

(2003) 09 BOM CK 0077

In the Bombay High Court

Case No : Criminal Appeal No. 8 of 1996

Ahmed Hussain Shaikh Nabi

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 15-09-2003

Acts Referred:

Prevention of Corruption Act, 1947 — Section 5(1), 5(2)
Penal Code, 1860 (IPC) — Section 161

Citation : (2003) 09 BOM CK 0077

Hon'ble Judges : P.B. Gaikwad, J

Bench : Single Bench

Advocate : V.N. Damle, holding for P.V. Mandlik, for the Appellant; V.B. Nayak, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Gaikwad, J.—The appellant has challenged the order dated 16-12-1995 passed by the learned Special Judge, Nanded in Special Case No. 2 of 1989 convicting the appellant for the offence punishable u/s 161 of Indian Penal Code (I.P.C.) and section 5(1)(d) read with section 5(2) of Prevention of Corruption Act, 1947 (P.C. Act) and sentencing to suffer rigorous imprisonment for six months u/s 161 of I.P.C. and to suffer rigorous imprisonment for six months and to pay fine of Rs. 500/- in default to suffer further rigorous imprisonment for two months u/s 5(1)(d) read with section 5(2) of P.C. Act.

2. The appellant was serving as Avval Karkun in the Tahsildar Office Nanded in the year 1988. Complainant Pradip was intending to convert the land belonging to his grand mother Laxmibai and sister Vimalabai bearing old Survey No. 43 and Gut No. 129 and 138 from village Pardi. Accordingly, he had filed application before the Tahsildar Office. Nanded for seeking permission as such. As a requisite therefor, a certificate was required from the concerned authority that the said land is not an inam land, since the 7/12 extract showed that in other rights column, names of Managya and Marshay were shown as tenants. Somewhere in

February, 1988, complainant Pradip came to know that there was a provisional declaration in favour of these two tenants but the Tahsildar by his order dated 6-8-1958 has cancelled the said provisional declaration.

Complainant, therefore, filed an application on 17-2-1988 for certified copy of the said order. He approached the concerned record office from Tahsildar Office, Nanded. Record section in-charge of Tahsildar Office informed that the said order is not traceable in the record room, nowhere, the same may be possibly with the Land Reforms section or Tahsil Office and the appellant deals with the said section. Complainant, accordingly approached the appellant and requested to trace the said order. Appellant initially demanded Rs. 500/- to trace the order and on 18-2-1988, the appellant succeeded in securing the said record by which the provisional declaration of the aforesaid two tenants was cancelled by the tenancy authorities. The complainant therefore, requested the appellant to give certificate to that effect, which is required for conversion of agricultural land into non agricultural land and the appellant, therefore, expressed that if the complainant pays Rs. 300/- he will issue necessary certificate. Some negotiations took place and ultimately it was agreed to pay Rs. 250/- to the appellant for the said work. Rs. 100/- were paid on 19-2-1988, while the remaining amount was to be paid after 3-4 days at the time of handing over the certificate in favour of the complainant.

3. On 24-2-1988, complainant approached the Anti Corruption Bureau. The Deputy Superintendent of Anti Corruption Bureau recorded the complaint of Pradip called two panchas and they were appraised about the grievance of the complainant. Both complainant and panchas were introduced to each others. Pre-trap panchanama was prepared. However, on 24-2-1988, though trap was laid since the requisite certificate was not ready, the appellant asked the complainant to come on the next day i.e. on 25-2-1988.

4. Again on the next day, trap was arranged, Pre-trap panchanama was prepared after following necessary procedure. Anthracene powder was applied to the three currency notes of Rs. 50/- each denomination. Those were kept in the pocket of the complainant and he was instructed to hand over the said notes to the appellant only on demand. Panch No. 1 was directed to accompany the complainant and panch No. 2 was directed to accompany the raiding party and see what happens.

At about 12 noon of 25-2-1988, complainant, panchas and members of the raiding party proceeded to the Tahsildar Office and reached the Land Reforms section where the appellant was working. The appellant was in front of his office smoking the cigarette. The complainant approached him and asked whether the certificate is ready. Appellant asked whether he has brought the amount and on saying that he had brought the amount, the appellant went to office, took certificate, handed over the same to complainant and then demanded the money. Complainant thereafter took out the amount of Rs. 150/- from his pocket and handed over the same to the appellant. He accepted the amount by his right

hand and kept the same in his back left side pocket. The complainant then gave prearranged signal. Raiding party members arrived at the spot, caught hold hands of the appellant and asked the appellant as to whether the amount of bribe is accepted by him. He informed that he has kept the said amount in the backside pocket. Panch No. 2 was directed to take out the said amount. The hands and fingers of the appellant were seen under ultra-violet lamp and the result was positive. Post trap panchanama was prepared.

The Deputy Superintendent of Police, Anti Corruption Bureau made a report filed an complaint and accordingly crime was registered.

