



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 174 OF 2004

Trishok S/o. Gomaji Wakle,
Age : 48 Years, Occu. : Service,
R/o. Vikas Nagar (West), Parbhani,
Tq. Parbhani, Dist. Parbhani.

..... **Appellant**
(Ori. Accused No.1)

Versus

The State of Maharashtra

..... **Respondent**

.....

Advocate for Appellant : Mr. Ashwin Sakolkar h/f Mr. V.G. Sakolkar.
APP for Respondent-State : Mr. D.R. Korade

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 09 December, 2024

PRONOUNCED ON : 03 January, 2025

JUDGMENT :

1. Instant appeal arises out of judgment and order dated 25.02.2004, passed by learned Special Judge, Parbhani, in Special Case No.03/2001, recording guilt of the present appellant for offences under Sections 7 and 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988.

IN NUTSHELL, CASE OF THE PROSECUTION IS AS UNDER :

2. Above sessions case was tried by learned Special Judge, Parbhani, against the present appellant, on being charge-sheeted on the premises that, he was working as a Talathi. That, PW1 Atmaram Waywal i.e. complainant, after demise of his father, approached the appellant to effect the names of himself, his mother, brothers and sisters, with regard to land, situated at Village Suki. That, application was tendered for drawing 7/12 extract. However, the appellant put up demand of Rs.500/- to do the needful. The complainant managed to pay Rs.250/- and agreed to pay remaining amount after 7/12 extract was issued. However, the complainant approached Anti Corruption Bureau Authority and lodged report at Exh.34.

3. On the basis of report, PW4 Police Inspector, Anti Corruption Bureau, Parbhani arranged and planned trap. Panchas were summoned. PW1 complainant and PW2 Pratap Rathod i.e. shadow panch were given necessary instructions and thereafter, they both were sent to the appellant to pay bribe on demand and to give signal. Accordingly, the complainant and shadow panch both approached the appellant at his residence. There, according to prosecution, on instructions of the appellant, bribe amount was kept

on the mat laid on cot and later on, bribe amount was collected by the appellant, after which predetermined signal was given, on which, raiding party arrived and apprehended both the accused.

4. PW4 Police Inspector lodged report at Exh.54, carried out investigation and charge-sheeted the appellant for above offences. Learned trial court, who conducted the special case, reached at conclusion that the prosecution succeeded in proving charge only against the present appellant and acquitted accused No.2, on the ground that, he had no knowledge that the amount accepted by him was towards bribe amount.

5. It is the above judgment which is now questioned before this court by filing instant appeal.

SUBMISSIONS

ON BEHALF OF THE APPELLANT :

6. Learned counsel for the appellant would point out that, there is false implication and moreover, erroneous appreciation of the material available before it by the learned trial court. He would further point out that, there is no convincing and legally acceptable

evidence about demand of money. He emphasized that, from the prosecution evidence itself, it transpires that, appellant had not accepted any currency, rather the complainant himself speaks of currency kept on the mat. Therefore, according to learned counsel, there is no acceptance of currency.

7. Learned counsel pointed out that, law is fairly settled that mere demand is not sufficient and even prosecution has to further prove that there is acceptance by way of bribe also. According to him, evidence to that regard is patently missing. He further pointed out that, witnesses i.e. PW1 complainant and PW2 shadow panch are not consistent. According to him, there are variances and discrepancies on material counts and in support of such contention, learned counsel took this court through the substantive evidence of PW1 complainant as well as PW2 shadow panch.

8. Learned counsel also pointed out that, from the evidence of PW1 complainant, it also emerges that, couple of times, attempt was made to pay bribe amount, but appellant had not accepted. Thus, according to him, this itself indicates that, there were desperate and repeated attempts to implicate the appellant. He also pointed out that, there are variances in the evidence of PW3 Sanctioning

Authority as well as PW4 Investigating Officer, on the numbers and denomination of the currencies. He also pointed out that, complainant after keeping the amount on mat, allegedly left and as such there is no evidence to show that amount was picked up or accepted by the appellant. Therefore, for all above reasons, according to learned counsel, case of prosecution is not fully proved beyond reasonable doubt.

9. Learned counsel further pointed out that, here, even sanction is invalid as evidence of sanctioning authority does not show that there is application of mind while according the sanction. According to him, invalid sanction also is a ground for rejecting the prosecution case.

10. In support of above submissions, learned counsel seeks reliance on the judgments of the Hon'ble Supreme Court in following cases, on the point of no evidence about prior demand.

i) Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, reported in (1979) 4 SCC 172.

ii) Hari Dev Sharma Vs. State (Delhi Administration), reported in (1977) 3 SCC 352.

ON BEHALF OF THE RESPONDENT-STATE :

11. In answer to above, learned APP for the Respondent-State pointed out that, the appellant was working as a Talathi. That, the complainant had approached him for issuing 7/12 extract, but the appellant demanded Rs.500/-. Complainant had initially paid Rs.250/- and subsequently, remaining amount of Rs.250/- was agreed to be paid on issuance of 7/12 extract. However, as the complainant was not willing to pay bribe, he lodged report with PW4 ACB Officer. That, said ACB officer planned and arranged trap by summoning panchas. That, verification panchanama was drawn. That, trap was laid and it was successful. That, the complainant was accompanied by PW2 shadow panch. That, both of them have narrated the events, which took place at the house of appellant regarding demand as well as acceptance.

