



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

CRIMINAL APPEAL NO. 823 OF 2006

The State of Maharashtra,
Through P. S. Kinwat, Per
Dy. S. P. Shri M. S. Perke, ACB
Nanded

.... Appellant
(Orig. Complainant)

Versus

Bapu Sopanrao Sonwane,
Age : 51 years, Occu. : Service,
Industrial Inspector, DIC, Nanded

.... Respondent
(Orig. Accused)

...
Mr. S. M. Ganachari, APP for Appellant - State.
Mr. Joydeep Chatterji, Advocate for Respondent.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 04 MARCH 2024

PRONOUNCED ON : 13 MARCH 2024

JUDGMENT :

1. Instant appeal arises out of judgment and order of acquittal passed by District and Sessions Judge-2, Nanded dated 16.08.2006 in Special (ACB) Case No.09 of 2001, by which respondent herein came to be acquitted from offence punishable under sections 7 and 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988.

PROSECUTION CASE IN BRIEF IS AS UNDER

2. One Madhav Totawar had a elder brother, namely

Ganpat, who was keen on setting up a grocery shop and had thereby applied for loan under Pradhan Mantri Rojgar Yojna and he had tendered application with District Industries Center (DIC) Office, Nanded. In that connection complainant was directed to meet respondent. However, respondent a Clerk posted in DIC, demanded Rs.1,000/- for higher Officer and Rs.500/- for himself to do the needful. Initially Rs.200/- was paid and remaining amount of Rs.300/- was to be paid on receipt of loan. However, complainant Madhav approached ACB authorities on 05.09.2001 and lodged complaint (Exh.20). On the strength of which, ACB authorities took necessary steps for arranging trap, summoning shadow panch, explaining the procedure to complainant and pancha and ACB authorities followed them, when they went to accused who demanded bribe and after its acceptance, accused was apprehended.

3. After investigation, he was charge-sheeted and tried by learned Special Court, who on appreciating oral and documentary evidence, held that prosecution failed to prove the guilt by adducing reliable evidence and acquitted the respondent from all charges vide judgment and order dated 16.08.2006, which is now assailed herein.

SUBMISSIONS

On behalf of Appellant - State :

4. According to learned APP, accused was working as Industrial Inspector. Brother of complainant had applied for loan under Special Scheme, namely, Pradhan Mantri Rojgar Yojna i.e. for setting up a grocery shop. For granting loan application, when complainant approached accused, he demanded illegal gratification for himself as well as for his superior. Complaint was therefore lodged with ACB authorities, who laid trap and in presence of independent pancha, tainted currency was accepted by accused and kept it in the drawer of table. He was found in possession of bribe amount and therefore was arrested.

5. Learned APP further submitted that, independent witness i.e. shadow panch accompanied accused is party to the demand as well as trap. He corroborated the testimony of the complainant. Trap was successful. Therefore, offence was completed.

6. He next submitted that, after obtaining valid sanction accused was tried. Therefore, there is strong overwhelming evidence. There is no explanation from accused under section 313 of Cr.P.C.. However, still learned trial court has acquitted the

accused by reaching to erroneous findings. That, there is improper appreciation of evidence as well as law and so he prays to allow the appeal by setting aside the impugned judgment.

On behalf of Respondent :

7. In answer to above, learned counsel for accused pointed out that, prosecution had miserably failed to establish the charges beyond reasonable doubt. He pointed out that, complaint is by brother and not by Ganpat, who had applied for loan. He further elaborated that, said Ganpat never approached personally to press the grant of loan application. That, on the contrary, complainant, who wanted to usurp loan amount was hotly pursuing him. This aspect was brought to the notice of the banker by accused and therefore, out of annoyance, there is huge possibility of false implication. That, also there is doubt whether amount was accepted. Amount may have been planted for false implication. Learned counsel took this court through the evidence of PW1 Madhav complainant, his cross as well as evidence of shadow pancha PW2 Pramod, answers given by him in cross, spot panchanama, and would submit that, apparently apart from variances, there are contradictions on material count. All such aspects are carefully examined by learned trial court and he invited attention of this court to paragraphs 31, 32, 34, 35 and 36

of the judgment and concluded by submitting that initial burden of proving the case beyond reasonable doubt has not been discharged by prosecution, and therefore, he supports the acquittal recorded by trial court and prays to dismiss the appeal for want of merits.

