



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 774 OF 2006

Bhaginath Mahadev Avhad
Age: 42 years, Occu.: Service,
R/o. Vithal, Anand Niwas, Tawale Nagar,
Near Aurangabad Road, Ahmednagar,
Tq. & Dist.Ahmednagar.

....Appellant
(Ori. Accused)

Versus

The State of Maharashtra

.....Respondent

.....
Advocate for Appellant : Mr.Joydeep Chatterji
APP for Respondent : Mr.N.D.Batule

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 06 MARCH, 2024

PRONOUNCED ON : 20 MARCH, 2024

JUDGMENT :-

1. Judgment and order passed in Special Case (A/C) No.5 of 2001 by learned Judge, Special Court, Ahmednagar on 08-11-2006 convicting appellant for offence under Section 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, is challenged herein by filing instant appeal.

FACTS LEADING TO TRIAL

2. PW1 Macchindra, Driver of Minidor Rickshaw was proceeding

towards MIDC alongwith his family on 22-07-2000. His vehicle was intercepted by accused, a Policeman and amount of Rs.250/- was demanded by way of hafta. His vehicle title documents were also seized. As complainant did not want to pay bribe, he approached Anti Corruption Bureau (ACB), Nashik, lodged complaint exh.10. ACB authorities planned and laid trap. Complainant was made to accompany shadow pancha and on 27-07-2000, demand was made in presence of shadow pacha and after its acceptance predetermined signal was given and accused was caught, arrested and after investigation chargesheeted and tried by learned Judge, Special Court, Ahmednagar, who on appreciation of oral and documentary evidence, held case of prosecution as proved and convicted appellant for the offence stated above.

Said judgment and order of conviction is now taken exception to by filing instant appeal.

SUBMISSIONS

On behalf of appellant :

3. Learned Counsel for the appellant would point out that there is false implication. That evidence of complainant shows that there are several cases against him for traffic violation. That his cross-

examination shows that title documents of his vehicle were not seized by the appellant but by another Officer namely Chavan. That testimony of PW1 Macchindra, complainant and PW2 Yuvraj, shadow pancha is not consistent. That there was no demand as bribe. Learned Counsel pointed out that demand was allegedly made on 22-07-2000, however, complaint was lodged after five days that too at Nashik but not at Ahmednagar where there is ACB Office available, therefore, there is apparently deliberate implication. That there was no demand and acceptance, moreover, amount was thrust. Learned Counsel further pointed out that case was not proved beyond reasonable doubt. Even there was no proper sanction, and there was mechanical sanction granted on the basis of draft i.e. without application of mind. Therefore, with such weak evidence, learned trial Court ought not to have recorded the guilt. However, learned trial Judge has erred both in appreciating the evidence as well as law and therefore, judgment being erroneous and not sustainable in the eyes of law, he prays to allow the appeal by setting aside the judgment under challenge.

On behalf of State :

4. Per contra, learned APP submitted that evidence of

complainant and shadow pancha is consistent. They are both lending support to each other. That after lodging complaint, verification was done, pre-trap panchanama was drawn in presence of PW2 Yuvraj, independent witness. That there was demand and acceptance. Therefore, offence was complete. That sanction is also valid and by competent authority and therefore, it is his submission that no fault can be found in the guilt recorded by the trial Judge and he prays to dismiss the appeal.

5 . This Court, being first appellate Court and last fact finding Court is expected to re-appreciate, re-analyze and re-examine the entire oral and documentary evidence adduced by prosecution.

EVIDENCE ON RECORD

6. **PW1** Macchindra Narayan Padole is the complainant. Sum and substance of his evidence is that he own a Minidor Rickshaw bearing registration no.MH16 B-6104. According to him, on 22-07-2000, while he was proceeding with his family, the appellant asked him to pay hafta of Rs.250/-. Every month he used to pay him hafta. As he did not comply the demand that day, his wife and children were made to get down from Rickshaw and his RC Book and licence were

seized by accused and was further threatened that if hafta is not paid, case would be filed against him. Therefore, he went to Nashik and approached ACB authorities at Nashik. He identified complaint exh.10 lodged by him. He deposed about arriving of panchas, procedure being explained and he and shadow pancha going in the vicinity of Ahmednagar S.T. Stand. According to him, accused called him and asked him whether he had brought amount, upon which complainant sought his papers. Again accused threatened to pay hafta, complainant finally agreed to pay Rs.250/- and he took out said amount from his pocket and gave to accused, who accepted the amount and kept in his pocket. He gave predetermined signal, raiding party arrived and caught accused.

7. **PW2** Yuvraj Narayan Bhoje, who was working as a Clerk in Circle Office at Nashik, deposed about being called at ACB office, introduced to complainant, he and complainant both explained procedure and given instructions. He deposed about accompanying complainant i.e. near State Excise Office. He deposed that at around 06:15 p.m. one person approached in plain dress and questioned complainant if he has brought Rs.250/-. Thereafter, complainant removed amount from pocket and hold in front of accused, who

accepted amount in his hand, counted it and thereafter, immediately complainant gave signal and raiding party apprehended accused. Accused was questioned and he admitted about committing wrong. At the instance of PW2 Yuvraj, shadow pancha, amount was taken from his pocket, counted and it tallied as per pre-trap panchanama.

8. **PW3** Dhanraj Kesharmal Dayma is the Investigating Officer.

9. **PW4** Ramrao Narayanrao Wagh is the Police Commissioner, who accorded sanction and he deposed about receiving investigating papers, going through the same and granting sanction exh.21.

