



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 12 OF 2013

Avinash Kashiram Pakhale,
Age : 46 years, Occu. : Service,
R/o. N-12, G-78, Swami Vivekanand Nagar,
Hudco, Aurangabad
Died, Through LR's
Pushpa Avinash Pakhale,
Age : 50 years, Occu. : Household,
R/o. As Above.

... Appellant

Versus

State of Maharashtra

... Respondent.

.....
Mr. N. K. Tungar, Advocate for Appellant.
Mr. C. V. Bhadane, APP for Respondent - State.

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 01 APRIL 2025

PRONOUNCED ON : 22 APRIL 2025

JUDGMENT :

1. Instant appeal arises out of judgment and order of conviction dated 19.12.2012 passed by learned Special Judge, Osmanabad in Special Case (ACB) No.9 of 2009 convicting appellant for offence under sections 7 and 13(1)(d) read with under section 13(2) of the Prevention of Corruption Act 1988.

PROSECUTION STROY IN TRIAL COURT IS AS UNDER

2. PW1 Mahadeo a differently abled person had applied for

agricultural loan from Maharashtra State Handicap Finance and Development Corporation, Mumbai. In that connection, after tendering application, he approached appellant, who worked as an Accountant in the branch at Osmanabad. PW1 Mahadeo was told by appellant that for sending file to Mumbai for sanction he will have to expend. Demand of Rs.5000/- was put up, but on negotiation it was brought down to Rs.2800/-, out of it Rs.1500/- were paid upfront advance and remaining Rs.1300/- were to paid later on. As PW1 Mahadeo was not willing to pay illegal gratification, he approached Anti Corruption Bureau, lodged report Exh.32 with PW5. He arranged panchas, trap was laid, pre-trap panchanama was drawn and tainted currency were handed over to PW1 Mahadeo to pay on demand and relay necessary signal.

As planned PW1 Mahadeo, informant and PW2 Shivaji, shadow pancha approached appellant. PW1 Mahadeo asked about his work. Again demand was put up for remaining amount, which was paid in the form of tainted currency. Signal was given. Raiding party came and apprehended appellant. PW5 lodged report, investigated the crime, sought necessary sanction and charge-sheeted appellant.

Trial was conducted before Special Court, which culminated into conviction, hence the present appeal.

SUBMISSIONS

On behalf of Appellant :

3. At the outset, learned counsel for the appellant submitted that, during pendency of appeal, original convict/appellant died. Present appeal is contested by his wife in the capacity of heir. He further submitted that, there is no dispute that appellant was Accountant. However, being working in such capacity, he had no authority or power to accept any application for loan or to sanction it. It was a job of Manager and this is accepted by said witness, who has stepped in witness box as witness. Therefore, there is no question of demand for illegal gratification. On the point of duty, learned counsel seeks reliance on Exh.49 which is a circular enumerating the duties of each of the staff.

4. He further submitted that, complaint is lodged with ulterior motive only because deceased appellant had raised several technical queries necessary for sanction before proposal was sent for sanction. Out of annoyance, complaint has been lodged.

5. It is further pointed out that, there is possibility of deliberate thrusting of currency. That, prosecution has not examined necessary important witnesses like pancha. Pre-trap panchanama is seriously questionable on the point of its credibility. Lastly learned

counsel submitted that, sanction is improper and without application of mind. For all above reasons, impugned judgment is sought to be set aside by allowing the appeal.

On behalf of Respondent – State :

6. Supporting the conviction, learned APP pointed out that essential requirements like demand are substantiated through complainant, but also through independent witness. That, demand verification is also got done prior to trap. That, in presence of PW2 shadow pancha there is again demand as well as acceptance. That, evidence of PW1 Mahadeo and PW2 Shivaji, shadow pancha has remained intact on the point of demand and acceptance. That, sanction is after application of mind. Therefore, for above reasons, learned APP prays to not to disturb the conclusion reached at by learned trial Judge and rather dismissed the appeal.

EVIDENCE BEFORE TRIAL COURT

7. The prosecution has examined following 5 witnesses in support of its case. Their role and status are as under :-

PW1 Mahadeo, informant, who lodged report at Exh.32.

PW2 Shivaji is the shadow Pancha. His testimony is at Exh.37.

PW3 Dhamendra is the Manager in the Maharashtra State

Other Backward Class, Finance and Development Corporation, under whose control the appellant was working.

PW4 Sanjay Kolathe is the Managing Director, Maharashtra State other Backward Class, Financial and Development Corporation, Mumbai.

PW5 A.S.I. Pratap Kulkarni is the Investigating Officer.

8. For proper appreciation and comprehension, it would be fruitful to reproduce the very testimonies of relevant witnesses i.e. PW1 Mahadeo, informant and PW2 Shivaji, shadow pancha in verbatim as has been stated in witness box in trial court.

