



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 839 OF 2014

The State of Maharashtra,
Through
Shri Balasaheb Dinkarrao Kopner,
Police Inspector,
Anti Corruption Bureau, Ahmednagar

... Applicant
(Orig. Complainant)

Versus

Shaikh Anwar Abdul Kadar,
Age : 54 years, Occu. : Service,
Police Sub Inspector,
Nagar Taluka Police Station,
Ahmednagar.

... Respondent
(Orig. Accused)

...
Mr. D. J. Patil, APP for Appellant – State
Mr. Abhinay Khot h/f. Mr. Vinay A. Sarwade, Advocate for Respondent
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 26th APRIL, 2024

PRONOUNCED ON : 06th MAY, 2024

JUDGMENT :

1. By instant appeal State is questioning the judgment and order dated 30.11.2013 passed by Special Judge, Ahmednagar in Special Case (ACB) No.04 of 2009, thereby acquitting present respondent from offence punishable under sections 7, 13(1)(d) read with section 13(2) of Prevention of Corruption Act, 1988 (P.C. Act).

PROSECUTION STORY IN TRIAL COURT IN NUTSHELL IS AS UNDER

2. PW2 Nanda, complainant was running a canteen. Truck drivers on the highway, who took stop at her canteen, whenever were short of cash, paid her in the form of petrol. Accused, a police officer used to demand regular *hafta* for possessing and selling petrol without permit. Prior to the complaint, he demanded Rs.5,000/- *hafta* in advance for the entire year. Complainant not being willing to comply, approached Anti Corruption Bureau, lodged complaint. ACB Authorities planned and arranged trap. Independent pancha PW3 Kantabai as well as complainant were introduced, made aware of procedure of trap and were instructed to go together to pay bribe on demand and relay predetermined signal, after which it was decided to apprehend accused.

3. Trap was laid on 26.09.2006. Accused, after being approached by PW2 Nanda and PW3 Kantabai, put up a demand and accepted the amount and kept it in the drawer. Signal was given by complainant, raid was conducted and accused was apprehend. PW4 P.I. Balasaheb Kopner filed complaint, carried out investigation and on its completion, charge-sheeted accused and on trial being conducted, learned Special Judge acquitted accused,

holding that, prosecution failed to prove demand and acceptance.

Above judgment and order is questioned by State on various grounds spelt out in the appeal memo.

SUBMISSIONS

On behalf of Appellant – State :-

4. According to learned APP, accused a police officer was regularly demanding *hafta* from complainant. When he demanded Rs.5,000/- for entire year, complainant approached ACB Authorities and lodged complaint, resulting into arranging and laying trap. That, shadow pancha was arranged and both, complainant and shadow pancha were given proper instructions. They both approached accused to pay demanded bribe. They deposed to that extent. That, they both consistently deposed about amount handed over by complainant and accused keeping it in the drawer. Therefore, according to learned APP, raid and trap was successful. Both these witnesses corroborated and lend support to each other. That, their evidence has remained intact in examination in cross. That, sanctioning authority after getting satisfied, accorded sanction and thus according to learned APP, all required ingredients for recording guilt were available in the evidence, but learned trial Court failed to consider and appreciate

the prosecution case. That, erroneous approach has been adopted in appreciating the evidence. Law has not been correctly appreciated and for all above reasons, learned APP submits that impugned judgment is required to be set aside by allowing the appeal.

On behalf of Respondent :

5. Per contra, learned counsel for accused respondent pointed out that, prosecution miserably failed to establish the charges beyond reasonable doubt. *Sine qua non* for attracting charges i.e. demand as well as acceptance has not been cogently proved. It is pointed out that, moreover, complainant had bad antecedent and track record of indulging in illegal activities. Complainant in examination-in-cross has admitted that, she was booked, tried and arrested by present respondent for violating law. Therefore, there is false and deliberate implication. That, complainant had deliberately set up a case to implicate and take revenge. He pointed out that, there is no demand or any evidence about that. Shadow pancha admitted that, in her presence, there was no demand. It is further pointed out that, amount was also not accepted or recovered from accused. Resultantly, it is submitted that there was neither demand or acceptance. Consequently, learned trial court committed no error whatsoever in acquitting

the accused and for want of merits, he prays to dismiss the appeal.

EVIDENCE ON RECORD

6. **PW1** D.G.P. Anami Roy, sanctioning authority deposed about receiving papers from ACB, then perusing the same, getting satisfied about case being made out for sanction and accordingly granted the same vide Exh.27.