GROUND

10. Following fundamental grounds are raised in the appeal by the appellant :

Firstly, there was no demand of any bribe.

Secondly, amount was thrust in his pocket.

Thirdly, variance in testimony of PW1 Macchindra and PW2 Yuvraj as testimony of PW1 Macchindra is silent about amount being counted, which is finding place in the testimony of PW2 Yuvraj.

ANALYSIS

11. Sum and substance of **PW1** Macchindra / complainant's evidence is that he plies a Minidor Rickshaw. According to him, on 22-7-2000, his vehicle was intercepted by accused at Imperial Hotel Chowk and he was asked to pay hafta. According to him, every month, he used to pay hafta. His RC book and licence were taken away on that day and he was threatened that if hafta is not paid, cases will be filed against him and his vehicle would be taken in custody. He had been to Nashik and he lodged complaint to ACB. While he and pancha witness were in the vicinity of S.T.Stand, accused called him and asked him whether he brought amount of Rs.250/-. He handed over amount and it was accepted by accused.

On taking survey of the **cross-examination** faced by **PW1** Macchindra, he is found to be admitting that there were many cases filed against him under the provisions of Motor Vehicles Act. He admitted that on 22-06-2000, PSI Chavan had filed case against him for not having number plate. He also admitted that as he has not paid fine amount, his driving licence was seized. He admitted that his licence was with traffic branch from 22-06-2000 to 22-07-2000. He admitted that on 26-07-2000, date, time of payment and place was not decided. He admitted that on 22-06-2000, he was required

to take another Rickshaw and he was allowed to go and at that time as his son was running fever, he decided to file complaint against accused. He further admitted that had that incident not taken place, he would not have filed complaint against accused. He admitted that he was waiting for arrival of accused. He also admitted that accused given back his Rickshaw on 22-07-2000.

12. **PW2** Yuvraj corroborated PW1 Macchindra by stating that when they were in S.T.Stand vicinity, accused said to complainant that he will have to suspend licence of the Minidor Rickshaw and further questioned whether he has brought Rs.250/- as hafta. Complainant held amount before accused and he accepted it, counted it and kept it in his pant pocket and raiding party caught accused.

In his **cross-examination**, **PW2** Yuvraj has admitted that complaint was not written in his presence. He also admitted that he and complainant were waiting for accused at S.T. Stand. Rest are all irrelevant questions.

13. Pointing out to the above cross-examination, learned Counsel for the appellant submitted that answers given by complainant and

shadow pancha witness categorically show that they were eagerly waiting for arrival of accused. That complainant has bad track record. He submitted that even complainant admits that “had he not made to leave the Rickshaw while he was going with the family, while his son was running fever, he would not have lodged complaint”. According to him, complainant’s evidence is silent about accused counting currency but pancha witness specifically states that accused counted it, therefore, they are at variance.

14. There is no force in above submission. On carefully appreciating the evidence, mere decision of complainant to approach ACB, Nashik instead of Ahmednagar is no a good ground to hold that there is attempt of false implication. Similarly, several cases filed against complainant for traffic violation also itself cannot be a ground to hold that he was falsely implicated. Likewise mere making complainant get down from Rickshaw while he was taking his son, who was running fever and complainant admitting that had that incident not taken place, he would not have lodged complaint, would itself not come to rescue of accused as these aspects are distinct than actual demand by way of hafta. According to complainant, accused used to regularly demand hafta. There is no challenge to this

version. Thus, there is clear demand of “hafta”. Complainant is very categorical that it has become usual practice of paying hafta. On that day, as he did not pay hafta, his vehicle papers were seized and hence, he has approached ACB.

PW2 Yuvraj, independent pancha witness is also categorical that he and complainant were together and in presence of independent pancha witness, accused has again put up a demand and even accepted the amount and kept in his pocket and thereafter, immediately he was apprehended. He had no plausible explanation to offer for possession of tainted currency. Because of mere omission or variance in testimony of PW1 Macchindra and PW2 Yuvraj on the point of counting currency, no benefit can be derived.

15. Similarly, the interpretation of the word “to wit” finding place in evidence of PW4 Wagh carrying some different dictionary meaning also will not wash away aspect of demand of hafta and its acceptance. The *sine qua non* for bringing home charge is demand of illegal gratification and its acceptance. There is evidence to such extent here, which has remained unshaken inspite of extensive cross-examination of complainant and shadow pancha. Similarly, sanction cannot be said to be invalid for mere admission about receipt of draft

sanction unless it is further shown or demonstrated that there was no proper application of mind and mere sanction order received from ACB was shown to be reproduced in verbatim. Consequently, no fault also can be found in the validity of sanction.

SUMMATION

16. To sum up, here there is both demand and acceptance of illegal gratification. Testimony of PW1 Macchindra and PW2 Yuvraj is inspiring confidence and sanction is valid. There is no explanation for possession of tainted currency. Consequently, no fault can be found in the conclusion reached at by the learned trial Judge. No case being made out on merit, appeal deserves to be dismissed. Accordingly, I proceed to pass following order :

ORDER

Criminal Appeal No. 774 of 2006 is dismissed.

(ABHAY S. WAGHWASE)
JUDGE

17. On pronouncement of this Judgment, learned Counsel for the appellant prays for six weeks time to surrender so as to enable him to approach the Hon'ble Apex Court.

18. Learned APP strongly opposes the same.

19. Considering the above request made by learned Counsel for the appellant, six weeks time is granted for the appellant to surrender.

(ABHAY S. WAGHWASE)
JUDGE

SPT