



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 272 OF 2004

Suresh S/o. Harichandra Hood,
Age : 42 years, Occu. : Service,
R/o. Kolge Niwas, Khokadpura,
Aurangabad, Tq. and Dist. Aurangabad

... Appellant
(Orig. Accused)

Versus

The State of Maharashtra

... Respondent.

...
Mr. R. N. Dhorde, Senior Advocate for Appellant
Mr. A.A.A. Khan, APP for Respondent - State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 08 JULY 2024

PRONOUNCED ON : 16 JULY 2024

JUDGMENT :

1. Getting dissatisfied by the judgment and order of conviction recorded by learned Special Judge, Aurangabad dated 13.04.2004 in Special Case No. 12 of 2000, original accused/convict has preferred instant appeal.

PROSECUTION CASE IN NUTSHELL IS AS UNDER

2. Prosecution was launched against present appellant on the premise that, while he was working as a clerk in Industrial Training Institute, Aurangabad, he demanded bribe of Rs.300/- for returning documents of complainant, who had enrolled himself for

ITI training course. On receipt of complaint, ACB authorities planned and arranged trap, which was successful on 07.06.2000. Therefore, complaint was lodged by PW4 Dy.S.P. Sonwane and after investigation, he was tried and charge-sheeted before Special Judge, Aurangabad, who conducted trial and accepted the case of prosecution as proved, hence, convicted present appellant for offence punishable under section 7, 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988 (P.C. Act), vide judgment and order dated 13.04.2004.

Said judgment is now taken exception to by filing instant appeal.

SUBMISSIONS

On behalf of Appellant :-

3. Learned Senior Counsel Shri R. N. Dhorde pointed out that, there are apparently false implication. He apprised this court about the prosecution version in trial court and submitted that, amount accepted by appellant was towards refund of stipend availed by complainant. He took this court through the testimony of complainant and his cross as well as statement of shadow panch and his cross and submitted that, defence of accused has been probabilized. He also put this court through the statement of accused, which was promptly recorded after alleged raid. Learned Senior Counsel criticizing the judgment by pointing out that, above

defence has not been correctly appreciated and thereby erroneous conclusion has been reached at by learned trial Court and hence he prays to interfere by allowing the appeal.

In support of above submissions, learned Senior Counsel seeks reliance on the following rulings :-

- 1] *State of Kerala and Another v. C.P. Rao*, (2011) 6 SCC 450
- 2] *Prabhat Kumar Gupta v. State of Jharkhand and Anr.* (2014) 14 SCC 516
- 3] *C.M. Girish Babu v. CBI, Cochin, High Court of Kerala*, (2009) 3 SCC 779
- 4] *M. Abbas v. State of Kerala*, (2001) 10 SCC 103
- 5] *State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede*, 2009 AIR SCW 5411
- 6] *B. Jayaraj v. State of Andhra Pradesh*, (2014) 13 SCC 55
- 7] *Mukhtiar Singh (since deceased) Through His LRS. v. State of Punjab*, (2017) 8 SCC 136

On behalf of Respondent - State :-

4. In answer to above, learned APP also took this court through the testimony of complainant and shadow panch and submitted that, they both are consistent and lending support to each other. That, there is specific demand of bribe to return the documents and therefore prompt complaint was lodged on same day and ACB authorities laid trap was successful. That, applicant was apprehended immediately. Defence is taken falsely

afterthought. Therefore, learned APP prays to dismiss the appeal for want of merits.

EVIDENCE ON RECORD IN TRIAL COURT

5. **PW1** Prakash is the Sanctioning Authority and it is stated that, investigation papers received from Anti Corruption Bureau (ACB) and on getting satisfied accorded sanction, which he identified to be at Exh.9.

PW2 Gajanan is the complainant, stated in his evidence at Exh.11 that, he had taken admission to ITI for the course of 'Watch Mechanic' and that time he had tendered original documents pertaining to leaving certificate and marks memo. He need the said documents for enrolling his name for employment and so he demanded said documents, at that time, accused demanded Rs.300/-. Therefore, he lodged complaint with ACB. Thereafter, when he went to collect the documents, at that time, accused demanded amount, it was paid by him and accused accepted and he gave signal.

PW3 Sunil, shadow pancha, stated that, he acted as a pancha and verified complaint at Exh.12. He accompanied the complainant to the ITI office. Complainant handed over the

application to accused. Accused collected the application and handed over the papers to complainant and thereafter accused asked him whether he has brought money. Complainant took out the tainted currency and accused accepted it. After which, complainant gave signal and raiding party apprehended accused.

PW4 Dy.S.P. Sonwane, who carried out investigation and charge-sheeted accused.

ANALYSIS

6. The main thrust here in appeal is that, complainant, who had enrolled himself in ITI was a beneficiary of stipend. That, he stopped the training and thereby applied for returning the documents. He was called upon to return stipend awarded by him. That, accordingly, he gave Rs.300/- that day. But on false implication accused was arrested.

Complainant PW2 Gajanan and Shadow panch PW3 Sunil are crucial witnesses in this case of demand of illegal gratification.

