



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 847 OF 2005

1. Ramesh s/o Kisan Shekade
Age : 40 years, Occ : Agri.,
R/o. Maliwada, Shevgaon,
Dist. Ahmednagar. (Died)
Through Legal Representative

1-A) Smt. Kumudini w/o Ramesh Shekade
Age 51 years, Occ : Household,
R/o Maliwada, Shevgaon,
District Ahmednagar.
2. Ramesh s/o. Radhu Shinde
Age : 29 years, Occ : Pan-Tapari,
R/o. Rasane Nagar, Ghodegaon Road,
Shrigonda, District Ahmednagar. ... Appellants

Versus

The State of Maharashtra ... Respondent

.....
Mr. N. K. Kakade, Advocate for the Appellants.
Mr. S. M. Ganachari, APP for Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 12.01.2024

Pronounced on : 23.01.2024

JUDGMENT :

1. Feeling aggrieved by the judgment and order of conviction dated 25.11.2005 passed by learned Judge, Special Court, Ahmednagar in Special Case (A/C) No. 2 of 2001 tried for offence

punishable under Sections 7, 13(2) r/w Section 13 (1)(d) and Section 12 of the Prevention of Corruption Act, 1988, original accused/convicts have preferred instant appeal.

2. In brief, prosecution was launched by Anti Corruption Bureau [ACB], Ahmednagar setting up a case that accused nos. 1 and 2 were police constables attached to Shrigonda Police Station. That, complainant, owner of a jeep, was repeatedly obstructed and demand of *hapta* of Rs.300/- was made. That, one time even his vehicle was asked for their proposed journey to Shirdi. He had refused to lend his vehicle as there were other passengers in his vehicle. Therefore, above demand was repeatedly made from him and so he finally approached Anti Corruption Department and lodged complaint with Dy.S.P. who arranged a trap and accordingly, on 10.07.2000, demand of Rs.300/- was made by accused from complainant as graft and it was duly accepted. Hence, above charges.

3. On being chargesheeted, accused were tried by Special Court vide Special Case (A/C) No. 2 of 2001 during which prosecution examined PW1 complainant, PW2 Aswale who acted as pancha and PW3 Spl. Inspector General of Police. Relying on their testimonies, learned trial Judge convicted both accused and the same is now

assailed by them before this court on various grounds raised in appeal memo.

4. Learned counsel for the appellants would submit that apparently it is a false implication. According to him, there were several crimes against complainant for carrying excess passengers and violating traffic rules and therefore instant complaint is motivated. He further pointed out that at the outset prosecution could not establish that there was any demand and gratification. According to him, complainant and other witness are not consistent and corroborating each other on material count. Secondly, Investigating Officer who allegedly conducted investigation and chargesheeted accused has not been examined by prosecution which in fact proves fatal for prosecution. Thirdly, according to him, there is violation of Section 19 of the Prevention of Corruption Act, 1988. Fourthly, even superior officer who allegedly was party to the trap has not been examined.

5. He next submitted that there was desperate attempt of involving appellants as three times there were attempts to trap them under the garb of seeking *hapta* i.e. on 15.06.2000, 17.06.2000 and 03.07.2000. Resultantly, learned counsel would submit that prosecution had planned to falsely implicate appellants by setting up

complainant and witnesses. He further pointed out that in fact there was no demand as alleged, rather amount was forcefully thrust in the pocket. There is no application of mind by sanctioning authority and entire trial was therefore vitiated for want of proper sanction. He pointed out that in support of defence of false implication, accused had adduced evidence of defence witness and had thereby probabilized their defence but, according to learned counsel, learned trial Judge has not considered and appreciated the evidence of prosecution as well as the evidence of defence and has reached to an erroneous conclusion. He seeks reliance on *The State of Maharashtra v. Chand Beg s/o Sharfu Beg* 2015 ALL MR (Cri) 3865 ; *Bhagwan Mahadeo Sathe v. State and another* 2011 ALL MR (Cri) 1221 ; *Jawansingh Ramsingh Gaud v. State of Maharashtra* 2016 Cri.L.J. 2526 ; *C.B.I. v. Ashok Kumar Aggarwal* 2014 AIR SCW 472 ; *Suraj Mal v. The State (Delhi Administration)* AIR 1979 SC 1408 and *State of Maharashtra v. Rajabhau Alias Govind Vinayak Deshpande* AIROnline 2020 Bom 3137.

