



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

CRIMINAL APPEAL NO. 556 OF 2004

The State of Maharashtra
Through Anti Corruption Bureau,
Jalgaon, District Jalgaon.

....Appellant

Versus

Santosh Sitaram Patil
Age: 47 years, Occu.: Service,
Police Head Constable B.No.1765,
Posted at Marawad Police Station,
Tq.Amalner, District Jalgaon.

.....Respondent
(Ori. Accused)

.....

APP for Appellant : Mr.D.J.Patil

Advocate for Respondent : Ms.Sakshi Kale h/f. Mr. Ajeet B. Kale

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 23 APRIL, 2024

PRONOUNCED ON : 06 MAY, 2024

JUDGMENT :-

1. State is taking exception to the judgment and order passed by the learned Special Judge, Amalner, District Jalgaon dated 15-05-2004 in Special Trial No.14 of 1999 by which respondent has been acquitted from offence under Section 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act (PC Act).

FACTS IN BRIEF LEADING TO TRIAL

2. Complainant PW1 Raghunath was called for enquiry on receipt of complaint from one Hilal Babulal Patil. In that connection, complainant visited Marwad Police Station. There, accused, a Police Officer, apprised about complaint and demanded Rs.3,000/- for sending favourable report. On mediation of one Madhukar Patil, amount was brought down from Rs.3,000/- to Rs.400/-. However, as complainant was not willing to pay bribe, he approached Anti Corruption Bureau (ACB), Jalgaon and lodged report exh.20 on 20-12-1996. ACB authorities arranged pancha and planned trap. Both complainant and pancha were apprised about the procedure of application of anthracene powder and they were given necessary instructions to be followed at the time of trap. Accused was approached on 21-12-1996. Accused took complainant to a hotel namely Chaya Tea House to take tea and there he made demand. He also accepted the amount and therefore, raiding party, who was waiting in lay, apprehended accused and further procedure was undertaken and after completing investigation, accused has been tried before learned trial Court.

Learned Special Judge, Amalner conducted trial and on appreciating oral and documentary evidence held that prosecution

failed to establish the charge and acquitted accused by judgment and order dated 15-05-2004. Hence, the appeal.

SUBMISSIONS

On behalf of appellant :

3. Learned APP submitted that prosecution has established the charges by adducing evidence of in all four witnesses i.e. PW1 Raghunath, complainant, PW2 Indrasing Devasing Patil, Pancha, PW3 Bipinkumarsing Bulandsing, Sanctioning Authority, PW4 Hiranman Abhiman Kankhare, Investigating Officer. That prosecution had proved demand as well as acceptance. That sanctioning authority was also examined, who after application of mind, has granted sanction. According to learned APP, there were repeated demands by accused, accused himself approached complainant to his village, therefore, there was ample evidence about demand of illegal gratification. He pointed out that evidence of complainant was supported by pancha witness and Investigating Officer. Therefore, all necessary ingredients for attracting charges were available. That evidence of prosecution witnesses remained unshaken in cross-examination. Therefore, prosecution had succeeded in establishing the guilt, but the learned trial Court has failed to appreciate and

consider said evidence and also failed to consider and apply correct law. Therefore, he prays to allow appeal by setting aside impugned judgment and order.

On behalf of Respondent :

4. Per contra, learned Counsel for respondent accused submitted that case of prosecution was not proved beyond reasonable doubt. She pointed out that at the outset, evidence of complainant is not supported by shadow pancha, who allegedly accompanied complainant at the time of trap. She pointed out that said pancha witness is reported to be dead. That another pancha witness, who examined, had no knowledge about actual occurrence. She pointed out that in case of such nature, complainant being interested witness, it is unsafe to rely on his testimony and therefore, corroboration is necessary, which is missing here. She pointed out that there are repeated demands, but no complaint was lodged by PW1 complainant at any point of time. She pointed out that firstly even demand is not proved and secondly acceptance is also not proved because money was found lying on the floor in a tea stall. Learned Counsel pointed out that crucial witnesses i.e. PW1 Namdeo Koli and other two Persons, who were also said to be party to apprehension,

are not examined. Therefore, evidence of prosecution was patently weak. She pointed out that on the contrary, defence has been successful in rebutting presumption by adducing evidence of DW1 Budha Onkar More. She further pointed out that here sanctioning authority had not applied its mind and had granted mechanical sanction. All such aspects were correctly appreciated by the learned trial Court and according to her, the conclusion reached at by learned trial Court is most possible view, which could emerge and as such she submits that there is no merit in the appeal and consequently, she prays to dismiss the appeal.