7. In substantive evidence, complainant PW2 Gajanan narrated about his admission in ITI, tendering original school leaving certificate and marks memo. His version is that, in July 2000, he had registered himself for employment, and therefore, on

07.06.2000, he approached accused to return the original T.C. and marks memo. Accused demanded Rs.300/-, but he agreed to pay Rs.200/-. However, accused insisted him for Rs.300/- and finally asked complainant to come by 4:00 p.m. As complainant was not willing to pay bribe, he approached ACB authorities and lodged report at Exh.12. He and shadow pancha were explained the procedure of trap by ACB authorities and were instructed to go together to ITI office to pay bribe. Complainant deposed that, when he approached accused, he was asked whether he brought the application and when answered in negative, he was asked to scribe the application. Accordingly, complainant prepared application at Exh.13, tendered the application to accused, who further asked him to obtain signature of Office Superintendent. Complainant returned back to accused and told him about talks held between him and O.S.. After which, complainant collected the application and took out one file and even handed over the original T.C. and marks memo. Thereafter, accused asked complainant, whether he brought money. After which, complainant took out the tainted currency and held it before accused, who collected it in his right hand and kept in the pocket of his shirt. After which, he transmitted signal.

In cross examination, he has admitted that, in July, he was getting Rs.40/- monthly as stipend. 8 days prior of the report,

he admitted that, he had approached Principal Mr. Gosavi, who had told him that, if original documents are sought back, then he will have to repay the stipend availed. He admitted that, 4 to 5 days thereafter he had approached accused. He also admitted that, he was not ready to repay the stipend amount.

8. PW2 shadow panch Sunil, stated that, he had accompanied complainant to ITI college. They approached the accused. Accused asked whether application has been moved and complainant replied in negative. Upon which, accused asked him to submit an application. Complainant wrote the application. According to him, they went out in search of accused, who was seen entering the office along with few persons. That time, accused told complainant to hand over him the application and told him to show it to Office Superintendent. They approached Office Superintendent, who asked complainant to obtain signature of accused and so they came back. That time, accused collected the application and handed over the papers to complainant and further asked whether he brought money. Accused then demanded Rs.300/- and took out the tainted notes by his right hand, confirmed the currency, after which, complainant rushed to transmit the signal.

While under cross, shadow panch answered and

admitted that, when he had first held talks with complainant at ACB office, at that time, complainant had told that there was demand of Rs.300/- towards stipend to be returned. He admitted that, during the recess all clerks had accompanied the accused for tea. He also admitted that, accused had made statement in his own handwriting that he had to recover the amount of stipend from Rokade i.e. complainant.

9. Statement of accused recorded immediately after apprehension of accused at Exh.23. The substance of statement of accused is that, *"the said candidates were sent for the signature of Principal and Registrar. But because of the Principal....., I told the said candidate that you are taking stipend. All you have to pay in advance only then you will be given Transfer Certificate(TC) and Mark Memo. After saying that he was ready to pay. Also, the said candidates have paid money to me and I will deposit that money in the accounts department, the concerned officer....., has took out the money from my pocket. Also he did it all deliberately. If I had to take money, I would have taken it from every candidate since morning."*

10. It appears that, the statement of accused is recorded immediately on the day of trap itself. Here, there is no dispute or

challenge about accused accepting the amount. Specific defence of accused since inception is that, complainant is a student of ITI course was recipient of stipend. He discontinued the course after enrolling himself in employment office and therefore was in need of original documents and therefore Principal had directed him to repay the stipend. Though, Principal is not examined by Investigating Officer, complainant himself has admitted that, Principal Gosavi had asked him that if he want original documents to be returned, then he will have to repay the stipend. Even pancha witness PW2 Sunil in his cross examination admitted that in ACB office, he had learnt about said stipend to be returned. Therefore, the tenor of the cross examination of complainant, shadow pancha and Investigating Officer goes to show that the defence taken since beginning is that amount accepted was towards return of stipend and not towards bribe as alleged.

11. It is fairly settled that, mere recovery of tainted currency, is itself not sufficient to record guilt. Rather, it is burden on prosecution is proved that the amount recovered was only and only bribe amount and not otherwise. There is material suggesting dues towards complainant and having left the course, complainant was expected to refund the stipend earned and availed by him.

12. Consequently, there is doubt as to what the amount

paid by complainant was towards. Doubt having crept in, benefit has go to accused. Defence of accused has been probabalized to larger extend. Here, prosecution has not proved the case beyond reasonable that the amount demanded was only towards bribe and for not any other purpose.

13. Cross examination, in paragraph no. 7 of the complainant supports the defence in clear terms that repayment of stipend availed, was to be refunded while seeking back the documents. Even shadow panch PW3 Sunil while under cross examination admits that in ACB office itself, the he was asked to refund amount of Rs.300/- towards stipend while seeking back T.C. and marks memo.

14. With such material, it is a fit case for benefit of doubt, as prosecution did not prove that there was demand of bribe only and money accepted was not towards any other consideration.

15. In paragraph no. 23 of the judgment, the trial court has observed that, during pendency of trial, both the witnesses are won over by the forces playing the roles in or outside the court premises and resultantly there are few admissions supporting defence, but still learned trial court seems to have applied principles enumerated in the case of *Krishna Mochi v. State of*

Bihar, AIR 2002 Supreme Court 1965, applied the observations therein and held the case as proved, applying presumption as available under section 20 of P.C. Act, recorded the guilt without getting satisfied that there is a specific defence and the same has been probabilized, which is the only burden on accused.

16. Perused the judgment. Apparently there is improper appreciation of evidence. The above discussion and features noticed by this court on re-appreciation are not taken into account by learned trial Judge and hence interference is called for. Hence, the following order :-

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to Suresh S/o. Harichandra Hood in Special Case No. 12 of 2000 by learned Special Judge, Aurangabad on 13.04.2004 for the offence punishable under sections 7, 13(1)(d) and 13(2) of 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 Prevention of Corruption Act, 1988,.
- IV) The bail bonds of the appellant stands 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.)