
(2012) 08 BOM CK 0095
In the Bombay High Court
Case No : Criminal Appeal No. 216 of 2001

Balim Ghodki and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197

Penal Code, 1860 (IPC) — Section 161

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 19, 20, 5(2)

Citation : (2012) BomCR(Cri) 276

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : P.S. Wathore, for the Appellant; D.B. Patel, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—The appeal is directed against the judgment and order dated 13/07/2001 in Special Case no 27 of 1989 passed by learned Special judge under the Prevention of corruption Act at Nagpur, whereby the accused was found guilty of offense punishable u/s 7 of the Prevention of Corruption Act (corresponding to repealed S. 161 of the IPC) and sentenced to suffer rigorous imprisonment for six months and to pay fine in the sum of Rs. 500/- or in default to undergo further of R.I. for two months while for the offense punishable u/s 13(1) (d) read with Section 13(2) of the Act (corresponding to s.5 (1) (d) read with section 5(2) of the Old Act) the accused was sentenced to suffer R.I. For 2 months. Substantive sentences of imprisonment were directed to run concurrently with set off allowed for the period of custody already undergone. Heard submissions at the Bar.

2. Facts stated briefly are:-

The complaint was lodged at the office of Anti -corruption Bureau (ACB), Nagpur by Ramdas (first informant) informing that he had applied for loan to Khadi

Gramodyog Mahamandal before 4 to 5 months. He met the accused (Supervisor), and was advised to collect N.O.C. From Gram Panchayat, Bank, MSEB, house tax receipt, experience certificate, copy of 7/12 extract of his property and a passport size photograph and to visit the office with the sureties and the documents. The accused had asked for sum of Rs. 500/- in presence of the surety Vasant for immediate sanction of the loan. When the complainant said that he had no money, the accused had reduced his demand to Rs. 100/-. The complainant paid sum of Rs 50/- reluctantly and made the complaint (Ex 38) to ACB, Nagpur. Procedure for the pre-trap Panchanama was followed; raiding party was formed as planned and the complainant and the pancha witness had approached the accused at his office. Complainant and pancha witness No. 1 went near the chair of accused. Accused asked the complainant about identity of the pancha witness upon which the complainant disclosed that he was his relative. Accused made enquiry with pancha about his profession. Pancha replied that he was driver on which accused asked him to make application for grant of loan to purchase auto-rickshaw. The accused had asked the complainant as to whether he had brought what he had told. The complainant answered in the affirmative. The accused then invited them for a cup of tea. On their way asked the complainant to give him money. The complainant gave the folded currency note to the accused, which the accused kept in his chest pocket of the shirt. Signal was given to the raiding party. Raiding Party came and caught hold of the accused by both hands. The test was carried out to detect presence of phenolphthalein powder sprinkled on the currency note accepted by the accused with the help of sodium carbonate solution. The currency note was recovered from the pocket of the accused by the Pancha No. 2, and serial number of the currency note was also tallied with the panchanama No. 1 (pre-trap panchanama). Right-hand fingers of the complainant also were also tested by dipping them in the solution of the sodium carbonate. The solution was collected in the bottle and sealed under the seizure Panchanama (Ex. 43). Documents (Ex 20 to 29) of the complainant with the accused were recovered from the accused and seized under the Panchanama (Ex45). The report was made to the Ganeshpeth Police Station and offence was registered vide Crime no 644/88. Seized articles were sent to C.A. in a sealed condition under the requisition letter (Ex75) and reports were received in due course (Ex 82). After completion of the investigation the accused was charge sheeted. The defense of the accused is that he was falsely implicated by the official of the of the employer establishment in connivance with the complainant.

3. Ten witnesses were examined to support the case of the prosecution. The trial Court held that the accused being a Public Servant while he was employed as an Industrial Supervisor in Maharashtra Khadi Gramodyog Mandal at Nagpur, made a demand from the complainant on 23/6/1988, 26/6/1988 and on 27/6/1988 the demanded sum of Rs. 500/- was reduced to sum of Rs. 100/- for to recommend loan application of the complainant to get early sanction. The accused had repeated the demand of Rs 100/- on 31/8/1988 at about 11 a.m. and agreed to

reduce it Rs 50/- as part payment on the same date in the afternoon and agreed to receive the balance amount after the sanction of the loan. The trial Court held further that the accused had demanded the sum of Rs 50/- on 31/8/1988 in the afternoon as a gratification other than legal remuneration as a motive or reward for doing the official work i.e. to recommend loan application for Rs 25000/- and to get it sanctioned early, thereby obtaining pecuniary advantage for himself by corrupt or illegal means.

