



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.752 OF 2004

The State of Maharashtra,
Through P. S. Gangapur, Aurangabad

... Appellant
(Orig. Complainant)

Versus

Bhagwan Vishwanath Bankar,
P.H.C. B. No. 548, Highway Police
Aurangabad

... Respondent
(Orig. Accused)

...
Mr. N. D. Batule, APP for Appellant – State
Mr. Rajendrraa Deshmukh, Senior Counsel i/b. Mr. D. R. Deshmukh
for Respondent sole

...

CORAM : ABHAY S. WAGHWASE, J.

DATED : 15th JANUARY, 2024

JUDGMENT :

1. Instant appeal arises out of judgment and order of acquittal from charges under sections 7, 13(1)(d) read with section 13(2) of Prevention of Corruption Act, 1988 passed by learned Special Judge, Aurangabad in Special Case No. 11 of 2000 dated 08.07.2004.

2. In brief, the case set up by prosecution is that, accused Bhagwan was posted as a constable in Highway Security Branch, Rural Aurangabad. Police Inspector, Anti Corruption Bureau got a

tip that some police officials are forcefully extracting money from the vehicle drivers for allowing them to pass through Aurangabad towards Pune and on failure, threat are issued for prosecution. Accordingly, PW3 PI Bankar decided to nab such public servants and therefore, after arranging panchas, plan was drawn to lay trap. On relevant day, panchas were made to sit in the transport vehicle and posed themselves as owner. They were to carry tainted currency to be handed over on demand and thereafter they were supposed to give signal, upon which culprits would be nabbed. Pre-trap panchanama (Exh.10) was drawn and Rs.400/- were handed over to complainant to be paid on demand and said currency was applied with anthracene powder.

3. Accordingly, on 28.01.2000, trap was laid. Raiding party, planted complainant, panchas went to Aurangabad - Pune road and were waiting in lay near Godawari bridge. According to prosecution, a mini truck bearing no. MH-20-A-1746 transporting live stock was stopped. Driver Vishnu was also apprised and he agreed to help the police in the trap.

4. It is further case that, when the vehicle was proceedings towards Aurangabad with complainant, panchas sitting in the cabin, posing themselves as owners, their vehicle was

signaled to be stopped near police chowky of Gangapur. Driver Vishnu got down and approached the police constable and he told that, owner was in the cabin. On interaction, it is alleged that, said police constable demanded Rs.50/- towards entry. Complainant Sable, who also got down, handed over Rs.100/- note and the constable deducted Rs.50/- by accepting the tainted currency and returned remaining amount of Rs.50/-.

5. It is further case that, complainant gave signal and thereafter police started approaching complainant. Police apprehended accused, who gave his name as Bhagwan Vishwanath Bankar (Bakkal No.548) posted as Highway Traffic police constable. He was taken to Gangapur guest house and then remaining formalities of panchanama, examination of accused was done, and thereafter, Officer Bankar lodged report.

Above is the case of prosecution in trial court.

6. Learned trial Judge by his judgment and order dated 08.07.2004, on analyzing the evidence held that, evidence of prosecution is not sufficient to bring whom the guilt and thereby acquitted accused from all the charges.

Consequently perused the entire evidence and impugned judgment herein referred above.

7. Before scrutinizing the prosecution evidence adduced in the trial court, it needs to be noted that, here, a very police officer of Anti Corruption department, on receipt of some information about extortion of money by police officials posted on highway, has himself laid the trap. PW1 Ashok and PW2 Raju are set up by prosecution to assist for success of said trap.

8. PW1 Ashok seems to be working in Panchayat Samiti, Gangapur and he was used as a complainant by projecting him to be the owner of the vehicle, which plying on Aurangabad-Pune road. He and other panchas were directed to board a transport vehicle and accompanied a driver and were called upon to meet the demand made by traffic police officials. In such background, on that day, i.e. on 28.01.2000, a mini transport vehicle was made to halt and its driver was also apprised about the purpose and allegedly agreed to assist and thereby PW1 Ashok and PW2 Raju accompanied him in the vehicle.

9. Evidence of PW1 Ashok and PW2 Raju shows that, their vehicle when reached Gangapur Police Chowky, accused signaled and allegedly questioned the driver, who further allegedly told him about owner to be sitting in the cabin of the truck. According to PW1 Ashok said constable demanded entry fee and when the amount was asked by PW1 Ashok, demand was said to be

raised of Rs.50/-. According to PW1 Ashok, he took out one tainted currency note of Rs.100/- and held it before accused, who allegedly collected it and returned Rs.50/- to PW1 Ashok. He, at that time transmitted signal and two police constables sitting in the cabin jumped and came down and smelling something found, the traffic police crumpled the currency note and threw under the banian tree and then he further marched towards the chowky and dipped his hands in the water pot. Thereafter he was caught. PW1 Ashok though claimed that, PW3 Investigating Officer PI Bankar subjected apprehended accused for examination under u/v light, no blue colour was visible to the hands, though there was some alleged shining to the currency notes.

10. Likewise, PW2 panch Raju Magar also deposed about being briefed by PW3 PI Bankar, Investigating officer regarding trap to be laid to nab police personnel demanding money and therefore, he accompanying PW1 Ashok. He also narrated as like PW1 Ashok, the events which took place like stopping mini-truck, apprising the truck driver about the purpose of trap and he agreed to assist and he and PW1 Ashok occupied seat in the cabin along with the driver. That, when their vehicle was passing, traffic police signaled and driver stopped it. Driver went towards the police along with PW1 Ashok and this witness himself. The constable

questioned about the goods loaded and demanded entry fee of Rs.50/- and Rs.100/- being handed over by PW1 Ashok and constable refunding Rs.50/- and then PW1 Ashok giving signal, police approaching and thereafter said traffic police constable going and washing his hands i.e. after throwing away the currency note.

11. The driver Vishnu (PW4) whose truck was occupied by PW1 Ashok and PW2 Raju has apparently retracted and has not supported prosecution. Therefore, the testimony of PW1 Ashok and PW2 Raju about their being intercepted by accused and further he being called by constable for questioning about the goods and thereafter PW1 Ashok also joining and paying the currency of Rs.100/-, such story of prosecution is rendered doubtful.

ANALYSIS

12. Therefore, what is emerging from testimony of PW1 Ashok and PW2 Raju is that, trap went unsuccessful. It transpires that along with planted complainant, constable Chobe and Bahure were also present, but they are not examined by prosecution for the best reasons known to them. Though PW1 Ashok and PW2 Raju speak about demand and acceptance, the very currency which was said to be tainted was apparently not found in possession of accused. There were no traces to the hands of accused to establish

acceptance i.e. when he was subjected to test by use of u/v light. This is admitted by not only PW1 Ashok and PW2 Raju, but even Investigating Officer. Resultantly, trap has failed. The currency note allegedly accepted by accused is also not shown to be preserved. Therefore, the entire exercise carried out by Investigation Officer has been watered down and rendered valueless.

Therefore, when required ingredients for attracting the charges not being available on record, case cannot be said to be proved beyond reasonable doubt. Rather, here prosecution has miserably failed in establishing the guilt of accused.

13. With such quality of evidence, the view taken by learned trial Judge is the most possible view that could emerge on even re-appreciation and re-examination of evidence. No fault can be found in the impugned judgment and resultantly no need for interference. Hence I proceed to pass following order :-

ORDER

- (i) The Criminal Appeal is hereby dismissed.

(ABHAY S. WAGHWASE, J.)