6. In answer to above, learned APP pointed out that accused persons were admittedly police constables but they were collecting *hapta* regularly. They had repeatedly demanded *hapta* from complainant and on account of failure to meet their demand, they

had also taken away keys of his vehicle and had attached his vehicle by levelling false allegations. He further pointed out that there was clear demand not once but repeatedly and therefore complainant had approached ACB. On his complaint, investigation was carried out and in presence of pancha, there was demand as well as acceptance. Anthracene powder quoted currency was found in the pocket of accused. Their hands were also examined on which traces of anthracite powder were detected. He further pointed out that in the pocket of one of the accused, there was a chit containing numbers of various vehicles from whose owners they were collecting *hapta*. According to him, independent witness PW2 has corroborated and supported the testimony of complainant. Therefore, presumption as required under law comes into play. Their testimonies having remained unshaken, are worthy of credence and as such it is his submission that learned trial Judge has correctly recorded the guilt and therefore, according to him, there is no merit in the appeal and hence he seeks the same to be dismissed.

7. On re-appreciation and re-examination of the evidence on record placed before the trial court, it is seen that charge was framed vide Exhibit 4 alleging commission of above offence. Papers and record show that in support of its case, prosecution had adduced

evidence of PW1 complainant, PW2 pancha and PW3 Spl. Inspect General, who was the then Superintendent of Police and the appointing and removing authority.

PROSECUTION EVIDENCE

8. The sum and substance of evidence of complainant PW1 at Exhibit 9 is that he was an educated and unemployed person and therefore, under a scheme meant for educated unemployed persons, he had purchased a jeep and had further obtained permit for carrying passengers. According to him, he was plying the vehicle between Shrigonda to Kashti. His complaint is that, on 15.06.2000, while he was soliciting passengers at S.T. stand Shrigonda, three police personnel whom he named in the complaint approached him on motorcycle and demanded his vehicle to enable them to go to Shirdi. According to him, he refused as there were two to three passengers already sitting in the jeep. He deposed that, he was threatened by those police personnel, by saying that they would see how he plies vehicle on the road.

According to him, two days thereafter i.e. on 17.06.2000, while he was carrying passengers, he was intercepted by same three police personnel and they forced passengers to get down. Police personnel namely Bhalsing took away the vehicle and thereafter, upon

indulgence of his uncle, his vehicle was returned. He deposed that for 15 days he could not ply his vehicle. Again on 03.07.2000 present appellant Ramesh Shekade questioned him for bringing the vehicle back on road and threatened to take action and further asked him to pay *hapta* on failure of which he was told that he would not be allowed to ply the vehicle. He claims that he assured to pay the amount later on as he did not have the amount. After two to three days, Shekade once again approached him at Shrigonda-Kshti road and demanded *hapta*. Therefore, finally on 07.07.2000, he came to Ahmednagar, approached ACB office, met Mr. Joshi, Dy.S.P. and lodged complaint Exhibit 10.

He further deposed that he was asked to come on 10.07.2000. When he went to ACB office, two Government panchas were already present and they were introduced to him. He was asked to bring Rs.300/- and so he handed over amount to the Dy.S.P. i.e. three currency notes of Rs.100/- each. Its numbers were noted in the panchanama. He was shown the importance and use of anthracene powder by demonstration. Two panchas were present there and he was instructed that pancha no.1 would accompany him and he was further told that amount was to be paid on demand and on its acceptance, signal to be given by pulling the sleeve of the shirt.

He further deposed that at relevant day, at 4.30 p.m., accused no.1 Shekade came with accused no.2 Shinde and they asked him about *hapta* upon which he allegedly told them that he would bring the amount from relatives. While at bazar tal, around 5.50 p.m., both accused came on motorcycle. That, he was questioned if amount was brought and he answered in affirmative and that he removed amount from his pocket and held the amount in front of accused Shekade. Accused Shinde accepted the amount, counted it and on being questioned by Shekade, he affirmed that there were Rs.300/- and further accused Shinde gave the amount to Shekade who kept it in his pocket. The complainant stated that thereafter he gave signal upon which police staff came there. All the while PW2 pancha Aswale was with him. Accused were caught. He identified them in the court to be the same persons. That, thereafter they were taken to guest house and hands and pockets of accused were examined under Ultra Violate light. That thereafter, they came back to police station where his statement was recorded.

9. PW2 in his evidence at Exhibit 19 deposed that he was working as a clerk. He and one Vajinkar were sent to ACB office to act as panchas and accordingly on 10.07.2000 they went there. They caused signature over complaint Exhibit 10. He deposed that complainant

handed over trap amount and its denomination numbers to be noted and demonstration of anthracene powder was shown to them. He stated that he was instructed to act as pancha and remain with complainant and thereafter detailed pre-trap panchanama was drawn. He identified it to be at Exhibit 21. He further deposed that they went to village Shrigonda and parked their vehicle near bazar tal. Around 4.15 p.m. both accused approached on motorcycle and questioned complainant if amount was brought. He deposed that complainant told them that amount is with his relatives and he will bring it and hand over near bazar tal. Thereafter, both accused went. This witness and complainant walked towards bazar tal. Once again both accused returned on motorcycle and came near complainant and again accused no.1 questioned whether amount was brought. Thereafter complainant removed the amount. Accused no.1 told to pay the amount to accused no.2. He further deposed that accused no.1 questioned accused no.2 as to how much was the amount and accused no.2 informed the amount to be Rs.300/-. Thereafter, accused no.2 handed over the amount to accused no.1, who kept it in his shirt pocket. Immediately raiding party came and caught accused. He further deposed that hands of both accused were checked which revealed anthracene powder. He stated that at the instance of pancha no.2, amount was recovered from the pocket of accused no.1 and it