GIST OF EVIDENCE

5. **PW1** Raghunath Harchand Patil, complainant gave evidence that there was quarrel with Hilal Baburao Patil of which Hilal lodged complaint at Marwad Police Station as well as before learned Judicial Magistrate First Class, Amalner. Accused Santosh Patil called him and two others for enquiry to Marwad Police Station. He read over the complaint and demanded Rs.3,000/- for doing favour. Finally, on negotiations, accused agreed to accept Rs.400/-. But as complainant was not willing to give bribe, he lodged complaint exh.20. He and shadow pancha, as per arranged trap, went to pay bribe at Marwad

Police Station. Thereafter, while sitting in a hotel, accused demanded bribe, it was paid by complainant and accepted by accused and raiding party caught accused.

6. **PW2** Indrasing Devasing Patil, pancha stated that he was directed to visit ACB office on 21-12-1996. There, he met complainant, nature of complaint was apprised to him and he and complainant were made aware of the procedure and he accompanied complainant to Marwad Police Station. From there, they went to a hotel. Complainant reached there. Predetermined signal was given by complainant and accused was caught.

7. **PW3** Bipinkumarsing Bulandsing, Sanctioning Authority deposed about receiving papers, ascertaining the same and according sanction exh.31.

8. **PW4** Hiranman Abhiman Kankhare is the Investigating Officer, who narrated all the steps taken by him during investigation till chargesheeting accused.

ANALYSIS

9. Sum and substance of accusations is that complainant was summoned to attend Police Station on receiving some complaint and during enquiry, it is alleged that to issue favourable report, accused demanded Rs.3000/-. Finally, on negotiations, accused agreed to accept Rs.400/- and therefore, there was demand and the amount being accepted, there was acceptance.

In support of such case, prosecution has adduced evidence of complainant **PW1** Raghunath Patil, who reiterated the contents of the complaint. That at Marwad Police Station, accused demanded Rs.3,000/-, he was unable to give such amount and therefore, through mediation of one Madhukar Patil in subsequent visit, amount was brought down to Rs.400/-. Thereafter, he approached ACB authority and lodged complaint. On instructions of ACB authorities, he and shadow pancha visited Marwad Police Station. That day accused took them to Chaya Tea Stall and there accused demanded money and it was duly handed over and thereafter, predetermined signal was relayed.

In **cross-examination** he admitted that he does not know that accused already submitted report to the Court. He answered that he learnt that accused had already submitted report to the Court against

him but he denied that getting annoyed by the same, he lodged complaint against accused on 20-12-1996. Omissions are brought about visiting Police Station on the next day. He answered that accused visited his village and at that time, he was accompanied by another Constable namely Kurkure. He admitted that, thrice he went to Marwad Police Station before he approached to ACB and he candidly admitted that he did not inform about demand by accused.

10. **PW2** Indrasing Devasing Patil is pancha, who claims to have accompanied ACB office alongwith another pancha Namdeo Koli and there, ACB authorities introduced them to complainant, apprised them about nature of complaint and he too signed the complaint exh.20 as a pancha. Thereafter, procedure of application of anthracene powder to the currency was explained to them. In paragraph no.5, he stated that both panchas, complainant and raiding party were proceeded towards Marwad Police Station. He stated that complainant was instructed to disclose identity of Namdeo Koli as his relative. According to him, complainant and Namdeo entered the hotel near Marwad Police Station and after taking water in the hotel, they proceeded towards premises of Marwad Police Station. After 2-3 minutes, they left the premises of

Marwad Police Station and they both sat near a Pan shop. After 30 minutes, three persons came from Police Station, one of them was having bag in his hand and he was wearing suit-pant, whereas rest were having Payjama. The person having a bag in his hand gave signal to the complainant to come in the hotel and thereafter, complainant went in the hotel. After 30 minutes of reaching hotel, complainant gave predetermined signal and raiding party entered the hotel and raiding party asked Namdeo Koli as to who asked the bribe money and at that time, Namdeo Koli pointed finger towards the accused and he was apprehended. Accused threw the currency on the ground and raiding party asked this witness to lift the currency.

