

Vai / Sawant

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.63 OF 2004

State of Maharashtra

.. Appellant

Versus

Chandrakant Revansidha Mathapati

.. Respondent

.....

- Ms. Sangita Phad, APP for Appellant – State of Maharashtra.
- Mr. Viresh V. Purwant a/w. Mr. Suraj V. Gadkari, Advocates for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 29, 2024

ORAL JUDGEMENT:

1. Heard Ms. Phad, learned APP for Appellant – State of Maharashtra and Mr. Purwant, learned Advocate for Respondent.

2. This is an appeal against acquittal challenging the judgment of acquittal dated 27.05.2003 of indicting, convicting and sentencing the Accused for having committed an offence punishable under Section 7 and Section 13(1) (b) read with Section 13 (2) of the Prevention of Corruption Act, 1988. Appellant shall be referred to as Accused for convenience.

3. Briefly stated, Accused was working as a Junior Engineer attached to the MSEB, Yashwant Nagar, Sub-Station, Solapur. In January 1999, Complainant wanted to start a flour mill in the name of his wife and approached MSEB and submitted application in the prescribed form for seeking electricity connection. He met Accused,

who was a Junior Engineer in MSEB office and gave details of the length and breadth of the premises, so as to ascertain the details of charges for the electricity connection to be provided by MSEB. Considering the dimensions of his premises, it is prosecution case that Accused informed Complainant that he would have to deposit an amount of Rs.7,000/- for the same. It is the prosecution case that the Accused informed Complainant that if he wanted the deposit amount to be reduced, then he would have to show a reduced area of his premises so that he would be advise a lower quotation. Thereafter Complainant deposited initial amount of Rs.3,500/- for the electricity connection to his shed. It was Complainant's desire that electricity connection be provided before 'Gudipadva day' on 18.03.1999. The evidence on record clearly states that as on 18.03.1999 and 19.03.1999, the electrical work for providing electricity connection was indeed carried out on the premises of Complainant, but it was not completed. Record shows that immediately before 'Gudipadva' the Complainant met the Accused in his office, when it is alleged that the Accused made a demand of Rs.1,000/- for providing the electricity connection. Further, it is prosecution case also that Complainant met Accused on 16.03.1999, on which date Accused once again made a demand of Rs.500/- for providing the electricity connection. This is the substantive case of the prosecution based on which the Complainant approached the ACB and on 19.03.1999. A trap was laid

and Accused was apprehended leading to filing of the Complaint.

4. The entire case of the prosecution stands or falls on the basis of the evidence of Complainant namely PW-1. In his examination-in-chief, Complainant - PW-1 has deposed that on 19.03.1999 i.e. the date of incident he met Accused (in his office) for ascertaining the status of completion of electricity work (in his office) and told him that he had brought with him an amount of Rs.500/- demanded by him. Next he has deposed that Accused placed his right hand in front of him and he removed the amount of Rs.500/- with his right hand and paid it to Accused. Next, he has deposed that Accused accepted the amount and kept it in his left side shirt pocket and asked him whether the amount was Rs.500/- to which his answer was in the affirmative. The fact of giving and accepting the graft has been adequately proved by the pre-trap and post-trap panchnama in this case. There is no doubt whatsoever about that but what is crucial are the admissions of the Complainant in his own cross-examination thereafter. At this juncture it needs to be pointed out that PW-1 is the sole eye witness to the offer and acceptance of the graft amount. As opposed to the above deposition in paragraph No.11 learned Trial Court has recorded the cross-examination of PW-1 in response to his examination-in-chief. For the sake of reference and convenience paragraph No.25 of his cross-examination is delineated below as it appears and recorded by the Trial Court:-

“25. On 19.03.1999 I visited A.C.B. office before visiting MSEB office. It is true that on 19.3.1999 there was no demand made by accused until I had visited A.C.B. office. On 19.3.1999 when I visited ACB office, both Panchas were present in A.C.B. office. It is true that on 19.3.1999 I had forcibly thrust the amount in the pocket of accused. It is true that when accused was trying to see what was kept in his pocket in the mean time A.C.B. officer came there and caught the accused. On that day I drank the water with the help of left hand. I removed my hand kerchief and I wiped my both hands.”

5. Perusal of above paragraph clearly shows that the Complainant has given a clear admission after a suggestion is put to him that it is he himself who forcibly (*emphasis supplied*) thrust the amount of Rs.500/- in the pocket of the Accused. Thereafter he has deposed and admitted the fact that when Accused was trying to see what was kept in his pocket at that time the ACB Officers came there and apprehended the Accused. As opposed to his examination-in-chief, his cross-examination is completely contradictory thereto. Clear dichotomy is noticed by the Trial Court. The question of making an offer and accepting the offer in view of the aforementioned admission in cross-examination of Complainant clearly goes against the tenet and principles of offering and accepting the graft. It is an admitted position in the instant case that PW-1 is the sole eye witness to the incident, as the incident took place inside the office of Accused in the absence of any person around them.