4. PW-1 Shri Khedekar deposed about the demand made by the accused when the complainant approached him for the purpose of loan as he wanted to buy a machine. The accused had asked for the 7/12 extract of the land and surety with necessary documents. The accused had retained the documents produced by the complainant and asked the complainant to pay a sum of Rs. 500/- if the complainant was interested to get the loan sanctioned early. The accused had made a demand of Rs. 500/- on 26/08/1988 also for early sanction of the loan. The complainant met the accused on 29/08/1988 and expressed his inability to pay Rs. 500/-. Then the accused had asked the complainant to pay sum of Rs. 100/- on 31/08/1988. Thus first demand of the sum of Rs. 500/- was reduced to Rs. 100/- and when the complainant met the accused on 31/08/1988 the accused had agreed to receive sum of Rs. 50/- on that day and asked the complainant to pay sum of Rs 50/- later. Form of loan (exhibit 20) was filled in. The application for loan was signed by the complainant (Ex21). Documents were submitted to the accused (Ex22 to 36). The complainant had assured the accused that he will come and bring the amount. The complainant who was not really willing to bribe the accused, had approached the ACB office. Shri Rahane (PW-8) had recorded the complaint (Ex. 37). Formalities of the pre-trap Panchanama were completed and the trap was planned accordingly. The complainant who was accompanied by Pancha Biraha, went walking to Khadi Gramodyog office at about 15 hrs. Panch No. 1 was introduced to the accused as relative of the Complainant. The accused asked about the profession of the Pancha No. 1 to which he disclosed that he was a driver. The accused had prepared the documents and asked for the caste certificate and income certificate to be brought on Friday and asked whether the the complainant has brought (the sum). When the complainant answered in the affirmative, the accused told that they will have a cup of tea. While they were descending down the staircase the accused asked the complainant to give the money brought by the complainant. The complainant took out the amount by his right hand and gave it in the left hand of the accused and the accused kept it in his left side chest pocket. The complainant then came out and gave the signal. Raiding party rushed to the spot and P.C Gyanba caught both hands of the accused. PW-8 Prabhakar introduced himself. Sodium carbonate solution test was carried out which was positive as the color of the solution turned purple when the fingers of the accused were tested in the solution under the Panchnama.

5. PW 2 Sau Indira Mararkar deposed that at the relevant time she was working as Junior Clerk in the Office of Maharashtra Khadi Gram Udyog. She had received

application of complainant and after taking inward entry, she forwarded the same to the accused who was Supervisor. She deposed that it is the Supervisor who has to make onward submissions of the applicants to the concerned officers. PW 7 Vasant Bakade who was holding the post of Senior Supervisor, deposed that chits in the handwriting of accused (exhibits 51 and 52) bear his signature and he also proved joining report of accused (exhibit 73) while the latter was transferred from Bhandara to Nagpur. Evidence of this witness and that of PW 2 Indira shows as to how loan applications are processed. PW 6 denied suggestion given to him in cross-examination that he was on inimical terms with accused.

6. P. W. 3 Raju Birha who is one of the two panchas, was at the relevant time working with MHADA as Junior Clerk. He deposed that on 31.8.1988 he and his colleague Gaurkhede were called by his officer and they were asked to accompany the ACB officials. He was taken to ACB Office and was asked to act as a pancha for raid in the office of Khadi Gram Udyog. He deposed that complainant produced currency notes of Rs. 50/-consisting of two currency notes of Rs. 20/- and one of Rs. 10/-. He deposed about pre-trap demonstration. He further deposed that after reaching the office of accused, when the complainant enquired about his loan case, accused replied that it was short of 5-6 documents. Accused offered tea and when they were coming down, on stair-case, accused asked the complainant whether he had brought as per their talk. Complainant gave Rs. 50/- to the accused and accused accepted the same. He then deposed about trap and proved certain documents viz. Seizure panchanama (exh. 42); list of articles (exh. 44); seizure memo (exh. 45); three blank papers and one written paper bearing his signature and signature of another pancha (exhibits 46 to 49) etc. In cross-examination he deposed that accused had not demanded specific amount from complainant. However, he denied the suggestion that complainant had forcibly put Rs. 50/- in the pocket of accused.

