2024:BHC-AUG:30836

THIS ORDER IS CORRECTED AND UPLOADED IN VIEW OF THE ORDER DATED 02-01-2025.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

CRIMINAL APPEAL NO.495 OF 2003

Sow. Lata Prakash Maske, ...**APPELLANT**
Age-44 years, Occu-Service,
R/o. C/o. Prakash Dadarao Maske,
PWD, Govt. Quarters, B-6,
Near Civil Hospital, Solapur

VERSUS

The State of Maharashtra ...**RESPONDENTS**

Mr. Satyajit S. Bora, Advocate for the appellant
Mrs. Chaitali Choudhari-Kutti, AGP for the respondents/State

CORAM : KISHORE C. SANT, J.
RESERVED ON : 21st AUGUST, 2024
PRONOUNCED ON : 03rd DECEMBER, 2024

JUDGMENT

1. This appeal is against the judgment and order passed by the learned Special Judge, Osmanabad dated 27-06-2003 in Special Case No. 05/2001. The appellant-Ori. Accused is held guilty of the offences punishable under Sections 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act,

1988. She is directed to suffer RI for one year and to pay fine of Rs.1000/- in default to suffer RI for three months for the offence punishable under Section 7. She is further directed to suffer RI for two years and to pay fine of Rs.2000/- in default to suffer RI for six months.

2. The prosecution alleged that the accused was working as Senior Clerk in the office of Assistant Charity Commissioner, Osmanabad asked for a bribe from the de-facto complainant for urgent registration of Trust. On a complaint by de-facto complainant trap was layed. In a trap the accused found accepting bribe. The prosecution was therefore, launched.

3. Prosecution in short, One Nitin – informant wanted to start Library under the name of 'Utkarsha Sarvajanik Wachnalaya'. He was elected as President of the said society alongwith other eleven members. He wanted to get the society registered as a public trust with the Public Trust Office and also certificate /permission to start a Library. For the purpose of

registration he went to the office of the Assistant Charity Commissioner (for short ‘the ACC’) with an application under the signature of the Secretary of the Society. The informant and Secretary Sachin went to the office on 12-01-2001 for registration of the society alongwith necessary documents such as memorandum of association Rules and Regulations, consent letters, list of members, letter of authorization etc. In the office they came to know that it is accused who looks after the said work having the name as Mhaske. They met the accused and submitted all the documents by taking endorsement on the same. Informant told that they want to get the registration at the earliest. The accused told in that case they will have to spend some more amount depending upon the urgency. On that she asked for Rs.1000/- towards expenses. On asking as to whether it is official fees, the accused replied that the informant has to pay Rs.1000/- telling that it is not for him to know the official charges. Thereafter, the amount was settled to Rs.700/-. However, she told that she would pay the official fees from the said amount of Rs.700/-. On that day he paid Rs.500/- asking him to pay Rs.200/- any time after 25-01-2001 by telling that she would keep the work ready by 25-01-2001. The accused did not accept the amount and gave him one envelope asking the informant to keep the amount in the said envelope and then to handover the same to her. Even thereafter she did not accept the envelope and asked the informant to keep the envelope in one coup-board in the room.

4. Thereafter as decided he was to go in the office with Rs.200/-. However, on 29-01-2001 he went to the office of ACB, Osmanabad and lodged the complaint. This information was reduced into writing in the presence of two panchas (Exh.80) by the Deputy Superintendent of Police ACB, Osmanabad on the same day. The panchas were called. It is on this the ACB decided to lay a trap on the said day. Trap was said to be successful. The prosecution thereafter obtained for sanction etc lodging the prosecution against the accused.

5. It is the defense of the accused that there was no

demand of bribe. The amount was towards official charges required for registration. The accused is falsely implicated in the crime.

6. In support of the prosecution case the prosecution examined total six witnesses. PW-1 is the informant – Nitin Baswaraj Hole, PW-2 is the Ramkrishna Potdar a panch witness who was serving as Senior Clerk at District Vocational Education Training Office, Osmanabad, PW-3 is the then Assistant Charity Commissioner, at Osmanabad namely Warsha Mishra, PW-4-Sanjay Dhone is the Vice-President, PW-5-Dhananjay Abhyankar who was working on deputation as Joint Charity Commissioner at the relevant time who accorded sanction, PW-6-Kalidas Suryawanshu is the Deputy Superintendent of Police who carried out the investigation.