The Investigating Officer submitted the Investigating Papers to the Collector, Nanded for necessary sanction and after obtaining the same, he submitted charge-sheet against the appellant before the learned Special Judge.

5. The learned Special Judge after considering the evidence on record adduced by the prosecution, concluded that there is demand and acceptance of bribe on the part of the appellant and therefore, he convicted and sentence the appellant for the offences as aforesaid. Said judgment and order of conviction and sentence is questioned in this appeal.

6. I heard Shri Damle, Advocate for the appellant and Shri Nayak, A.P.P. for the State.

7. It is submitted by Shri Damle, Advocate that the learned Special Judge has not properly scanned and scrutinised the evidence on record.

Secondly, according to him, the Court below has wrongly concluded that there is demand and acceptance of bribe.

Thirdly, according to him, the sanction is without application of mind.

Thus, according to Shri Damle, at any rate of the judgment and order of conviction and sentence is not proper and justified.

Shri Damle in support of his submissions also placed reliance on the decisions in the cases of M.K. Harshan Vs. State of Kerala, , Puran Chand Vs. State of Punjab, , Shamnashab M. Multtani Vs. State of Karnataka, and Subash Parbat Sonvane Vs. State of Gujarat, .

8. On the other hand, it is submitted by Shri Nayak, A.P.P. for the respondent/ State that the order is proper and justified.

9. Considering the submissions made on behalf of the parties, it is necessary to see whether the order of conviction and sentence is proper and justified for which reference to provisions of section 161 of I.P.C. is necessary which read as under:

"161. Public servant taking gratification other than legal remuneration in respect of an official act.-Whoever being or expecting to be a public servant accepts or obtains or agrees to accept or attempts to obtain from any person, any

gratification, whatever, other than legal remuneration as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show. In the exercise of his official functions, favour or disfavour to any person or for rendering or attempt to render any service or disservice to any person, with State or with any local authority, Corporation or Government company referred to in section 21 or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

Explanation.---

Gratification.--- The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

....."

It is also necessary to make it clear that the question as to the handing over of any bribe and recovery of the same from the accused should be considered along with other material circumstances one of which is the question whether any demand was at all made by the appellant for the bribe. I am referring this particular aspect with a view that it is contended by Shri Damle, Advocate that in the present case there is no demand by the appellant.

10. As it will be seen from the record, the prosecution has examined six witnesses. P.W. 1 Pradip (Exhibit 7) is the complainant. Through his evidence, complaint (Exhibit 8) dated 24-2-1988 is got proved. Through his evidence, other documents Exhibits 10 to 13 are also got proved. P.W. 2 Uttam (Exhibit 14) is the panch. Through his evidence the pre-trap and post trap panchanamas Exhibits 15 and 16 are got proved. P.W. 3 is Swadhin Kshtriya, Collector, Nanded at the relevant time, who has given sanction for prosecution dated 27-1-1989. Evidence of this witness is at Exhibit 22 while the sanction is got proved at Exhibit 23. P.W. 4 is Ram (Exhibit 32), panch No. 2. P.W. 5 is Murlidhar (Exhibit 35), Tahsildar, attached to the Tahsil office, Nanded at the relevant time. P.W. 6 is Chavan (Exhibit 38), Investigating Officer.

11. On close scrutiny of evidence of P.W. 1 Pradip. P.W. 2 Uttam P.W., 4 Ram and P.W. 6 Chavan. Investigating Officer it is sufficiently clear that the evidence of complainant as regards demand of Rs. 300/- on 19-2-1988 as a bribe for issuing certificate is satisfactory, acceptable and convincing and there was no reason for the complainant to involve the appellant falsely. It is further clear from his evidence that the said demand was thereafter, reduced to Rs. 250/- out of which on the very day i.e. on 19-2-1988, the appellant accepted Rs. 100/- and balance was to be paid after 3-4 days at the time of taking certificate. The evidence to this effect is cogent, satisfactory, convincing and acceptable.

12. So far as regards the incident which took place on 25-2-1988 is concerned, the evidence of P.W. 1 Pradip and P.W. 2 Uttam sufficiently makes it clear that both of them had been to the Tahsil office at about 12 noon. The appellant was

found in front of his section, smoking cigarette. Complainant asked him whether the certificate is ready and then appellant asked whether he has brought the amount. The complainant replied in affirmative. Thereafter, the appellant went in the office directing the complainant to wait there only, took the certificate and handed over the same to him and demanded remaining amount. The complainant paid amount of Rs 150/-, which was accepted by the appellant by his right hand and he kept the said amount of Rs. 300/- in his back side pocket.

