

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.456 of 2016

The State of Maharashtra
(Through Police Station) ... Appellant.
(Orig.Complainant)

Versus

Sunil Gopal Karhadkar,
Age 48 years, Occp : Service,
R/at Mourya Vihar, H Building
Flat No.7 Gandhibhavan,
Kothrud, Pune-38 ... Respondent.
(Orig.Accused)

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Ms SD Shinde, APP for appellant/State.
Mr Sanjeev Kadam, Advocate a/w Raju Yamgar, Bharti Lokhande
& Harshal Chavan, for respondent.

Coram : R.N.Laddha, J.

Reserved on : 7 November, 2023.
Pronounced on : 2 January 2024.

Judgment :

This Appeal is directed against the judgment and order passed by the learned Special Judge at Pune, in Special Case No. 33 of 2014, on 7 November 2015, whereby the accused/respondent No.1 came to be acquitted of the offences, punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the Act').

2. It is the case of the prosecution that the complainant, Sanjay Vishnu Kshatriya, was dealing in the business of waterproofing and was a member of Chandrangan Housing Society. There were five members of the Society, including the complainant. In 2013, they filed an application along with relevant documents in the office of the Sub-Registrar, Shivaji Nagar, Pune, for deemed conveyance. This matter was before the District Deputy Registrar, Mr Sonawane, and nobody raised the objection for deemed conveyance. The complainant and chairman of the society, Mr Patil, were attending the hearings. On 15 October 2013, the District Deputy Registrar reserved the matter for order and asked them to visit his office after 10-12 days to see the order. On 29 October 2013, when the complainant visited the office of the District Deputy Registrar, he was informed that he could collect the order from the cooperative officer, Sunil Karhadkar (the accused). The complainant then met with the accused, who, however, demanded a bribe of Rs.1000/- per flat, totalling Rs.22,000/- from the complainant to issue the order. The complainant realized that unless the bribe was paid, the accused would not give the order.

3. According to the complainant, since he was not willing to pay the said bribe amount to the accused, he went to the office of the Anti-Corruption Bureau at Shivaji Nagar, Pune, and lodged a complaint against the accused on 30 October 2013. The concerned

police officer, Mr Subhshchandra Nilkanth Deshmukh (PW 3), decided to verify the complaint by instructing the complainant to meet the accused and the panch witnesses to verify the demand. He, therefore, was given a digital voice recorder and sent the complainant and panch witness Mr Harish Kharbadkar (PW2) to meet the accused. Accordingly, they met the accused, who, after negotiations, reduced his demand from Rs.22,000/- to Rs.11,000/-. The conversation was recorded in the voice recorder. The script of the conversation and audio cassette was then prepared. The currency notes worth Rs.11,000/- smeared with anthracene powder were given to the complainant. Mr Harish Kharbadkar (PW 2), the panch witness was instructed to accompany the complainant during the trap. On 30 October 2010, at about 6.30 p.m., the accused was nabbed in his cabin after accepting a bribe of Rs.11,000/-. Accordingly, a detailed post-trap panchnama was drawn.

4. A report was lodged at Shivaji Nagar Police Station, Pune. Based on this report, an offence vide C.R.No.3115 of 2013 was registered against the accused under Sections 7, 13(1)(d) read with 13(2) of the Act. The Sub-Divisional Additional Registrar, Cooperative Societies, Pune Division, Pune accorded sanction to prosecute the accused, and a charge sheet was subsequently filed.

5. Charge came to be framed against the accused for the

offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Act. The accused abjured his guilt and claimed trial.

6. At the trial, to substantiate the indictment against the accused, the learned trial Court recorded the evidence of the following witnesses: Sanjay Vishnu Kshatriya (PW1), the complainant; Harish Balkrishna Kharbadkar (PW 2), the panch witness; Subhashchandra Nilkanth Deshmukh (PW 3), the investigating officer.

7. The statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.) came to be thereafter recorded, consisting of a denial and false implication.

8. After hearing the learned Counsel for the parties, the learned trial Court held that the evidence regarding the demand and acceptance of the bribe was questionable in several significant ways. The defence put forth by the accused was found to be probable. As a result, the trial Court acquitted the accused.

9. Being aggrieved by and dissatisfied with the impugned judgment and order of acquittal, the appellant/State has preferred this appeal.

10. I have heard Ms SD Shinde, the learned Additional Public Prosecutor for the State and Mr Sanjeev Kadam, the learned

Counsel for the accused/respondent and perused the impugned judgment, grounds in the appeal memo, evidence of the prosecution witnesses and the entire material on record.

11. Ms SD Shinde, learned Additional Public Prosecutor appearing on behalf of the State, submitted that the learned trial Court committed a manifest error in acquitting the accused/respondent. She stated that the trial Court misinterpreted the evidence presented by the prosecution and erred in concluding that the prosecution failed to prove the demand and acceptance of Rs.11,000/- as gratification for issuing the order of conveyance.

12. According to the learned APP, the trap set against the accused had been proved and that there was sufficient evidence to show that the accused had demanded a bribe and received it in his office. It was submitted that the appellant demanded and accepted the bribe in his official capacity, which is supported by the evidence of the panch witness (PW2). The learned APP argued that the complainant and panch witness, Mr Kharbadkar, confirmed the accused's demand and acceptance of the bribe. The defence did not dispute the sanction order. Mr Subhashchandra Nilkanth Deshmukh (PW3) testified that the necessary procedure for setting up the trap was followed, and the accused was nabbed while accepting the bribe. In her view, the defence of the accused is not at

all probable as it was alleged that the bribe was demanded to issue a conveyance order.