While in **cross-examination**, he answered that the complainant did not have talk with raiding party after coming out of Police Station premises. He stated that he was accompanied one Police Officer but he is unable to give his name. He admitted that inner portion of the hotel was not clearly visible from the place where he was standing. He answered that complainant gave signal from the counter of the hotel. He admitted that in his presence, ACB authorities did not record statements of two persons, who were accompanying accused. He answered that currency notes were lying 7 to 8 feet away from the hotel counter. Rest all is denial.

11. Therefore, what transpires on close scrutiny of evidence of PW1 Raghunath, complainant and that of PW2 Indrasing, shadow pancha is that on receiving complaint against PW1 complainant, he was called by a Police Officer at Marwad Police Station, who was officiating there. According to complainant, he and two others visited Marwad Police Station. Exactly on which date they visited Marwad Police Station has not been stated by PW1 complainant. He admits to that extent in the examination-in-chief itself. According to him, accused demanded Rs.3,000/- for sending favourable report and as he was not having such amount, he disagreed to such demand. He stated that he one Madhukar Patil has mediated and the demand was settled at Rs.400/-. He stated that thereafter, accused visited his village and demanded money but on which date and which place of his village accused demanded money, is not given. He speaks about visiting ACB, Jalgaon on 20-12-1996 i.e. after more than two months after first visit to Marwad Police Station. He claims that he has already stated in the evidence that he and pancha Namdeo Koli visited Marwad Police Station that day and they and accused went to hotel for tea. Therefore, Namdeo Koli was his companion but he seems to have expired and therefore, his evidence is not recorded by Police. PW2 Indrasing, who is examined by the Court, appears to be

second pancha, but he was mere party to first interaction with complainant while apprising about complaint as well as explaining procedure of trap in ACB office. Infact Namdeo Koli was instructed to accompany complainant and he accompanied complainant to Marwad Police Station and then to Chaya Tea House. Therefore, PW2 Indrasing does not have direct knowledge about conversation, which took place between complainant and accused in hotel. PW2 Indrasing has candidly admittedly that events in the hotel were not visible to him. Further evidence of PW2 Indrasing goes to show that from hotel, complainant, Namdeo Koli and accused returned to Marwad Police Station. They spent 30 minutes there and thereafter, two unknown persons accompanied accused. Investigating Officer did not record their statements. Therefore, who were those two persons, who gave signal to complainant is a mystery. Here except evidence of PW1, there is no supportive evidence.

As rightly submitted by learned Counsel for the respondent in case of such nature, law requires independent corroboration to the testimony of complainant. Here Namdeo Koli, who accompanied complainant to Marwad Police Station and was an independent witness, is apparently not available. Therefore, demand is not cogently proved. Cross-examination of PW1 Raghunath as well as

evidence of PW2 Indrasing suggested that currency was lying on the floor. Therefore, there is no witness, who had seen acceptance. No independent witness had seen acceptance of amount. Resultantly, both demand as well as acceptance come under shadow of doubt.

12. On visiting evidence of PW3 Bipinkumarsing, Sanctioning Authority, it is emerging that except his testimony about receiving draft sanction order, there is nothing to show that there was independent application of mind. Therefore, trial Court has correctly held that sanction is not valid. Apart from this, aspects of demand as well as acceptance have come under shadow of doubt. Such crucial aspects have not been cogently proved by the prosecution. Material witnesses are not examined or available. Hence, no fault can be found in the conclusion reached at by the trial Court. No case being made out on merits, appeal deserves to be dismissed. Accordingly, I proceed to pass following order :

ORDER

Criminal Appeal No.556 of 2004 stands dismissed.

(ABHAY S. WAGHWASE)
JUDGE