



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 134 OF 2005

Ashok S/o. Babasaheb Kasar,
Age : 35 years, Occu. : Service,
R/o. : Walki, Tq. & Dist. Ahmednagar. ... Appellant

Versus

The State of Maharashtra ... Respondent

...
Mr. Satej S. Jadhav, Advocate for Appellant
Mr. S. M. Ganachari, APP for Respondent - State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 10th DECEMBER, 2024

PRONOUNCED ON : 03rd JANUARY, 2025

JUDGMENT :

1. Aggrieved by the judgment and order dated 08.02.2005 passed by Special Judge, Ahmednagar in Special Case No.10 of 2001, holding appellant guilty for offence punishable under sections 7, 13(2) read with section 13(1)(d) of Prevention of Corruption Act, 1988, convict has invoked section 374 of Cr.P.C.

2. In brief, prosecution was launched against present appellant on report lodged by PW1 Sachin, alleging that, Nagar Taluka Police station booked brother of complainant in one crime bearing No. 55 of 2000 and arrested him. PSI Tangade threatened

to detain mother of complainant also and from abstaining to do so he demanded Rs.25,000/-. On negotiations with complainant, figure was brought down to Rs.8,000/- in two installments. Instead of complying and paying bribe, PW1 Sachin approached ACB authorities and gave report. ACB Officer summoned panchas, introduced them to complainant, apprised them about nature of complaint and thereafter planned and arranged trap of which necessary instructions were given to complainant and panchas. They were also made aware about the procedure of application of anthracene powder to the currency which was instructed to be handed over to accused on demand and then to relay signal.

3. Accordingly, on given date and time, complainant and shadow pancha, visited police station. On behalf of Officer Tangade present appellant demanded bribe and after accepting it, complainant gave signal and he was duly apprehended. After investigation, he was charge-sheeted and tried, resulting into conviction.

Hence, the instant appeal.

SUBMISSIONS

On behalf of Appellant :

4. Learned counsel for appellant pointed out that, apparently there is false implication. That, appellant is a Constable.

He never put up any demand nor he had any authority to release brother of complainant. That, PSI a superior officer had demanded bribe. However, to save him, present appellant is made scapegoat. He had never put up any demand. That, very complainant in his evidence has admitted that there was demand by PSI Tangade and he had no work with present appellant. That, sanctioning authority has also admitted that complaint was against Officer Tangade, but he is now charge-sheeted or tried.

5. Learned counsel further submitted that, even complainant and shadow pancha are not consistent and supporting to each other. That, whatever details were narrated by complainant regarding the events taking place at police station, are not narrated by shadow pancha in spite of both claiming to be together. That, evidence of complainant and shadow pancha is also full of material omissions, contradictions and variances on the point of timing of pre-trap panchanama.

For all above reasons, learned counsel questions the findings and conclusion reached at by learned trial court and urges to allow the appeal by setting aside the impugned judgment.

On behalf of Respondent – State :-

6. Countering the above submissions, learned APP

pointed out that, though demand was by Officer Tangade, present appellant acted on behalf of said officer. He demanded and even accepted the currency. He was caught red handed. Therefore, both demand and acceptance being available, it is his submission that, no fault can be found in the appreciation or conclusion reached at by learned trial Judge and so prays to dismiss the appeal.

ANALYSIS

7. Fundamental grounds raised in appeal is that, there was no demand by appellant. In fact, demand was raised by his superior, who was a PSI. That, he is let off and to save him, appellant is made scapegoat. That, even complainant and sanctioning authority admit that, demand was by PSI Tangade, who was conducting investigation and present appellant being constable had no power or authority to favour complainant. *Secondly*, there is variance in the timing regarding trap appearing in the pre-trap panchanama.

8. On above lines, if evidence of complainant and shadow pancha which is crucial, is carefully and meticulously appreciated, it does emerge that, as brother of complainant was in custody of Taluka Nagar Police Station, wherein Officer Tangade was said to be an Investigating Officer. It also emerges from complainant's evidence that, complainant had approached said Officer Tangade to

allow him to meet his brother and had requested not to detain his mother, for which Officer Tangade initially demanded Rs.25,000/-. However, on negotiations, he agreed to accept Rs.8,000/- in two installments. Complainant also deposed that, he was asked to pay amount to the Constable and accordingly complainant had met present appellant. So much part of the evidence of complainant has remained intact. Therefore, complainant had met present appellant on the next day and complainant had further deposed that present appellant told that they have collected Rs.25,000/- from other accused and they had demanded Rs.10,000/- and hence complainant had again approached PSI Tangade and had told him that it was not possible to meet such demand, upon which PSI Tangade allegedly told this witness to pay whatever amount was possible and it was finally agreed to pay Rs.8,000/- in two installments. It has also come in the evidence of complainant that, on the day of trap, around 7:00 p.m., he and pancha, both visited police station, met present appellant, who specifically asked complainant to wait and then he went and returned back in 20 minutes and thereafter again questioned complainant whether he brought the amount and further on it being handed over, he accepted the same and kept it in his watch pocket of his pant.

In cross, paragraph no.4, complainant though admitted that he had no work with accused Kasar and bribe was to be paid to

PSI Tangade, to a further suggestion by very defence it has come in cross that, he was instructed that he should pay on demand to present appellant or to anyone else on the say of PSI Tangade. This very suggestion shows that present appellant too was aware that he was to receive bribe amount on behalf of PSI Tangade.

9. Shadow pancha has also in his evidence stated that, when they went to police station, on 7:00 p.m., they met accused near the gate, accused questioned complainant whether amount is brought and complainant removed the amount and paid it to present appellant, who accepted it, further counted it and kept it in the watch pocket of his pant.

Consequently, on the evidence of complainant and shadow pancha, there is both, demand as well as acceptance.

10. On visiting statement under section 313 of Cr.P.C. answered by appellant, there is no specific defence set up by him that he accepted amount on behalf of PSI Tangade. He merely answered that he is made scapegoat and false documents are prepared. He does not set up a case that he was not aware that the amount which he received was illegal gratification. On the contrary, shadow pancha and Investigating Officer, both

consistently speak that sensing presence of raiding party appellant tried to flee by jumping over the wall. His such conduct also goes to show that, he was aware that he was about to be apprehended for accepting bribe.

11. Therefore, here, on complete re-appreciation, there is both, demand as well as acceptance by accused though on behalf of Officer PSI Tangade, but with full knowledge that amount was to be received by way of illegal gratification. Resultantly, *sine qua non* of demand as well as acceptance are patently substantiated. Defence so put has no merits. Section 7 of P.C. Act specifically takes in its sweep act of present appellant for acting on behalf of PSI Tangade. Hence, finding no merits in the appeal, I proceed to pass following order:-

ORDER

The criminal appeal is hereby dismissed.

(ABHAY S. WAGHWASE, J.)