PW2 Nanda, complainant deposed that, she ran a canteen. Customers, who were drivers of vehicle and tanker drivers, sometimes halt at her canteen and instead of cash, gave her petrol or diesel. Accused police officer has lodged false complaint for unauthorized possession or sale of petrol and demanded Rs.500/- *hafta* per month. Prior to the complaint, he demanded Rs.5,000/- for entire year and she lodged complaint in the office of ACB at Exh.31. Presence of **PW3** pancha, ACB authorities explained procedure and gave instruction of trap. She and pancha visited Police Station. Accused demanded the amount. She handed over the same, but accused called one Dahatonde, another police to receive the amount. Amount was kept on the table and accused put it in the driver. Seeing raiding party arrive, he threw the currency in the water tank, but was apprehended.

PW3 Kantabai, shadow panch also reiterated that she

was called to act as a pancha, introduced to complainant, she verified the contents of complaint and that she and complainant being explained the procedure by ACB and sent with tainted currency to police station to pay on demand and to relay predetermined signal. At Police Station, accused asked complainant whether she brought money and when it was answered in affirmative, accused asked her to pay amount to Dahatonde. Complainant removed cash from purse and kept it on the table, upon which accused kept it in drawer and complainant gave signal, followed by arrival of raiding party. Meanwhile, accused went and threw currency in the water tank and was thereafter arrested.

PW4 PI Balasaheb Kopner is the Investigating Officer and he narrated all events from receipt of complaint, till charge-sheeting accused.

ANALYSIS

7. On carefully re-examining and re-appreciating the complainant's evidence, it is pertinent to note that, testimony of complainant does not specify exactly when and where accused approached her and demanded Rs.5,000/- for one year. She merely speaks of his visit 8 days prior to complaint. In cross she admitted that, there are several cases of illegal sale of kerosene and diesel

against her. She admitted that, one month prior to incident, a case was lodged against her. She admitted that, raid being conducted, but she is unable to remember breaking open lock of her house. She admits to be found in possession of 220 liters kerosene. She also admitted that, she was kept in custody at Police Station by accused.

8. She is unable to state when she decided to lodge complaint. In cross, she candidly admitted that, she does know the procedure to file complaint. She is unable to assign any reason as to why portioned marked 'A' is appearing in his statement, i.e. regarding *"I told PSI Shaikh that Panch Smt. Jadhav had come from Pune saying that she was my maternal sister."*

She is unable to state in which hand of accused she handed over tainted currency. She is also unable to remember informing police about placing currency on the table and she admits that she was confused. She again stated that she does not remember about informing police regarding keeping the currency on table. She is unable to state how many drawer to the table of accused. She is also unable to state how portion marked "B" is appearing in his statement i.e. regarding *"I came to the open space inside the main gate of the police station and I gave the signal*

about accepting the prescribed bribe, by removing the scarf tied on my head with my left hand and holding it in my hand.”

9. On analyzing cross of PW3 Kantabai, shadow panch, she is found to be admitting in paragraph no. 5 that there were no talks between accused and complainant relating to work in her presence. In paragraph no. 6, she is unable to state how portion marked ‘A’ is appearing in her statement, i.e. regarding *“then in that room, on the right side of the entrance, a uniformed officer was sitting on a chair next to a table, and two officers with informal/ordinary clothes were sitting on a chair next to him.”*

In paragraph no.7, she admitted that, after complainant took out currency to handover the same to the accused, he did not accept and further admitted that, complainant herself placed the currency on the table and thereafter she and complainant left the room. She admitted that, during inquiry, she had informed that she is unable to remember conversation between complainant and accused and that she merely saw complainant keeping the cash on the table. She also admitted that, she gave statement that she had not seen accused throwing the currency notes in the water tank and that she is unable to state how currency notes fell in the water tank.

10. Therefore, the above answers given by complainant and shadow panch, who are crucial witnesses, while facing cross, renders case of prosecution weak about demand as well as acceptance. As stated above, when exactly demand was made is not proved. Panch witness is not supporting complainant on account of demand at police station. Her evidence also shows that, she did not hear conversation of demand between accused and complainant. She merely speaks of complainant giving currency and accused not accepting and complainant herself keeping currency on the table. Complainant claims that, accused collected the currency and put it in the drawer, and thereafter, he went and threw in water tank, but her companion, whose answers in cross are reproduced above goes to show that, PW3 Kantabai is not supporting complainant on events that took place at police station. Admittedly, there is no evidence about accused accepting the currency. Therefore, there is weak or no evidence about demand and no convincing evidence is available about acceptance also.

11. Resultantly, very essentials of offence being not cogently proved, no fault can be found in the appreciation or conclusion drawn by learned trial Judge. On re-appreciation of evidence at the hands of this court, the view taken by learned trial

Judge seems to be the possible view that could emerge on analyzing the evidence of prosecution. No case being made out on merits, hence the following order :-

ORDER

The Criminal Appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)