2024:BHC-AUG:24915

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 713 OF 2005

Mohd. Kasam Tadwi
Age: 42 years, Occu.: Service,
R/o. At Shirsad, Post.Sakali,
Tq.Yawal, Dist.Jalgaon,
At Present : Shri Ambhore's House,
Samta Nagar, Aurangabad. ..Appellant
(Original Accused)

Versus

The State of Maharashtra ..Respondent

.....

Advocate for Appellant : Mr. Angad L. Kanade
APP for Respondent : Mr.S.K.Shirse

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 03 OCTOBER, 2024
PRONOUNCED ON : 15 OCTOBER, 2024

JUDGMENT :-

1. Appellant, who stood convicted for offence under Sections 7 and 13(2) of the Prevention of Corruption Act, is taking exception to the judgment and order dated 30-09-2005, passed by the learned II Additional Sessions Judge, Aurangabad in Special Case No.16 of 2003.

PROSECUTION CASE IN BRIEF

2. Mother of complainant PW2 Prashant was in the business of selling bed sheet. She had applied for loan through Mahatma Phule Magasvargiya Vikas Mahamandal (hereinafter referred to as the "Corporation"), Aurangabad. File of her loan was assigned to Allahabad Bank. Complainant accompanied by her mother visited said Bank and they were told that necessary enquiry and inspection would be done before granting sanction. In August 2002 it was learnt that loan was sanctioned and letter was issued on 27-08-2002. However, for further process of loan, pay order of subsidy amount of Rs.10,000/- was required from the Corporation. Therefore, PW2 complainant visited said Corporation. One Pawar and Kamble working in the said Corporation directed him to appellant. Complainant reportedly approached appellant and requested to do his work. Appellant demanded Rs.100/- to procure signature of the superior. As complainant was not willing to pay bribe, he lodged report with Anti Corruption Bureau, who planned, arranged and executed trap. Complaint was lodged. It was investigated and finally appellant was tried by the learned II Additional Sessions Judge, Aurangabad vide Special Case No.16 of 2003.

After appreciating evidence adduced by the prosecution, case of prosecution was accepted and guilt was recorded by judgment and order dated 30-09-2005. Hence, instant appeal.

SUBMISSIONS

On behalf of appellant :

3. Learned Counsel for the appellant submitted that there is false implication. That there was no demand as alleged. He submitted that there is no corroboration to the testimony of complainant PW2 Prashant. That PW3 Sakharam, shadow pancha and PW2 Prashant, complainant are at variance on material counts. That though PW1 Bansod, sanctioning authority has accorded sanction, it is in mechanical manner. That there is incorrect appreciation of the evidence by the learned trial Court and conclusion drawn is not supported by sound reasons and hence, he prays to set aside the impugned judgment by allowing the appeal.

On behalf of State :

4. In answer to above, learned APP, while supporting the impugned judgment, submitted that there is demand of bribe. That in presence of shadow pancha again there was demand as well acceptance. That immediately after raid, appellant was

apprehended. Therefore, all necessary ingredients for attracting the charges are available and therefore, it is submitted that appreciation is correct and in consonance with the evidence. Consequently, according to learned APP, there is no merit in the appeal.

EVIDENCE BEFORE TRIAL COURT

In support of its case, prosecution has examined as many as five witnesses. Sum and substance of their evidence is as under :

5. **PW1** Ratnaraj Gangaram Bansod is the Sanctioning Authority. He testified that, on receipt of file and papers from ACB, the same were perused and he reached to a conclusion that it was a fit case to grant sanction and accordingly, vide exh.10 sanction was issued.

In **cross-examination**, above witness answered that he did not call any document from Corporation and he does not remember whether or not any statement of Ramrao Pawar was recorded by ACB. He is unable to state why portion marked 'A' is appearing in statement of said Ramrao.

6. **PW2** Prashant Rustumrao Mhaske, complainant testified that

his mother had applied for loan of Rs.40,000/- from aforesaid Corporation for running bed sheet selling business. That their file was referred for sanction to Allhabad Bank. That Bank Manager paid visit to their house for verification. That during subsequent visit, complainant learnt that Corporation has not despatched pay order of subsidy of Rs.10,000/-. That on 27-08-2002 and 28-08-2002 complainant approached Corporation. That he received sanction letter from above Bank. That thereafter, he visited Corporation and one Pawar and Kamble directed him to present appellant to whom he approached twice thrice, but there was no response. That in November again he approached appellant and requested for his work upon which appellant allegedly told him that he often comes empty handed and that he is busy and he cannot do the work. Then he asked complainant to come on 20th and to bring Rs.100/- for obtaining signature of the Officer and stated that without Rs.100/- work would not be done. Therefore, he lodged report with ACB, who arranged, planned trap, explained and gave necessary instructions to him and panchas.