12. Learned APP further pointed out that, immediately after trap, anthracene traces were found even on the hands of appellant as well as accused No.2. Thus, according to him, acceptance is substantiated and proved. As regards to sanction is concerned, learned APP pointed out that, after studying the papers, on due application of mind, sanction has been accorded and hence, it is his submission that, learned special court committed no error in recording the guilt of the appellant. So, he prays to dismiss the appeal.

ANALYSIS

13. In the light of above submissions, evidence adduced by prosecution is put to minute scrutiny. Here, PW1 seems to be complainant, PW2 seems to be shadow panch, PW3 is the sanctioning authority and PW4 is the Investigating Officer. Defence side has also adduced evidence of one witness i.e. DW1 Ganpati Randive.

14. Visited the evidence of **PW1** Atmaram i.e. complainant at Exh.33. The sum and substance of his testimony is that, after demise of his father, he approached to the present appellant, who was Talathi of Village Suki, to effect the names of heirs i.e. himself, his mother and siblings. The complainant has categorically stated that, he also tendered application, but the appellant told him that he would have to pay some amount and then, demanded Rs.500/-. The complainant stated that, he expressed his inability to pay the amount because of poor financial condition, but appellant insisted for the same and therefore, during second visit, complainant paid Rs.250/-. He deposed that, remaining amount of Rs.250/- was decided to be paid after work was done. However, he has lodged report which he identified at Exhibit 34.

15. PW1 complainant further deposed that, on his report, PW4 Investigating Officer/ACB Officer arranged and planned trap. Independent panchas were called and they were all instructed about procedure of payment of bribe on demand. The complainant in para 3 of his evidence deposed that, he and PW2 shadow panch together visited the house of appellant. The appellant told them to sit on cot and when the complainant asked him about 7/12 extract, the appellant questioned him whether he has brought the remaining amount. The complainant confirmed about bringing it and when he took out the currency to hand over, it is the case of complainant that, appellant directed him to keep it on the mat. Accordingly, said currency was kept there and thereafter, complainant went to give signal followed by trap executed by raiding party, who were waiting in lay.

Complainant is subjected to extensive **cross-examination**. However, the above evidence has not been disturbed or shaken.

16. Another crucial witness is **PW2** Pratap Rathod i.e. shadow panch. He also in his substantive evidence at Exh.37 narrated that, he was called by ACB Office, introduced to the complainant, who lodged report against the appellant, was apprised of the complainant's case and he put signature over the complaint. He

further stated about ACB officer giving them instruction, demonstrating application of anthracene powder to the currency and giving specific instructions to pay amount on demand. In para 5 of his evidence, he stated that, he accompanied the complainant to the house of appellant. Thereafter, he also deposed, as like the complainant, about accused initially came and called them inside the house and made them sit on cot and conversation took place between complainant and accused. PW2 shadow panch categorically stated that, when complainant asked about his work, appellant counter-questioned him about money, upon which complainant took out the currency and while he was about to hand it over, appellant instructed the complainant to keep it on the mat.

17. Thereafter, PW2 Pratap stated that, when complainant went out to give signal, he himself continued to sit there and he has deposed about the amount being taken by accused No.2 and after arrival of raiding party, when hands of both, accused No.1-appellant and accused No.2 were subjected to examination under UV light, there were anthracene traces even to the hands of appellant.

18. Therefore, PW2 Pratap is independent witness. He has seen appellant accepting the currency, though it was subsequently

passed to accused No.2. Even there is nothing adverse in his cross-examination. In spite of cross-examining him to larger extent, the crucial aspect of demand as well as acceptance, which is *sine qua non*, is also available in his evidence and he also supports PW1 complainant as regards to demand and acceptance is concerned.

19. Consequently, PW1 complainant and PW2 shadow panch both are corroborating each other and lending support to each other on the required aspects of demand and acceptance. Though learned counsel for the appellant pointed out that, witnesses are not consistent entirely and there are material variances on the aspects pointed out, in the considered opinion of this Court, these are not material variances. Only those variances are material which are core case of the prosecution i.e. demand and acceptance. However such aspect has remained undisturbed.

20. On visiting the evidence of **PW3** sanctioning authority, even this court is of considered view that, there is no force in the submission that, there is no application of mind. Witness has stated about studying the papers and according sanction. Therefore, sanction cannot be said to be invalid.

21. Therefore, on complete re-appreciation of the evidence of PW1, PW2, PW3 and PW4, there is no hesitation to hold that the view taken by the learned trial court is the possible view that could emerge on appreciation of the available evidence. No case being made out for interference, I pass following order.

ORDER

The criminal appeal is hereby dismissed.

[ABHAY S. WAGHWASE, J.]

22. On pronouncement of this Judgment, learned counsel for the appellant prays for four weeks time to surrender so as to enable him to approach the Hon'ble Apex Court.

23. Learned APP strongly opposes the same.

24. Considering the above request made by learned counsel for the appellant, four weeks time is granted to the appellant to surrender.

[ABHAY S. WAGHWASE, J.]