IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 845 OF 2004

Kamlesh S/o. Govindrao Kamble,
Age : 45 years, Occu. : Government Service
as Sub-Inspector in State
Excise Department, Bhoom,
Dist. Osmanabad (at present under suspension),
R/o. Plot No.2, Snehanagar, Ambejogai,
Taluka : Ambejogai, District : Beed. **... Appellant**
(Orig. Accused No.1)

Versus

The State of Maharashtra,
Through Deputy Superintendent of Police,
Anti – Corruption Bureau, Osmanabad. **... Respondent**
(Orig. Complainant)

WITH

CRIMINAL APPEAL NO.846 OF 2004

Dashrath s/o. Sambhaji Shinde,
Age : 27 years, Occu. : Agriculture,
R/o. Kasba Peth, Bhoom,
Taluka : Bhoom, Dist. Osmanabad. **... Appellant**
(Orig. Accused No.2)

Versus

The State of Maharashtra,
Through Deputy Superintendent of Police,
Anti Corruption Bureau,
Osmanabad. **... Respondent**
(Orig. Complainant)

...

Mr. N. L. Chaudhari, Advocate for Appellants.
Mrs. Ashlesha S. Deshmukh, APP for Respondent – State.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 19th SEPTEMBER, 2024

PRONOUNCED ON : 24th SEPTEMBER, 2024

JUDGMENT :

1. Both convicts for offence punishable under sections 7 and 13(1)(d) read with section 13(2) and section 12 of the Prevention of Corruption Act, 1988 (P.C. Act), have preferred instant distinct appeals bearing Nos.845 and 846 of 2004, thereby challenging judgment and order passed by learned Special Judge, Osmanabad dated 30.11.2004 in Special Case (Anti Corruption) No.11 of 2001.

FACTUAL MATRIX

2. Prosecution was launched against appellants, who are official of State Excise Department and agriculturist, on the premise that, complainant PW1 Rajendra a liquor licence holder had approached accused no.1 Sub Inspector, State Excise Department to send favourable report to the Collector, upon conducting inquiry on alleged Gramsabha resolution, demanding closure of liquor shop at Bhoom. For dispatching favourable report, it is a case of prosecution that, appellant accused no.1 Kamlesh Kamble demanded Rs.50,000/-. Finally, he agreed to accept Rs.25,000/-. Initially, he accepted Rs.15,000/- from complainant and asked complainant to bring the remaining amount to his office.

3. As complainant was not willing to pay illegal gratification, he approached ACB authorities and lodged complaint. ACB authorities

took further steps of arranging panchas, introducing them to complainant, apprising them about the grievance of complainant. Both, pancha and complainant were explained the procedure of application of anthracene powder and planned trap was explained. As instructed complainant and pancha witness visited office of appellant Kamlesh and on his demand and directions, amount was accepted on his behalf by accused no.2. Pre-determined signal was relayed. Raiding party waiting in lay, conducting raid, apprehended both accused and they were booked for provisions of P.C. Act.

Both appellants were tried before Special Judge, Osmanabad vide Special Case (Anti Corruption) No. 11 of 2001 and finally held guilty for above sections. Hence, the instant appeals.

SUBMISSIONS

On behalf of Appellants : -

4. Criticizing the judgment, learned counsel for appellants would submit that, there is false implication. That, there was no demand as alleged. That, amount accepted was towards fine amount due towards complainant. That, there is evidence to that extent. Learned counsel pointed out that, there is no corroboration to the testimony of complainant about demand of Rs.50,000/-, demand brought down to Rs.25,000/- and part amount of Rs.15,000/- being accepted. He would

emphasize that, here, very shadow pancha did not support prosecution. He also emphasized that, here, there is no verification panchanama. He would strenuously submit that, there was deliberate attempt to implicate as repeated attempts had failed. He would emphatically submit that, panchanama was not drawn at the spot, rather it was drawn at police station. That, there are several lapses and infirmities in the investigation and evidence, is not convincing. However, according to him, learned trial court has still accepted the case of prosecution as proved. According to learned counsel, there is improper appreciation of both, evidence as well as law and hence, he prays to allow the appeal.