was tallied with the numbers noted in pre-trap panchanama and thereafter detailed post-trap panchanama was drawn which he identified to be at Exhibit 22. He also deposed about attaching a chit which was also signed by him i.e. from the pocket of accused no.2.

10. Both, complainant and pancha are subjected to extensive cross by learned defence counsel. On going through the cross of PW1 complainant, initially questions were put regarding complainant registered against him regarding illegal transportation of passengers. Questions pertaining to some incident between his drivers, i.e. Javak and Lokhande, and PC Bhalsing were put to this witness regarding some occurrence taking place on 15.06.2000 and 17.06.2000. He had admitted that on 05.07.2000 case was filed against his driver Lokhande for parking vehicle in no parking zone and he was fined. He flatly denied that his main complaint was against PC Bhalsing and Gajare. Then there are questions regarding engaging one Advocate namely Borude for looking after court matters. Omission was brought regarding not stating in the complaint the place where amount was to be paid or time of its payment. He admitted that he had not specifically stated in the complaint that accused were told that amount was to be paid at bazar tal. Admission is brought that officer Kazi was also present during raid. He admitted that there is a pan

stall of accused no.2 near the gate of ST stand. Rest all are denials except admission that accused was standing with motorcycle parked and that being a bazar day, there was rush.

Even while under cross at the hands of accused no.2, omission is brought to the extent that around 4.30 p.m. constable Shekade coming along with Shinde on motorcycle; Shekade questioning as to what happened about *hapta* amount and this witness telling them that relatives have gone to bazar and that he would collect and give the amount; that around 5.30 p.m. Shekade coming along with Shinde and Shekade asking him if the amount was brought and he removing the amount and giving it to Shinde who accepted it; Shekade questioning Shinde how much was the amount and Shinde answering it to be Rs.300/- and Shekade accepting and keeping the amount in his pocket. He denied in cross that as he felt that the trap may not be successful if he pays the amount while accused was on vehicle and therefore he gave false information to the accused that amount is with the relatives.

11. On meticulously going through the cross of PW2, which is also extensive and lengthy, it is revealed that there are questions like who did the typing work of the panchanama. He admitted that complaint

Exhibit 10 was not written in his presence. That while information was being passed to him, complainant did not tell him about *hapta*. He is questioned about the distance between bazar tal and S.T. stand and whether it is a busy road. Witness is unable to state whether there is pan stall owned by accused in the vicinity of bus stand. He too admitted that complainant falsely stated about amount to be lying with his relatives. In para 11 and 12 answers are extracted to the extent that during their stay at the guest house, they had dinner and typing work being undertaken. However, witness answers that he read the panchanama and thereafter caused signature. He has answered that accused no.1 folded the amount with both hands. However he denied that only one hand of accused no.1 shown traces of the powder.

12. PW3 is the sanctioning authority who was Spl. Inspector General of Police.

13. On hearing submissions of learned counsel for applicant, it is emerging that fundamental grounds raised before this court are that, **firstly**, there is no proper sanction; **secondly**, there is no corroboration to the testimony of complainant and **thirdly**, very Investigating Officer has not been examined by prosecution.

ANALYSIS

14. On re-appreciating and re-analyzing the evidence on record this courts proceeds to deal with the above grounds of challenge.

15. First attack is of no proper sanction. It is pointed out that PW3 Sanctioning Authority in cross has admitted that he has received draft sanction but he was not carrying the same and further admitted that in the sanction order, amount so allegedly demanded was interpolated.

In view of such criticism, evidence of PW3 is put to scrutiny which is at Exhibit 27. It transpires that he was officiating as a special Inspector General of Police. He claims that he received papers from ACB, Mumbai in crime no. 3011/2000 and he went through the papers, FIR, pre-trap and post-trap panchanamas. That, he also perused the say tendered by accused as well as Investigation Officer and on going through the papers he came to the conclusion that it is a fit case to accord sanction and accordingly he passed sanction order which he identified to be at Exhibit 28.

On going through Exhibit 28, it is observed that after noting the factual foundation, he has observed that on fully examining the

papers of investigation in crime no. 3011/2000 under Section 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 and into the allegations mentioned therein, he was of the opinion that the accused persons should be prosecuted in the interest of justice in the court of competent jurisdiction for the above offences. It is further noted that he being Superintendent of Police, Ahmednagar at that time and being appointing authority and also authority competent to remove accused persons from the post, do hereby for the purpose of and as required by section 19(1)(c) of the Prevention of Corruption Act, 1988, for taking cognizance of the offences by the court of competent jurisdiction, accord sanction to the prosecution of accused persons.

