



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 150 OF 2003

Ramesh Dinkarrao Jain

Age : 30 years, Occu: Business,
R/o. Kannad, Dist. Aurangabad.

... Appellant

Versus

The State of Maharashtra

... Respondent

.....

Mr. Anant Amol Kakade h/f Mr. Amol N. Kakade, Advocate for the
Appellant.

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

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 14.03.2024

Pronounced on : 02.04.2024

JUDGMENT :

1. Judgment and order passed by Special Judge, Aurangabad dated 31.01.2003 in Special Case No. 1 of 1998, convicting appellant-original accused no.2 for offence punishable under Sections 7 and 12 of the Prevention of Corruption Act, 1988 [PC Act] is taken exception to by filing instant appeal.

IN NUTSHELL CASE OF PROSECUTION IS AS UNDER

2. Complainant Ravindra Rajput was owner of a matador vehicle which was used for transportation of goods. On 23.09.1997, said

vehicle met with an accident, i.e. on account of dash given by a speeding luxury bus, and said occurrence was reported to Kannad Police Station. The Investigation of such complaint/report was entrusted to Head Constable Kendre. Said I.O. collected papers of matador and asked PW2 complainant to produce surety on the next day morning.

3. Consequently, on 24.09.1997, PW2 complainant visited Kannad Police Station with surety namely, Laxmanrao Deshmukh. However, I.O. Kendre was absent. The PSO on duty, namely Savant, accepted the surety bond and when PW1 demanded his papers back along with copies of panchanama, said PSO asked him to collect it from ASI Kendre. He then told PW2 complainant to meet a person sitting at police station. Accordingly, PW2 complainant went outside the police station and met said unknown person, who told him that he is owner of ready-made shop, namely, Lajari and that PSO Savant had asked complainant to pay Rs.1,500/- for handing over papers.

4. On 25.09.1997, again PW2 complainant visited police station but even this time, ASI Kendre was not available. PSO Savant, who met him, directed him to meet owner of Lajari ready-made shop and so he went to said shop to collect papers. However, owner of said

shop told complainant that Savant had phoned him to handover papers of complainant, but on payment of Rs.1,500/- only. Agreeing to pay, PW2 complainant left.

5. However, on 26.09.1997, PW2 lodged report Exhibit 34 with ACB authorities, who planned and laid trap and finally on conclusion of investigation, police official Savant and present appellant were both chargesheeted for offence under Sections 7, 13(1)(d) and 13(2) of the PC Act.

On trial, learned trial Judge acquitted accused Savant and convicted present appellant alone for offence under Sections 7 and 12 of PC Act. Hence the Appeal.

SUBMISSIONS

On behalf of the appellant :

6. Learned counsel or the appellant would point out that prosecution has miserably failed to establish the charges. He strenuously submitted that present appellant is a businessman and as such, being a private person, he ought not to have been held guilty of offence under the provisions of the PC Act. He pointed out that learned trial court has misconstrued the legal position and has

recorded the guilt. He further pointed out that including complainant and shadow pancha, none have supported prosecution. Answers given by these witnesses in cross apparently show that charge has not been made out. There is reasonable doubt about very identity of the shop owner of ready-made clothes. Complainant as well as pancha witnesses have not identified accused who allegedly met complainant at police station. Therefore, apparently case of prosecution was weak. However, still learned trial court on assumptions, presumptions, conjectures and surmises, has convicted appellant, a private businessman, even when the main public servant accused no.1 has been let scot-free. For all above reasons, he submits that judgment being illegal and not sustainable in the eyes of law, the same be quashed and set aside by allowing the appeal.

On behalf of the State :

7. In answer to above, learned APP pointed out that though accused i.e. present appellant is shown to be a private person, he had indulged in abetting commission of offence putting demand and accepting illegal gratification/bribe. He was in constant touch with informant PW2. Repeatedly he had instigated PW2 to pay Rs.1,500/- for receiving back his own papers. Therefore, complaint was also lodged and ACB authorities had duly laid trap. It was successful.

