



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 303 OF 2004

Dashrath s/o Vithoba Kamble,
Age; 45 years, Occ; Service as Talathi,
R/o; Gunjegaon, Tq. Gangakhed,
Tq. Gangakhed, Dist. Parbhani

... APPELLANT

V E R S U S

The State of Maharashtra
Through Public Prosecutor,
High Court of Judicature at
Bombay, Bench at Aurangabad.

...RESPONDENT

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

CORAM : KISHORE C. SANT, J.

Date of Reservation : 12.08.2024

Date of Pronouncement : 03.09.2024

J U D G M E N T :

1. The present appellant is held guilty for the offences

punishable under Sections 7 and 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988, (hereinafter referred to as the 'PC Act'). For the offence punishable under Section 7, he is sentenced to suffer Rigorous Imprisonment for 2 years and to pay fine of Rs. 2,000/-, in default, to undergo Rigorous Imprisonment for 6 months. For the offence punishable under Sections 13 (1) (d) read with 13 (2) of the PC Act, he is sentenced to suffer Rigorous Imprisonment for one year and to pay fine of Rs. 1,000/-, in default, to undergo further Rigorous Imprisonment for 3 months. The Special Court has directed both the above sentences to run concurrently. Herein after the parties are referred to as per their original nomenclatures.

2. The facts in short are that one Dnyanoba P. Narayanrao Ballal, the de-facto complainant approached Anti Corruption Bureau, Parbhani and lodged a complaint dated 15.02.2000 stating that he is having lands at Dhobewadi in Gut No. 57 and 58 standing in the name of his sister namely Trigunabai wife of deceased brother Sopanrao Ballal. The said

land was purchased by him about 25 to 30 years back. The name of Trigunabai was mutated in the 7/12 extract in cultivation column for the year 1997-98, without any notice to the informant. He preferred an appeal to the Sub Divisional Officer, Selu (in short 'SDO'). The said SDO passed an order directing parties to maintain status-quo. In view of the status-quo, the Talathi (for short 'the accused') had again shown the name of Trigunabai in the 7/12 extract. Thereafter, an appeal was preferred and the same was pending before the Dy. Collector, Parbhani.

3. On 14.02.2000, the de facto informant Dnyanoba met the accused in his office and requested him to give copy of 7/12 extract. The accused told him that his case is pending before the Dy. Collector, Parbhani and if he wants copy of the 7/12 extract in the name of Trigunabai, then he will have to pay Rs. 2,000/- for it. The informant bargained with the accused and settled amount to Rs. 500/-. The accused thereafter, called informant Dnyanoba to come on next morning in the office alongwith

amount. Since he was not willing to pay amount, he approached to the Anti Corruption Bureau and lodged a complaint.

4. On receiving complaint the Investigation Officer decided to lay a trap. He called two panchas for that purpose and prepared a team. It is further the case of prosecution that on 15.02.2000 Dnyanoba alongwith a shadow pancha witness More (PW-2) went to the office of accused alongwith the amount of bribe. The accused again demanded an amount from Dnyanoba and accepted the same in his office. Immediately, he was apprehended by the raiding party. After completion of the investigation and after obtaining the sanction a charge-sheet came to be filed against the accused. After considering the oral and documentary evidence the trial Court held the appellant/accused guilty of the offence punishable under Sections 7 and 13 (1) (d) read with 13 (2) of the P.C. Act as above. Hence this appeal.

5. Learned Advocate for the appellant/accused submits

that the prosecution has failed to prove aforesaid offences beyond reasonable doubt. The amount that was paid by the complainant was towards the arrears of land revenue i.e. Rs. 498/-. Under the pretext of giving amount of arrears of land revenue the informant handed over the amount and soon thereafter, the raiding party came and apprehended the accused.

6. He further submits that there is no proper sanction accorded by the sanctioning authority. The sanctioning authority had no power to accord sanction. The trial Court has failed to appreciate evidence in its proper perspective. The demand is also not proved. Thus, the conviction and sentence deserves to be quashed and set aside. The appellant tried to make out a case that after receiving the amount of Rs. 500/-, the accused was about to issue receipt and for that purpose he turned towards cupboard to get receipt book, before he took out the receipt book to write receipt, the raid was conducted and the trap was shown successful.

