



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 113 OF 2004

Ram S/o. Munjaji Salgar,
Age : 53 years, Occu. : Service,
As Talathi Sajja - Naikota,
Tq. Sonpeth, Dist. Parbhani,
R/o. Naikota, Tq. Sonpeth,
Dist. Parbhani.

... Appellant
(Orig. Accused)

Versus

The State of Maharashtra,
Through Anti Corruption Bureau,
Parbhani.

... Respondent
(Orig. Complainant)

...
Mr. Sudarshan J. Salunke h/f. Mr. V. D. Salunke, Advocate for Appellant
Mr. A.A.A. Khan, APP for Respondent - State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 24th JULY 2024

PRONOUNCED ON : 9th AUGUST 2024

JUDGMENT :

1. In this appeal, there is challenge to the judgment and order of conviction recorded by learned Special Judge, Parbhani dated 10.02.2004 in Special Case No.06 of 2000, convicting appellant for offence punishable under sections 7, 13(1)(d) punishable under section 13(2) of the Prevention of Corruption Act, 1988 (P.C. Act).

PROSECUTION CASE IN NUTSHELL IS AS UNDER

2. Prosecution was launched against present appellant on complaint of PW1 Ambadas that he had approached accused Talathi for effecting mutation in 7/12 extract incorporating entries on the basis of a decree passed by the court. Accused Talathi demanded Rs.2,000/- for doing said work and there was settlement in Rs.900/-. Complainant was not willing to pay bribe and therefore he approached ACB authorities and lodged report.

On the basis of complaint, PW4 P.I. More summoned panchas, introduced them to complainant, informed them about nature of complaint, panchas and complainant were explained procedure of trap and were instructed to go together to pay bribe on demand. Accused, after being approached by PW1 Ambadas and PW2 Shankar, put up a demand, complainant handed over demanded amount i.e. tainted currencies, after which complainant gave signal and raid was carried out. Further which PW4 P.I. More lodged report, carried out investigation and charge-sheeted accused.

Trial was conducted by Special Judge, Parbhani, who accepted the prosecution case as proved, vide judgment and order dated 10.02.2004, convicted appellant i.e. for offence under

sections 7 and 13(1)(d) punishable under section 13(2) of Prevention of Corruption Act.

Feeling aggrieved by the above judgment and order, instant appeal has been preferred, which is now questioned before this court by virtue of present appeal.

EVIDENCE ON RECORD IN TRIAL COURT

3. PW1 Ambadas, complainant, deposed that, after he decided to effect mutation entry in the name of his son, he approached accused Talathi and he advised him to seek orders from the court and said that without orders of the court, he cannot effect mutations, and thereafter, not finding him supporting, he was cross examined by learned APP, wherein he denied demand of Rs.2,000/- by accused Talathi, there was settlement in Rs.900/- and thereafter he approached ACB office and lodged complaint.

PW2 Shankar - shadow pancha, denied that in ACB office complainant told him that accused was demanded bribe for effecting mutations and consequently finding shadow pancha also not supporting, by seeking permission of learned trial court, learned APP subjected prosecution's own witness to cross examine. However, he also denied about complainant informing him in ACB

office regarding demand of Rs.2,000/- from accused and ultimately the amount of bribe was settled at Rs.900/-. Consequently, he has accepted the procedure explained by ACB Officer and panchanama was drawn. But, he again denied after going to the house of accused, while in company of complainant, the complainant asked him whether mutation in respect of his land was effected or not and conversation of 7/12 extract, accused demanding bribe amount and it being paid by complainant. In fact he stated that, accused has received the amount given by complainant. He again admitted that, accused received amount by his right hand and then counted the said amount by both hands and kept it in his pocket. He admitted that, after raiding party entered, he pointed towards accused as the person receiving the amount. He identified the currency and also 7/12 extract seized by ACB authorities.

