



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 271 OF 2004

Nivrutti s/o Vithal Garje
Age 53 years, Occu. Service
as a Talathi Sajja Sautada,
Additional charge of Sajja
Wahali, Taluka Patoda,
District Beed.

... Appellant

Versus

The State of Maharashtra

... Respondent

.....
Mr. R. G. Hange, Advocate for the Appellant.
Mr. N. D. Batule, APP for the Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 22.07.2024

Pronounced on : 29.07.2024

JUDGMENT :

1. The judgment and order of conviction recorded by the Additional Sessions Judge/Special Judge, Beed in Special Case No. 12 of 1998 dated 07.04.2004 has been questioned by filing instant appeal.

FACTS IN BRIEF, LEADING TO TRIAL

2. PW1 Parmeshwar (informant) approached accused appellant, who was Talathi, on 10.02.1997 for issuing 7/12 extract. Accused demanded Rs.300/- for the same. Informant was not willing to pay and therefore he approached ACB authorities and lodged report Exhibit 14 on the basis of which, ACB authorities planned and arranged trap, arranged pancha and explained both, pancha and informant, the procedure of trap. Both, complainant and pancha, were made to approach appellant. Informant was instructed to pay tainted currency on demand. During visit to Talathi office, demand was made and after handing over tainted currency, PW1 informant gave signal upon which, raid was carried out and appellant was apprehended. PW6 Dy.S.P. Bhokare carried out investigation and chargesheeted accused for commission of offence punishable under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 [PC Act].

3. Special Judge conducted trial vide Special Case No. 12 of 1998 and by his judgment and order dated 07.04.2004, accepted the case of prosecution as proved and recorded conviction for the above offence, which is assailed by filing instant appeal.

SUM AND SUBSTANCE OF THE ARGUMENTS/SUBMISSIONS

On behalf of the appellant :

4. Learned counsel for the appellant pointed out that there is apparently false implication. That, prosecution did not prove either demand or acceptance beyond reasonable doubt. According to learned counsel, there is inordinate delay in approaching ACB authorities in spite of alleged demand. Moreover, investigating machinery did not ascertain and verify that there was demand. That, repeated attempts were made to trap and therefore it is a clear case of deliberate implication.

5. According to learned counsel, in fact, appellant was merely holding additional charge. The main thrust of his argument is that there was land revenue arrears towards informant. The amount paid that day was towards land arrears. That, cross of informant is on such lines. Defence case has been probalilized as there is admission to that extent. Learned counsel pointed to the communication Exhibit 38 and submitted that higher authorities and supervisors of appellant were pressing hard for recovery of land revenue. Therefore, the amount accepted was not illegal gratification, rather it was land revenue

arrears. That, in spite of such evidence coming on record, learned trial court failed to consider and appreciate such evidence and defence of accused. Even answer given immediately is regarding acceptance towards land revenue arrears. However, learned trial court lost sight of such evidence and according to learned counsel, learned trial court committed error in disbelieving the defence and accepting the prosecution version without there being cogent, reliable and trustworthy evidence.

On behalf of the State :

6. On the contrary, supporting the judgment of trial court, learned APP submitted that there is evidence of complainant regarding demand of Rs.300/-. Complaint was lodged, trap was laid, pancha who accompanied complainant is lending support to the evidence of demand and acceptance. That, false, unsupported defence of land revenue arrears is taken and the same is rightly disbelieved by trial court. That, there is correct appreciation. All requirements for attracting the charges being available, according to learned APP, there is no need to interfere in the judgment.

EVIDENCE BEFORE TRIAL COURT

7. In support of its case, prosecution has examined following six witnesses. Their role and status and the sum and substance of their evidence is as under :

PW1 Parmeshwar is the informant. He in his evidence at Exhibit 13 stated that he had approached Talathi for 7/12 extract. Accused demanded Rs.300/- for issuing the same. As he was not willing to pay bribe, he approached ACB and lodged report Exhibit 14. He and shadow pancha PW4 visited Talathi office. Again he asked accused whether 7/12 extract was ready, upon which accused asked if amount is brought. He paid and accused accepted the amount and thereafter he went out and gave signal and raiding party apprehended accused.

PW2 SDO Deshmukh is the sanctioning authority, who, in his evidence at Exhibit 15, stated that after applying mind to the papers received from ACB, he accorded sanction Exhibit 16.

PW3 Pandharinath, a villager, who did not support prosecution.