Present appellant was caught red handed accepting bribe on behalf of accused no.1. That, necessary ingredients for attracting offence under Sections 7 and 12 of the PC Act are very much available in the prosecution evidence and as such, learned trial court has committed no error in recording guilt. Hence, for want of merits, he prays to dismiss the appeal.

STATUS OF WITNESSES AND SUM AND SUBSTANCE OF THEIR EVIDENCE.

8. Prosecution seems to have adduced evidence of following witnesses to establish its case:

PW1 Sanctioning authority, who granted sanction to prosecute accused Savant.

PW2 Ravindra is the complainant. He is the owner of the matador. The sum and substance of his evidence is that, his matador was transporting goods on 22.09.1997. His vehicle met with accident on account of dash being given by a luxury bus. Therefore, he approached Kannad police station and lodged report. Police authorities retained his papers and he was asked to come with a surety for release of vehicle. Therefore, next day when he went to the police station. Concerned I.O. was not present. However, accused no.1 met him and introduced him to another person sitting in the police station. On introduction

with said person, he was asked to pay Rs.1,500/- which would be required to be paid to the superior. Similarly, he visited police station as well as shop on 25.09.1997 and 26.09.1997. As he was not intending to pay bribe, he lodged report Exhibit 34.

He further deposed about ACB authorities arranging and explaining trap to him as well as pancha and then, as agreed, they first visited police station and thereafter went to Lajari Collection shop. There, he paid tainted currency to accused Ramesh, who collected the notes and kept it in his pocket. ACB authorities rushed and caught Ramesh.

PW3 Pawar deposed that he acted as pancha and he was introduced to PW2. He deposed about being appraised about the complaint of PW2 and then he and PW2 being instructed by ACB authorities, panchanama Exhibit 38 being drawn and he and PW2 initially went to Kannad Police Station, where Savant met them and told complainant to pay amount of Rs.1,500/- to Ramesh Seth of Mayuri Collection. Therefore, he and PW2 walked towards Mayuri Collection. There, PW2 told Ramesh Seth that Savant had sent him and to hand over papers of the vehicle. Said Ramesh Seth again directed them to police station along with a bond paper. At police station, When PW2 told Savant that he has brought amount of Rs.1,500/-, again he was directed to visit Mayuri Collection shop where they met Ramesh Seth, who asked PW2 as to how much amount has been brought and when amount was held, Ramesh accepted it and kept it in his pocket and thereafter, on giving signal, he was apprehended by ACB authorities.

PW4 Hanumant Kulkarni was the Investigating Officer. He narrated all steps taken since receipt of complaint from PW2 till chargesheeting accused.

ANALYSIS

9. Apparently, present appellant is shown to be the owner of a cloth shop and thus, not a public servant. Now, law is fairly settled that even a private person can be arraigned and tried under the provisions of the PC Act. However rider is that, while trying a private individual, it has to be demonstrated that he was party to the acceptance of illegal gratification and he has entered into conspiracy for demanding and accepting bribe or even has abetted commission of offence under Sections 7, 11 or 12 of the PC Act. Resultantly, even a private individual can be both, tried as well as punished, under the provisions of the PC Act.

10. On carefully visiting the evidence of complainant PW2 and shadow pancha PW3, it is emerging that their testimonies are bereft of essentials for applying conspiracy or even abetment. There is nothing to show that accused no.2/appellant has entered into a conspiracy to compel complainant to pay illegal gratification to accused no.1 for receiving back title papers of his vehicle allegedly in

possession of accused no.1 Savant or Head Constable Kendre. Another distinct feature is that said Head Constable Kendre has not been examined here, who in fact seems to be a crucial witness. It is also noticed on analyzing evidence of complainant that he speaks of meeting a person outside police station informing him to be owner of Lajari shop and such shop is named in the complaint. But in substantive evidence, he speaks of meeting accused, a owner of Mayuri shop and directly handing him tainted currency. Further, both, complainant and shadow pancha, have not identified accused present in the court to be the same person who had allegedly asked complainant to pay Rs.1,500/-. What complainant in para 7 of his examination-in-chief states is that, after meeting present accused he directly asked him to pay amount of Rs.1,500/- to Head Constable Kendre and even collect the papers of vehicle. Thus, apparently, there is no demand by accused Ramesh.

