2024:BHC-AUG:3369

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 751 OF 2004

Ramrao Jijaram Gaikwad
Age 42 years, Occ- service,
Talathi, Talathi Sajja Gowardhan,
Taluka Parali Vaijinath,
District Beed. … Appellant

Versus

The State of Maharashtra
through Shri G. D. Deshmukh,
Deputy Superintendent of Police,
Anti Corruption Bureau, Beed,
District Beed. … Respondent

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Mr. B. R. Warma, Advocate for the Appellant.
Mr. S. M. Ganachari, APP for Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 05.02.2024
Pronounced on : 16.02.2024

JUDGMENT :

1. Convict for offence punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 [PC Act] is hereby challenging the judgment and order of conviction dated 26.10.2004 passed by learned Special Judge, Ambajogai, District Beed in Special Case (A.C.) No. 1/2002.

2. In brief, case of prosecution is that, accused was a Talathi. Brother of complainant-PW1 Tanaji had tendered application with Tahsil authorities objecting to the entry of name of one Ramrao Jadhav in the backdrop of some transaction with Chabubai of which civil dispute was pending. According to the prosecution, when complainant, i.e. brother of Shivaji, approached Talathi, he agreed not to enter name of said Ramrao in view of the order of Civil Court, but to refrain from doing so, he demanded Rs.5,000/-. When complainant expressed his inability to pay such huge amount, after negotiations, accused brought down the figure to Rs.2,500/- and asked complainant to pay the same on 27.12.2001.

On 26.12.2001, complainant approached Anti-Corruption Bureau [ACB] authorities and lodged complaint Exhibit 18, after which ACB authorities summoned panchas, complaint was verified, trap was planned and explained to complainant and pancha, demonstration of application of tainted currency was given to them and thereafter complainant and pancha went to Talathi office. Accused asked complainant whether he has brought the amount as agreed yesterday. When amount was taken out from the pocket of complainant, accused accepted it, counted it and kept it in hip pocket, after which raiding party entered and apprehended him. His hands, on examination, revealed traces of anthracene powder and thereafter, after completing formalities or arrest, crime was registered and investigation was carried out for above offence and accused was chargesheeted.

After appreciating the evidence of prosecution, learned Special Judge, Ambajogai held case of prosecution as proved and awarded conviction under Sections 7, 13(1)(d) and 13(2) of the PC Act by judgment dated 26.10.2004, which is now questioned by filing instant appeal.

SUBMISSIONS

3. Questioning the legality and maintainability of the judgment, learned counsel for the appellant pointed out that there is no dispute that accused was Talathi. There is also no dispute that complainant had approached Talathi at Tahsil office. However, he disputes demand raised by accused. According to him, accused had demanded land revenue arrears and even specific defence to that extent is raised. He pointed out that even alleged demand is on 25.12.2001, but trap is laid on 27.12.2001 and therefore, it is deliberate attempt. Learned counsel submitted that here, very essential aspect of demand as bribe has not been proved. According to him, in support of the above defence, accused has adduced evidence of DW1 and DW2 and as such, he has probabilized his defence. Further, such defence has still

not been taken into consideration by learned trial Judge. He pointed out that in fact, there is no motive as complainant himself has admitted receipt of revenue document i.e. 7x12 extract etc. Therefore, there is no question of bribe being asked for doing or not doing any work. However, learned trial court, according to him, has not considered and appreciated the case in its correct perspective and hence, he prays to set aside the impugned judgment by allowing the appeal.

4. On behalf of the State, learned APP pointed out that complainant went with application to the Talathi for not entering the name of subsequent purchaser Ramrao Jadhav in the backdrop of pending civil dispute and in view of order of civil court. However, in spite of so, accused Talathi had demanded bribe. Therefore complainant had approached ACB. Trap was laid, independent pancha was arranged and complainant and pancha together had been to the Talathi and he had specifically raised demand. Tainted currency was handed over and it was even accepted by accused and trap was successful. Accused was apprehended with tainted currency and therefore he was booked and tried. Prosecution has established its case by examining complainant and shadow pancha, who are consistent and corroborating each other. Demand and acceptance

being proved, sanctioning authority having applied its mind and accorded sanction, learned trial court has correctly accepted such evidence and guilt is rightly recorded. According to him, there is no merit in the appeal and so he prays to dismiss the same.

5. After considering respective submissions, it seems to be the case of appellant that demand of money, which was accepted by accused, was not towards any illegal gratification or bribe for not doing any official work, but it was towards some arrears towards land revenue of brother of complainant and such payment has been misunderstood and magnified as bribe.