On behalf of Respondent – State :-

5. In answer to above, learned APP while supporting the judgment pointed out that, both, demand and acceptance is proved. That, demand of any gratification was raised to send favourable report to the higher authorities. That, part payment was accepted. It is pointed out that, after recept of complaint, pre-trap panchanama was drawn. Shadow pancha, who accompanied complainant, partly supported prosecution, and therefore, his entire evidence cannot kept out of purview and consideration. It is pointed out that, amount was accepted at residence by accused no.2 on behalf of and instructions of accused no.1. She pointed out that, there is valid sanction on application of mind. Resultantly, she submitted all requirements for prosecution and guilt

being available, learned trial Judge rightly held both accused guilty.

EVIDENCE ON RECORD

6. **PW1** Rajendra, complainant deposed about owning liquor shop, about Government notification to close down liquor shop if Gramsabha passes resolution by majority. If there is requirement of report of Officer of Excise Department before taking action, so he approached appellant Kamlesh and he demanded Rs.50,000/-, but agreed to accept Rs.25,000/- and part payment of Rs.15,000/- being accepted and before payment of remaining amount of Rs.10,000/- he lodged complaint with ACB, who planned and arranged trap. That, in presence of shadow pancha, accused demanded money at his residence. That, accused no.2 accepted Rs.10,000/- i.e. tainted currency on behalf of and on directions of accused no.1. He relayed signal and trap was executed.

PW2 shadow pancha Navnath, initially deposed about being summoned to ACB office along with other pancha. Dy.S.P. introduced him to complainant and they verified complaint Exh.32. That, Dy.S.P. issued instructions and explained the procedure of trap, application of anthracene to the currency and instructions being given to pay on demand and relayed signal. That, during first visit, office of accused no.1 was closed, and therefore, trap was postponed and executed on next day at the residence of accused no.1 on 18.04.2001. That, accused asked complainant, whether amount has been brought and answering in affirmative and when cash was about to be handed over to private servant of accused no.1, who accepted it and counted it and thereafter complainant gave signal and raiding party carried out raid. That, pancha no.2 carried search of accused no.2. Some other amount was found with accused no.2 and he explained it amount to be paid towards challan and therefore, said amount was returned. As some persons trying to enter, Dy.S.P. took decision to proceed to Bhoom Police Station and panchanama was drawn at police station and identified to be at Exh.41. He deposed that, thereafter both panchas left home. At this point of time, after seeking permission of the court, learned APP cross examined PW2 shadow pancha, in which there is complete denial.

PW3 Arunachalan, sanctioning authority, deposed that he was Commissioner, State Excise Department. He received file from ACB Office, Beed. He studied the entire file and accorded sanction Exh.44.

PW4 P.I. Suryawanshi - ACB Officer and **PW5** Mehandra Bhokare, Dy.S.P., narrated about receipt of complaint, calling panchas, planning and explaining trap and executing it.

7. The fundamental objections raised in appeal could be summarized as under :-

Firstly – No corroboration to the testimony of complainant as shadow pancha did not support on material count.

Secondly – no direct evidence about acceptance of amount by appellant no.1;

Thirdly – No verification panchanama drawn before trap.

Fourthly - Amount demanded and accepted was towards fine and not bribe.

Fifthly – No panchanama drawn at the spot.

In support of above contentions and submissions, he relied on following rulings :

(i) Khaleel Ahmed v. State of Karnataka, 2015 DGLS (SC) 1403

(ii) B. Jayraj v. State of A.P., 2014 DGLS (SC) 298

(iii) Punjabrao v. State of Maharashtra, 2001 DGLS(SC) 254

(iv) State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede, 2009 DGLS (SC) 1109

