



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

CRIMINAL APPEAL NO. 652 OF 2004

Onkar s/o. Hariram Shirale
Age: 52 years, Occu.: Service,
R/o. Ektanagar, Parbhani,
District Parbhani.

....Appellant
(Original Accused)

Versus

The State of Maharashtra

....Respondent

.....

WITH

CRIMINAL APPLICATION NO. 3832 OF 2023

IN

CRIMINAL APPEAL NO. 652 OF 2004

Onkar S/o. Hariram Shirale
Age: 65 years, Occu.: Nil,
R/o. Ektanagar, Parbhani,
District Parbhani.

....Applicant

Versus

The State of Maharashtra

....Respondent

.....

Advocate for Appellant – Applicant : Mr. S.P. Chapalgaonkar
APP for Respondent : Mrs.Chaitali Chaudhari – Kutti

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 26 SEPTEMBER, 2024

PRONOUNCED ON : 04 OCTOBER, 2024

JUDGMENT :-

1. In this appeal, there is challenge to the judgment and order

dated 28-09-2004 passed by the Special Judge, Parbhani in Special Case No.5 of 2001 thereby convicting the appellant for offence under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act (PC Act).

FACTS IN BRIEF LEADING TO TRIAL

2. PW1 Gulab Digambarrao Pawar, an agriculturist, was intending to carry out sale transaction of land survey no.210 situated at village Wazur. As such he was in need of 7/12 extract and therefore, he approached appellant, a Talathi. For issuing 7/12 extract, appellant demanded Rs.1,000/-. On request of complainant PW1, figure was brought down and on that day, he accepted Rs.100/- and directed complainant to bring remaining amount. Complainant, as was not willing to pay bribe, lodged report with ACB authority, who planned and arranged trap by summoning panchas and explaining panchas necessary procedure. PW2 Sambha Rathoji Sadawarte, shadow pancha and PW1 complainant approached accused at Parbhani at his residence. There accused put up demand and accepted the amount, after which predetermined signal was relayed and appellant was apprehended. Thereafter, complaint was lodged, which was investigated and appellant was duly chargesheeted and tried by Special Judge, Parbhani and finally held guilty. Hence, appeal.

SUBMISSIONS

On behalf of appellant :

3. Learned Counsel for the appellant alleges false implication. According to him, there is no convincing, cogent and reliable evidence on behalf of prosecution in the trial Court. He very strenuously and emphatically submitted that in this case, there is no demand at all. On this count, he sought reliance on the evidence of PW2 Sambha, shadow pancha. He submitted that testimonies of both PW1 complainant and PW2 shadow pancha are not consistent. That there are material variances. He further submitted that infact 7/12 extract was already issued and therefore, there was no question of putting up demand of bribe. He pointed out that infact amount was thrust and there is admission to this extent by PW2 shadow pancha. He lastly submitted that in this case, there is no valid sanction and therefore, even prosecution and guilt cannot be accepted. He took this Court through the evidence of PW4 Deelip Ranba Gutte, sanctioning authority and would submit that it is evident from answers given by him in his cross-examination that there is total non-application of mind and as such sanction is not good sanction in the eyes of law. For all above reasons, he prays to allow the appeal by setting aside the conviction.

On behalf of State :

4. Learned APP, who opposed appeal and favoured the judgment, would submit that appellant was Talathi and he had put up demand of bribe. There was prompt lodgment of complaint. That in presence of shadow pancha amount was demanded and even accepted. That even sanction is valid as all papers were studied by the sanctioning authority. Therefore, according to her, judgment is infallible and need to be confirmed by dismissing the appeal.

EVIDENCE ON RECORD

5. In support of its case, prosecution has examined as many as five witnesses. The sum and substance of their evidence is as under :

PW1 Gulab Digambarrao Pawar, complainant in his evidence at exh.15, deposed that he has share of land in survey no.210, which he had intended to sale and therefore, he approached appellant Talathi of village Wazur for 7/12 extract. He deposed that, on being approached, appellant asked him to pay Rs.1,000/-, if he requires 7/12 extract immediately. He deposed that when he expressed his inability to pay amount, appellant denied to issue 7/12 extract. That on the request of complainant, accused appellant asked him to pay

whichever amount is with him and therefore, complainant paid Rs.100/-, after which, appellant told him that he should pay balance Rs.900/- at Wajur and to collect 7/12 extract. Complaint to that extent was lodged to ACB authority, who planned and arranged trap and on proceeding at his house, appellant accepted tainted currency and therefore, was trapped and apprehended.