7. Learned APP opposed the appeal stating that in the

present case the demand is clearly proved. The accused has accepted the amount. The amount is found with the accused. The blue shine traces of the anthracene powder are seen on the finger tips of the accused. He, thus, submits that the trial Court has rightly held the accused guilty and has rightly convicted him. Therefore, no interference is required and prays for rejection of the appeal. The learned APP submits that the details of arrears of land revenue are not at all correct. The arrears of land revenue amount was total less than Rs. 10/- and there is no question of accepting the amount of Rs. 500/-, when the arrears were not even Rs. 10/-.

8. To appreciate the case, this Court has gone through the evidence, record and proceedings

9. Dnyanoba (PW-1) in his evidence stated about the earlier demand of dated 14.02.2000. It has come in his evidence that on the date of trap he was instructed to go alongwith a shadow witness i.e. panch Ramchandra More (PW-2), after giving

demonstration as to how the anthracene powder works and after giving necessary instructions the raiding party started from Parbhani by a jeep towards Railway Station, Gangakhed. From Railway Station, Dnyanoba and Ramchandra More went to the office of accused by walk. They were followed by other members of the raiding party. When they both went in the room of the accused he was not present there. They both therefore, waited for some time near the office of accused. After 10 minutes when accused came there, the Complainant demanded 7/12 extract from him. Accused took out the book of 7/12 extract from his cupboard and started writing on it by asking as to whether the Complainant had brought the amount. The Complainant informed that he had brought the amount. After completion of writing 7/12 extract, the accused handed over the same to the Complainant and demanded the amount. The Complainant took the said 7/12 extract and paid the amount to the accused. The accused accepted the amount by his right hand and put it in his right hands heap pocket of pant. As decided, the Complainant gave signal to the raiding party. The raiding party came in the

room of the accused and asked the shadow pancha as to where the amount is kept by the accused. The shadow pancha told that the accused had accepted the amount and has kept in his right hand heap pocket of pant. Thereafter, the Complainant was asked to go outside the office. After some time the Complainant was called in the office. His both hands were examined in the light of ultra violate lamp and the blue shining of the anthracene powder was found on his hands. He identified the currency notes which were given to the accused.

10. In the cross-examination the situation of room where the appellant/accused was sitting is taken on record. It is stated that the raiding party came from southern side on receiving the signal from the Complainant. The portion Mark-A of his statement also came to be exhibited. The statement Exhibit-A is that the earlier Talathi had taken entry in the name of Trigunabai in 7/12 extract and had given extract to the Complainant. He also exhibited the portion Mark-B from his statement dated 17.02.2000 to the effect (his statement recorded by Inspector

More on 17.02.2000. The said portion is correctly recorded as per his statement made by him. The 7/12 extracts seized from the Complainant after the trap, are admitted by the accused. Therefore they are marked Exhibits 9 to 12. It is stated that he was Sarpanch of the Grampanchyat Sahajpur (Jawala) about 20 years ago. The question was put to this witness in the cross-examination that on 12.02.2000 the Complainant had been to the accused for 7/12 extract and on that day the accused told him that there are arrears of land revenue of Rs. 498 and the Complainant has to pay that amount. Since the amount of arrears of land revenue was demanded, the Complainant got annoyed. He denied that the amount of Rs. 498/- was towards the arrears of land revenue.

11. More, (PW-2), the shadow pancha deposed that he was called in the office of ACB on 15.02.2000. There, he was instructed to act as panch. A trap was prepared by giving necessary instructions. The demonstration of anthracene powder was given. He deposed on the same lines of the Complainant.

12. In the cross-examination he accepted that there was no specific words used as bribe amount. The accused simply asked as to whether the amount is brought, to which the Complainant answered in the affirmative. The suggestion was put to him in that in fact the amount that was paid was towards the amount of arrears of land revenue, it is denied by this witness. This witness proved the panchanama.

13. Pimpalgaonkar, (PW-3), Dy. Collector, Usmanabad, accorded sanction to prosecute the accused. This witness deposed that he granted sanction after being satisfied that the prosecution has made out a case and after going through the papers of investigation. He proved the sanction order (Exh. 27). He also deposed that the SDO is the competent authority to appoint and remove Class-III employees within his jurisdiction.