8. Visited the entire evidence of PW1 Rajendra and PW2 Navnath and carefully analyzed the same. The substance of complainant's testimony is that, he runs liquor shop. By virtue of Government notification liquor shops against whom Gramsabha passes the resolution for closure, action of closure was contemplated. Excise Officer was expected to study the resolution and give suitable report. According to

complainant, in such context, he had approached appellant no.1 Kamlesh with a request to issue favourable report and for the same, there was demand of Rs.50,000/-. When complainant informed him about his inability to pay huge amount, appellant accused agreed to accept Rs.25,000/- and even accepted Rs.15,000/- and directed complainant to pay remaining Rs.10,000/- at his office. He deposed that, as he was not willing, he approached ACB authorities and lodged report to plan the trap and he testified all steps taken by ACB authorities, like summoning panchas, introducing the complainant, they all being explaining the procedure of trap and verification panchanama being drawn. He deposed in paragraph nos.8, 9 and 10 that, during first visit to accused in the company of PW2 shadow pancha, accused was not found in the office as it was closed, and therefore, trap was postponed. During second visit also accused was not in the office, and therefore, they visited his residence and there he testified that accused demanded remaining amount. While paying the amount, accused no.2 accepted it on behalf of accused no.1. After which signal was given to the raiding party, who executed the trap.

Above witness is subjected to extensive cross commencing from paragraph no. 11. Initial question is about permit room at Chausala and Paranda, licence standing in the name of his father and himself. There are questions about contesting Gram-panchayat election, about accused visiting their country liquor shops and permit rooms, during visits there were preparations of challan in the office of accused and depositing amount in banks, about resolution passed by Gramsabha dated 30.11.2000. He denied knowing whether P.I. Koli had submitted favourable report, but admitted that, Tahsildar had issued adverse report and on that report Collector has issued show cause notice as to why liquor shop could not be closed and it being challenged in the court of learned Civil Judge Senior Division. Questions are put about visit to the bar on 25.06.1999. He denied knowing whether the Collector had imposed fine, but he admitted that recovery was ordered against him to the tune of Rs.7,500/- by the Collector Office.

Cross on the point of trap commences from paragraph Nos. 18, 19, 20 and 21 onwards. Relevant cross of trap commences in paragraph nos.22 and 23. But, it is noticed on careful analysis that, testimony of complainant about initial demand of Rs.50,000/-, figure brought down to Rs.25,000/-, Rs.15,000/- accepted and direction to bring remaining amount of Rs.10,000/- to the office has remained intact.

9. Likewise, on analyzing evidence of PW2 Navnath, his evidence in examination-in-chief, paragraph nos.1, 2, 3, 4, 5, 6, 7 and 8 shows that, he was engaged to act as a pancha and was instructed to accompany complainant. He has deposed about pre-trap panchanama

being drawn and accompanying complainant during two visits. In paragraph no.3 he deposed that, on that day, they reached office of appellant no.1 around 1:40 p.m., but office was closed and it was learnt that the appellant was on tour. Dy.S.P. Bhokre instructed to conduct raid on next day i.e. 18.04.2001 of which panchanama was drawn vide Exh.38. On 18.04.2001, fresh panchanama Exh.39 was drawn and thereafter raiding party proceeded towards Bhoom. They reached residence of accused around 1:00 p.m. 2 to 4 persons were already around accused. Accused asked complainant to wait for sometime. After the persons, who came to meet accused left, he and complainant as well as one person called as 'mama' entered the room, where accused was sitting. One constable was sitting on the carpet. Complainant told accused that he had brought the amount in connection with previous matter, upon which accused no.1 asked complainant to deposit the amount and thereafter this witness complainant came out of the room. One Shri Shinde, private servant of accused met them in the passage. Witness pointed out to accused no.2 before the court and deposed that complainant removed the amount from right side pocket, who accepted it. After which complainant gave signal and raiding party reached at the spot. While accused no.2 was counting cash, he was caught. Accused no.1 was unable to say anything. In search of room, amount was found in suitcase. P.C. Nalawade, who took personal search of constable Bhoite found some cash. Panch No.2 Arsul took personal search of accused no.2 and he was found with some cash and accused no.2 told that amount was to be deposited under challan and it was therefore, returned to accused no.2. As people started gathering, Dy.S.P. proceeded to Police Station Bhoom and there panchanama Exh.41 was drawn. Thereafter this witness stated that, after signing panchanama, he and other pancha left.