EVIDENCE BY THE PROSECUTION

7. PW-1 in his evidence deposed that he alongwith other colleague decided to start the Library at Omerga, a taluka place, under the name of Utkarsha Sarvajanik Wachnalaya. For

that purpose they decided to get the institution registered under the Maharashtra Public Trust Act. For the said purpose, he alongwith PW-4 had been to the office of the ACC, Osmanabad. There they met this accused. On that she gave a form for the purpose of registration. PW-4 filled the said form and thereafter same was submitted. The form was checked and verified by the accused. She also gave endorsement in token of receipt of documents. On asking as to when the certificate would be ready, she told that it would depend upon the urgency. If the informant wants certificate early, then he will have to pay Rs.1000/-. The amount was settled to Rs.700/- On that day Rs.500/- was paid as stated earlier in one envelope. He kept the envelope in the wooden cupboard. Then accused told to contact her after 25-01-2001. On 29-01-2001 he visited the ACB at about 10.00 to 10.30 am. There they met PW-6. Thereafter the Investigating Officer called one male and one female to act as panchas. In their presence the informant reproduced whatever was told to PW-6. On that a complaint was reduced into writing. Thereafter, the procedure of conducting raid was told to the panchas and the informant. It was decided to lay a trap. He was told not to pay the amount unless the accused demands.

8. The raiding party left for the office of ACC for trap. The informant and PW-2 went to the office by autorikshaw. The other members followed them in a Maruti Van. After Maruti Van reached near the office of ACC, the informant and panchas went to the office. Within five minutes other members also reached to the office.

9. On entering in the office and making an enquiry the accused asked as to whether the registration certificate is not collected. On that he stated that he would collect the certificate only from the accused. On that the accused took one file asked him to deposit the prescribed fees. On depositing fees, she removed the registration certificate from the file and handed over it to the informant. She also took signature on receipt of certificate on the duplicate registration certificate and thereafter told to remit remaining amount. On that he took

out the notes with anthracene powder and handed over the same to the accused. The accused counted the notes and kept the same in the drawer of the table. She also asked the informant to get one photo copy of the certificate for office record. The informant came to ground floor of the office for getting certificate. He also gave signal to the raiding party. The raiding party immediately entered the office and went in the room of the accused. He saw that the raiding party asked as to who accepted the amount. Another panch witness told that the accused has accepted the notes. After 15 minutes he was also called in the office. His hands were tested under the ultra violate lamp and same shown bluish glitterance.

10. In the cross-examination this witness accepted that the work of registration of the trust was to be looked after by Sanjay- Secretary. The secretary had submitted an affidavit in the office of the trust on 12-01-2001. At the time of preparing of the affidavit this witness had accompanied the secretary and he was present at the relevant time. He specifically accepted that he

was not authorized to look after the work of registration by passing any resolution. He thus specifically admitted that the accused had not asked him to attend the office on 29-01-2001 alongwith Rs.200/-. He further accepted that when registration is to be made, fees is required to be paid. He also accepted that registration certificate is to be issued under the seal and signature of the ACC. In the office, the accused had asked him to pay the requisite government fees. As he was in hurry, he gave the amount to the accused and asked her to complete the work, as he was to attend some function. He accepted that date of registration certificate is 17-01-2001. Instead of giving copy of certificate he directly gave signal to the raiding party. He further accepted that since members of the trust were repeatedly called in the office of the ACC they developed grudge in the office of ACC. The omission is taken on record as regards asking by the accused to pay the remaining amount. He could not say whether the accused was demanding amount for government fees or herself.

