



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

**CRIMINAL APPEAL NO. 520 OF 2003
WITH
CRIMINAL APPLICATION NO. 2880 OF 2018**

Kamalakar s/o Deoba Sabale,
Age : 41 years, Occu. : Service,
(Working as Talathi at Aurangabad),
Tq. & Dist. Aurangabad

... Appellant
(Accused)

Versus

The State of Maharashtra,
Through P. S. Karmad
Dist. Aurangabad.
for ACB Aurangabad

... Respondent

...
Mr. Joydeep Chatterji, Advocate for Appellant.
Mr. N. D. Batule, APP for Respondent - State.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 29th FEBRUARY, 2024

PRONOUNCED ON : 6th MARCH, 2024

JUDGMENT :

1. Conviction awarded for offence punishable under sections 7 and 13 of Prevention of Corruption Act, 1988 by the learned Special Judge, Aurangabad in Special Case No. 4 of 1998, dated 25.06.2003 is hereby assailed by the accused.

FACTUAL MATRIX

2. In brief, prosecution was launched against present appellant on accusation that, while he was working as Talathi and thus being a public servant, he demanded illegal gratification to the

tune of Rs.5,000/- from complainant PW1 Baliram, who had approached him with a request to take mutation entry of Vatsalabai in 7/12 extract. Complainant PW1 Baliram approached Anti Corruption Bureau (ACB) authorities, lodged complaint at Exh.19. Said Authorities planned raid and trap by arranging panchas on 01.01.1997. While complainant was accompanied by panch witnesses, accused demanded and accepted amount and was thereby apprehended. After investigation, he was charge-sheeted for above offence and on trial being conducted, held appellant guilty by learned Special Judge, Aurangabad. Hence, instant appeal.

SUBMISSIONS

On behalf of appellant :-

3. The sum and substance of arguments advanced by learned counsel for appellant is that, there is no dispute that appellant was working as Talathi. According to him, on that day, amount was accepted not as a bribe, but amount towards small savings scheme, which is a scheme enforced by Government and work of which was entrusted to appellant. Further according to him, evidence of complainant and shadow panch is not convincing. That, in fact prosecution had failed to establish demand and acceptance of illegal gratification beyond reasonable doubt. He took this court through the testimony of PW1 Baliram and would point

out that in substantial evidence itself, complainant was confused whether the amount demanded was for himself or not. He invited attention of the court to para 3 of examination-in-chief of complainant.

4. He next submitted that, complainant himself was not willing to lodge complaint, but he had lodged complaint at the instance of one Sandu Shalke and there is admission to that extent in para 6 of cross. Further according to him, material witness Vishwanth Maharaj, who allegedly accompanying complainant has not been examined. It is tried to be impressed that very testimony of complainant in para 4 clearly shows that, there was no demand at all from appellant side, rather complainant himself, before any demand declared that he had brought money. Therefore, according to learned counsel, there is no demand in this case.

5. Learned counsel also submitted that, complainant in the substantive evidence deposed about accused agreeing to issue receipt and the same was towards small savings scheme, of which appellant was given target by higher authorities. According to learned counsel, if there is illegal gratification, where is the question of issuing receipt. Further according to him, at the time of said demand, several independent persons were present, but the same are also not examined.

6. Attacking the prosecution case for want of sufficient corroboration to the testimony of complainant, he pointed out that, even panch witness has deposed that, in his presence accused prepared receipts in the name of Vatsalabai and on payment of amount, accused agreed to issue receipt. Consequently, learned counsel submitted that, even this independent witness confirms issuance of receipt on payment. He invited attention of the court to the deposition of PW3 Shivaji in para 3 and pointed out that, complainant had demanded receipts after paying. Thus, according to him, with such material on record, by no stretch of imagination it can be said that there was acceptance of illegal gratification.

7. Criticizing the prosecution evidence on the point of sanction, it is submitted that, there is no proper scrutiny or application of mind independently. Moreover, sanctioning authority himself confirmed that, there was no work of complainant pending with accused. Further, sanction was apparently accorded by putting to use draft sanction order. He pointed out that even sanctioning authority admitted in cross that, scheme of small savings was to be executed by Talathis and as such though amount was accepted, there is no demand of illegal gratification and the amount is towards small savings scheme.