At this stage, learned APP seems to have sought permission to cross examined its own witness and on permission being granted in paragraph no. 10, he admitted that, on 18.04.2001, enveloped sealed on 17.04.2001 was removed and tainted currency was taken out from the pocket of pant and again anthracene powder was applied. The previous envelop was burnt. Seals were affixed again and he admitted that, after reaching Bhoom, they entered residential room of accused no.1, but he flatly denied that complainant asked accused to submit favourable report, "that accused agreed and asked complainant whether he brought remaining Rs.10,000/-; complainant told that he brought the amount, upon which accused asked him to pay; complainant removed the tainted currency and tendered it before accused no.1; he denied that accused no.1 asked complainant to pay that amount to accused no.2 to collect the amount and retain it with him. He denied that, accused no.2 kept the currency in his pocket and went out of the room. He denied that, he and complainant followed accused no.2. He admitted that, accused no.2 was counting notes in passage and thereafter complainant gave signal. He denied that he told Dy.S.P. by pointing finger towards accused no.2 for accepting the amount on instructions of accused no.1.

In further cross at the hands of accused, witness admitted that, they had met accused no.2 on 17.04.2001. He denied talks between accused no.1 and complainant during first visit. He admitted that, search of accused no.2 was taken in room and not in passage. He admitted that the amount found tallied with the challan, which was of PC Bhoite.

ANALYSIS

10. Therefore, on re-appreciating the above evidence of PW1 Rajendra and PW2 Navnath, firstly, there is no independent evidence lending support to the complainant's version that on 12.04.2001 accused no.1 demanded Rs.25,000/- for issuing favourable report. He claims to have approached accused no.1 on 12.04.2001 along with worker namely Ramkisan Pandurang Nawasekar, but he is not examined to confirm visit and talks between complainant and accused no.1. Though he stated on that day, out of settled amount of Rs.25,000/-, he paid Rs.15,000/- i.e. Rs.5,000/- which he was carrying and he raised Rs.10,000/- from his relatives at Bhoom, such relative is also not examined. According to him, accused called him with remaining amount to his office on 17.04.2001,

but admittedly, on that day, accused no.1 was reported to be on tour. He has not lodged complaint with ACB authorities at Bhoom, but has lodged complaint at ACB Office, Osmanabad by assigning reason that there was possibility of accused to be acquainted with ACB authorities at Bhoom.

11. He has admitted in paragraph no.14 that show cause notice has been served upon him in July 2001 as to why his liquor shop could not be closed and why he has knocked the doors of court. He admitted that, on report of accused no.1, liquor shop run by his father, Collector Osmanabad had already cancelled the licence and in appeal before Commissioner fine was imposed to the tune of Rs.25,000/-. He is unable to state whether said order was set aside in appeal. He also unable to state that, whether Collector Osmanabad had imposed fine of Rs.10,000/- and in paragraph no.16, he admitted that, recovery order of Rs.7,500/- was passed against him and he is unable to answer whether said order was served upon him by accused no.1. He admitted that, many times, challans were drawn in the office of accused no.1 and amount was deposited in the bank. In paragraph 22, he admitted that, when he paid amount to accused no.2, he was in the passage and that from passage, he gave signal to the raiding party. He stated that his statement was recorded by Dy.S.P. Suryawanshi on 24.04.2001.

12. Evidence of PW2 Navnath does not lend support to the above version of complainant about accused no.1 in his house, during visit on 18.04.2001, made a demand of Rs.10,000/- and directed accused no.2 to accept it. Therefore, there is no corroboration to the version of complainant. Complainant in above discussed cross candidly admit that, he was on several times fined and he paid it by visiting office of accused no.1 and even in a room at residence which was operated as a temporary office. Resultantly, demand and acceptance by accused no.1 which are *sine quo non* are not established for prosecution evidence. Therefore, there is force in the objection that there is no evidence about demand and acceptance.