6. On re-appreciating the entire evidence, it is seen that complainant **PW1** Tanaji is examined at Exhibit 17 and the sum and substance of his evidence is that his father had executed a sale deed of agricultural land in favour of sister Chabubai, without consulting complainant and his brother Shivaji. Therefore these brothers instituted civil proceedings bearing no. 98/2000 and the sale deed in favour of Chabubai was set aside by the court. In spite of it, their sister Chabubai had executed the sale deed in favour of one Ramrao Jadhav and for objecting to entry of his name, on behalf of his brother Shivaji, *de facto* complainant approached Talathi to tender

application to not to give effect to any mutation entry on the strength of alleged sale deed between Chabubai and Ramrao Jadhav, and at that time, accused demanded Rs.5,000/- and on negotiations, brought it to Rs.2,500/-. He deposed about approaching ACB authorities on 26.12.2001, lodging complaint Exhibit 18, on 27.12.2001 in presence of pancha, preparations being made, demonstration being given, pre-trap panchanama being drawn and he and pancha visiting office of Talathi on the same day. In para 7, he specifically stated that when they approached Talathi, he asked whether amount was brought as per yesterday's agreement and this witness answered in affirmative and took out money from his shirt pocket and handed it over to the accused Talathi, who accepted it, counted it and then kept it in his hip pocked. On predetermined signal being given, accused was apprehended.

There is extensive cross of complainant PW1 Tanaji regarding his educational qualification, about ancestral landed property and holdings, acquisition of their land by Government and receipt of compensation. In para 11 and 12 questions are posed regarding location and set up of Talathi office, geographical directions, doors, windows, road etc. In para 13 of the cross, again questions are posed about joint family holdings and its management. Complainant is unable to give the amount of land arrears due towards all brothers, but he admitted that it was due towards him from 25.12.2001. Then again questions are posed about entry of name of Chabubai in the 7x12 extract. In para 13, there are also questions about arrears of land revenue and he admitted that there was demand to that extent from him by accused even prior to 25.12.2001. He flatly denied that arrears of revenue were also demanded by accused from his brother. Para 14 and 15 is the cross pertaining to visit to Talathi office with application. In para 15, he has denied carrying copies of 7x12 extract and other revenue records to Talathi office on 25.12.2001. He is also unable to state as to whether copies of revenue record were obtained by him on 25.12.2001 i.e. Exhibits 20 and 21. He answered that copies were not prepared in his presence. He is also unable to state who prepared Exhibits 20 and 21. He is unable to state the date on which his brother Shivaji had prepared application raising objection. In para 17, he admitted that Exhibits 20 and 21 were obtained on 25.12.2001 and thereafter he went to Talathi office on 27.12.2001. Then there are questions pertaining to his decision to approach ACB authorities. Again in para 21, he answered that he had promised accused that he would clear arrears of revenue on 27.12.2001 but the copy should be given to him on 25.12.2001 as he was in need of the said copies. In para 22 he answered that while his statement was recorded by Shri Deshmukh, he was questioned whether he was in arrears of any land revenue and he answered in affirmative. However, he further stated that he did not tell before ACB officers while recording his complaint Exhibit 18 that anything was due from him to Government or to the Talathi towards land revenue. He is unable to state why portion marked “A” is appearing in his complaint Exhibit 18.

7. **PW4** Devidas ware, shadow pancha also reiterated about he being called to ACB office, introduced to complainant, briefed about trap and he agreeing to act as pancha. He also deposed about demonstration of anthracene powder and thereafter he being asked to accompany complainant and they both approached Talathi. He also stated that when he and complainant approached accused at Talathi office, initially complainant wished accused and thereafter he reciprocated and accused asked complainant whether complainant has brought amount as directed by Talathi day before yesterday. Accused demanded the said amount brought by complainant. Complainant took out the tainted currency from his chest pocket and held it in front of accused, who accepted it, counted it and kept it in his hip pocket and thereafter, at signal being given by complainant, he was apprehended.

Even above witness is cross-examined. In para 18 he stated that at the time of incident, there was talk between complainant and accused about land revenue. He also admitted that at that time accused told complainant as and when he will pay the remaining land revenue. He denied it so happened that after keeping amount in the pocket by the accused, accused was turning to the office. Rest is all denial.

8. **PW2** Kulkarni is the sanctioning authority who deposed about receiving papers from ACB, he completely studying documents and on getting satisfied, he according sanction.

9. The above discussed evidence shows that complainant had approached accused, a Talathi, with an application on behalf of his brother objecting to the entry of name of Ramrao Jadhav with whom their sister had entered a sale transaction. Specific complaint is that accused initially demanded Rs.5,000/- for not entering name of subsequent purchaser Ramrao Jadhav, but finally negotiated and brought down the amount to Rs.2,500/-. Complainant and pancha are both consistent about demand by accused Talathi. Shadow pancha confirms about going through the contents of the complaint and

agreeing to act as pancha. They both are also consistent about visiting Talathi office and accused asking him whether he has brought money as agreed that day and thereafter complainant agreeing and handing over the tainted currency and it was accepted. Therefore, both, complainant and pancha are lending support to each other on the aspect of demand and acceptance.

