



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

CRIMINAL APPEAL NO. 842 OF 2004

The State of Maharashtra
(through, ACB Jalgaon)

....Appellant

Versus

Dhanraj Tulshiram Sonwane
Age: 47 yrs. Occp. : Talathi Saja,
Kalmadu, Tq.Chalisgaon,
Dist.Jalgaon.

.....Respondent
(Ori. Accused)

.....
APP for Appellant : Mrs.Ashlesha S.Deshmukh
Advocate for Respondent : Mr.U.B.Bondar

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 22 APRIL, 2024

PRONOUNCED ON : 03 MAY, 2024

JUDGMENT :-

1. Getting dissatisfied by the judgment and order passed by the learned Special Judge and Additional Sessions Judge, Jalgaon dated 09-07-2004 acquitting respondent from offence under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act (PC Act), State has preferred instant appeal.

FACTS IN BRIEF LEADING TO TRIAL

2. PW3 Samdhan Jagannath Sonwane, complainant had approached accused Talathi for mutation of names on 12-11-2001. Accused demanded Rs.500/-. Complainant assured to pay after arrangement is made and he visited house of accused on 18-11-2001. That time also accused asked whether amount has been brought. As accused was not willing to give bribe amount, he approached ACB authorities and lodged report exh.23. ACB authorities planned and arranged trap. PW3 Samadhan, Complainant and PW2 Madhukar, shadow pancha were explained the procedure of trap and thereafter, both visited the office of the accused on 20-11-2001.

Accused was approached by PW3 complainant and enquiry was made regarding his work. Accused asked whether amount has been brought and when complainant affirmed it, accused gestured him to come out of the office and thereafter, he accepted the amount and pocketed it followed by relay of predetermined signal by complainant and raiding party carrying out the trap and apprehending accused followed by lodgment of complaint, investigation and accused persons being chargesheeted and trial being conducted before learned Additional Sessions Judge.

After appreciating oral and documentary evidence, learned

trial Judge reached to a finding that prosecution has failed to establish the case and thereby acquitted accused vide judgment and order dated 09-07-2004. Hence instant appeal by the State.

SUBMISSIONS

On behalf of appellant :

3. Learned APP for appellant State submitted that accused is Talathi. Complainant had approached him for mutation entry. Accused had demanded Rs.500/-. Complainant lodged report for demanding bribe and therefore, ACB authorities planned and executed raid. Complainant and panch witness, who had visited office of accused are consistent. There was demand made on 12-11-2001, 18-11-2001 and finally on 20-11-2001. Learned APP took this Court through testimonies of PW2 Madhukar and PW3 Samadhan i.e. shadow pancha and complainant and submitted that they are both consistent about demand as well as acceptance of bribe amount. That raid was immediately conducted and accused was apprehended.

4. Learned APP pointed out that infact in presence of PW2 Madhukar and PW3 Samadhan, sensing trouble, accused had after accepting amount, thrust amount in pocket of one Sahebrao but

both of them were apprehended. Evidence of PW2 Madhukar and PW3 Samadhan had remained unshaken. Nothing adverse has been brought to disbelieve complainant, however, according to him, learned trial Court has failed to appreciate such evidence and by assigning improper reasons acquitted accused holding that amount has been thrust. She further pointed out that even PW1 Mahajan, Sanctioning Authority was examined, who had applied its mind to the papers and had accorded sanction, but still learned trial Court has held that sanction is mechanical. According to learned APP, there is apparently erroneous approach in appreciating the evidence. Therefore, she prays to set aside the impugned judgment by allowing the appeal.

On behalf of respondent :

5. In answer to above, learned Counsel for respondent accused pointed out that testimonies of PW3 complainant and PW2 shadow pancha are inconsistent and at variance on material counts. Learned Counsel took this Court through impugned judgment, more particularly paragraph no.13 and pointed out that learned trial Court has reproduced the comparative versions given by PW3 complainant and PW2 pancha witnesses in the witness box and they are shown to

be apparently inconsistent. He pointed out that there is no recovery at the instance of accused. There is an attempt of false implication. Therefore, learned trial Court committed no error in refusing to accept the case of prosecution. As regards to sanction is concerned, he pointed out that cross of sanctioning authority clearly shows that there is no application of mind and sanction order is mechanical and sanctioning authority has no power to accord sanction. All such aspects are duly considered by the learned trial Court and according to him, there is no need to interfere in the sound judgment passed by the learned trial Judge. Consequently, he prays to dismiss the appeal for want of merits.