On carefully going through the above sanction order, it is evident that there is proper scrutiny of papers, allegations, complaint and further application of mind to the nature of accusations and on due satisfaction, sanction seems to have been accorded. There is no infirmity in the said sanction order.

It would be fruitful to refer to the judgment of the Hon'ble Apex Court in the case of ***State of Maharashtra Through C.B.I. v. Mahesh G. Jain*** 2014 ALL SCR 177 wherein the Hon'ble Apex Court has laid

down principles as regards to grant of sanction and the same are reproduced as under:

- “(a) It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.
- (b) The sanction order may expressly show that the sanctioning authority has perused the material placed before him and after consideration of the circumstances, has granted sanction for prosecution.
- (c) The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and his satisfaction was arrived at upon perusal of the material placed before him.
- (d) Grant of sanction is only on administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.
- (e) The adequacy of material placed before the sanctioning authority cannot be gone into by the Court as it does not sit in appeal over the sanction order.

- (f) If the sanctioning authority has perused all the materials placed before him and some of them have not been proved that would not vitiate the order of sanction.
- (g) The order of sanction is pre-requisite as it is intended to provide a safeguard to public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be hyper technical approach to test its validity.”

Similarly, law is dealt and reiterated on the point of validity of sanction order in the case of *State of Karnataka v. Ameerjan* (2007) 11 SCC 273 and *CBI v. Ashok Kumar Aggarwal* (2014) 14 SCC 295.

Keeping above settled legal position in mind, though ground and objection is raised regarding validity of sanction, in view of above discussed material and contents of the sanction order, there is no hesitation to hold that sanction is accorded after due satisfaction and on application of mind by PW3 to the material placed before him. Hence, in the considered opinion of this court, there is no merit in the above ground raised before this court.

16. As regards to submission and ground raised, that the testimonies of complainant and shadow witness are not consistent, also has no force. This court while re-examining and re-appreciating the evidence, has dealt with the substantive evidence of complainant as well as the shadow witness PW2. They are consistent and lending support to each other on the aspect of both, accused persons approaching more than once for asserting the demand and in presence of independent witness i.e. shadow pancha, there is demand as well as acceptance. There is no reason for the shadow pancha to falsely depose against accused. The submission about registration of crimes against complainant for violation of traffic rules and therefore there is false implication does not hold merit. Except making allegation to that extent, there is nothing to show that complainant was motivated to falsely implicate accused persons. Here, in fact his evidence shows that on several occasions his vehicle was intercepted, demanded for use without paying charges and on one occasion he had to get the vehicle released by intervention of his uncle. It is thereafter, complainant has alleged that threats were issued by saying that they would see how he plies the vehicle. As discussed above, both PW1 and PW2 have categorically deposed regarding demand and acceptance. There is both, pre-trap as well as post-trap panchanama. Therefore, the above ground also holds no merit.

17. The last objection and ground raised in appeal by learned counsel is that prosecution has failed to examine the very Investigating Officer and therefore it is his submission that entire exercise of alleged investigation and prosecution has been watered down by non-examination of the Investigating Officer.

This court is not at all convinced with the above ground that failure to examine Investigating Officer itself would be fatal to the prosecution. The Hon'ble Apex Court in the case of ***Bahadur Naik v. State of Bihar*** (2000) 9 SCC 153 has categorically held that non-examination of Investigating Officer as a witness is of no consequence when it could not be shown as to what prejudice has been caused to the appellant by such non-examination.

Such proposition is also time and again upheld in numerous cases by Hon'ble Apex Court as well as various High Courts. Here, except raising above ground, what prejudice has been caused to the accused persons by non-examination of the Investigating Officer has not been put forth. As stated above, star witnesses are complainant and shadow pancha who are party to the demand and acceptance. Their evidence has been discussed and accepted as trustworthy and

hence worthy of credence. That apart, no material contradictions or omissions are brought in their testimonies while both, complainant and shadow pancha, were in witness box so as to get it proved through Investigating Officer. Resultantly, examination of Investigating Officer, more particularly in this case, was a mere formality and as such non-examination of IO Mr. Joshi cannot be termed as fatal for the prosecution and to further overshadow the reliable testimonies of complaint and shadow witness.

18. In the light of above discussion, none of the grounds raised before this court are worthy of credence or are so sufficient so as to render the prosecution evidence on re-appreciation to be doubtful. No case is made out on merits in appeal and so this court proceeds to pass following order:

ORDER

The appeal is hereby dismissed.

[ABHAY S. WAGHWASE, J.]