11. In cross, para 8 complainant answered that he knew Ramesh Seth of Mayuri collection. But in chief para 7 he has spoken about approaching accused and paying him currency in the shop of Lajari Collection. In cross he stated that while standing outside the police station after furnishing bail, a person claiming to be owner of Lajari Collection had met them and further admitted that he had seen that

person for the first time and such person is not present in the court. He further admitted that he met present accused for the first time on the day of trap. He went to the extent of admitting that though he gave a written complaint to the ACB office, he did not sign it. Complainant himself is found to be admitting in cross para 8 that accused no.1 Savant never demanded or told him to pay money to anybody for the documents. Complainant has further admitted in cross para 10 that accused Ramesh has a shop at Chalisgaon and that he used to come there. Complainant has also admitted that he has requested accused Ramesh to get his work done from Head Constable Kendre and that, on his own, accused did not agree to do the work. From such answers of complainant himself, it is apparent that he has not supported prosecution.

12. Therefore, the moot question that arises is when there is no material either in the evidence of complainant PW2 or panchan PW3 suggesting present appellant Ramesh entering into any conspiracy with main accused Savant to persuade complainant to pay bribe, and when there is no further material that present appellant abetted complainant to pay bribe, it is unsafe to rope in present appellant also. Shadow pancha also admits in cross that on reaching the shop, complainant alone went inside the shop and returned with the shop

owner and even he went to the extent of admitting that complainant did not gave the signal on paying money. Therefore, such answers by shadow pancha further weakens the prosecution version about accused appellant Ramesh to be making any demand or receiving it thereupon.

13. Therefore, in view of above discussion, here, there is nothing to show that accused no.1 Savant authorized accused no.2 appellant to receive illegal gratification on his behalf. As stated above, learned trial court has acquitted main accused and therefore, unless there is strong foundation in support of charge of abetment, accused no.2 i.e. present appellant cannot be tied down and held guilty.

14. Here, complainant and shadow pancha have apparently not supported prosecution rendering the case doubtful. Consequently, when main accused was let scot-free, in absence of essential ingredients for attracting Sections 7 and 12 of the PC Act, guilt of accused no.2 i.e. present appellant alone could not have been recorded. There is no material regarding instigation or abetment by accused no.2 or engagement of minds between accused nos.1 and 2 to commit the offence of demanding and accepting bribe.

15. Perused the judgment under challenge. Learned trial court has taken pains to discuss current scenario about fate of prosecution being decided by winning over witnesses ; the role of courts while appreciating evidence to find out the truth ; the menace of corruption that has spread in the society ; procedural delay in technicalities in law ; public interest and societal interest etc., of which there is apparently no second opinion. In para 23 of the judgment, learned trial court has reached to a finding that there are variances on crucial aspects in the evidence of material witnesses. Hence, guilt of accused no.2/appellant is apparently improper. Resultantly, appellant succeeds. Accordingly, following order is passed:

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellant Ramesh Dinkarrao Jain, by learned Special Judge, Aurangabad in Special Case No. 01 of 1998 under Sections 7 and 12 of Prevention of Corruption Act on 31.01.2003 stands quashed and set aside.
- III. The appellant stand acquitted of the offence punishable under Sections 7 and 12 of Prevention of Corruption Act.

- IV. The bail bonds of the appellant stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI. It is clarified that there is no change as regards the order regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]

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