PW3 Pimpalgaonkar is the Sanctioning Authority, who deposed about working as S.D.O. Parbhani from the year 1999 to 2001, receiving letter and papers from ACB for sanction of prosecution. He deposed that, after perusal of the papers, he found it a fit case to accord sanction and accordingly granted sanction.

PW4 P.I. More is the Investigating Officer, who narrated all steps taken by him regarding receiving complaint, calling

panchas, explaining procedure to complainant and panchas, planning and arranging raid, and on receiving signal from complainant, successfully carrying out the trap, apprehending accused and regarding further steps taken by him till filing charge-sheet.

SUBMISSIONS

On behalf of Appellant :-

4. Pointing from above evidence, learned counsel for appellant submitted that, in this case prosecution has utterly failed to prove essential requirements of demand and acceptance. He would strenuously submit that, here, very complainant has not supported the prosecution. That, even shadow pancha has not supported the prosecution, and therefore, very essentials of demand and acceptance are not proved by prosecution. He took this court through the essential requirements of section 7 and 13(1)(d) of P.C. Act and would submit that to prove the said charges, there has to be reliable and trustworthy evidence regarding both, demand of illegal gratification as well as acceptance. That, as there is no proof of demand and acceptance, said charges cannot be said to be proved. He pointed out that, here, neither complainant nor the shadow pancha, who are star witnesses of prosecution, have not supported the prosecution and therefore case of prosecution has collapsed in trial court.

On the point of essential requirements for proving the charges, learned counsel for appellant sought reliance on the following rulings :-

- 1) *P. Satyanarayana Murthy v. The Dist. Inspector of Police & Anr., 2015 ALL SCR 3171*
- 2) *Banarsi Dass v. State of Haryana, 2010 Cri.L.J. 2419*
- 3) *Sopan Kadu Choudhari v. State of Maharashtra, 2023 (3) ABR (CRI) 790*

On behalf of Respondent :-

5. In answer to above, learned APP submitted that, unfortunately though complainant and pancha witness have not supported, there is evidence of Investigating Officer and the case of prosecution stood proved through him. He has received complaint, he had arranged and planned trap and also successfully executed the same. That, accused was apprehended while in possession of tainted currencies. That, there is no explanation for said possession. Therefore, charges are cogently proved. According to him, though prosecution witnesses have not supported, circumstances brought on record coupled with evidence of Investigating Officer, case of prosecution has been cogently proved. On this count, he seeks reliance on the judgment and order of Hon'ble Apex Court in the case of *Neeraj Dutta v. State (Govt. of N.C.T. of Delhi), (2023) 4 SCC 731*.

ANALYSIS

6. Here, admittedly, PW1 Eknath - complainant has retracted and resiled and has not supported prosecution. Likewise, PW2 Shankar - shadow pancha, who was party to the planning and arranging raid and even laying trap, has not supported prosecution. In fact, he is flip-flop witness. Initially, he denied complainant informing about demand and at one point of time he admitted that visit was paid to ACB authorities. He subsequently denied going through the contents of complaint. Therefore, this witness was fickle minded and is a flip-flop witness. Thus, evidence of only Investigating Officer and Sanctioning Authority has remained for consideration.

7. Learned APP has sought reliance on the decision in the case of *Neeraj Dutta (Supra)*, wherein recently the Hon'ble Apex court has enunciated principles by discussing various precedents in paragraph no.68 and the same could be summarized as under :-

“68.

“(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the

subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an **offer to pay by the bribe giver without** there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is **a case of acceptance** as per Section 7 of the Act. In such a case, there need not be **a prior demand** by the public servant.

(ii) On the other hand, **if the public servant makes a demand** and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is **a case of obtainment**. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13(1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the Act.”

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the

absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1)(d)(i) and (ii) of the Act.”

8. The ratio i.e. spelt out in paragraph no.70 of the aforesaid Judgment i.e. in absence of evidence of complainant, it is permissible to draw an inferential deduction of culpability/guilt of a public servant under section 7 and section 13(1)(d) r/w section 13(2) of P.C.Act based on other evidence adduced by the prosecution.