The accused was immediately apprehended after giving signal by the complainant. Investigating Officer disclosed his identity and asked the accused as to where is the amount and he then replied that it is kept in the backside pocket. Panch No. 2 Uttam was accordingly directed to take out the said amount. The right hand and fingers so also left hand of the appellant were seen in ultra violet lamp. Those were found tainted with anthracene powder. Post trap panchnama was prepared in detail. Evidence of P.W. 1 Pradip and P.W. 2 Uttam as regards demand and acceptance of Rs. 150/- on 25-2-1988 by the appellant is again convincing and satisfactory so also trustworthy and acceptable and there is no infirmity in the said evidence on this material particulars. Even the evidence of P.W. 4 Ram panch No. 2 is again satisfactory.

The evidence of all these witnesses, if read together with the evidence of Investigating Officer make it clear that there is consistency as regards demand and acceptance of bribe. I find that the learned Special Judge has rightly considered this aspect at great length. Thus, the contention on behalf of the appellant that there is no demand and acceptance is unfounded. Same needs to be discarded.

13. So far as regards the sanction is concerned. I have gone through the evidence of P.W. 3 Swadhin Kshatriya, the then Collector of Nanded so also the sanction order. I find that the Collector had applied his mind and accordingly accorded sanction to prosecute the appellant. There is no infirmity in the said sanction. On close scrutiny of the evidence on record and its reassessment. I find that the learned Special Judge has rightly evaluated and scrutinised the evidence and even rightly concluded that the accused committed offence u/s 161 of I.P.C. and section 5(1)(d) read with section 5(2) of P.C. Act. Considering the ingredients of both the offences and considering the evidence on record so also the factual aspects. I do not find any infirmity in the conclusions arrived at by the learned Special Judge. I further find that the Court below has taken a lenient view as regards the quantum of sentence.

14. I have also carefully gone through the ratio laid down in the authorities on which reliance is placed by Shri Damle, Advocate for the appellant. I find that considering the factual aspects in the present case, the ratio laid down in those authorities is not in any way applicable. I find that in the present case, there is demand and acceptance of bribe amount by the appellant and therefore, a detail reference to the said authorities is not necessary.

15. A reference is necessary to the stand taken by the appellant. It is seen from the tenure of the cross-examination and explanation given by the appellant in a statement u/s 313 of Cri.P.C. that he was working as Avval Karkun and attached to Land Reforms Section. This fact is not in dispute. The fact that the complainant approached the appellant with a request to issue certificate is also not in much dispute. It is further seen from the record that the appellant has not explained anything about the amount of Rs. 150/- recovered from his pocket and traces of anthracene powder to his right hand palm and fingers. It is in this respect necessary to make it clear that the presumption as laid down in section 4 of P.C. Act comes into play. A reference, to my mind, is necessary to the decision in the case of Manik Shrirang Gaikwad and another Vs. State of Maharashtra, , wherein it is observed to the following effect:

"..... The plain reading of section 4 is that not only the proof of the fact that the purpose of the acceptance is dispensed with but even the proof of the making of the demand is dispensed with. The very acceptance bears upon itself the stamp of illegal gratification. No one accepts illegal gratification as a motive or reward without there being a nexus between the acceptance and the purpose. The "demand is implicit in this entire affair."

A reference is also necessary to the decision in the case of Hazarilal v. State (Delhi Administration), AIR 1980 Delhi 873, wherein it is observed to the following effect:

"Recovery of money coupled with other circumstances leading to the circumstance that accused received gratification presumption u/s 4(1) can be drawn."

A reference is also necessary to the decision in the case of Chaturdas Bhagwandas Patel Vs. The State of Gujarat, , wherein it is observed to the following effect :

"Where the prosecution had proved that the accused Head Constable had accepted a gratification of Rupees 500/- which was not his legal remuneration from G. the statutory presumption u/s 4(1) was attracted in full force and the burden had shifted onto the accused....."

It is further observed to the following effect:

"To constitute an offence u/s 161 it is enough if the public servant who accepts the gratification, takes it by inducing a belief or by holding out that he would render assistance to give "with any other public servant" and the giver gives the gratification under that belief. It is further immaterial if the public servant receiving the gratification does not intend to do the official act, favour or forbearance which he holds himself out as capable of doing."

16. Considering the ratio laid down in the above authorities and factual aspects in the present case. I find that the conclusions arrived at by the learned Special Judge convicting the appellant for the offences u/s 161 of I.P.C. and section 5(1)

(d) read with section 5(2) of P.C. Act does not suffer from any infirmity. I further find that the said conclusion is in consonance and conformity with the evidence on record. I further find that the prosecution has satisfactorily proved demand and acceptance of bribe amount by the appellant from the complainant and thus, the order of conviction and sentence needs to be confirmed.

17. In the result, the appeal is dismissed.

R & P be sent to the Court below immediately.

The appellant is directed to surrender before the Special Judge, Nanded forthwith. His bail bonds stand cancelled. The appellant is entitled to set off u/s 428 of the Code of Criminal Procedure.