14. In his cross-examination, he accepted that format of sanction order was received by him alongwith letter (Exh. 26). He produced on record sanction order alongwith application Exh. 27.

He denied the suggestion that he has only copied down the format of sanction order. He accepts that he did not make any change in the wording of the draft as it was not found necessary. He deposed that he made some changes marked as A, B, C and D in the draft sanction order, which were marked by his clerk. He has prepared the sanction order by giving directions to his clerk and told him to insert portion A, B, C and D in it. It was asked to this witness that if a person is in arrears of land revenue, no 7/12 can be issued to such person. It is specific answer that there is no such practice, neither there is any such rule, when any person is in arrears of land revenue, the department follows procedure by issuing demand notice to such person and thereafter the property is attached.

15. PW-4 Rajendra More, working with Anti Corruption Bureau at the relevant time. He stated about the investigation, obtaining of sanction order etc. He proved the complaint lodged by him dated 15.02.2000. In his cross-examination, he could not tell as to whether the same is the draft sanction order while

submitting the final report. The Complainant had come to the office of ACB at 6.00 a.m. on 15.02.2000 and thereafter he called two persons to act as panchas. He denied the suggestion that he was not competent to carry out the investigation.

16. On this evidence certain contradictions were pointed out by the learned Advocate for the appellant. The Complainant in his cross-examination accepted that the 7/12 extracts at Sr. No. 9 to 12 were not given to the Inspector at the time of search, however, in the complaint the Complainant has stated so. He thus denied before the Court that he had given the said 7/12 extract to the ACB and except that all 7/12 extracts were already in his possession since prior to the date of the trap. The sanction order appears to be mechanical one. No details are recorded in the sanction order as to for what purpose the sanction is accorded.

17. Taking in to consideration the oral and documentary evidence, this Court finds that the name of Trigunabai was

already taken to 7/12 in Gut No. 57 and 58 as is reflected from (Exh. 9 to 12). However, the defence could not produce anything on record to show that the amount of arrears was Rs. 498/-. On the contrary, it is pointed out by the learned APP that the amount of arrears was only Rs. 5.30 ps. Thus, the defence is far fetched. So far as, the evidence of the complainant is concerned, it is corroborated by evidence of (PW-2) a shadow panch witness. No contradictions are pointed out. The material fact of giving and accepting of the bribe is proved. The notice is issued by the Talathi/accused on 10.01.2000, is on record showing the amount of arrears to be Rs. 5.30 ps issued in the name of Trigunabai. There is also a report dated 22.01.2000 sent by the Tahsildar, Palve, District Parbhani, shows that the notice was pasted on the Grampanchyat Office towards the arrears of land revenue of Rs. 5.30 ps. Thus, this Court finds no merit in the submissions of the learned Advocate for the appellant that there is nothing on record to show that the amount demanded was the amount of land revenue. No any witness has stated that the accused asked for the amount as land revenue.

18. It is held by the trial Court that the total arrears of land revenue infact are Rs. 5.30 ps., as the land revenue is Rs. 1.55 ps per annum. The Court has rightly considered that the accused has not brought on record anything to show that Trigunabai was in arrears of land revenue of amount of Rs. 498/-. When the defence is taken it was for the accused to specifically show that infact Trigunabai was in arrears of that much amount.

19. This Court finds substance in the argument of learned APP that the appellant accepted that (PW-1) and (PW-2) had been to the office of accused on 15.02.2000 and the accused has accepted the amount. Though the accused has taken a defence in his 313 statement that the amount was towards the arrears of land revenue and he was about to issue receipt by taking amount from complainant, however no such defence is put in his evidence.

20. This Court on going through the evidence and submissions finds that the submissions of learned APP finds merit. No illegality or perversity is pointed out in the judgment of the trial Court. The trial Court has rightly held the accused guilty of the afore stated offences levelled against him. Thus, this Court finds that no case is made out calling for interference at the hands of this Court. The Criminal Appeal, therefore, deserves to be dismissed and the same is hereby dismissed. Appellant to surrender to his bail bonds.

(KISHORE C. SANT)
JUDGE

21. At the request of learned Advocate for the appellant four weeks time is granted to surrender.

(KISHORE C. SANT)
JUDGE

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