For all above reasons, he submits that, it is a fit case to extend benefit of doubt as prosecution has failed to discharge its primary burden by proving the case beyond reasonable doubt.

Learned counsel for the appellant, in order to substantiate his contentions, placed reliance on the following rulings :

- i] *Tryambak Lilaji Binnar v. State of Maharashtra, 2002 (3) Mh.L.J. 293*
- ii] *Ratnakar Narayan Morankar v. The State of Maharashtra, Criminal Appeal No. 560 of 2005 (High Court of Bombay, Bench At Aurangabad)*

On behalf of State :-

8. In answer to above, learned APP pointed out that, prosecution had establish its case by adducing testimony of complainant and independent shadow panch, who are both consistent on the point of demand and acceptance of illegal gratification for entering name in 7/12 extract. The defence put up is false and afterthought. The demand was only for doing official work and not towards any scheme. Sanctioning authority has accorded sanction after application of mind, and therefore, taking such evidence into consideration, it is submitted that, learned trial Judge has rightly convicted the accused and he prays to dismiss the appeal.

9. On carefully scrutiny and re-appreciation, here, it is the case of prosecution that, accused appellant while working as a Talathi, put up a demand of illegal gratification for entering name in revenue record. Trap was laid and he was apprehended while accepting and possessing tainted currency.

Whereas, defence put up is that though amount was accepted, it was not towards illegal gratification, rather it was towards contribution for small savings scheme.

EVIDENCE ON BEHALF OF PROSECUTION

10. PW1 Baliram is the complainant. The sum and substance of his evidence is that, when he approached accused for entering name of his sister in 7/12 extract, there was demand of Rs.5,000/- which was subsequently brought down to Rs.2,000/- and remaining Rs.3,000/- was to be paid later. Thereafter, complainant approached Anti Corruption Bureau (ACB) authorities, lodged complaint at Exh.19 and ACB authorities arranged pancha, explained them the procedure and directed to pay tainted currencies on demand. After meeting, complainant initially asked accused about his work, upon which accused initially issued two receipts (Exhs.21 and 22) and after tea accused asked about the money as settled on previous day, upon

which complainant took out the same and held it before accused, who collected it and accepted and thereafter raiding party apprehended accused.

11. On going through the cross of complainant, questions seem to have been put regarding the incident taking place eight years back. He admitted that, he was aware that accused was not authorized to do their work. He admitted that, one Sandu Shalke had told him about ACB office and that accused had offered to deposit the amount with Tahsil office or with him, by handing over four forms, suggesting to obtain thumb impression of Vatsalabai. He admitted that, he had asked the accused about the receipt of Rs.2,000/-, to which accused told him that he would get it after paying the whole amount. Accused told that, the said amount would be deposited in the name of Vatsalabai. He further admitted that, he lodged report at the instance of Sandu Shalke.

12. Shadow panch PW3 Shivaji at Exh.37 testified about visiting ACB office, being introduced to complainant, going through his complaint, he and complainant both made aware of the procedure of application of anthracene powder to the currencies, panchanama of the same being drawn and he accompanying complainant to approach accused. According to him, accused asked

complainant whether amount has been brought as agreed. In his presence, accused prepared two receipts of Rs.240/- and Rs.225/- respectively in the name of Vatsalabai while at office and when they went to take tea, accused asked whether he had brought the money and complainant told that he has brought Rs.2,000/- as told to him and then accused demanded him the money, which was handed over by complainant and accepted by accused. Panch further testified that, accused then asked the complainant when he would give balance amount of Rs.3,000/-, upon which complainant told that he would pay after selling the cotton.

13. On going through the cross of shadow panch, there is omission brought regarding before going to take tea accused asking complainant about money. He is further asked who was sitting in the hotel, its distance from Talathi office, at what distance accused was caught, whether there was Master and Waiter in the hotel. In cross it has been brought that, complainant paid tainted money to the accused in the hotel and accused made some account and calculations. Rest is all denial.