9. **PW1** Mahadeo is the informant. In his testimony at Exh.31 he deposed as under :-

1. *I am educated upto 10th standard. I am affected by Polio to my right leg since my childhood. I am handicapped person. I know about Maharashtra State Handicapped Finance and Development Corporation, Mumbai. There is one branch of said Corporation at Osmanabad.*

2. *On 22-10-2008 I made application for grant of Rs.5,00,000/- as agricultural loan from Osmanabad Branch. I had given application to accused. Accused was working as a Accountant in the said Branch at Osmanabad. Accused told me that to sent loan file to Mumbai office for grant of loan it will require expenses. I asked accused as to how much expenses will require. Accused told me to visit in next month, and he will tell in next month about the expenses. Accused before the Court is the same person working as a Accountant in the Branch at Osmanabad.*

3. I did not visit Branch Osmanabad in the next month as told by accused. I went to the office of accused on 5-1-2009. Accused was present there on 5-1-2009 in the office. Accused made demand of Rs.5000/- from me. I told accused that I cannot pay Rs.5000/- in view of my financial condition. Accused told me to give Rs.2800/-. I paid Rs.1500/- in cash to accused in his office. Accused told me to come on coming Monday with Rs. 1300/-. Accused told me if I will bring Rs. 1300/- then in that event, the loan file would be sent to Mumbai otherwise not. I agreed to come to coming Monday with Rs. 1300/-.

4. On 12-1-2009 I went to the Anti Corruption Office at Osmanabad at about 1.00 p.m.. Shri. Yunus Shaikh was present in the office of Anti Corruption Office. I do not know his designation. I told Yunus Shaikh that, accused made demand of bribe from me for sending my loan file. I narrated the entire incident to Yunus Shaikh. I narrated orally my complaint to Shaikh Yunus which he had reduced in writing as per my say. I read the complaint and thereafter I signed. Now I am shown the complaint. I say that, it bears my signature. Its contents are correct. Complaint is at Exh.32.

5. Yunus Shaikh introduced me with those two persons namely Gangawane and Umbare being panchas. Yunus Shaikh introduced me with Gangawane and Umbare. Yunus Shaikh directed me to tell my complaint in front of panch Gangawane and Umbare. I narrated my complaint to Gangawane and Umbare. Shaikh Yunus had given the complaint Exh.32 which was recorded by him to read to Gangawane and Umbare. Gangawane and Umbare made signature on my complaint Exh.32 that the contents in the complaint are correct as per the narration given by me before them. Now I am shown the complaint Exh.32, I say that, the complaint bears the signature of Gangawane and Umbare.

6. Myself, Yunus Shaikh, Gangawane, Umbare and staff of Anti Corruption Office, came towards the office of accused by a Government Jeep. The jeep has stopped near Kohinoor Hotel

near the office of accused. Anti corruption staff members stood near jeep. The office of the accused is located on the second floor in the Kohinoor Hotel in Anand Nagar area. Myself and Gangawane went to the second floor of the Kohinoor hotel in the office of accused. Accused was present in the office. I offered Namaskar to him. He also acknowledged by Namaskar. I asked accused as to whether he had sent my loan file to Mumbai Office. Accused told me that I had paid half money to him, and I have not paid remaining money. He told me to bring Rs. 1300/- then he will sent my file to Mumbai office. I told accused that I will bring Rs.1300/- till 5.00 p.m. and in the meantime accused should sent my file to Mumbai Office. Accused told me to bring the money then he will sent the file.

8. *Yunus Shaikh then instructed me and Gangawane to visit accused and I should request accused to send loan file to Mumbai office. If accused made demand of money, then I should give the tainted notes to accused by using right hand from my pocket. Shaikh Yunus also instructed me to give signal by taking out the handkerchief from my left pocket of my pant, by left hand in order to put the handkerchief on left shoulder if accused accepted the money.*

9. *..... Myself and Gangawane went to the office of accused. In the office accused and two unknown people were found sitting. I offered Namaskar and accused also acknowledged the same. I told accused that, I had come as said by you. Accused then stood up from his chair, and told me to come down. Myself, accused and Gangawane came on the road infront of the hotel Kohinoor. Accused told me to give money to him. I told accused to take tea. Accused told me to give money immediately and not tea. I then took out the money from my right hand from my left pocket of my shirt and hold the money infront of accused. Accused then took the money by his right hand from my right hand. I then gave signal by taking out handkerchief from the left pocket of my pant by left hand and put on my left shoulder. Accused was holding the currency notes in his right hand at the time when I gave signal. Thereafter, Yunus Shaikh his staff members and panch Umbare came near us. Gangawane told Yunus Shaikh that Pakhale Saheb had accepted the money*

by showing finger on accused. Yunus Shaikh had then caught the both wrist of the accused.”

10. **PW2** Shivaji is the Shadow Pancha. In his testimony at Exh.37 he deposed as under :-

“In January 2009, I was working in Osmanabad division office as a senior clerk. On 12.1.09. I was present in my office. On that day my superior officer directed me and another panch Dharmraj Umbare to go to office of ACB Osmanabad and help the ACB Officer. Myself and another employee Umbare went to said office at about 2.30 p.m. Dy.S.P.Shaikh, ASI Kulkarni, constables Bagade, Jadhav, Tambare were present there. Dy.S.P.Shaikh introduced them to us. Dy.S.P.Shaikh told us that we are required to act as a panch. We consented for the same. Dy.S.P.Shaikh told us that we are required to arrange trap on one Ramling Baraskar. One person namely Baraskar was present in the office. Dy.S.P.Shaikh told complainant to introduce himself. Then complainant introduced himself to me and another panch Umbare.

