



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 257 OF 2004

Sheshrao s/o Sopanrao Dhondge,
Age; 61 yeas, Occ; Pensioner,
R/o; "Laxmi Nivas", Yogeshwar Colony,
Gangakhed, Taluka Gangakhed,
District; Parbhani.

...APPELLANT
(Orig. Accused)

V E R S U S

The State of Maharashtra

...RESPONDENT.
(Orig. Complainant)

.....
Advocate for the appellant : Mr.S.P. Chapalgaonkar
A.G.P. for the Respondent/State : Mr. S.K.Shirse
.....

CORAM : KISHORE C. SANT, J.

Date of Reservation : 16.08.2024
Date of Pronouncement : 14.10.2024

JUDGMENT

1. Being aggrieved by the judgment and order passed by

the learned Special Judge, Parbhani in Special Case No. 15 of 2000 dated 31.03.2004, the appellant original accused has approached this Court. He is held guilty of & convicted for the offences punishable under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988. He is sentenced to suffer R.I. for 1 year and to pay fine of Rs. 1,000/-, I.D. to undergo R.I. for 3 months for each of the offences. Sentences are directed to run concurrently.

2. The prosecution was initiated on a complaint filed by one Manik Shivram Perke PW-4 by Dy. S.P. (ACB) Parbhani prosecution case is that PW-1 Devidas Dukare, a defacto Complainant was working as Primary Teacher, he had approached the accused, Block Education Officer for his pay fixation. On 29.01.2000 he met the accused. On that day when requested, the accused told him that though on earlier occasion he had transferred the complainant as per his request still he has not given anything to the accused. If Complainant wants that his pay should be fixed as per 5th Pay Commission then he has to pay Rs. 1,000/-, otherwise the work would be done in routine manner. The Complainant, on that, requested to reduce the said amount.

Accused told him to come on 31.01.2000 with Rs. 500/- and told to pay remaining amount of Rs. 500/- after the pay fixation is done. On this the Complainant lodged a complaint with Anti Corruption Bureau on 31.01.2000. The Dy. S.P. ACB, on such complaint decided to lay a trap on 31.01.2000. The further case of the prosecution is that the trap became successful. The accused is caught red handed alongwith the amount of bribe. After obtaining sanction, the charge-sheet came to be filed and the accused was tried.

3. Learned Special Judge on trial held the accused guilty of the aforesaid offences and passed the judgment.

4. The prosecution in support of its case examined four witnesses. PW-1, de-facto Complainant, in his evidence stated about the earlier demand, laying of trap etc. About the actual incident he stated that he went in the office of accused alongwith pancha PW-2. He asked one lady sitting outside the room of the accused as to whether the accused is in the office. On making inquiry they both went in the room of the accused with his Service Book. Before going to the room he had asked another employee

whether his pay fixation is done, on that it was informed that the said work is not done. On going in the room of the accused he asked as to whether his work is done, on that the accused asked as to whether the amount is brought as agreed. On saying that the Complainant has brought the amount, the accused asked as to whether the Complainant has paid the amount to one Katarde. The Complainant told that he has not paid the amount to Katarde but he would pay the amount directly to the accused. On that the accused demanded the amount of Rs. 500/-. The accused took the amount in his hand asking as to how much is the amount and counted the amount by both the hands and kept the same in left pocket of his pant and asked the Complainant to wait outside telling that he would come out of the room. The panch, however, stayed in the room of the accused. After coming out of the room this witness gave signal to the raiding party, on that the raiding party came in the room. After some time this Complainant was called inside the room. Pocket of his pant was examined under the ultra violet lamp, which shown traces of anthracene powder. On the hands of the Complainant also traces of powder were seen. He proved the complaint lodged by him on 31.01.2000.

5. In the cross-examination it was suggested that this witness was working as a Chairman of one association of the primary School of Teachers, which he denied and volunteered that he became the Chairman after the incident. He accepted that the clerk Katarde had told that the necessary entry for correct fixation is made in the service book, therefore, the Complainant need not see the accused. It is taken that there is annual gathering held every year which is being attended by all the primary teachers under the control of central primary school. He denied that such gathering was held at village on 29.01.2000 village Sayala, where the accused and other three officers were present in between 2.00 p.m. to 5.00 p.m. It was answered that it being Saturday, such gathering was over at 1.00 p.m. only. He denied suggestion that the amount of Rs. 500/- was inserted in the pocket of the accused.

6. PW-2 is the Sanctioning authority who was working as Secretary, Public Health Department, Bombay. At the relevant time he was working as Secretary in the School Education Department, Government of Maharashtra. He stated that he received the papers through the Home Department, those papers were wrongly sent to Rural Development Department earlier. He stated that he studied

all the papers and after applying mind he accorded sanction to prosecute the accused. He proved the sanction order dated 27.11.2000. He also stated that the authority to appoint the applicant Education Officer is with the Government and stated that the power is exercised with the approval of the State Government by the Head of the Department i.e. the Secretary. He was the Secretary at the relevant time and therefore, was having authority to accord the sanction.