ANALYSIS

8. This court has analyzed the evidence of **PW1** Madhav at Exh.19 and the sum and substance of his testimony is that, his brother Ganpat had applied for loan to the tune of Rs.1,00,000/- for opening grocery shop by tendering application to DIC. When he approached Divisional Manager, he was directed to approach accused an Industrial Inspector, who demanded Rs.500/- for himself and Rs.1000/- for his Superior. Rs.200/- was paid in advance in July 2001 and remaining amount was agreed to be paid later on i.e. after sanction of loan. On 29.08.2001 accused again demanded Rs.300/-, and therefore, this witness approached ACB and lodged complaint. He narrated the procedure undertaken by ACB authorities regarding laying trap, and thereafter, he and panch Pramod Kedare approaching accused, who demanded amount and it being handed over, accused collected the same, kept it in his drawer of his table and was caught by ACB authorities.

9. **PW2** Pramod, who is examined at Exh.26 deposed

about verifying complaint, accused accompanying complainant to pay bribe amount on demand i.e. to office of Vividh Karyakari Gram Udyog Sangh. After complainant and accused greeted each other, he deposed that complainant asked accused what happened about loan matter of his brother and accused counter questioned whether amount is brought. When PW1 Madhav gave it, he accepted and kept it in the drawer. Thereafter, complainant gave signal and ACB authorities apprehended.

10. **PW3** Shankarrao Sangu is the Investigating Officer, carrying out investigation after received complaint and narrated all steps taken by him during investigation.

11. **PW4** Aziz Mahedi Khan is the Sanctioning Authority.

12. On one hand, prosecution claims that, there is demand as well as acceptance. PW1 Madhav complainant and PW2 Pramod shadow panch are lending support to each other, and therefore, prosecution proved the charges. On the other hand, defence came with a case that, PW1 Madhav and PW2 Pramod are contradicting each other, and therefore, case of prosecution is doubtful.

13. As regards to initial demand is concerned, there is only testimony of PW1 Madhav. PW2 Pramod a shadow panch seems to

have accompanied him as instructed by ACB authorities i.e. to pay tainted currency on demand. Regarding this in para 7 of the chief he states that, he and panch witness approached accused, who was sitting in the office on chair. After wishing, he claims that he questioned accused whether file has been forwarded to the bank, upon which accused handed over a letter, he kept it in his pocket. According to him, thereafter accused demanded amount and he handed it over to accused, who kept it in the drawer of his table, and thereafter, went out and gave signal to ACB authorities, who came and carried out further proceedings.

While under cross, in para 10, he answered that, after receipt of letter he stayed in the office of accused for 7 to 8 minutes. He denied that, after keeping amount in the drawer, he came out from the northern door. He is unable to state whether there were two other tables. He categorically answered that, "it is true that on 05.09.2001 accused Sonawane had not demanded me amount." When there are questions about his occupation, educational qualification, he admitted that, he was knowing that General Manager of DIC office and Manager of Bank, who had the authority to sanction loan and that accused Sonawane was mere Clerk. He answered that, prior to 08.08.2001 i.e. date of tendering application for loan, he had not visited DIC office. He further admitted that, previously he had no occasion to visit DIC office. He

also admitted he collected application form (Exh.22) on 08.08.2001 and tendered the same on 13.08.2001. He also admitted that, on loan application (Exh.22) his signature is appearing. He denied that, he was trying to collect loan amount in the name of his brother Ganpat by keeping him away.

In para 12 he answered that, immediate after entry in the office from northern side, there is one table and chair and he admitted that, accused was occupying **first table**. He admitted contents of Map (Exh.23). He answered that, in his presence amount was not recovered from drawer of second table.

14. On re-examination by learned APP, he deposed that, on 05.09.2001, when he and shadow panch entered in office of accused, he had questioned the accused about the loan. That time accused asking complainant whether amount is brought. He replied in affirmative and after accepting the letter, keeping it in the pocket. Thereafter, accused asked about amount and it was paid.

