2004 and what talks took place. He is questioned about set up in the room occupied by accused and from where other Peon brought the file. In cross-examination, he answered that accused had told complainant that “as said to you yesterday, whether you brought amount of Rs.150/-” and he admitted that accused told complainant that “if you deposit the amount of Rs.150/-, you will receive certificate tomorrow”. There were no talks regarding amount to be deposited in OPD Section. He further answered that accused told complainant that in OPD Section, after depositing amount, receipt would be passed. At the end of the cross-examination, to a suggestion, this witness has categorically answered that amount of Rs.150/- is towards bribe.

ANALYSIS

9. Therefore, on analysis of above testimony of PW1 Nakul and PW2 Dattu Chavhan, it is emerging that accused appellant was

working as a Peon in Record Room. Person authorized to issue documents was one Muktikar (Clerk), but he was on leave. There was no reason for appellant to put up a demand of Rs.150/- for issuance of injury certificate as he was merely a peon. However, he has demanded Rs.150/- since complainant had approached him couple of times. If at all it was a deposit, it was expected of him to ask complainant to show the receipt towards charges of injury certificate. This has not happened, rather he has asked in presence of shadow pancha to the complainant whether amount has been brought and on being taken out, he himself had accepted and pocketed the amount. Had the amount being deposit, he ought to have directed complainant to go to the concerned Section and deposit there, and not accepted the amount and kept in his pocket. Complainant paid second visit during which also certificate was not ready, but accused has asked complainant whether he brought Rs.150/- and further asked him to come with money and when complainant accompanied by shadow pancha went to obtain certificate, again when complainant expressed his urgency, amount is demanded and even accepted. Therefore, apparently offence is complete.

10. Specific defence that the amount was towards fees / charges and PW3 Dr.Nandkumar Dravid, Sanctioning Authority admitting to that extent, by no means has substance for the simple reason that, accused was a Peon and was not even authorized to take charges or fees towards issuing documents. There is distinct Section for depositing charges for copy of injury certificate. On payment of charges, receipt is mandatorily required to be issued, it being a Government Hospital. This does not seem to have happened here. Accused being a Peon is not authorized to accept any fees or charges so as to accept the above defence. Taking his Post into consideration to be of Peon, he had no business to pocket any money paid by public for issuance of documents from the Record Room. Hence, above defence is futile attempt to come out of the case.

11. PW3 Dr.Nandkumar Dravid, Sanctioning Authority categorically speaks about receiving papers from ACB. He has defined the nature of the documents and very categorically spoke about studying the papers and thereafter according sanction. Hence, all the necessary requirements for attracting the charges are very much available in the evidence put-forth by prosecution.

12. After going through the impugned judgment, it cannot be faulted at on any count as nothing perverse or illegal is brought to the notice of this Court so as to allow the appeal. Hence, for above reasons, appellant fails and I proceed to pass following order :

ORDER

Criminal Appeal No.389 of 2007 stands dismissed.

(ABHAY S. WAGHWASE)
JUDGE