



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 312 OF 2004

Shaikh Nadeem Sk. Yasin
Age: 32 years, Occu.: Government
Service, Muster Assistant, Minor
Irrigation, Sub-Division No.4, Zilla
Parishad, Kalamnuri under Panchayat
Samiti Basmath Taluka,
Basmath Resident of Basmath
Taluka, Dist.Basmath.Appellant

Versus

The State of Maharashtra
Through Anti Corruption Bureau
Parbhani.Respondent

.....
Advocate for Appellant : Ms.A.N.Ansari
APP for Respondent : Mr.N.D.Batule

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 05 MARCH, 2024

PRONOUNCED ON : 20 MARCH, 2024

JUDGMENT :-

1. Judgment and order of conviction passed by the Special Judge, Parbhani dated 30-04-2004 in Special Case No.8 of 2001 holding appellant guilty for offence under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act (PC Act), is assailed by filing instant appeal.

CASE OF PROSECUTION IN BRIEF

2. Complainant Bhimrao was a beneficiary of scheme for digging bore well in his land. After digging bore well up to 20 feet, Panchayat Samiti Committee paid visit and part amount was issued by way of subsidy i.e. in the year 2000 as well as 2001. For remaining amount of subsidy, complainant had approached present appellant with a request to release the remaining amount. However, accused stated that he cannot release the amount free of charge and thereby demanded Rs.1,000/- for releasing said subsidy amount. As complainant was not willing to pay bribe, he approached Anti Corruption Bureau (ACB), lodged complaint, after which ACB authorities planned and arranged trap and he was caught accepting bribe and was therefore, chargesheeted for offence under Sections 7, 13(1)(d) r/w 13(2) of the PC Act and tried before the learned Special Judge, who after appreciating the oral and documentary evidence, held offence to be made out and recorded conviction as stated above. Said judgment is therefore, impugned herein.

SUBMISSIONS**On behalf of Appellant :**

3. Learned Counsel for the appellant pointed out that there is

apparently false implication. According to her, appellant was working as a mere Muster Assistant that too on contractual basis. Therefore, he is at threshold not a public servant. Therefore, he cannot be booked and tried under the provisions of PC Act. She elaborated that employment of appellant was under the Employment Guarantee Scheme (EGS), which is purely on contractual basis and for particular project only. There is no fix pay scale like other Government employees. She invited attention of this Court to the appointment order and would submit that from the same, it is clear that services of appellant were on temporary basis and he was engaged to look after and supervise work of labours. His job was only to maintain register of labours and as such he was not authorized to issue or release any amount by way of subsidy. Therefore, according to her, there is no question of demanding any illegal gratification or bribe. In support of her above submissions, she seeks reliance on the Government Resolution dated 01-12-1995.

4. She further questioned sanction to prosecute as according to her, Chief Executive Officer, who has granted sanction in this case, was not appointing authority. Therefore, such authority was not competent to also grant sanction to prosecute. For all above reasons,

she submits that prosecution launched itself was faulty and moreover, evidence of complainant, pancha witness was not consistent. Therefore, according to her, learned trial Court ought not to have accepted the case of prosecution and ought not to have convicted accused.

On behalf of State :

5. Per contra, learned APP submitted that accused has not denied his employment in Government. Therefore, he squarely falls in the definition of “public servant”. He invited attention of this Court to Section 2(c) of the PC Act and pointed out that he was on pay-roll and he was receiving regular remuneration from the Government and therefore, he infact is a public servant. He had demanded illegal gratification for clearing subsidy. He was caught raid-handed after demand and accepting bribe. Therefore, offence was complete. That valid sanction was obtained from the competent authority and therefore, learned trial Court rightly accepted the evidence adduced by the prosecution and has rightly convicted appellant and therefore, he prays to dismiss the appeal for want of merits.