6. In so far as witness action of panchas is concerned, their evidence is to the effect that after they apprehended the Accused, they

searched him and found Rs.500/- on his person i.e. in his pocket and panchanama was prepared. The aforesaid fact has weighed with the learned Trial Court while deciding the present case. It is seen that once this is the position, the case of Complainant and prosecution virtually pales into insignificance as there is a clear dichotomy with respect to the case with which the prosecution has come to the Court and the same being contradicted by the sole eye witness i.e. the Complainant himself. Record indicates and shows that an application by Complainant for supply of electrical meter / electricity for flour mill in his wife's name was made some time in January – 1999. The present incident occurred immediately after Gudipadva on 19.03.1999 and is linked to a precursor incident of demand as per prosecution case made by Accused to Complainant.

7. Further contradiction noticed by the Court is that there are three separate demands made as emanating from the prosecution case. The first one is on 10.03.1999, when it is alleged that demand of Rs.2,000/- was made in addition to the alleged quotation fee of Rs.3,500/- by Accused. Thereafter on 12.03.1999, demand was made for Rs.1,000/- whereas on 16.03.1999, demand was made for Rs.500/-. Gudipadva day was celebrated on 18.03.1999 whereas Accused was trapped on the following day i.e. 19.03.1999. On going through the examination-in-chief and cross-examination of Complainant i.e. PW-1, it is clear that this is not a case where the

electrical work was not at all done by the office of Accused i.e. Junior Engineer of MSEB. Issue pertained to delay in completion of the work and supply of electricity. This is so because in his deposition, Complainant admittedly accepts the fact that on 19.03.1999, electrical work pertaining to internal wiring was not completed and he was told by Accused that it would be completed by the following day i.e. tomorrow.

8. Taking into consideration the aforesaid material with respect to prosecution case and the admissions of the Complainant in his cross-examination, the precursor to the incident of apprehending the Accused has been induced by the Complainant himself as admitted by him. In such circumstances and especially when he has deposed that the moment he thrust the amount of Rs.500/- in his left side shirt pocket on his own volition, the ACB Officers came inside the cabin of Accused and apprehended him, clearly shows that the inducement was given by Complainant himself to Accused.

9. In that view of the matter, it cannot be said that prosecution has proved its case beyond all reasonable doubts. Accused undoubtedly would have to be given the benefit of doubt in view of the aforementioned evidence which is favourable to him and raises a clear doubt and suspicion against PW-1. The learned Trial Court from paragraph No.23 onwards has given cogent reasons with respect to the

issue pertaining to offer and acceptance of the graft amount as it transpired on the basis of evidence placed before the Court and after analysing the same. It has given reasoned findings in paragraph Nos.25 and 26, giving benefit of doubt to the Accused. I find no reason to interfere with the cogent reasons given by the Trial Court in paragraph Nos.25 and 26. For the sake of convenience paragraph Nos.25 and 26 are reproduced below:-

“25. From the foregoing paragraphs, I have already discussed that the evidence of complainant and Pancha nowhere makes out any case of demand being made by the accused at any point of time prior to laying of the trap, therefore, the circumstances lead to the conclusion that complainant who was agitated by the fact that he could not receive electric supply before Padva festival could not open his shop and the probability of false implication cannot be ruled out.

26. If we analyse the entire evidence of prosecution, the theory put-forth by the defence that the act of complainant in thrusting the amount in his pocket can be accepted. Learned A.P.P. vehemently argued that it is not possible for complainant to forcibly thrust the amount, nor Pancha in any way has supported on this line. Of course, it is difficult to believe the story of thrusting of amount in the pocket of accused, but it can be believed, because in his cross-examination complainant admits that he had thrust the amount in the pocket of accused and accused tried to find out what was thrust in his pocket, because of which anthracene powder was seen on his pocket, and on his fingers. Taking into consideration the contradictory story of the complainant, at one stage he is alleging that accused demanded and accepted the amount, in the same breathe he states that he thrust the amount in the pocket of accused. At the same time, we have other evidence on record which discloses that there was no demand. There seems to be other reason for complainant to be agitated against accused to falsely implicate him. Under these circumstances, the defence version appears to be more probable. When two versions are appearing, one favourable to the accused will have to be accepted. Under these circumstances, I therefore hold that accused deserves to be given benefit of doubt. Hence, he is entitled to be acquitted for the offence punishable under Section 7 and 13 (2) r.w.s. 13(1)(d) of Prevention of Corruption Act, 1988. As prosecution has failed to prove beyond reasonable doubt guilt of accused, the question of whether sanction was

accorded with proper application of mind or not is not being discussed by me. Hence, I hold that accused deserves to be acquitted. Hence, I pass the following order:-

Order

Accused is acquitted under Sec.248(1), Cr.P.C. for offence punishable under Section 7 and 13(2) r.w.s.13(1)(d) of Prevention of Corruption Act, 1988.

His bail bonds shall stand cancelled.

Muddemal article, namely cash amount be confiscated to State.

Other article, namely, shirt be destroyed.

Disposal of Muddemal articles to take place after appeal period or after period of one year – whichever event takes place subsequently.”

10. Since the prosecution case has not been proved beyond all reasonable doubts and there are clear discrepancies in the evidence of the sole eye witness i.e. PW-1 the Complainant himself which has been highlighted and considered by the Trial Court, the decision and judgment given by the learned Trial Court dated 27.05.2003 deserves to be upheld.

11. In view of the above observations and findings, Criminal Appeal No.63 of 2004 stands dismissed.

[MILIND N. JADHAV, J.]

HARSHADA
HANUMANT
SAWANT

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HARSHADA
HANUMANT
SAWANT
Date: 2024.11.30
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