13. As regards to objection about no demand verification panchanama, learned counsel would strenuously submit that, Investigation Officer was expected to get verification of demand got done prior to trap as accused no.1 was a Officer. He seeks reliance on judgment of the Hon'ble Apex court in case of ***Neeraj Dutta v. State (Govt. of N.C.T. of Delhi), (2023) 4 SCC 731.***

Here, on carefully examining entire evidence of complainant, two Officers i.e. PW4 P.I. Suryawanshi and PW5 Dy.S.P. Bhokare, it is noticed that, there is no verification panchanama drawn. Rather, after entertaining complaint, mere pre-trap panchanama is drawn in the ACB office and raids are planned and executed.

The Hon'ble Apex Court in recent ruling of ***Mir Mustafa Ali Hasmi v. The State of A.P.,*** 2024 INSC 503, Criminal Appeal arising out of (SLP(Crl.) No.(s) 9091 of 2022) reproduced the observations of the Constitutional Bench Judgment in the case of ***Neeraj Dutta*** (Supra) and further in paragraph no.31 observed as under :-

> *"**31.** It is the settled convention in such cases that the Trap Lying Officer, makes efforts to verify the factum of demand of bribe by public servant before initiating the trap proceedings. The factum of demand of bribe can also be verified by recording telephonic conversation between decoy and suspect public servant……………"*

Here, in instant case, Investigating Officer does not seem to have undertaken said exercise at all. Therefore, even for said reason prosecution version comes under shadow of doubt.

14. Specific defence raised herein is that amount demanded was towards fine and not bribe amount. Complainant's evidence discussed in cross, more particularly in paragraph Nos. 14, 15 and 16 goes to suggest that on several occasion fine was imposed upon complainant and there is clear admission to that extent. Even pancha PW2 Navnath deposed that accused no.2 before raiding party stated about amount in his possession to be fine amount. Therefore, even said defence, which accused is merely expected to be probabilized and not proved, has some substance.

15. As regards to objection of no panchanama at the spot i.e. post trap, also there is force. As admittedly on the reason of gathering of several people, decision of going to police station and drawing panchanama was admittedly taken by Investigating Officer. This clearly suggest that, no panchanama was drawn at the spot itself, rather accused persons are taken to a distance and then post trap panchanama is allegedly drawn. Even this contributes to the credibility and veracity of prosecution version regarding successful trap.

16. Accused no.2 is booked on the charge of commission of offence under section 12 of P.C. Act. According to prosecution, he acted and accepted bribe at the instance of accused no.1. He was said to be private servant of accused no.1. But, there is no distinct evidence in that regards. Unless it is shown that, he was aware that the amount which he allegedly accepted was bribe and illegal gratification and still he accepted it, knowledge about receiving bribe cannot be attributed to him. There is nothing to show in the evidence of PW1 Rajendra that both accused acted in concert upon conspiracy to accept bribe.

For above reasons, both appeals deserve to be allowed.

17. Perused the judgment under challenge. Learned trial Judge has not taken into consideration the settled legal position of seeking

corroboration to the complainant's version, who is looked upon as a interested witness. Requirement of prior verification of demand has not been ascertained by learned trial Judge. Therefore, interference is called for. Hence, following order is passed :-

ORDER

I) Both criminal appeals are allowed.

II) The conviction awarded to appellants, namely - Kamlesh S/o. Govindrao Kamble and (ii) Dashrath s/o. Sambhaji Shinde in Special Case (Anti Corruption) No.11 of 2001 by learned Special Judge, Osmanabad on 30.11.2004 for the offence punishable under sections 7 and 13(1)(d) read with section 13(2) and section 12 of the Prevention of Corruption Act, respectively, stand quashed and set aside.

III) The appellants stand acquitted of the offence punishable under sections 7 and 13(1)(d) read with section 13(2) and section 12 of the Prevention of Corruption Act.

IV) The bail bonds of the appellants stand cancelled.

V) The fine amount deposited, if any, be refunded to the appellants after the statutory period.

(ABHAY S. WAGHWASE, J.)

Tandale