



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 852 OF 2004

1] Ashok s/o Chunilal Kachi,
since deceased through his L.Rs.-

1-A] Arti w/o Ashok Kachi,
Age – 40 years, Occu.: Household,
R/o.: 'Gajanan Complex', Harsool,
Aurangabad, Taluka and District Aurangabad.

1-B] Akash s/o Ashok Kachi,
Age: 23 years, Occu.: Private Service,
R/o. As above.

1-C] Amit s/o Ashok Kachi,
Age – 17 years, Occu.: Student,
R/o. As above.
(under guardianship of his natural
mother i.e. Arti w/o Ashok Kachi).

1-D] Ashish s/o Ashok Kachi,
Age – 13 years, Occu. Student,
R/o. As above.
(under guardianship of his natural
mother i.e. Arti w/o Ashok Kachi).

... Appellants
[Lrs. of orig. Accused]

Versus

The State of Maharashtra

... Respondent

.....
Mr. Rajendrraa Deshmukkh, Senior Advocate a/w Mr. Vishal A.
Chavan & Vikhyati Jain i/by Mr. Devang R. Deshmukh, Advocate for
the Appellants.

Mr. G. O. Wattamwar, APP for Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 03.09.2024

Pronounced on : 09.09.2024

JUDGMENT :

1. In this appeal, there is challenge to judgment and order of conviction dated 17.11.2004 rendered by learned Special Judge, Aurangabad in Special Case No. 29/1999.

2. It needs to be noted that during pendency of appeal, accused Ashok Chunilal Kachi expired, and therefore appeal was prosecuted by his wife in capacity of legal representative.

PROSECUTION VERSION IN TRIAL COURT IS AS UNDER

3. Son of PW2 Indubai, namely, Rahul, was apprehended by accused, Police Head Constable posted in Detection Branch at Jawaharnagar Police Station, on suspicion of committing theft of bundle of wire and was taken to police station. Complainant followed and visited police station to inform that her son Rahul had not committed theft, rather it was found, and she pleaded to let her son off, but accused Ashok demanded Rs.2,000/- to release her son. When she expressed her inability to pay such amount, she being poor, he brought down the demand to Rs.1,000/-. As she was not willing to give bribe, she lodged report with ACB authorities who planned and arranged trap by arranging panchas. Complainant and pancha were

explained the procedure and necessary instructions were given to pay tainted currency on demand. Accordingly, PW3 Thorat, who acted as shadow pancha, went to the house of complainant. Accused approached complainant and put up demand and on its payment, she gave predetermined signal. Raiding party, which was waiting in lay, apprehended accused and he was resultantly booked and chargesheeted for offence punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 [PC Act].

4. Deceased Ashok was tried by Special Judge vide Special Case No. 29 of 1999. On appreciating the evidence of in all five witnesses, learned Special Judge accepted the case of prosecution as proved and by judgment and order dated 17.11.2004, held deceased Ashok guilty for offence under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 [PC Act].

Hence the appeal.

SUBMISSIONS

On behalf of the appellants :

5. Learned senior counsel, pleading innocence and false implication, pointed out that prosecution had failed to bring home the

charges beyond reasonable doubt. He pointed out that it is a clear case of thrusting money as complainant was annoyed for her son was booked in some crime. Learned senior counsel took this court through the testimony of complainant and submitted that she has admitted that she was annoyed and angry with accused because he had taken her son Rahul twice to the police station and had beaten him in police station and also abused him on mother and sisters. Learned senior counsel further submitted that shadow pancha admitted that he was sleeping by pulling *chadar* over his face and therefore he was not party to the alleged visit of accused or any demand. Further, complainant and pancha witness are at variance on the time of raid. He pointed out that according to complainant, she took out tainted currency from cloth bag, whereas pancha deposed about tainted currency taken out from purse. Therefore, with such variance, he would submit that, prosecution story is unworthy of credence.

6. Learned senior counsel further submitted that here, sanctioning authority has admitted that he was in receipt of a draft sanction. That, his evidence does not show that there was application of mind before according sanction, and rather it was in mechanical manner. He next submitted that here, verification panchanama has not been drawn by the Investigating Officer. Moreover, immediately after the alleged

raid, accused had given written statement that amount was deliberately thrust to implicate him and he had not demanded or accepted any amount. For all above reasons, learned senior counsel questions the story of prosecution as well as the quality of evidence and criticizes the judgment to be based on assumptions and presumptions and without any strong, legally acceptable evidence.