7. PW 4 Vasanta Wasade deposed that he had agreed to stand surety for complainant in a loan case and when he had accompanied the complainant to the office of accused. According to him, accused stated to the complainant that if he wants his work to be done early, complainant will have to pay Rs. 500/-. In his cross-examination, he denied all adverse suggestions.

8. P. W. 5 Prabhakar who was at the relevant time head constable attached to ACB, Nagpur, proved FIR (exhibit 63). He carried property to C. A., Nagpur and brought it back along with C. A. Report. PW 6 Shamrao deposed that he was working as constable with Police Station, Ganeshpeth, Nagpur and on 31.8.1988 he registered offence vide Crime No. 644/88. Nothing adverse to the prosecution case could be elicited from the cross-examination of these witnesses.

9. PW 8 Prabhakar Rahane stated on oath that on 31.8.1988 he was working as P. I. At Anti-corruption Bureau and he reduced into writing complaint of complainant as per his version. Complainant went through the complaint and admitted its correctness. Then he gave requisition to the office of MHADA and obtained two panchas. He, in a thorough detail, deposed he prepared pre-trap

panchanama and the procedure adopted by him while conducting trap on the accused. He deposed that first sanction order was received from the Chief Executive Officer and second was received from the Chairman of Khadi Gram Udyog. In cross-examination, he deposed that all investigating papers were sent to the sanctioning authority. He denied the suggestions that he had not carried out seizure and investigation.

10. P. W. 9 Jayant Patil deposed that from 1987 to 1991 he was Chairman of MS Khadi & Village Industries Board. He deposed that from 1978 onwards powers of appointment and removal of the employees below class-I were with the Chairman, but the same were later on delegated to the Chief Executive Officer. After receiving all the investigating papers, he had discussed the matter with CEO who was competent to give sanction. He proved sanction order (exhibit 87) given by the CEO. He deposed that he and CEO were satisfied that there was sufficient evidence against accused to accord sanction to prosecute in public interest. He also deposed that since at the time of appointment of accused, Chairman was appointing authority, question cropped up whether sanction should be accorded by the Chairman and, therefore, he received letter from D.C.P. (exhibit 84) for sanction to prosecute accused. After going through the papers he was satisfied that sanction was necessary to prosecute accused in public interest and, therefore, he accorded sanction on 30.7.1990. In cross-examination, he denied a suggestion that he simply signed draft sanction order. In cross-examination, he replied to a question that he was having special powers to accord sanction and resolution to that effect was filed on record. He denied that out of bias for accused, he was deposing against him.

11. On the point of sanction, prosecution also examined P. W. 10 Ratnakar Gaikwad who was working as Chief Executive Officer of Khadi & Village Industries Board. He deposed that sanction order (exh. 87) was signed by him as appointing and removing authority after carefully going through the investigation papers and after he was satisfied that there existed prima facie case against the accused. In cross-examination, he denied all adverse suggestions.

12. Shri Wathore, learned advocate (appointed) for the appellants submitted that P. W. 2 Sau Indira and PW 7 Bakade have deposed as to how loan case was processed. PW 2 deposed that loan application was received by her and after taking entry in inward register, she forwarded the same to the accused who was supervisor. She further deposed that the Supervisor has to put up loan case to the District Gram Udyog Officer. He submits from the evidence of PW 2 Indira and PW 7 Vasant it can be gathered that it is not the accused who was empowered to sanction the loan. He submits that demand was not proved in the present case. According to Shri Wathore, there was no evidence about the date and time of alleged demand. He contended that the recovery made is inconsequential. Making reference to the evidence of PW 3 Raju who acted as shadow witness, he submitted that there was no whisper of demand of Rs 500/- from the accused. PW3 also did not specify as to which fingers of the accused

were dipped in the solution. According to Shri Wathore, the credibility of Panchanama Ex 55 and Ex 56 was doubtful. PW 3 has admitted in his cross examination that there was no specific demand like Rs. 10 or 50/- from the accused.