ANALYSIS

14. Pointing to the above evidence, learned counsel for appellant tried to submit that, it is clearly emerging that, after accepting the amount, there was drawing of receipts (Exhs.21 and

22). That, both complainant as well as shadow panch are candidly admitting about accused accepting money and drawing receipts and even returning some amount to complainant. Therefore, it is his submission that, defence of accused is clearly made out. That, the amount so demanded and accepted was towards small savings and not a bribe.

This argument though sounds attractive, it cannot be accepted for the simple reason that Exhs. 21 and 22 are receipts toward revenue record. Complainant is very categorical in complaint as well as substantive evidence that when he approached accused to enter name of his sister Vatsalabai in 7/12 extract, accused demanded Rs.5,000/-. Complainant agreed to pay Rs.2,000/-. Complainant is further categorical that, he was able to pay only Rs.2,000/-, and therefore, he was asked to come on next day i.e. on 01.01.1997 and accordingly an amount of Rs.550/- was handed over **in addition** to Rs.2,000/-. He further categorically stated that, at such time, he had agreed to pay remaining amount of Rs.3,000/- after work is done. Witness further stated that, he sought indulgence of Vishwanath Maharaj to reduce the amount.

PW3 Shivaji shadow panch also, though speaks of accused preparing receipts of Rs.240/- and Rs.225/- respectively

and refunding Rs.50/- while at Tahsil office, but he is also categorical that thereafter they went to have tea and that time again accused asked complainant whether he brought money, upon which complainant said to him about bringing Rs.2,000/- as told to him, then accused demanded and even accepted the amount in his fist. It has further come in his evidence that, accused again asked complainant when he would pay the balance amount of Rs.3,000/-.

Considering such evidence of PW1 Baliram and PW3 Shivaji, in the opinion of this court, there is no confusion that, when complainant approached accused, he put up a demand of Rs.5,000/- and finally agreed to accept Rs.2,000/- on the day of trap and that remaining amount would be paid later on. Though there is conversation about paying Rs.240/- and 225/-, of which receipts are issued, bribe amount is distinct demand for carrying mutation. Here, evidence of PW1 Baliram and PW3 Shivaji clearly shows that, on the day of trap, again demand was raised and met. Questioning by accused regarding remaining amount of Rs.3,000/- fortifies the aspect of demand of Rs.5,000/-. Mere suggestion about accused, being Talathi, also performing work of small savings scheme, itself would not be sufficient to hold that the amount so accepted was towards said scheme and not towards bribe. Further, there is no distinct suggestion to PW3 Shivaji and independent

panch on the point of amount paid towards small savings scheme. Hence, defence so taken cannot be accepted as a rebuttal of presumption or probabalizing the defence.

15. I have gone through the rulings and citations tried to be taken aid of, but facts in those cases are materially distinct than the facts in the case in hand. Therefore, with due respect, it is not open for appellant to seek reliance of the same. Though this very court had accepted such defence of accused in the case of ***Ratnakar Narayan Morankar (supra)*** in Criminal Appeal No.560 of 2005, there was distinct material about contribution made towards small savings. Here, it is not so. Except mere suggestions, there is nothing to accept such defence. Hence, none of the rulings can be taken aid of by the appellant.

16. Having gone through the impugned judgment, this court is convinced that, with such quality of evidence, the conclusion reached at by learned trial Judge is just, legal and proper and findings are supported by assigning sound reasons. No perversity or illegality is brought to the notice so as to interfere in the findings arrived at by the learned trial Judge. Finding no merits, I proceed to pass the following order :-

ORDER

- i) The criminal appeal stands dismissed.
- ii) In view of disposal of the appeal itself, Criminal Application No.2880 of 2018 does not survive and it is accordingly disposed of.

(ABHAY S. WAGHWASE, J.)

17. On pronouncement of this judgment, learned counsel for appellant prays four 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, four weeks time is granted for the appellant to surrender.

(ABHAY S. WAGHWASE, J.)