11. PW No.2 a panch, in his evidence stated that he attended the ACB office alongwith one other person as per direction of his Superior. There, they were told that they have to act as panch in the ACB trap. They were told the procedure. As per directions this witness accompanied the informant to the office of the ACC. On going to the office of the ACC on the first floor they saw the accused was sitting in the said office facing towards East. One employee was also present in front of the accused. The informant sat on the chair that was empty in front of the accused. This witness stood by his side. The informant asked the accused as to whether work of registration is complete. On that accused told him that she thought that by now the registration certificate must have been collected by the informant. Thereafter, the accused searched for some files from the rack and told that he has to pay requisite fees. On that the informant told her that it was already settled that he would pay Rs.700/- for the entire work including the government fees. By telling that he has already paid the amount of Rs.500/-, remaining amount of Rs.200/- is brought by him. On that again

the accused told that the informant has to pay requisite fees with the Accountant. The informant shown relectance to pay the government fees. On that the accused took register book and gave him registration certificate by obtaining signature on the counter file. On receipt of certificate the accused asked the informant to pay the amount. The informant on that took the amount and gave it to the accused which was accepted by the accused with right hand. She opened the drawer of her table and kept the amount in that drawer. On that the accused asked this witness to sit on the bench. This witness was introduced as brother of the informant. The accused told the informant to give photo copy of the certificate. The informant left the office. Immediately thereafter, raiding party came and complete the formalities.

12. In the cross-examination this witness accepted that in the compliant there is no mention that the informant was asked to pay the bribe amount of Rs.200/- on 29-01-2001. He also accepted that the application for registration was not under

the signature of the informant. He also accepted that accused told the informant that his work is already done. The accused searched for certificate in the files. She also told that the informant has not paid the requisite government fees with the Accountant. He accepted that the accused took the amount from the informant and then put it in the drawer of the table and thereafter, she asked him to bring a photo copy. It is taken in the cross that he had told to the Investigation Officer that the accused had asked the informant to pay the government fees. Specific admission is taken that accused did not demand the amount from the informant as bribe.

13. PW-3 is Varsha Mishra, then serving as Assistant Charity Commissioner, deposed that if any society is to be registered, then the proposal is required to be circulated to the office of the ACC for registration. During the relevant period one Dhaware was working as Accountant. No one is authorized to accept the requisite fees except an Accountant. In the cross-examination it is taken that after receipt of proposal same goes

to the superintendent who is expected to accept the proposal without scrutiny. The proposal thereafter sent to the inward register for taking entry and thereafter it is sent to concerned table. On that scrutiny is done and the proposal is sent back to the Superintendent. The Superintendent thereafter sends the entire proposal to the ACC. It is taken that after the specific order is passed by the learned ACC on the file, the file goes to the accountant for accepting the requisite fees. It is only after the acceptance of the requisite fees, file is again placed before the ACC for signature on a registration certificate. She accepted that she had signed the registration certificate without verifying as to whether the government fees is paid. She also accepted that she could not verify the amount of Rs.500/- is deposited by the informant in the bank or in the post office. She also accepted that in the office of ACC many a times people hand over the amount to the staff and collect the receipts as per their convenience, later on.

14. PW-4 Sanjay Dhone- Secretary of the proposed trust,

deposed mainly in respect of alleged first demand on 25-01-2001. He had been to the office of the ACC. They met the accused. He specifically stated that though the informant tendered the amount of Rs.500/- to the accused she did not accept the same. But handed over one envelope asking the informant to put the amount in the envelope and then they both went out of the office and inserted sum of Rs.500/- in the said envelope. On that she asked to keep the envelope in the coupboard.

15. As this witness was not there on the date of trap his cross-examination is only in respect of the incident dated 25-01-2001.

16. Panch Witness No.5 is the sanctioning authority who deposed that he received the proposal for sanction. He went through the papers minutely and after going through the same, he accorded the sanction to prosecute. In the cross-examination he stated that he did not receive papers from the concerned

office pertaining to the registration of the trust. The papers were also not collected by the police during the investigation and were not seen by this witness. This witness proved the sanction order.

17. Witness No.6 is the Investigation Officer who deposed about receipt the complaint, investigation and obtaining sanction etc. In the cross-examination he deposed that trap can be made only if demand is made. He accepted that in the complaint it is not stated by the informant that the accused had asked to bring sum of Rs.200/- towards illegal gratification.