PW4 Ratan acted as shadow pancha. In his evidence at Exhibit 19, he stated that ACB office called him, introduced him to complainant, he and complainant were given instructions about trap and instructions to pay on demand. This pancha was asked to observe events of demand and acceptance. He stated that in

his presence complainant asked about 7/12 extract, upon which accused counter-questioned whether he had come with preparations. Complainant told accused that he was short of funds, but accused told that extract will be given only if Rs.300/- are given. Subsequently, he and complainant approached Talathi. Again accused asked if total amount is brought. Complainant handed over the amount and accused accepted it, after which complainant gave signal.

PW5 Bhimrao is the staff of Tahsil office who issued communication Exhibit 28-C.

PW6 Dy.S.P. Bhokare is the Investigating Officer.

8. Defence has also examined one witness DW1 Ramrao, who was a retired Tahasildar. He stated that while he was working as Tahasildar at Patoda, accused had 8 villages under his jurisdiction. That, revenue collector had taken review on 17.01.1997 regarding recovery made by accused and it was found to be unsatisfactory and under his signature, show cause notice Exhibit 38 was issued. According to him, in 1997, nine times land revenue, as shown in the 7/12 extract, was recovered and Talathi used to recover the amount and entries to that effect were taken in *Jamabandi* file from 7/12 extract and 8-A form.

ANALYSIS

9. On analyzing the above evidence, it is clearly emerging that prime defence of accused is that he did accept amount given by complainant, but it was towards land revenue arrears and not towards illegal gratification.

10. On analyzing complainant's evidence, it is emerging that he claims to have interacted with accused for the first time on 10.01.1997 and he lodged report with the ACB i.e. Exhibit 14 on 16.01.1997. It further shows that after lodging report, he and raiding party had tried to approach accused but he was not available and therefore, trap was not successful. Second time visit seems to have been paid by complainant on Thursday, i.e. to the ACB office, and on Friday, again complainant and team approached accused and on being asked by accused about amount, he stated that he was short of funds, but accused insisted for Rs.300/- and to come with full amount and therefore, complainant and pancha approached IO Bhokare and thereafter amount was handed over to accused.

11. Similar version is coming from PW4 pancha also. There is demand as well as acceptance, but as stated above, fundamental

defence of accused is that, the amount accepted was towards land revenue arrears.

12. Learned counsel for the appellant would strenuously submit that just before the raid, superior authority had issued communication calling explanation for not achieving target of recovery of land revenue. Communication Exhibit 38, though is of 20.01.1997, it refers to the meeting conducted on 17.01.1997 i.e. three days earlier. Explanation of accused seems to have been called for unsatisfactory performance regarding collection of revenue.

13. Even the authority who issued the communication has been examined by accused as DW1 and he has supported accused in that regard. Even communication has been placed on record regarding inquiry made with Talathi office to ascertain whether complainant was liable to pay land arrears. Communication Exhibit 28 clearly shows that complainant was liable to pay land revenue. Therefore, there is material suggesting move by higher revenue authorities to augment process of recovery of land revenue arrears. Even shadow pancha admits accused giving statement to Investigating Officer at the time of his apprehension that amount accepted by him was towards land revenue.

14. Consequently, defence has been probabalized. Law enjoins liability on accused persons to merely probabalize the defence and not to substantiate it. Here, though complainant and Investigating Officer denied that complainant was not liable to pay any revenue, there is communication in black and white suggesting that complainant was liable to pay land revenue Rs.5.95/- as per the 8-A form. Exhibit 28/C does come to the rescue of accused. Contemplating action, there is every probability that complainant was made to pay arrears first. Therefore, taking such material into consideration, defence taken cannot be brushed aside.

15. Learned trial court has not appreciated the above defence in its correct perspective. There is no prior verification of demand. Possibility of acceptance of money towards land revenue has been probabalized. Panchanama also carries material that in body search of accused, there was collection of land revenue arrears to the tune of Rs.751/- and remaining amount was belonging to accuses. Tainted currency is part of the same collection. Therefore, learned trial court did not appreciate this crucial aspect and has brushed aside the defence lightly and therefore interference is required. Hence, I proceed to pass the following order :

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellant Nivrutti s/o Vithal Garje, by learned Additional Sessions Judge/Special Judge, Beed in Special Case No. 12 of 1998 under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 on 07.04.2004 stands quashed and set aside.
- III. The appellant stands acquitted of the offence punishable under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.
- IV. The bail bonds of the appellant stand cancelled.
- V. 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 regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]