EVIDENCE ON BEHALF OF PROSECUTION IN TRIAL COURT

6. **PW1** Bhimrao Shamrao Dhabe, who is examined at exh.10

deposed about sanction of subsidy of Rs.45,000/- for digging the bore well and receiving amount of Rs.26,000/- in 1999, Rs.5,000/- in 2000 and Rs.3,000/- in 2001 and for remaining Rs.10,000/-, he claims to have approached Panchayat Samiti office, Basmath and had contacted appellant and made request to release the amount. According to him, accused told that amount cannot be released free of charge and further told that he has to pay rs.1,000/-. Finally accused agreed to receive Rs.500/- and accused had called him with amount on 22-05-2001. On same day, complainant approached ACB and lodged complaint exh.11. He deposed about pancha namely Raut being called, apprised about complaint and both of them given detailed instructions and information about procedure of trap. Finally he and pancha both approached accused at Panchayat Samiti office. There, he and pancha went to a hotel and after tea, complainant told him that as directed by him, he brought Rs.500/-. Accused told that since others are around, he would talk later on. After 15 minutes, accused alone came and took complainant to side and asked how much amount was brought. When complainant told him that he had brought Rs.500/-, accused asked him to pay and further said that cheque of remaining amount would be issued on Tuesday. He accepted the currency and kept in the chest pocket.

Thereafter, ACB authorities carried out the trap.

7. **PW2** Nivrutti Sitaram Raut, who has acted as pancha also stated that he has approached ACB authorities, he heard grievance of complainant, he verified the complaint, caused signature over it and thereafter, ACB authorities explaining the procedure and drafting panchanama exh.16. Thereafter, he, complainant, other pancha and staff of ACB rushed to Basmath. They approached accused in his office. After tea in a hotel, PW1 Bhimrao told accused that he has brought the amount as per direction. Accused asked him to wait outside the office saying that he would return after a while. When he came back, accused questioned complainant as to how much amount was brought and he demanded the said amount and after he accepted it, complainant told him that BDO has gone to Aundha and he should come to collect the cheque on Tuesday. Complainant gave signal to raiding party, who arrived and caught accused.

8. **PW3** Radheshyam Laxmanrao Mopalwar is the Chief Executive Officer (CEO). According to him, he received papers from ACB and after considering the investigating papers, he granted sanction to prosecute accused. He identified sanction order exh.20. According

to him, accused was Muster Assistant, who was appointed by the CEO and therefore, he was competent authority to remove him.

9. **PW4** Rangnath Dhondiba Nagare is the Investigating Officer, who narrated all steps taken by him during the investigation.

GROUND IN APPEAL

10. On appreciating the arguments, here fundamental grounds of challenge are, *firstly* accused to be not a public servant and therefore, cannot be tried or held guilty under the provisions of PC Act. *Secondly*, being Muster Assistant and appointed temporarily to note and register details of labours, he had no authority to deal with financial transactions and therefore, no question of releasing remaining subsidy. *Thirdly*, there was no demand, which is *sine qua non* for attracting the offence.

ANALYSIS

11. Re-appreciated the evidence adduced in the trial Court.

12. **PW1** Bhimrao Shamrao Dhabe is the complainant and **PW2** Nivrutti is the shadow pancha. Initial demand when was made at

that time PW1 Bhimrao was alone, but he has immediately approached ACB and has lodged complaint. Thereafter, PW2 Nivrutti was summoned and both PW1 Bhimrao and PW2 Nivrutti were apprised about pre-trap and post-trap activity. They both are found to be consistent approaching Panchayat Samiti that day with tainted currency and meeting accused. They both are consistent about they all going to take tea, after which accused asked complainant whether amount has been brought. They both are consistent about accused making such demand and even accepting it. They both are consistent about accused informing complainant that BDO was out of town and cheque would be issued on Tuesday i.e. amount towards remaining amount of subsidy. Consequently, here PW1 Bhiraao and PW2 Nivrutti are lending support to each other about demand being made and on handing it over, accused accepting it, after which he was apprehended. Therefore, here prosecution has demonstrated that there is demand as well as acceptance.