18. The learned advocate for the respondent vehemently argued that the in the present case the prosecution has utterly failed to prove the demand and acceptance of bribe. The complaint was lodged because of grudge that was developed in the mind of the members of the trust. On 29-01-2001 already certificate of registration was ready and thereafter there was no question of accused demanding any bribe amount for

completing the work. There is no direct demand by the accused of any bribe. On the contrary, he submits, that she asked for the amount of government fees. From PW-2 it is taken that there was immediate explanation offered by the accused. It is specifically brought that accused did not demand the amount from the informant towards bribe. The accused immediately gave explanation that the informant had given the amount towards government fees. There is a practice as has come from the evidence of PW-3 that in many cases persons give the amount to the persons from the office and thereafter receipts are collected as per their convenience. So far as sanction is concerned, he submits that no documents were placed in respect of the proposal for registration of the trust before the sanctioning authority. So far as cross-examination of the Investigation Officer is concerned, he points out that the informant never told the specific time and place where the amount of bribe was to be paid. There was no demand of bribe at the time of alleged incident. He thus, submits that amount was never paid as a bribe amount but was paid as requisite fees.

19. As against these the learned APP submits that the prosecution has clearly established that the accused had demanded and accepted the amount towards bribe. Amount is clearly accepted by the accused. There is anthracene powder seen on the fingers of the accused persons. The motive was clear to accept the amount as the complainant was in hurry to get the registration certificate at the earliest. The amount was accepted for the said purpose. Sanctioning authority has categorically stated that the sanctioning authority had carefully gone through the proposal and it is only thereafter the sanction was granted. The learned APP thus prays for rejection of the appeal.

20. Considering the evidence on record this court has to find out as to whether any case is made out to allow the appeal and as to whether there is sufficient evidence on record to hold the accused guilty of an offence. To prove the offence under sections 7, 13 (1)(d) of the Prevention of Corruption Act, the prosecution has to prove the demand and acceptance pursuant

to the demand. The prosecution also further has to prove that the amount was demanded towards illegal gratification or bribe. The demand is made at the time of acceptance of the amount. In the present case, about the demand both the witnesses PW-1 and PW-2 have categorically stated that accused asked for the amount towards requisite government fees. From their evidence it is clear that as on that day the procedure of the registration was complete, only certificate of registration was to be collected. It is further clear that even the accused was not aware that certificate was not collected by that time. It has clearly comes in the evidence that she asked the informant as to whether he has collected the certificate. This question further shows that accused was aware of the fact that registration was already done. She had also further asked the informant to deposit the amount with the Accountant. It was the complainant-informant who hesitated to go to accountant and asked her to accept the amount as he was in hurry to go to some function. Thus, from the evidence of those two witnesses it is clear that there was no direct demand. Admittedly there is no demand verification panchanama in this case. It also needs to be seen that there is immediate explanation offered by the accused that amount was towards government fees and she had in fact told the informant to pay the amount to the Accountant. This immediate explanation is taken in the cross-examination of PW-2.

21. Sanctioning authority though has stated in the chief-examination that he had gone through the proposal carefully and minutely, however, he accepted in the cross-examination that papers in respect of the proposal of the registration of the trust were not placed before him for his consideration. From this it is clear that he could not get the knowledge as to whether on the date of alleged payment of bribe whether any work was pending with the accused or not. He also could not get an idea as to whether any work was really pending with the accused. Had the said material been placed before the sanctioning authority, there were certainly chances of sanctioning authority to consider this aspect as well and it may have reached to a different conclusion. From the cross of the Investigation Officer

it is brought on record that the informant had not specifically stated about the time and place of payment of bribe. It is also taken from the cross of the Investigation Officer that the complaint Exh.20 there is no wording showing that the amount was towards of bribe.

22. Though the learned APP has tried to support the impugned judgment and order, this court finds that the learned court below has failed to appreciate all the points which are discussed above and has come to a erroneous conclusion. This court has no hesitation in coming in to the conclusion that the prosecution has not proved the guilt of the accused beyond reasonable doubts. The impugned judgment and order therefore, deserves to be quashed and set aside. Hence, the following order:

ORDER

a] The criminal appeal stands allowed.

b] The impugned judgment and order dated **27-06-2003** passed by the learned Special Judge, Osmanabad is hereby quashed and set aside.

c] The accused stands acquitted from the offences punishable under Sections 7, 13 (1)(d) r/w 13(2) of the Prevention of Corruption Act. Necessary consequences to follow.

d] The criminal appeal stands disposed off.

[KISHORE C. SANT, J.]

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