10. Specific defence raised by accused is that amount was accepted but it was not towards bribe for not entering name of Ramrao Jadhav, rather it was towards arrears of land revenue. Answers given by complainant and shadow pancha to that extent in cross are specifically relied in support of such defence.

11. That apart, accused has examined **DW1** Bhausaheb Naibal, who gave evidence at Exhibit 62 and the sum and substance of his evidence is that he knew accused, who was Talathi. According to him, he along with five to six persons went to the office of Talathi on 25.12.2001. At that time, around 10 to 11 a.m., **Tanaji** was also present along with other Talathis. He deposed that at that time he told Talathi Gaikwad that he will pay land revenue after one or two days and Tanaji had also come demanding 7x12 extract from Talathi and Talathi had told him that he would issue 7x12 extract

after land revenue is paid. Thereafter, Tanaji agreed to pay the land revenue on Thursday, but asked to issue 7x12 extract. However, this witness further deposed that, thereafter there were altercations between Tanaji and Talathi. Witness claims that he also told Talathi that he will pay land revenue and to issue 7x12 extract. Thereafter, 7x12 extract of Tanaji was received by one Nagargoje. On Thursday, he and four persons also paid land revenue to Talathi and at that time, Talathi had issued receipts which he identified at Exhibits 63 and 64.

12. **DW2** is accused himself and he deposed that there were arrears of complainant, his brothers for the month of December 2001 and they were to pay land revenue of Rs.2,632/-.

13. Therefore, with above evidence, case is tried to be made out that on that day, land revenue to the tune of Rs.2,632/- was at the end of complainant and his brother and on 27.12.2001 i.e. the day of trap, complainant had handed over money towards said arrears and there was no demand of illegal gratification as claimed by prosecution.

14. On sifting cross of complainant, from para 13 it is emerging that it is elicited that revenue khata are standing in separate names. Complainant is unable to state whether land arrears were due from all brothers. To his extent, he answered that the land revenue was due to the tune of Rs.700/- to 900/- as on 25.12.2001 and that he does not know the arrears of his brothers. In para 21 he flatly denied handing over amount of Rs.2,500/- to the accused towards arrears of land revenue of himself as well as his brothers and also denied the suggestion that an amount of Rs.2632/- was outstanding on 27.12.2001 towards land revenue. Therefore, such material shows that case of land revenue arrears has been refuted outright.

Even if we carefully go through the evidence of Investigating Officer, we find him specifically deposing in examination-in-chief that pancha told him that when he went with complainant, accused asked complainant whether he has brought amount of Rs.2,500/- and complainant had told accused that he has brought the amount. The Investigating Officer further deposed that accused told complainant to pay the amount and thereafter complainant paid the amount and accused put it in pocket of his pant. Further accused also told complainant that **he will not take the name of Jadhav in 7x12 extract**. Thereafter accused told complainant to pay remaining land revenue as early as possible. Investigating Officer claims that thereafter he verified through the revenue inspector as to how much amount was due from complainant towards revenue and it was revealed to be to the tune of Rs.1,151/-. Therefore, the question arises as to for what purpose initially amount of Rs.5000/- was demanded and finally on negotiations, Rs.2,500/- was accepted. Consequently, for above reasons, the defence raised is apparently false.

15. Therefore, above discussed evidence shows that Investigating Officer has thoroughly investigated the matter even on aspect of so called revenue arrears. Here, it it pertinent to note that though DW1 has been examined, who spoke about land revenue arrears, it is only complainant and pancha who were party to the demand and acceptance. Independent witness PW4 shadow pancha specifically informed Investigating Officer that accused, after accepting the amount, assured the complainant that he will not take name of Jadhav in the 7x12 extract. So much evidence of the Investigating Officer has not been challenged or rendered doubtful in the trial court while he was under cross-examination. Therefore, this court finds no substance in the defence raised that the amount accepted was towards land revenue arrears and not towards bribe amount. Even there is variance on actual arrears of land revenue and the amount

accepted by accused. Therefore, there is both, demand as well as acceptance of illegal gratification which is proved from the testimony of complainant and PW4 pancha witness.

16. There is no challenge to the validity of sanction. Therefore, charge being brought home, offence can safely be said to be proved. No perversity is brought to notice in appreciation of evidence by learned trial court. Finding no merit in the appeal, I proceed to pass the following order :

ORDER

I. The appeal is hereby dismissed.

II. The bail bonds furnished by the appellant stand cancelled.

III. The Superintendent of Police, Beed is directed to see that accused surrenders to undergo sentence as ordered by the learned Special Judge, Ambajogai in Special Case (A.C.) No. 1 of 2002 on 26.10.2004 forthwith and send compliance report to this court within two weeks from the date of receipt of this judgment.

IV. The record and proceedings be sent back to the concerned court forthwith.

V. Criminal Appeal is accordingly disposed of.

[ABHAY S. WAGHWASE, J.]

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