PW2 Sambha Raghoji Sadawarte, shadow pancha deposed at exh.18 that he was called at ACB Office. That he met complainant, went through the complaint, complainant produced currency before ACB authority. That demonstration and necessary instructions were given to them. In paragraph 3, he deposed that he accompanied complainant to meet appellant at Wajur, but it was realized that he was already left for Parbhani and therefore, they proceeded towards Parbhani to the resident of appellant at Ekta Nagar. That there, in his presence, demand was made and even accepted. This witness claims that he pointed out to raiding party the person, who accepted the amount and therefore, necessary formalities were completed.

PW3 Manik Shivram Perke is the Investigating Officer.

PW4 Deelip Ranba Gutte is the Sanctioning Authority.

ANALYSIS

6. Two fundamental grounds of challenge are that firstly, here there is no demand secondly, there is no valid sanction.

FIRST GROUND :

7. In support of defence and ground that there was no demand, appellant primarily relied on evidence of PW2 Sambha, shadow pancha, more particularly, evidence in paragraph no.3.

On scrutiny of his evidence to that extent, it is noticed that he has deposed that they entered house of accused, who asked them to seat on Sofa set while accused sat on cot. Complainant demanded 7/12 extract to that person narrating his urgency. Accused asked Gulab whether he had come prepared and as per directions. However, from above discussion, it can be clearly discerned that complainant is questioned whether he has come prepared. Evidence of complainant has remained intact as regards to demand of Rs.1,000/-, Rs.100/- accepted by way of advance and further directions to come with remaining amount to collect 7/12 extract.

PW2 Sambha, shadow pancha was in the company of complainant and though he stated that complainant asked whether he has come prepared, clear inference can be drawn is that demand

was of remaining amount. Above text appearing in evidence of PW2 Sambha, shadow pancha cannot be read in isolation. The preceding and post conversation evidence also needs to be analyzed and appreciated, wherein PW2 Sambha, shadow pancha has narrated that after being called to ACB Office, he was introduced to the complainant and made aware of the complaint. That in his presence amount to be paid was taken from complainant to which anthracene powder was applied and this entire demonstration watched by this witness has been testified by this witness in his evidence. Therefore, above submission that there is no demand, has no force.

SECOND GROUND :

8. The second ground of challenge is that there is no valid sanction, as according to learned Counsel for appellant, there is no application of mind before according sanction.

In the light of above objection, it would be desirable to reproduce paragraph no. 2 of testimony of PW4 Gutte.

“2. On 20.6.2001 I received a letter from SP ACB Aurangabad with a request to accord sanction for prosecution of the accused. The letter Exh.39 is the office copy of the letter. I received case papers alongwith the said letter of SP ACB Aurangabad. I had gone through the case papers. On considering the recital in the case papers, I formed my opinion that there was prima facie grounds for prosecution

of the accused. Therefore, I accorded sanction for prosecution of the accused. Sanction order now shown to me is the same. It bears my signature. Its contents are true and correct. It is marked as Exhibit-42. Sub-Divisional Officer is appointing and removing authority of the Talathi.”

9. On visiting answers given in cross-examination to which attention is invited, it is true that this witness has not received the list of documents and that he has received draft sanction and had taken aid of it. However, in his examination-in-chief, he is very categorical that after receiving case papers, he has gone through the case papers and after going through recital of the case papers, he accorded sanction. His answer that he is unable to state whether 7/12 extract had been issued to the complainant or not, is not of much significance because acts of demand and acceptance, which is *sine qua non* for attracting the charges are very much available in the evidence of complainant, whose testimony has remained virtually unshaken and is finding support from testimony of PW2 shadow pancha.

Consequently, there is no merit in the appeal. Accordingly, I proceed to pass following order :

ORDER

- (i) Criminal Appeal No.652 of 2004 is dismissed.
- (ii) Criminal Application No.3832 of 2023 is also disposed of.

(ABHAY S. WAGHWASE)
JUDGE

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

11. Learned APP strongly opposes the same.

12. 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