7. In the cross-examination he could not tell as to whether a note was prepared by his subordinate for sanction but he stated that he followed the routine procedure while issuing sanction. He explained that the procedure in the cross-examination. However, he stated that he did not find it necessary to reproduce the said procedure in the sanctioning order itself. It is also taken in the cross-examination that he had sought the approval of the Minister of Education before according sanction being Head of the Department. He accepted that the draft sanction order was prepared by the ACB and was received in the papers, however, he denied that he granted the sanction mechanically.

8. PW-3 is the panch witness namely Dattatraya Kide, who was working as Assistant Professor at Agricultural College, Parbhani. He stated that on 31.01.2000 he was sent by the Principal of the said College along with one other his colleague to the office of ACB, Parbhani. He stated about going to the office of ACB, conducting of demonstration of the anthracene powder, the procedure of laying of trap etc. He thereafter deposed about going to the office of the accused along with the Complainant. On going to the office of the Block Development Officer, the Complainant contacted the concerned clerk and requested him for information about matter of re-fixation of his pay. It was informed that entry of re-fixation of pay is already taken in the service book, however, only signature of the Block Development Officer was yet to be made. The entry was shown to the Complainant in the service book of re-fixation of pay. The Complainant took the said service book and papers on telling by the Clerk that he would himself obtain signature of the accused. When they came near the Chamber of the Education Officer, a lady peon sitting outside, told them to wait outside as some persons were in the chamber. After those persons came out, the Complainant entered the chamber and this witness followed the Complainant. The Complainant went at the table of

the accused and asked him as to whether a signature on pay fixation is made. The accused asked as to whether he has brought the amount and on answering in affirmative the Complainant placed the papers and the service book on the table of the accused. The said person thereafter demanded the amount. The Complainant took out the amount kept in his left chest pocket of the shirt and give it to the officer. The officer took the amount in his right hand, counted the same and kept it in the left side pocket of his pant with his left hand and after accepting the amount he told the Complainant that his work would be done. On this, the Complainant left the chamber this witness sat in the chamber of the accused. The other members of the raiding party immediately entered the chamber. On asking by PW-4 as to who demanded the amount and received the same, this witness told that the amount is demanded and accepted by the accused. He further stated about the procedure followed thereafter of checking of hands of accused under the ultra violate lamp and on checking of both hands of the accused it shows blue shining under the ultra violate lamp. The pant pocket of the accused also shown blue shining of anthracene powder. Even inner side of the pocket shown blue shining. The notes were recovered. This witness proved the panchanama.

9. In the cross-examination it is brought on record that this witness was standing inside of the door of the Chamber of the accused, nothing much is taken in the cross-examination.

10. As regards PW-4, in investigating officer, who was working as Dy. Superintendent of Police, Parbhani at the relevant time. He deposed about recording of the complaint, calling of the pancha witnesses and obtaining of the sanction etc.

11. From his cross-examination, nothing much is taken. This witness has proved the complaint, forwarding of letter along with proposal for sanction etc.

12. The defence has also examined one witness namely Vitthal Lad, who was working as Headmaster of a School at Sayala. He deposed that on the date of incident a function was held at Primary School, Sayala in two sessions i.e. first session between 10.00 a.m. to 1.00 p.m. and the second Session from 2.00 p.m. to 5.00 p.m. In the said programme the certificates to the students for their performances were to be distributed. The accused was

present in the said function. He further stated that no photographs were taken in the first Session of the function. The photographs were taken only in the second session. He exhibited those photographs wherein the accused is shown to be present. He also proved the register kept for visitors.

13. In the cross-examination he stated that no invitation cards were printed of the function. The programme list was prepared, but the same was not available. In his photographs the timing of the sessions was not marked. From the photographs it could not be stated as to whether they are of the first session or the second session. A suggestion was given that his statement about the presence of the accused from 10.00 a.m. to 5.00 p.m. was false, the said is denied. He accepted that no panel for the function was prepared. The written invitations were given to the visitors of the Sayala village and teachers of the primary school coming within the jurisdiction of Central Primary School Lohgaon. He stated that there is no record to show that the function of distribution of certificates to the students was held in between 2.00 p.m. to 5.00 p.m. He accepted that the time of function was at 2.00 p.m. 5.00 p.m. as mentioned in Exh. 55 only on the basis of his memory and

there is no record to that effect. He also stated that there is no record maintained to show that he was present in the function and that function was continued till 5.00 p.m. Exhibit 55 is the only letter addressed stating that the function of distribution of certificates' was arranged from 2.00 p.m. to 5.00 p.m.

14. On the basis of this evidence the learned trial Court came to conclusion that the prosecution has proved the guilt of the accused beyond reasonable doubt and held him guilty and thus the appellant is before this Court.

