



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 485 OF 2004

Haridas S/o. Mahadev Chavan,
Age : 53 years, Occu. : Retired,
Junior Auditor,
R/o. K-31/11, N-11, Navjeevan Colony,
HUDCO, Aurangabad, Tq. & Dist. Aurangabad.

... Appellant
(Orig. Accused)

Versus

The State of Maharashtra

... Respondent.

...
Mr. R. N. Dhorde, Senior Counsel i/b. Mr. Vikram R. Dhorde a/w.
Mr. S. P. Nimbalkar.

Mr. K. K. Naik, APP for Respondent - State.

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 30 SEPTEMBER, 2024

PRONOUNCED ON : 08 OCTOBER, 2024

JUDGMENT :

1. In this appeal there is challenge by the convict to the judgment and order dated 09.07.2004 passed by learned Special Judge at Aurangabad in Special Case No.18 of 2001 holding him guilty for offence punishable under sections 7 and 13(1)(d) read with section 13(2) of Prevention of Corruption Act, 1988.

2. In short case of prosecution is that, PW1 Charias husband of Kamalbai Abhayankar approached office of Education Department with papers of his wife to receive second installment of

arrears towards 5th Pay Commission. Present appellant working as an Assistant Auditor was approached with request to do the needful. Appellant put up demand of Rs.200/- to release the arrears and also threatened that work would not be done if amount was not be paid. Therefore, informant PW1 approached ACB authorities, lodged report Exh.17. On the strength of which, ACB authorities planned trap in presence of pancha. Necessary instructions were given and trap was executed after accused demanded and accepted the bribe amount. He was duly charge-sheeted, tried and finally held guilty. Hence, instant appeal.

SUBMISSIONS

On behalf of Appellant :-

3. Learned Senior Counsel Shri R. N. Dhorde would submit that there is false implication. According to him, complainant had no work at all in the office of appellant. That, work was of his wife and her documents were to be submitted to receive arrears. That, said wife never approached and even she is not examined. That, there was quarrel between complainant and appellant as appellant insisted presence of wife of complainant, who was actual beneficiary. Out of annoyance for insisting, false report is lodged. That, there was no demand as alleged. He further submitted that, complaint was of same day and even trap was executed on the same day. That, evidence shows that panchas were

already available prior to visit of complainant.

4. Learned Senior Counsel further pointed out that, alleged report which is treated as complaint and would submit that it does not carry timing. That, there is admission to that extent by both, complainant as well as Investigating Officer, and therefore, according to learned Senior Counsel, very story of prosecution about receipt of complaint comes under shadow of doubt and there is every possibility of drawing report as per convenience of complainant at subsequent point of time.

5. Learned Senior Counsel took this court through the evidence of shadow pancha and would submit that his evidence shows that two other independent persons were present at the time of visit of complainant, but they too are not examined. Learned Senior Counsel strenuously submitted that, going by the hand sketch map which is part of record, there is every possibility of bribe amount thrust in the drawer to falsely implicate. He also pointed out that, another pancha, who was said to be party to the raid, has not been examined.

6. That, witnesses are quoting different time of raid and such crucial aspect creates serious doubt about prosecution

version also. Lastly, learned Senior Counsel took this court through the evidence of Investigating Officer, more particularly his cross and submitted that there is serious doubt about the actual raid because Investigating Officer has admitted that there were no communication to the panchas to come an act as pancha.

Learned Senior Counsel in support of his submissions seeks reliance on following rulings :-

- (i) *Subhash Parbat Sunvane v. State of Gujarat, AIR 2003 SC 2169;*
- (ii) *M. R. Purushotham v. State of Karnataka, (2015) 3 SCC 247;*
- (iii) *Prabhat Kumar Gupta v. State of Jharkhand and Anr. (2014) 14 SCC 516;*
- (iv) *State of Kerala and Anr. v. C.P. Rao, (2011) 6 SCC 450;*
- (v) *Ganapathi Sanya Naik v. State of Karnataka, AIR 2007 SC 3213;*
- (vi) *M. K. Harshan v. State of Kerala, AIR 1995 SC 2178;*
- (vii) *Sita Ram v. The State of Rajasthan, AIR 1975 SC 1432;*
- (viii) *Salimkhan Sardarkhan v. State of Gujarat, AIR 1986 SC 307;*
- (ix) *Mukhtiar Singh (since deceased) Through His Legal Representative v. State of Punjab, (2017) 8 SCC 136;*
- (x) *V. Venkata Subbarao v. State represented by Inspector of Police, A.P. (2006) 13 SCC 305;*
- (xi) *Darshan Lal v. The Delhi Administration, (1974) 3 SCC 595;*

(xii) Prakash Bhaskarrao Patil v. State of Maharashtra, 2022 (3) ABR (CRI) 27 (Bombay High Court).

On behalf of Respondent – State :

7. In answer to above, learned APP supported the judgment and would submit that, there is clear, cogent and convincing evidence. That, there was demand of illegal gratification for releasing arrears of wife of complainant. That, there is prompt complaint. According to him, ACB authorities acted swiftly, planned and arranged trap. That, complainant was accompanied by independent pancha witness. That, they both are corroborating each other. That, there is demand as well as acceptance. According to him, going by the map there is no possibility at all of deliberate thrusting currency in the drawer. Such defence is not acceptable. Therefore, according to him, as all ingredients to attract the charges were available, he prays to uphold the conviction by dismissing the appeal.