2. Mr. Shaikh drew panchanama prior to verification...

4. Accordingly the pre-trap panchanama was prepared. Pre-trap panchanama now shown to me bears my signature, signature of another panch and Dy.S.P. shaikh. The contents in panchanama are true and correct. It is Exh.43. Pre-Trap panchanama at Exh.43 was drawn at 4:30 p.m.

5. Myself and complainant Baraskar went at office of accused on 1st floor. When we went there, we saw that Mr.Pakale was in his office and two other persons were sitting in front of him. Mr.Baraskar said Namaskar Pakale saheb and further told him that he came as per his instruction. Mr.Pakale responded complainant by saying Namaste and thereafter told us to come down. Accordingly Mr.Pakale went down the steps and we accompanied him. We came outside the gate. Mr.Pakale asked Mr. Baraskar to give money. Mr.Baraskar told Mr.Pakale atleast to take tea. Accused Mr.Pakale declined to come with him and

asked Baraskar to pay the amount. Thereafter Mr.Baraskar took out the tainted amount by his right hand from left pocket of his shirt and hold before the accused. The accused Pakale accepted the said tainted amount by his right hand and hold it in his hand. Thereafter Mr. Baraskar took out handkerchief from his left pocket by left hand and put it on left shoulder. On receiving signal, the staff of raiding party gathered there. I told Dy.S.P.Shaikh that accused Pakale accepted the tainted amount from the complainant Baraskar. Mr.Shaikh asked Mr.Baraskar to go out side. On receiving information from me Mr.Shaikh caught hold hand of accused near the wrist and asked the accused his name.”

ANALYSIS

11. On re-appreciating and re-analyzing the evidence of complainant, it is emerging that he being a differently abled person had applied for loan specially sanctioned by the office in which appellant worked. In his evidence at Exh.31 PW1 Mahadeo has stated that, when he approached office of appellant for forwarding file of loan for sanction, appellant demanded Rs.5000/-, deal was finalized at Rs.2800/- and Rs.1500/- were paid on that day and remaining Rs.1300/- were paid on Monday. He being unwilling to give bribe, lodged report (Exh.32) with ACB. To this extent evidence of PW1 Informant has remained undisturbed in spite of being cross examined.

12. PW2 Shivaji is the independent pancha and his evidence is at Exh.37. He has also testified about being summoned to ACB

office, introduced to PW1 Mahadeo, made aware of complaint. He and PW1 Mahadeo being given necessary instructions by PW5 Investigating Officer. They both visited office of appellant to verify the demand and in his presence demand being made and subsequently verification panchanama being drawn. That, he accompanied PW1 Mahadeo to the office of appellant, which was said to be on first floor. After exchanging greetings, appellant called them out and accordingly asked PW1 Mahadeo to give money, which was given and duly accepted and later on PW1 Mahadeo gave signal to raiding party headed by PW5 A.S.I. Kulkarni, who came and apprehended appellant. He deposed about further procedure undertaken by PW5 A.S.I. Kulkarni. Even his above testimony has remained intact in the cross.

13. For proving the charges, there has to be demand and acceptance. These *sine quo non* are available in the evidence of PW1 Mahadeo and PW2 Shivaji.

14. Main ground is that appellant was not authorized. However, he is on an Accountant. PW3 Dharmendra, the Manager in his evidence at Exh.47 has confirmed appellant to be working as Accountant. Procedure of receiving proposals for loan is also elaborated by him. He also testified about receiving proposal from

PW1 Mahadeo and its scrutiny being done by appellant. He deposed that it was expected of appellant to place application to the head office and that no charges or fees is required to forward the application, but application was not at all put up before him by accused.

15. In the light of above unshaken evidence of PW3 Dharmendra, above ground that the appellant had no concern with the loan application and he had no duty to accept application, has no force. Very Superior Officer of appellant has confirmed his such duty.

16. Another ground of challenge is that there is possibility of thrusting. However, evidence of PW2 Shivaji rules out any such possibility as this witness has narrated the sequence of events since his visit to ACB office, accompanying PW1 Mahadeo to the office of appellant for verification, pre-trap panchanama being drawn and subsequently accompanied PW1 Mahadeo when again demand of remaining amount of Rs.1300/- was put up. Appellant has called PW1 Mahadeo outside the office and has accepted the amount demanded by him.

17. Therefore, on complete re-appreciation, this court finds there to be cogent, reliable and credible evidence of PW1 Mahadeo,

informant and PW2 Shivaji, shadow pancha on the point of demand and acceptance. Sanctioning Authority PW4 Sanjay Kolate has also deposed about applying mind and according sanction. All essential ingredients being available, there is no perversity or illegality so as to disturb the findings of learned trial court. Hence, the following order is passed :-

ORDER

The criminal appeal is dismissed.

(ABHAY S. WAGHWASE, J.)