GIST OF EVIDENCE

6. **PW3** Samadhan Jagannath Sonwane, complainant in his evidence at exh.22 stated that his father owned land at village Raj Mane Shivar. He approached accused to get name mutated on 12-11-2001 at office located at Kalmadu. Accused demanded Rs.500/-. He told that he was not having money at that time and would meet after arranging money. On 18-11-2001, he again went to Chalisgoan to see accused. That time accused told him that he has meeting and he would return on next day. Accused asked him

whether he had brought the money and he told that he would bring money at village Kalmadu. On 19-11-2001 he approached ACB authority at Dhule and lodged complaint exh.23. According to him, ACB Officer Mr.Sonwane asked him to come on next morning. Next day, he was introduced to pancha and both were explained procedure and necessary instructions were given regarding trap. Accordingly, he and pancha approached the accused at his office. Initially accused was asked him to come after half an hour as he was in a hurry. After half an hour, when he and pancha visited the office, he made enquiry regarding his work. Upon which accused asked whether amount of Rs.500/- has been brought. He took out amount from his shirt pocket, accused accepted the amount in left hand and kept in his shirt pocket. Signal was relayed. Thereafter, accused took out amount from his pocket and kept in pocket of one Sahebrao. ACB authorities came and apprehended accused persons.

7. **PW2** Madhukar Barku Patil, shadow pancha, who is examined at exh.16 stated that on 19-11-2001, he was informed by his superior to visit ACB Office. Accordingly, he visited said Office on 20-11-2001 and he was briefed about the complaint and he read the complaint, signed it and thereafter, he and complainant being

explained about the procedure. He accompanied complainant at Kalmadu. After entering the Office of Talathi, complainant informed about his work, upon which, accused told him to come at 11:00 a.m. Again he and complainant returned to the Office of accused. Again complainant asked about his work, upon which accused pointed a finger towards the complainant and then came out. He himself, accused and complainant came out of Office. Accused asked whether amount has been brought. Complainant answered in affirmative. Accused asked complainant to pay the amount. Complainant took out the amount, accused accepted it and kept in his shirt pocket. A stranger came there. On receiving signal, raiding party came there. Accused suspected something wrong and therefore, he took out bribe amount from his pocket and thrust it in the pocket of the stranger. Thereafter, raiding party caught hold of the hands of the accused and stranger and brought them in the office of the accused.

8. **PW1** Dilip Dagadu Mahajan, Sanctioning Authority, who in his evidence at exh.14 stated about receiving papers along with draft sanction, he going through the papers and according sanction and issuing sanction order exh.15.

9. **PW4** Bhivasan Daga Sonawane is the Investigating Officer, who narrated all steps taken since the receipt of complaint till filing of the chargesheet.

10. **PW5** Mukund Rajaram Mahajan is the another Investigating Officer, who completed the formalities of filing chargesheet.

LEGAL POSITION

11. Here is the appeal by the State against judgment and order of acquittal.

Before proceeding to re-appreciate the evidence, it would be appropriate to give brief account of settled legal position while dealing with appeal against acquittal.

Recently, the Hon'ble Apex Court in the case of ***Ravi Sharma v State (Government of N.C.T. Delhi and another)***, 2022 LiveLaw (SC) 615 has considered and discussed the law settled by the Hon'ble Apex Court in the case of ***Chandrappa v. State of Karnataka***, (2007) 4 SCC 415, which are as under :

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and

reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

12. Likewise in the same judgment, the Hon’ble Apex Court has touched and dealt with as to what is meant by perverse findings by taking recourse to the earlier decisions in the cases of ***Arulvelu and another v. State***, (2009) 10 SCC 206; ***Babu v. State of Kerala*** (2010) 9 SCC 189 and ***Anwar Ali and another v. State of Himachal Pradesh***,

(2020) 10 SCC 166.

Similarly, while dealing with the aspect as to what is meant by “possible view”, the Hon’ble Apex Court in **Ravi Sharma** (supra), by referring to the Judgments in the cases viz. **N.Vijay Kumar v. State of Tamil Nadu**, (2021) 3 SCC 687; **Murugesan v. State**, (2012) 10 SCC 383, **Hakeem Khan v. State of M.P.**, (2017) 5 SCC 719, observed that “if the “possible view” of the trial Court is not agreeable for the High Court, even then such “possible view” recorded by the trial Court cannot be interdicted. It is further held that as long as the view of the trial Court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial Court cannot be interdicted and the High Court cannot be supplant over the view of the trial Court”.

13. Keeping the above discussed legal position in mind, appeal filed by State against acquittal is taken up for consideration.

ANALYSIS

14. This Court has already reproduced the substantive evidence of PW3 and PW2, who are the star witnesses being complainant and shadow pancha respectively. Taking the nature of charge into consideration, it is incumbent upon prosecution to establish firstly

demand and secondly acceptance as to bring home the charge. Complainant's evidence in the capacity of PW3 before the Court is that he had approached accused for mutation entry on 12-11-2001. Accused Talathi put up a demand of Rs.500/-. Complainant agreed to meet on arranging amount. It seems from his evidence that complainant himself approached accused at his house at Chalisgaon on 18-11-2001 and finally agreed to meet the demand at Kalmadu. His evidence does not show that he assured accused to visit his Office on a particular date. He seems to have approached ACB authorities on 19-11-2001 and then lodged report. In paragraph no.3, he seems to have stating about ACB authorities explaining him procedure of actual trap to be undertaken. However, as pointed out by learned Counsel for respondent, complainant did not visit ACB Office by carrying any cash meant to be paid on demand. What his evidence in paragraph no.3 goes to show is that, amount was kept on the table of ACB authorities.