13. Though both PW1 Bhimrao, complainant and PW2 Nivrutti are subjected to grueling cross, their above version has remained unshaken and undisturbed. Both PW1 Bhimrao and PW2 Nivruti are lending support to each other. PW2 Nivruti, an independent pancha

is party to conversation of demand and also a party to the aspect of acceptance. Right Hand of accused and inner side pocket of his shirt are smeared with powder, regarding which there is no explanation or dispute. Consequently, here both demand and acceptance is cogently proved.

14. Another ground of criticism is that there is no valid sanction. Such submission has no force because **PW3** Mopalwar, CEO, Sanctioning Authority deposed that while he was working as CEO, he received papers from ACB, which he scrutinized. He narrated the nature of documents i.e. original complaint, papers of trap and even service record of accused. He thereafter, has drawn conclusion that sanction needs to be accorded and therefore, issued sanction order exh.20. According to him, accused was appointed as Muster Assistant by CEO and therefore, he is authorized to remove him also. That Panchayat Samiti falls under jurisdiction of CEO, Zilla Parishad.

Though **cross-examined**, questions to this witness are regarding appointment letter, accused approaching Labour Court. He answered that fresh appointment orders of Muster Assistant were issued by CEO in 1992. He flatly denied that accused is not a public servant. He also answered that Muster Assistant has to note attendance of

labours working under EGS and that it is not his duty to issue or pass cheques.

15. Next ground of challenge is raised pointing to above cross-examination of PW3 Mopalwar, Sanctioning Authority that accused being mere a Muster Assistant, was not dealing with drawing cheques or issuing cheques and rather he was assigned only the work of maintaining attendance of labours.

Though, the above arguments sounds attractive, there is no force in the submission that accused was not a public servant. Accused was apparently appointed as Muster Assistant on EGS. He was receiving remuneration and salary from Government. He was even on pay roll of Government and rendering services of Government in EGS, which is a permanent scheme run by Government.

16. The Government Resolution (GR) of 21-04-1999 is heavily relied by learned Counsel for appellant. However, on carefully going through the entire GR, it is apparent that the said GR was required to be issued regarding applicability of benefits of 5th Pay Commission. It is not a GR specifying that Muster Assistants are not public servant for all purposes. In the considered opinion of this Court, accused was

appointed under the orders of CEO and his services were governed by BDO at Panchayat Samiti level. CEO is the Head of the Department and is also removing authority.

Consequently, at the time of trap, accused was working as Muster Assistant and was on pay roll of the Government. Mere some issue raised before the Labour Court would not itself be sufficient to bring him out of the ambit of public servant. Similarly, merely his duty was to record attendance of labours, also in itself is not sufficient to hold that he had no authority to handle or issue cheques and therefore, entire story of complainant regarding demand of illegal gratification being made would not be washed out. Here complaint has been lodged alleging demand of Rs.500/- for issuing cheque towards subsidy. The demand was apparently illegal gratification. There is both demand as well as acceptance of money other than remuneration.

17. Perused the impugned judgment. Learned trial Court has correctly appreciated the evidence as well as documents relied upon. No illegality or perversity is brought to the notice of this Court so as to cause interference. Findings being in consonance with the evidence and law and no case being made out for any interference, I proceed to pass following order :

ORDER

Criminal Appeal No.312 of 2004 is dismissed

(ABHAY S. WAGHWASE)
JUDGE

18. On pronouncement of this Judgment, learned Counsel for the appellant prays for six weeks time to surrender so as to enable her to approach the Hon'ble Apex Court.

19. Learned APP strongly opposes the same.

20. Considering the above request made by learned Counsel for the appellant, six weeks time is granted for the appellant to surrender.

(ABHAY S. WAGHWASE)
JUDGE