

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1068 OF 2022

Lalasaheb Pandurang Dongre ...Appellant
Versus
Sampat Shrirang Gaikwad And Anr. ...Respondents

Ms. Siddhi Patil i/by Mr. Prashant Hagare Advocate for Appellant.
Mr. Arfan Sait, APP for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 9th JANUARY, 2024

P.C.:-

1. Appeal is preferred under Section 372 of Cr.P.C. challenging the Judgment and Order dated 29th April 2022 passed by learned Additional Sessions Judge, Baramati, District Pune in Special A.C.B. Case No. 24 of 2015 whereby the Respondent No.1 was acquitted.
2. The case of prosecution is that, the complaint was filed by appellant with ACB, Pune and contended that he is agriculturist and owned the land at village. He applied for conversion of the land for non-agricultural use. Order dated 23rd April 2013 was passed by Sub-Divisional Officer allowing conversion. He submitted order to the Talathi to take necessary note in village form No.2. The Talathi (accused) did not make necessary endorsement on 7/12 extract. He demanded Rs.15,000/- with complainant/appellant. Complaint was made to ACB. It was decided to

verify the demand. Voice recorder was installed. Conversation between complainant and accused was recorded. Accused demanded the amount. Thereafter, raid was arranged. The complainant and the panch witnesses visited the office of the accused. Bribe amount kept on the table. The panch witness No.2 took out the bribe amount below the register kept on the table. The accused was apprehended. Charge-sheet was filed.

3. The prosecution examined three witnesses i.e. PW-1 is the complainant, PW-2 is panch witness and PW-3 is the Investigating Officer. After analyzing the evidence, the trial Court acquitted the accused.

4. Learned Advocate for the appellant submitted that the judgment of trial Court is contrary to law. The prosecution has proved its case. There was sufficient evidence to convict the respondent. The demand was verified. Conversation between accused and the complainant was recorded. Recorded conversation indicated that there was demand of Rs. 13,000/- by the accused. The accused instructed the complainant to keep the amount on the table. Amount was kept on the table. Thus, demand and acceptance was proved. It was an error to acquit the accused. Order of acquittal is required to be set aside.

5. Learned APP on instructions submitted that the State did not file Appeal.

6. I have perused the evidence recorded by trial Court and the judgment of acquittal. The trial Court has assigned cogent reasons while acquitting

the accused. It is pertinent to note that the prosecution has failed to establish the demand and acceptance of the amount. It is not the case of the prosecution that the accused has accepted the amount in his hand. The amount was purportedly kept on the table. The case of the prosecution is that PW-1 and PW-2 had been to the office of Talathi. PW-1 took the bribe amount and kept it on the table on instructions of the accused. One register was kept on the bribe amount. PW-1 told the ACB Officials that the amount was below the register. The ACB officials asked the accused to take out the amount. The accused took out the amount and gave it to ACB officials. PW-2 has deposed that the complainant kept the bribe amount below the register on the table of the accused. Police Constable caught the hand of the accused when the raid was effected. Panch witness lifted register and found the bribe amount. PW-3 has deposed that hands of the accused were held by two persons. The panch witness took out bribe amount which was kept below the register. There are contradictions in the evidence of PW-1 and PW-2. PW-1 has deposed that he took the bribe amount and the Accused kept it on the register. PW-2 deposed that PW-1 has kept bribe amount below the register. None of the witnesses have deposed that accused received the bribe amount from the complainant. According to PW-1, he touched the bribe amount only when he was asked by ACB Officials to take out the bribe amount. Prosecution could not give any explanation as to why the anthracene powder was found on the hands of the accused.

Finding of anthracene powder on the hands of the accused proves that the amount of bribe is passed from the complainant to the accused. However, the prosecution case is that the bribe amount was kept by the accused on the table and it was not handed over to the accused. The prosecution has not proved its case beyond reasonable doubt. Presumption under section 20 of the Prevention of Corruption Act is rebutted. The trial Court has rightly acquitted the accused. No case is made out to interfere the impugned order of acquittal. Appeal is devoid of merits.

ORDER

Criminal Appeal No. 1068 of 2022 is dismissed and disposed off.

(PRAKASH D. NAIK, J.)