15. Learned Advocate for the appellant argued for quite some time. He submits that the prosecution has not proved the guilt of the accused beyond reasonable doubt. PW-1 had stated in his evidence that the accused asked him as to whether he has paid the amount to one Katarde and he told that he had not paid the amount to him. This material part is absent in the evidence of PW-3 a pancha witness. The story of the prosecution thus becomes doubtful. In the evidence of PW-3 it has come that immediately after giving amount to the accused, the informant left the chamber and immediately thereafter one person came in the Chamber,

however, that person is not examined by the prosecution. This is a serious infirmity in the evidence of the prosecution. So far as the sanction is concerned he submits that the sanctioning authority has accepted in his evidence in the cross-examination that he had received a draft sanction order. In his submission it shows that the sanctioning authority had granted sanction in a mechanical manner. The proof of demand and acceptance taken is also not satisfactory which is sine-qua-non to prove the case. He further submits that the incident is reported to have taken place between between 3.30 p.m. to 4.00 p.m. In the defence evidence it is brought on record that at the same time the accused was present in the gathering arranged by the school at Sayala, which is at the distance of 25 to 30 k.m. away from the office of the accused. He thus submits that there are serious loopholes in the case of prosecution and prayed for acquittal of the accused.

16. Learned APP vehemently opposes the case. He submits that the prosecution has specifically proved its case by establishing proof of demand of the amount and acceptance pursuant to the demand. Both witnesses i.e. the Complainant and pancha are consistent with each other on material particulars. Mere non

stating that the accused asked as to whether the Complainant gave the amount to Katarde is not material aspect. He further submits that the sanction authority has clearly deposed about the procedure as to how the sanction was granted. Nothing is brought on record to show that the sanction order suffers from non application of mind. By inviting attention to the answers to question Nos. 39 and 40 he submits that accused accepted that after the incident under the ultra violate lamp blue shining of anthracene powder was found in his hands. He also accepted that the pocket of his pant was also showing glittering under the ultra violate lamp. He thus submits that acceptance in is clearly proved. The distance between Sayala and Parbhani is only 9 k.m. At the time of incident it was Saturday and therefore, the school was closed at 1.00 p.m. He submits that nothing is brought in the cross-examination by the defence. About the defence witness he submits that his evidence is not sufficient to show that the accused was at the school at Sayala at the time of incident. He relied upon the judgment in **Neeraj Dutta Vs. State (Government of NCT of Delhi) reported in (2023) 4 SCC 731** in support of the prosecution.

17. After hearing the submissions and material things it

needs to be considered as to whether the prosecution has proved the demand and acceptance by the accused on the basis of evidence laid before the Court and that further question is as to whether the sanction is proper.

18. So far as the demand and acceptance is concerned, the defacto Complainant and the pancha witnesses are consistent in all material particulars except asking by the accused as to whether the amount is paid to one Katarde. This inconsistency is clearly not material. The Complainant and pancha witnesses went to the office of the accused is clearly established. Thereafter they went in the Chamber, whereby the accused demanded the amount is also duly proved and there is nothing to disbelieve the said story. The acceptance and counting of the amount is duly proved. After counting of notes the accused kept the amount in the pocket is also duly proved as the evidence is totally corroborated. In 313 statement there is no denial of the fact that the anthracene powder was seen to the hands of the accused and at the pocket of the pant. A lame defence is tried to be taken of function at School at Sayala. Another defence tried to be put in cross examination of PW 1 that amount was inserted in the pocket is clearly denied. The defence

further could not give details when the photographs were taken showing the accused was present in the gathering. He could not show any invitation card of the function except stating vaguely that the function was held till 5.00 O’Clock, he could not satisfactorily prove the presence of the accused at Sayala. Assuming that there was function at School at Sayala, the distance between the Parbhani and Sayala is hardly 9 k.m., which hardly takes 15 to 20 minutes to reach. In the cross-examination of the sanctioning authority, nothing could be brought on record to show that the sanctioning authority had not applied its mind. The proper authority is not questioned. In the case of **Neeraj Dutta** (supra) the Hon’ble Apex Court has categorically held that the proof of demand and acceptance is Sine-Qua-Non. It is further held that the prosecution has to first prove the demand and illegal gratification and subsequent acceptance as a matter of fact. This can be proved either by direct evidence or can be in the nature of oral or documentary evidence. The said also can be proved by circumstantial evidence in absence of direct or oral or documentary evidence to offence under Section 13 (1) (d) (i) (ii) of the Act.

19. In the present case, it is seen that the prosecution has

proved all material facts. The defence could not bring on record anything in support of its case. This Court is thus has no hesitation in holding that the prosecution has proved its case beyond reasonable doubts. The learned trial Court has rightly appreciated the evidence and no perversity or illegality is found in the judgment. For all these reasons recorded, this Court does not find any substance calling for any interference in the impugned judgment and order. The appeal is thus, liable to be dismissed and the same is dismissed. The bail bonds stand cancelled. The appellant to surrender within six weeks from today. Consequences to follow.

**(KISHORE C. SANT)
JUDGE**

mahajansb/