On behalf of respondent State:

7. Per contra, supporting the judgment, learned APP submitted that accused had detained son of complainant on mere suspicion and there was no record of his custody at police station. That, to release her son, accused had demanded Rs.2,000/-. That, he also threatened that on failure to comply the demand, her son would be involved in another crime. That, out of fear, complainant agreed to pay Rs.1,000/- but she approached ACB and lodged prompt report resulting into planning of trap and it being successfully executed. He pointed out that accused Ashok was apprehended in the house of complainant when he went there to collect the bribe amount for not taking action on her son in future. That, shadow pancha was present there and he had seen and witnessed the visit, demand as well as acceptance. Learned APP pointed that tainted currency was recovered

from the possession of accused. That, false explanation has been offered. Learned trial court has correctly appreciated the available evidence and, according to learned APP, no fault can be found in the manner of appreciation and findings recorded by learned trial Judge and consequently, he prays to dismiss the appeal.

EVIDENCE ON RECORD

PW1 Prakash Sengaonkar, sanctioning authority, who was a D.C.P. ranking officer, deposed about receiving papers from ACB i.e. pertaining to crime no. 3005/1999. He studied the papers and accorded sanction Exhibit 12.

PW2 Indubai - informant narrated events of her son being taken to Jawaharnagar police station by accused, she visiting police station to get her son released but accused refusing to release and rather demanding Rs.2000/- for his release. That, after accused left, she got her son released i.e. while other superior officer was on duty. She deposed that accused approached her and questioned how her son was released and threatened to implicate her son in another case if she fails to meet his demand. She offered to pay Rs.1000/- in installments and as she was not willing to pay bribe, she lodged report. ACB arranged trap. Shadow pancha accompanied her in the house and when accused came to take the bribe amount, she offered on his demand and when he accepted it, she gave signal, followed by accused being apprehended by raiding party.

PW3 Thorat, shadow pancha stated that he was called to act as pancha, was introduced to complainant, he heard her grievance and agreed to act as pancha. He visited house of complainant as instructed. Accused came there, put up demand and accepted bribe, after which complainant gave signal and accused was apprehended.

PW4 PSI Patil, posted at Jawaharnagar Police Station, who released son of complainant.

PW5 P.I. Chaudhari is the Investigating Officer.

ANALYSIS

8. After considering the submissions of learned Senior Counsel, case seems to have been put up that, as son of complainant was involved in crimes and was apprehended, out of annoyance, there was deliberate entrapment by thrusting tainted currency. There was never any bribe demanded or accepted.

9. In the line of above defence, if evidence of complainant PW2 is put to minute scrutiny, it seems that complainant's son, namely, Rahul aged 14 was allegedly taken to Jawaharnagar Police Station by deceased accused Ashok who undisputedly was there as a constable in

detection branch. When the complainant lady visited police station to plead innocence of her son and with a request to release him, she deposed that, accused demanded Rs.2000/- for releasing her son. She has testified that when she expressed her inability to meet such demand, she being poor, she claims that accused asked her to come to the court tomorrow. On next day she seems to have again visited police station and at that time, approached accused and told that she has brought Rs.500/- only. However, he demanded Rs.1000/- instead of Rs.2000/- and left the police station. She claims that another officer was approached by her who released her son. She further deposed that at around 9.00 p.m., deceased accused visited her house, questioned her who released her son and further threatened to implicate her son in another case and arrest him if she fails to pay Rs.1000/-. She deposed that she offered Rs.200/- and assured to pay remaining balance in 2 to 3 days. He accepted Rs.200/- and told her to pay him Rs.500/- on Friday and remaining Rs.300/- later on. She claims that as she was not willing to pay the bribe, she lodged report with ACB, who planned and arranged trap. In para 6 and 7, she stated that at her house, shadow pancha accompanied her and around 5.00 p.m. accused came on motorcycle. He sat on the same cot where shadow pancha was pretending to sleep. Accused demanded money. She told him that she could not raise Rs.800/- and rather succeeded

in gathering Rs.500/- only, upon which accused told her to pay Rs.300/- on Sunday. On demand, she paid him Rs.500/-, went in another room and transmitted signal and accused was resultantly caught by raiding party. He was found in possession of tainted currency.