7. When he and pancha approached appellant to the Office of appellant, he was not there. Hence, they all reached near hotel

Haveli. That he and shadow pancha again went to the Office of Corporation. However, appellant was not in the Office. They both waited there. After a while, at around 04:00 p.m. appellant was spotted coming up from stairs and went to his room and again started coming down from stairs. Then complainant approached appellant. Complainant asked about his work, upon which, appellant asked him to pay the amount, if it was brought as his file was to be put before the Officer. While climbing stairs, tainted currency was taken out by complainant from his right pocket of pant and it was handed over to appellant, who accepted it in his right hand and kept it in his left chest pocket. Signal was relayed and appellant was caught.

In **cross-examination**, which commences from paragraph 12 onward, initially questioning is about educational qualification of complainant, whether he is aware of procedure of loan, whether at the time of lodging complaint, bank documents were annexed, how many times, he met Pawar and Kamble in August, 2002. He is unable to give month when first he met accused and he volunteered that he did not remember as to how many days prior to catching hold of accused, he had made the demand of bribe. But he again volunteered that it was in the month of November. He is also unable to state after how many days after accused made demand, he was caught.

Omission is brought regarding accused asking Rs.100/- on account of obtaining signature of his higher Officer.

In paragraph 14 of cross examination, witness is unable to state whether he had stated before ACB authority that accused had asked him whether he had brought money i.e. when he had asked about pay order. He is also unable to remember whether he has informed Sk. Muzeeb that the accused said to him that he would put up file before his Officer and such talk took place at the staircase. He is also unable to state whether he had informed Sk.Muzib that he took out the notes from his right side pant pocket by right hand. Rest is all denial.

8. **PW3** Sakharam Trimbakrao Kulkarni stated that he works in Provident Fund Office. That he was called at the ACB Office. That he met Prashant Mhaske, went through his complaint, ACB authorities explained both of them procedure of application of anthracene powder to the currency notes and they both were given necessary instructions regarding trap and being instructed to pay on demand and this witness asked to accompany the complainant and

be watchful. That he signed over pre-trap panchanama exh.27. He deposed that at around 01:30 p.m., he accompanied complainant to the Office of Corporation. There, information was received that appellant had gone out. That again during second visit at around 04:00 p.m., they went to the Office of Corporation and there appellant was seen coming towards Office. That complainant approached appellant and this witness also followed. According to this witness, complainant and appellant were getting down through staircase. But he could not hear as to what they were talking, however, according to him, complainant gave information by gestures that he had given the amount to appellant and that thereafter, appellant was caught.

9. **PW4** Baswantappa Virbhadrao Pirole is the Assistant Manager of Allahabad Bank, Branch Aurangabad. His evidence is at exh.35.

10. **PW5** Sk. Mujib Hamid is the Investigating Officer. His evidence is at exh.39.

ANALYSIS

11. Here sum and substance of prosecution case is that mother of

complainant PW2 Prashant had applied for loan of Rs.40,000/- from the Corporation to conduct business of bed sheets. Her file was referred to Allahabad Bank and for sanctioning of loan, pay order or subsidy amount of Rs.10,000/- was required from Corporation and therefore, he had approached appellant, who was working as Peon in the said Corporation. Case of prosecution is that for obtaining signature of superior Officer on the pay order, complainant was asked to pay Rs.100/- and as he was not willing to pay bribe, he lodged report with ACB. Here evidence of complainant PW2 Prashant and shadow pancha PW3 Sakharam is crucial.

12. Fundamental grounds of challenge are that there is no corroboration to the testimony of complainant on the point of demand and there was thrusting of money for false implication. Said episode of thrusting was while coming down by stairs.

On such lines, if evidence of prosecution, more particularly, complainant PW2 Prashant and shadow pancha PW3 Sakharam is minutely scrutinized, here it is noticed that complainant is unable to give dates of events and surprisingly, he is also unaware on which date demand was made. Law is fairly settled that there is heavy burden on prosecution to prove demand, which is *sine qua non*.

Mere possession of tainted currency is not sufficient and prosecution is expected to prove that there was demand of illegal gratification for doing or abstaining from doing any work. Here on minute scrutiny of evidence of PW3 Sakharam, shadow pancha, as pointed out by learned counsel for appellant, this witness has not heard the conversation regarding demand and he deposed to that extent. Therefore, as pointed out, there is no corroboration to the actual demand.

13. Specific defence is of thrusting. It seems that while accused was using stairs to go down, amount was deliberately thrusted. Therefore, obviously when PW3 Sakharam, shadow pancha does not speak about demand and does not corroborate acceptance, and merely deposes about gestures, he was not party to the acceptance also. Consequently, even though learned APP submitted that there are traces of anthracene powder, as stated above, case is of thrusting. Defence of accused has not been disturbed on this aspect.

For all above reasons, case not being proved beyond reasonable doubt on the points of both demand and acceptance, benefit of doubt deserves to be extended. Accordingly, I proceed to pass following order :

ORDER

I) Criminal Appeal No.713 of 2005 is allowed.

II) The conviction awarded to appellant – Mohd. Kasam Tadwi for the offence punishable under Sections 7, 13(2) of the Prevention of Corruption Act, by the learned II Additional Sessions Judge, Aurangabad on 30-09-2005 in Special Case No.16 of 2003, stands quashed and set aside.

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

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**)
JUDGE

SPT