



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 643 OF 2004

The State of Maharashtra

... Appellant

[Orig. Complainant]

Versus

Govind s/o. Satvaji Narwane,
Age : 41 years, Occu. : Service,
R/o. T.B. Centre, Gandhi Chaman,
Old Jalna, Dist. Jalna.

... Respondent

[orig. Accused]

...

Mr. S. M. Ganachari, APP for Appellant – State.
Mr. Joydeep Chatterji, Advocate for Respondent

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 05 MARCH 2024

PRONOUNCED ON : 08 MARCH 2024

JUDGMENT :

1. State is aggrieved by the judgment and order of acquittal dated 22.07.2004 passed by the learned Special Judge, Jalna in Special Case No. 4 of 2002, which was tried for offence punishable under sections 7 and 13(1)(d) read with section 13(2) of Prevention of Corruption Act, 1988.

2. Present respondent was charge-sheeted on accusation that, he demanded bribe of Rs.1,000/- for performing cesarean operation of daughter of complainant, who was admitted in the

hospital on 31.08.2001. Out of the bribe amount, demand of Rs.600/- was met, however as complainant was not interested in paying remaining amount, he had approached Anti Corruption Bureau (ACB) authorities and lodged complaint and after registration of the same, PW4 PI Satish Deshmukh carried out investigation and charge-sheeted accused. On facing trial, prosecution adduced evidence of 4 witnesses. Documentary evidence was also relied. However, after appreciating the same, learned trial Judge acquitted the accused by judgment and order dated 22.07.2004, holding that, prosecution failed to establish and prove the charges levelled against the accused.

It is the above judgment and order of acquittal, which is now taken exception to by the State by filing instant appeal before this Court.

SUBMISSIONS

On behalf of Appellant State :-

3. According to learned APP, accused was working as Medical Officer in rural hospital. That, daughter of complainant was admitted for delivery, however, accused informed complainant that his daughter would be required to undergo cesarean operation and for that he would have to expend. He pointed out that, there was demand of Rs.1,000/-. That, complainant complied with part

demand by paying Rs.600/-, accused persisted and consistently demanded remaining amount of Rs.400/-. Therefore complaint was lodged with ACB and trap was planned and laid, and accused was apprehended. His fingers were found to be carrying anthracene powder. Panch witness also supported the prosecution version. Unfortunately, complainant did not support the prosecution, but according to learned APP, considering the testimony of Investigating Officer and Sanctioning Authority, case ought to have been proved, but learned trial Court failed to consider and appreciate the same and has unfortunately acquitted the accused and hence he seeks to set aside the judgment by allowing the appeal.

On behalf of Respondent :-

4. In answer to above, learned counsel for respondent accused pointed out that, at the first count, here, prosecution has miserably failed to establish that there was any demand at all. He pointed out that, complainant, who had set law into motion himself has not supported the prosecution. Learned counsel for respondent accused took this court through the evidence of PW2 Vasant, his cross, evidence of sanctioning authority and would submit that, apart from inconsistent version from the mouth of PW2 Vasant panch, even sanction is invalid as very sanctioning authority has

candidly admitted that, he was not authorized to accord sanction. Therefore, prosecution case got knocked at the bottom itself. Therefore, learned trial court finding complainant not supporting sanction to be invalid, was left with no alternative, but to acquit the accused and that has been precisely done and hence prays to dismiss the appeal for want of merits.

EVIDENCE ON RECORD

5. PW1 Ankush, complainant is examined at Exh.17. His testimony is about his daughter admitted for delivery and he approaching respondent doctor. According to him, doctor told that, he would require to spend some amount for cesarean and thereupon complainant claims that he promised to pay amount after returning from village. According to him, doctor told him to pay Rs.1,000/-. That time, he paid Rs.600/- and assured to pay remaining amount later on and then he approached ACB and lodged complaint at Exh.18. While deposing in para 3 of his chief, he stated that, doctor asked him, whether he brought the amount and on answering affirmatively, he took out the amount and paid to him. But, thereafter complainant resiled and did not support the prosecution as he started testifying that he cannot state who was a person accompanying him at the time of alleged payment made and whether the person was private person or police personnel.

However, surprisingly he is virtually admitting all suggestions given by learned APP.

Again while in cross, which commences from paragraph 7 and more particularly in paragraph 8 he has admitted that, doctor told him that patient was in need of blood and it was required to be brought from outside and he therefore asked doctor about the price of the blood bottle and doctor was told about it to be Rs.400/- and thereafter doctor was asked by him to bring the blood bottle. He further admitted that, he had paid amount of Rs.600/- while he was in the ward. He admitted that, doctor had refused to accept the amount as he was examining patients. Then he further answered that, when he offered amount, doctor pushed his hand away and refused to accept it and at that time accidentally his hand got touched to the currency. He admitted that, he did not make any signal to the raiding party. He also further admitted that, it is a police to ask accused to lift the currency lying on the floor and accused collected the notes and handed to the police. In paragraph 12 he admitted that, he was the under impression that, proper care was not taken of his daughter in the hospital and therefore he had lodged complaint. He further categorically admitted that, there was neither any demand nor accepted the same. Resultantly, very complainant, who had set law into motion

has not supported the prosecution.

6. **PW2** is examined at Exh.20, deposed about he being called to ACB office, apprised about introduced to complainant and apprised about the purpose of visits and then he claims that he accompanied complainant to the hospital. Even this witness in paragraph 2 deposed that, doctor told him that blood was necessary for the patient. Doctor also told that, the blood bank opens at 4:00 p.m. and while they were proceeding, complainant told accused that he had brought the money and thereafter complainant took out the amount and paid him. He further deposed that doctor threw the notes on the floor and thereafter constable asked accused to pick it up and that time he lifted the notes.

While under cross, panch also answered that he was not knowing about the accused. He admitted that he did not hear the talk between accused and the complainant. Rest are all denial.

7. Therefore even PW2 Vasant, whose evidence is discussed above, has admitted that, there were talks of arranging blood and amount was paid, but doctor refused. This witness has categorically stated that, he is unaware of the nature of talk between complainant and accused.

8. Learned counsel for respondent accused pointed out that, here, not only complainant has not supported, but even sanction itself is invalid. In the light of above ground, evidence of PW3 Prakash Pradhan is visited, which is at Exh.24. This witness claimed himself to be authorized by Government to prosecute Medical Officer and thereafter on receipt of proposal, he granted sanction. But, while cross in para 4 he has admitted that, he was not authorized to accord the sanction or to prosecute the accused and that there was no power to sign the letter as delegated to him. Therefore, here, even sanction so obtained is not patently valid.

9. Resultantly, taking above material into account, here, prosecution has miserably failed to establish the charges. Therefore, learned trial court has correctly appreciated the available evidence and has refused to accept the case of prosecution as proved. With such quality of evidence, the only conclusion is acquittal and it is only possible view that could emerge. No case made out on merits in appeal. Hence, I proceed to pass the following order :-

ORDER

The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)