In cross-examination paragraph no.7, he seems to have admitted that when he went to the ACB Office, he was not having Rs.500/-. Even he answered that he had stated before Police that he did not bring amount with him. Attention was invited to complaint exh.23 wherein complainant informed that he brought the

amount being paid to the accused and such contention was denied while in witness Box in the Court. Therefore, moot question that arises is which currency accused was carrying, which would meant to be paid on demand by accused.

In paragraph no.8 of the cross-examination, he has answered that when he approached accused i.e. on the date of trap, accused only told him that he was in a hurry and that he should come later. Therefore, at such point of time also complainant does not speak about accused putting up any demand. PW2 shadow pancha in cross-examination in paragraph no.11 has admitted that there were no talks with accused during such period. Therefore, during visit to ACB authorities, complainant as well as pancha witnesses are both found to be admitting that there was no conversation with accused.

15. It is fairly settled that in cases of illegal gratification, it is always expected of prosecution to corroborate the testimony of complainant through shadow pancha. As pointed out, paragraph 11 of the cross-examination of PW2 shadow pancha shows that complainant and accused went out of the door of the Office after accused allegedly signaled him to come out. He stated that they were out of Office for few seconds. His such cross-examination

suggests that he was not party to the conversation, which allegedly took place between accused and complainant. Even complainant in paragraph 8 of his cross-examination, has candidly answered that conversation between him and accused took place outside the Office. Therefore, such answers show that except testimony of complainant about demand, there is apparently no corroboration from pancha witness, who was said to be accompanying complainant at the time of actual trap. Therefore, here it is doubtful whether there was demand at all by accused on the date of trap.

16. Evidence of PW2 shadow pancha and PW3 complainant further goes to show that amount is recovered from one Sahebrao and not accused. Case tried to be put by prosecution is that initially accused accepted and pocketed the amount and then on entertaining some suspicion, he thrust the amount in the pocket of Sahebrao. There is nothing to show that there is any nexus between accused and Sahebrao so as to accept the above version. According to complainant, Sahebrao questioned accused why he kept amount in his pocket, but panch witness has stated that there was no conversation between accused and said Sahebrao. Therefore, panch witness and complainant are not lending support to each other on

aspect of acceptance.

In the light of above discussion, to sum up, here PW3 complainant's own case is that when he visited ACB Office, he did not carry bribe amount meant to be paid to the accused and that amount was kept already by ACB authorities on the table. Secondly, the evidence further goes to show that during visit of complainant and panch witness, there was no conversation between complainant and accused regarding payment. On alleged gestures given by accused to complainant, only accused and complainant seem to have come out of the Office. Therefore, PW2 shadow panch was not party to the talk or conversation between accused and complainant. As stated above, currency is not recovered from the person of accused. Such factors, which are emanating on scrutiny of evidence of PW2 shadow pancha and PW3 complainant, renders prosecution version to be not free from doubt.

17. Learned APP has pointed out that there was valid sanction but still learned trial Court has failed to consider and appreciate the same and held it otherwise. In the line of such submission, evidence of sanctioning authority PW1 Mahajan is visited. He is the Sub-Divisional Officer. According to him, he received papers from ACB

Nashik alongwith draft sanction order. He accorded sanction for prosecuting accused and he identified the same to be at exh.15. While under cross-examination, said authority answered that he did not take notes after perusing the papers, he is unable to tell strength of documents sent to him. He admitted that sanction of mutation entry is in the domain of Circle Inspector. He admitted that word appearing therein as 'Lok Sevak' is a mistake. He admitted that power to appoint and remove Talathi is mere delegated power. He admitted that he did not give particulars of documents verified by him on the basis of which he had come to conclusion.

Resultantly, considering the substantive evidence, more particularly, examination-in-chief of PW1 Mahajan, sanctioning authority, it emerges that he does not seem to have given details of the nature of documents perused and studied by him before according sanction. Such approach on his part leaves room to hold that there is no proper application of mind while granting sanction. Resultantly, even sanction seems to be mechanical.

CONCLUSION

18. Perused the judgment under challenge. Learned trial Court seems to have properly appreciated the testimonies of PW2

Madhukar, shadow pancha and PW3 Samadhan, complainant, who are crucial witnesses as well as evidence of PW1 Mahajan, Sanctioning Authority. Reasons for not accepting prosecution version are reflected in paragraph no.13 onwards. How such reasoning and findings are incorrect has not been demonstrated by learned APP.

19. Keeping above referred settled legal position, which is to be borne in mind while exercising powers under Section 378 of the Code of Criminal Procedure, there is no perversity brought to the notice of this Court so as to interfere. With such quality of evidence on record, the view taken by the learned trial Court seems to be the possible view. No case being made out for interference, I proceed to pass following order :

ORDER

Criminal Appeal No.842 of 2004 is dismissed.

(ABHAY S. WAGHWASE)
JUDGE