10. On visiting her cross, she has admitted that previously, her son was taken to Jawaharnagar Police Station by accused. She admitted that accused had beaten her son in police station and therefore she was annoyed. That, as her son was under watch, she thought that accused might detain her son in some crime. There is cross on neighbour Sitabai, who, complainant deposed that, was an informer of the police. She answered that she does not know whether accused was visiting her house. She answered that shadow pancha was sleeping on the cot by covering his face with *chadar*. Rest is all denial, including thrusting of amount in the hand.

11. PW3 shadow pancha who is examined at Exhibit 17, in para 6 stated that on instructions of ACB, he went to the house of complainant. While he was lying on the cot, around 5.30 p.m., complainant told that accused had come and to make space to sit on the cot. Shadow pancha stated that accused sat on the cot and asked

complainant whether amount of Rs.800/- was ready. He also narrated that complaint told accused that she could arrange only Rs.500/- and not 800/-, upon which she offered Rs.500/-and assured give Rs.300/- on Sunday. He also deposed that complainant took out tainted currency and held it before accused, who took it and counted it and thereafter complainant gave signal and trap was executed.

12. On visiting his cross, it is merely brought that he was unable to see another pancha Shelar and he was lying on the cot having *chadar* on his person. He denied that as he was sleeping, he could not witness the events.

13. On appreciating and analyzing testimony of PW2 complainant Indubai and PW3 shadow pancha Thorat, it has come on record that accused, a police constable posted at Jawaharnagar police station, apprehended son of complainant and when his release was sought, he had demanded Rs.2000/- and finally agreed to take Rs.1000/-. In his absence, son of complainant was released and therefore he seems to have visited her house to question about it, and it is further emerging that, he also threatened to implicate her son in another crime if she fails to meet his demand, and therefore she has lodged report. PW3 shadow pancha, who is also examined, was party to the planning and

arranging of trap and had also accompanied complainant to her house. He is independent witness. He had no axe to grind. He has also narrated that in complainant's house, around 5.30 p.m., accused had come to collect bribe amount, demanded it and even accepted part amount. Both, PW2 complainant and PW3 shadow pancha, are consistent on all events taking place in the house of complainant. In presence of shadow pancha, there is not only arrival of accused to the house of complainant, but also demand and acceptance by him. There is no explanation as to why accused visited house of complainant for no reason even when there was no crime or offence registered against her son. His very visit to her house twice, clearly indicates that he had intentions to accept bribe to not to implicate her son in any other case. PW2 complainant and PW3 shadow pancha, as stated above, are consistent and lending support to each other on all the events.

14. Learned senior counsel pointed out that witnesses are not consistent and there is variance in the timing. Mere different timings quoted by complainant and pancha witness, itself will not wash away the act of demand, acceptance and immediate possession of tainted currency with accused, that too, in the house of complainant. There was no justifiable reason for deceased accused to visit complainant's house. Repeated visits to her house clearly show that he had sinister

motive of seeing that his demand of bribe is met. Mere immediate recording of statement that amount was thrust, itself will not be sufficient to discard the evidence of complainant which is getting fortified from the testimony of independent witness ie. shadow pancha. Similarly, mere answers given in cross by illiterate lady complainant that she was annoyed with accused for taking her son to police station, is no reason to falsely implicate, as is tried to be put forth. Likewise, variance in the testimony about both hands being caught and blue shining reflected on only one hand, also would not come to the rescue of accused, who had put up demand of bribe and further apprehended in presence of independent shadow pancha. Therefore, the defence put up of thrusting, is of no avail to the deceased.

15. As regards to sanction is concern, it is apparently by a D.C.P. ranking officer who is admittedly of a rank of S.P. He has categorically stated that he had received papers and he had studied the same. His such testimony shows that there is application of mind while according sanction. It cannot be said to be sanction given in mechanical manner. Mere acceptance about receipt of draft also itself would not be of much relevance when there is no further effective cross of using draft as a sanction order.

16. To sum up, case of prosecution has been correctly appreciated by the trial Judge. The view taken by the trial Judge is the most possible view that could emerge on careful appreciation and re-appreciation. No case being made out on merits, there is no reason to interfere. Hence, I proceed to pass the following order:

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]

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