13. Mr Sanjeev Kadam, the learned Counsel appearing on behalf of the accused/respondent, supported the line of reasoning adopted by the trial Court to record the finding of acquittal. He made various submissions countering the arguments put forth on behalf of the appellant/State. He argued that the complainant was neither a member of the society nor authorised by it to lodge the complaint.

14. According to the learned Counsel, even if it was a trap case, there was no direct evidence of demand by the accused, and there was no material on record to show that the tainted currency notes of the alleged bribe were ever accepted or received by the accused. It was submitted that the currency notes were found inside the drawer of the table and mere presence of the currency notes in the table drawer did not prove that the accused had accepted or received the alleged bribe, as claimed by the complainant. It was contended that the entire story of the complainant was improbable, and there is sufficient evidence to demonstrate that the complainant and the person on whose behest he was acting had a grudge against the accused, and this led them to create a story of bribe demand.

15. The learned Counsel submitted that there are inconsistencies in the testimonies of the complainant (PW1) and the panch witness (PW2), who had acted in a number of cases. The investigating officer (PW3) initially submitted this fact and did not speak the truth in his examination-in-chief. Learned Counsel also pointed out that the prosecution failed to produce the digital recorder before the trial Court and did not provide a certificate under Section 65B of the Evidence Act. He relied on the following judgments: *i) Jafarudheen & Ors. Vs. State of Kerala*¹ *ii) Kanthiram Vs. State of Maharashtra*²; *iii) Tryambak Lilaji Binnar Vs. State of Maharashtra*³; *iv) State of Gujrat Vs. Kumudchandra Pranjivan Shah*⁴; *iv) Hira Lal Vs. State of Haryana*⁵.

16. It is a settled principle in law that in the proceedings instituted against the order of acquittal, it is open to the High Court to re-appreciate the evidence and conclusions drawn by the trial Court but only in a case when the judgment of the trial Court is stated to be perverse.

17. In the present case, although the prosecution had laid a trap

1 (2022)8 SCC 440.

2 2012 SCC OnLine Bom 1527.

3 2002 (3) Mh.L.J.293

4 1997 SCC (cri) 750

5 AIR 1971 SCC 356

against the accused /respondent, the bribe amount was not actually found in the hands of the accused, and therefore, it is necessary to examine the evidence and material on record, as well as the context in which the trap was laid, in detail.

18. It is the case of the prosecution that the complainant visited the office of the accused on 29.10.2013 to obtain a conveyance order. The accused demanded a bribe from the complainant during this visit. However, in his evidence before the Court, the complainant stated that he and the Chairman of the society visited the office of the accused and the accused demanded a bribe of Rs.1,000/- per flat. The complainant does not mention any such demand made in the presence of the chairman of the society in his complaint. It is pertinent to note that the prosecution did not examine the chairman of the society, Mr Patil.

19. The demand verification panchanama does not indicate that the accused asked the complainant whether he had brought the amount. However, according to a panch witness (PW2), when they met the accused, he asked the complainant about the bribe amount and demanded Rs.1000/- per person, making a gesture thereafter. The complainant, however, did not state that the accused demanded the bribe by making a gesture. Thus, there are inconsistencies in the evidence of the complainant and the panch

witness on the point of verification of demand.

20. According to the prosecution, the accused demanded a bribe as soon as the complainant and the panch witness entered his cabin. He then asked the complainant to put the bribe in a packet, which he handed over to the complainant, who had kept the said bribe amount in the packet. After the complainant held the packet in front of the accused, he opened a drawer with his left hand, kept the packet inside, and closed the drawer. During the trial, the complainant, however, testified that the accused asked him if he had brought the bribe amount and how much it was. When the complainant replied in the affirmative, the accused asked him to put the money in a packet. The complainant complied and handed over the packet to the accused, who kept it in his drawer. In this respect, the panch witness (PW2) testified that the accused asked if the amount was brought and then went to another compartment, accepted the amount, put it in a packet, and kept it in the drawer. Thus, the complainant and the panch witness are providing testimony that is different from the prosecution case. Admittedly, as per the prosecution case, the complainant himself kept the packet containing the currency notes in the table drawer of the accused.

21. The suspicion created in this situation is further re-enforced by the facts that the panch witness had acted in a number of cases

investigated by this investigating officer (PW3). The complainant was not a member of the society and no flat was standing in his name, nor was he authorised by the society to receive the order from the accused and to lodge the complaint. Furthermore, the digital tape recorder, though it was in the hands of the investigating agency, was not produced in the evidence and kept back from the trial. It is the duty of the prosecution to bring the entire facts before the Court. In the circumstances, an adverse inference needs to be drawn against the prosecution, and it has to be presumed that the prosecution suppressed this evidence of the digital recorder as it would not have favoured its case.

22. In such circumstances, the trial Court, in my considered opinion, rightly found the accused/respondent not guilty of the offence for which he was tried.

23. Resultantly, this appeal fails and is hereby dismissed.

[R.N.Laddha, J.]