9. On one hand, learned counsel for appellant strenuously submit that, there is no cogent and reliable evidence about demand as well as acceptance and both star witnesses of prosecution have not supported prosecution. While on the other hand, learned APP

sought reliance on above rulings and would emphasize that merely because witnesses have turned hostile, there is no good ground to reject the prosecution version. According to him, the Hon'ble Apex court has held that even if the witnesses are hostile, if there is corroboration to other aspect of the case, guilt can be judged and even recorded.

10. Admittedly, it is also fairly settled that, for establishing charge of section 7 and section 13(1)(d) r/w section 13(2) of P.C. Act, proof of demand and proof of acceptance are *sine qua non*. Neither mere demand nor mere acceptance are itself sufficient to hold the charges as proved. In the above ruling, it has been recently observed that, in cases where witnesses have turned hostile, still guilt can be recorded by taking recourse to other circumstances. The fact that the witnesses are hostile does not result in automatic rejection of the evidence. The Hon'ble Apex court has held that, when witness turns hostile, his entire testimony need not be discarded, but so much part of the evidence which can be relied, can be put to use.

11. Keeping in mind such observations, if we revert back to the case in hand, here, it is noticed that the complainant from inception itself has not supported the prosecution on the point of

demand. Shadow pancha, whose testimony is looked upon as a corroborative piece of evidence, has also unfortunately turned his back from prosecution and he has denied about complainant informing in ACB office that there was demand of illegal bribe. He has categorically denied that instructions were given and that he signed the complaint after verified it. Consequently, both star witnesses, complainant and shadow pancha, have not supported the prosecution. Mere evidence that remained is of Investigating Officer, but on sole testimony of Investigating Officer, unless demand and acceptance is conclusively proved, case of prosecution cannot be accepted. Likewise, sanctioning authority has come into picture at later point of time i.e. after all transactions which took place pre-trap and post trap. Role of sanctioning authority was only confined to administrative approval for sanction.

12. Here, it is noticed that, though complainant had allegedly approached ACB authorities, there is no verification of very demand prior to planning and executing trap. When complainant and shadow pancha, who were the only star witnesses on the point of demand and acceptance, having resiled, in view of above recent law, other circumstances were expected to be proved by prosecution. But, here, no distinct circumstances to take recourse to are brought to the notice of this court by the learned

APP. It is also fairly settled that, mere possession of tainted currency from the accused is not itself sufficient to draw inference unless demand of illegal gratification has been demonstrated and substantiated. As stated above, evidence as regards to very demand is here not getting proved. It is pointed out by learned counsel for appellant that, the work for which there was said to be demand, was actually and already done prior to the episode of alleged trap, and therefore, on such count also prosecution version comes under shadow of doubt. In the light of above submissions, it is noticed that, complainant's work was already done prior to alleged trap. Consequently, here, there are no reliable circumstances also to look into as held by the Hon'ble Apex court in the above referred judgment.

13. Perused the judgment. Learned trial court has reproduced the contents of the complaint at Exh.37 and the same are held to be proved through Investigating Officer PW4 P.I. More and on appreciating his testimony, learned trial court has accepted prosecution version. Foundational facts, which were within the knowledge of complainant and shadow pancha, cannot be said to be established from the sole testimony of Investigating Officer. Consequently, for above reasons, appellant succeeds.

14. The above discussion and features noticed by this court on re-appreciation are not taken into account by learned trial Judge and hence interference is called for. Hence, the following order :-

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to Ram S/o. Munjaji Salgar in Special Case No. 06 of 2000 by learned Special Judge, Parbhani on 10.02.2004 for the offence punishable under sections 7, 13(1)(d) punishable under section 13(2) of the Prevention of Corruption Act, 1988, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under sections 7, 13(1)(d) punishable under section 13(2) of Prevention of Corruption Act, 1988.
- IV) The bail bonds of the appellant stands cancelled.
- V) The 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 in respect of disposal of *muddemal*.

(ABHAY S. WAGHWASE, J.)