In cross, he again admitted that, in examination-in-chief conducted on 15.02.2006 he had not deposed that accused asked him whether amount is brought. He stated that, in cross he admitted that, on 05.09.2001, Sonawane has not demanded

amount to him. He further volunteered that, he had given that admission on account of confusion.

Therefore, from above material it is emerging that, on the day of trap, complainant himself had not deposed about accused making any demand of money. Only on re-examination, attempt is made to fill up the lacuna, which is in fact vital in nature.

15. PW2 Pramod, shadow panch in chief deposed about accompanying complainant to the office of accused and in his presence complainant asking as to what happened about the loan of his brother. According to him, the said person asked PW1 Madhav whether amount is brought and handed over a letter to complainant, he kept it in the pocket. Said person demanded amount and complainant handed it and it was taken in right hand and kept it in the same drawer and thereafter complainant going went out of the office and raiding party entering and catching accused.

16. In cross, he answered that after entering in the office, there is first table in front to door and second table is just adjacent to the first table. He also admitted contents of map (Exh.23) to be correct. In further cross he admitted that, at the time of

occurrence no one was occupying seat of table no.1. He further admitted that, first table is without drawer. He categorically answered that, accused was not occupying chair of the first table and he was occupying chair of the second table and amount was seized from drawer of the second table. He further admitted that, in his presence no amount was recovered from table no.1 and table no.3. He further answered that complainant approached accused to table no.2 and both table no.1 and table no.2 are independent.

17. On analyzing above evidence, apparently as pointed out by learned counsel for accused, firstly complainant's testimony is silent about any demand made by accused. Subsequently, on re-examination such lacuna is tried to be filled. Even otherwise, there is confusion as to on which table accused was sitting and in which table of drawer he kept the tainted currency. Because from above discussion it is clear that, according to complainant, accused was sitting on the first table and after accepting the amount, he kept it in the first table itself. But, shadow panch, who is accompanying him is giving contrary version about accused sitting on second table and no amount being seized from first table.

18. Specific defence in the trial court set up by accused is that, there is a case of planting false implication. Complainant was said to be interested in getting the loan amount on an application of

his brother and that brother Ganpat had never approached for loan. Complainant himself is admitting that he has never visited DIC office prior to 08.08.2001. Therefore, his version about approaching accused in the first week of July 2001 and accused putting up demand for himself and his superior itself comes under the shadow of doubt. Accused had duly informed about loan application to be of Ganpat and not of complainant to the bankers and probably the same has invited annoyance of complainant. Above discussion shows that there is every possibility of planting money to implicate accused.

19. Documents (Exhs.28, 29 and 31) shows that, prior to the date of trap, proposal of brother of complainant i.e. of Ganpat was already recommended to the banker. Resultantly, there is further doubt as to what was the need then to approach accused to comply the demand of remaining amount of Rs.300/-.

20. Again, as pointed out, though sanction has been obtained from PW4 Aziz Khan, he has categorically admitted that, sanction order does not show any reasoning that along with investigating papers he has received draft sanction order in a sealed pocket. He further admitted that, after going through the draft of sanction order and sanction order (Exh.39), there are mere some changes. Such answer also, as pointed out, shows that,

there is recourse to draft sanction and as such there is no separate application of mind while granting sanction.

21. To sum up, here, complainant's evidence itself shows that there is no demand. *Secondly*, PW1 Madhav and PW2 Pramod are contradicting each other about exact drawer of the table, from which recovery was said to be made by Investigating Officer. Consequently, specific defence of planting has been probablized.

22. Perused the judgment under challenge. Learned trial Judge has appreciated both oral and documentary evidence i.e. of PW1 Madhav and PW2 Pramod, considered the answers given by them in cross, entire material gathered by Investigating Officer and his substantive evidence is also dealt and discussed at length and thereupon has reached to a conclusion that, prosecution has failed to prove its case beyond reasonable doubt. No illegality or perversity has been brought to the notice of this court so as to interfere in the judgment under challenge. Hence, I proceed to pass the following order :-

ORDER

The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)