EVIDENCE ON RECORD

8. **PW1** Charias is complainant. Sum and substance of his evidence that, he approached accused an Assistant Auditor with papers of his wife, who was a teacher, for receiving arrears towards 5th Pay Commission. That, for doing such official work, appellant demanded bribe. Complainant was not willing to pay bribe, therefore he lodged report and acted as per instructions of

ACB Officer and while in company of PW3 Sk Chiraguddin, after demand bribe amount was paid. It was accepted and he relayed necessary signal, after which trap was executed.

PW2 Pralhad, Sanctioning Authority, who claims to have studied the papers and file received from ACB authorities and granted sanction.

PW3 Sk. Chiraguddin, shadow pancha, deposed that he was asked to visit ACB office, introduced to complainant and complaint. He agreed to act as pancha. Procedure of application of anthracene powder to the currency handed by complainant was demonstrated. He accompanied complainant to the office of accused. In his presence, there was demand as well as acceptance.

PW4 P.I. Tandale, ACB is the Investigating Officer.

ANALYSIS

9. The fundamental grounds of challenge are that, *firstly*, there was no demand of illegal gratification and there is no corroboration to the version of complainant about demand. That, merely because appellant insisted presence of wife of complainant, who was actual beneficiary of arrears, complainant who is ex-armyman got annoyed and he lodged report. *Secondly*, evidence of complainant and pancha witness is not consistent regarding the

time of actual raid. *Thirdly*, there is no timing over report. *Fourthly*, there is no documentary evidence regarding summoning panchas and *fifthly*, sanction is without application of mind and rather is in mechanical manner.

10. In the light of above objections and after hearing both sides, carefully analyzed the substantive evidence of PW1 complainant and PW3 shadow pancha. Visited the cross faced by them. It is emerging therein that, complainant approached office of Education Department, Aurangabad on 16.01.2001 with papers of his wife working as a teacher, was entitled for arrears towards 5th Pay Commission. It has come in his evidence that, as she was not keeping good health, instead of her, he had come. However, there was demand of Rs.200/- to do the needful by the appellant. So much part of testimony has virtually remained unchallenged in cross examination. Witness has flatly denied in cross that, as appellant asked to produce his wife, there is false implication. It is true that, witness is unable to give time of lodging report, but it is to be noticed that his testimony is recorded in 2004 i.e. after three years of the alleged incident and therefore his mere inability to give exact time will not render his other version doubtful.

On comparing evidence of shadow pancha, who is

examined as PW3 has also narrated about initially being summoned to ACB office, about being introduced to complainant and complaint and that he and complainant both were explained procedure of raid and with clear instructions to complainant to pay on demand and panchanama to be drawn. He deposed about visiting office of appellant. In paragraph no.4, he narrated the events taking place at the office of appellant is very categorical about conversation between complainant and accused. According to him, appellant told that his work is almost over and mere signature of Superior Officer has remained and then asked complainant to pay Rs.200/- and that he would seek signature and asked complainant to come on next day. Complainant held tainted currency and accused accepted it with right hand and kept it in left drawer. Signal was given by complainant and raid was carried out. His cross which commences from paragraph no.9. He has indeed given different timing, but again merely on such count his above version would not entire come under shadow of doubt. He has withstood the remaining cross without getting shaken on crucial aspect of demand and acceptance.

Consequently, testimonies of PW1 and PW3 are consistent and they are lending support to each other.

11. As regards to testimony of PW2 Pralhad, Sanctioning authority is concerned, he has testified about receiving ACB file, studying the papers, applying mind and then according sanction. There is very little or no cross of such witness.

12. Investigating Officer has also deposed and narrated all events since receipt of complaint, planning trap, giving necessary instruction, demonstration and apprehending accused after receiving signal from complainant. Again, failure to note timing of complaint cannot be said to be a serious infraction. It could at the most be lapse on the part of Investigating Officer in not noting timing, but no benefit could be derived by accused merely on such count.

13. To sum up, there is convincing evidence of both demand as well as acceptance. There is no previous enmity to falsely implicate. Even the submission about implication due to quarrel for insisting presence of wife, also is not a convincing ground to overlook or discard the other aspects of demand and acceptance. There is no plausible explanation from accused. Submission that, going by the location of site of office and sitting arrangement, as is reflected in the map, it is possible to thrust, also cannot be given much undue significance. There is anthracene

powder to the fingers which is a conclusive proof of acceptance. Resultantly, no good ground being raised on merits, there is no substance in the appeal. Hence, the following order :-

ORDER

The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

14. On pronouncement of this judgment, learned Senior counsel for the appellant prays for six weeks time to surrender so as to enable him to approach the Hon'ble Apex Court.

15. Learned APP strongly opposes the same.

16. Considering the above request made by learned Senior counsel for the appellant, six weeks time is granted for the appellant to surrender.

(ABHAY S. WAGHWASE, J.)