13. Learned counsel contends that on overall reading of the evidence adduced by the prosecution, crucial aspects i.e. demand of bribe money, acceptance and recovery thereof are not proved in this case beyond shadow of doubt. He also submits that whatever is the strength of prosecution evidence is rendered further doubtful by the defence of accused which is probable. In support of this argument, he placed reliance on the judgment of this Court in Pandit Chaudhari & anr v. The State of Maharashtra reported in 2012 All MR (Cri) 1546 wherein this Court (brother A. H. Joshi, J) set aside conviction and order of sentence which was based on mere suspicion than the proof of charge.

14. Learned advocate (appointed) for appellants then pressed into service judgment rendered by the undersigned in The State of Maharashtra v. Ramkrushna reported in 2012 All MR (Cri) 1543. In that case, this Court, relying on the judgments of the Apex Court in C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala, and M. Narsinga Rao Vs. State of Andhra Pradesh, held that mere recovery of money from the accused by itself is not enough, in absence of substantive evidence for demand and acceptance. Shri Wathore contended that the prosecution in this case has failed to establish the fact that bribe was paid to the accused and the accused had voluntarily accepted the amount of bribe as a motive or reward for doing or forbearing to do any official act.

15. Placing reliance on the ruling in Ramakrishna Punjabi's case (supra) Shri Wathore submitted that the sanctioning authority is expected to apply its judicious mind to the proposal of the sanction. Judicial notice can be taken of the routine practice to in the Government set-up to put up draft Sanction Order before the officer concerned for his signature. The Sanctioning Authority can not start with assumption as to prima facie case as a matter of routine merely by putting its seal of approval on the draft of sanction order without going through the record o the case or without assessment of the material collected during the investigation. Shri Wathore submitted that two authorities namely Chairman and the Chief Executive Officer had sanctioned the prosecution by two orders namely Ex 87 and Ex 89 in the present case. He made reference to the observations in Para 12 of the ruling in State of Himachal Pradesh Vs. Nishant Sareen, wherein the Apex Court has in paragraph 12 observed thus:

It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power u/s 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it

is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course.

In *State of HP v. Nishant Sareen* (supra), sanction to prosecute was initially refused by the Principal Secretary (Health) and thereafter the Vigilance Department took up the matter with the same authority for grant of sanction as in their opinion, sufficient evidence existed to prosecute the respondent therein. The above observation by the Apex Court were in the context about the review or reconsideration of the earlier sanction, if allowed, then with the change of government or sanctioning authority different order may be passed on the basis of same material, then there would be no end to such exercise. However subsequent to the earlier order, fresh material if collected by the investigating agency, can not preclude the Sanctioning authority concerned before whom it is placed to form an opinion to grant Sanction to prosecute the Public Servant concerned.

It is not a case before me that the sanction was initially declined and that the same authority reviewed it after it was again sought. Chief Executive Officer accorded sanction as appointing and removing authority after going through the investigating papers and after he was satisfied that there was prima facie case against the accused. The same thing was done by the Chairman who did it in order not to leave any technical flaw in the matter of sanction inasmuch as Chairman was appointing and removing authority when the accused entered into the employment of Khadi Udyog. Sanction Orders in the present case will have to be read together and it cannot be inferred from any angle that there was review or reconsideration of any of the two sanction orders.

16. Looking to the evidence on record as discussed in paragraphs 5 to 12 above, the prosecution has succeeded to establish the fact of demand of bribe made by the accused and voluntary payment of bribe amount by complainant and acceptance of bribe amount by accused as illegal gratification as consideration of official duty for getting early sanction of the loan. The statutory presumption u/s 20 of the Act arose which was not rebutted by the accused so as to displace it

even upon preponderance of probabilities.

17. This appeal is continued by legal representatives of original appellant. Looking into the evidence on record, it appears that the prosecution has succeeded to establish the fact of the demand of bribe made by the accused and voluntary payment of bribe amount by the complainant and acceptance of the bribe amount by the accused as illegal gratification in consideration of the unlawful promise for getting early sanction of the loan. The statutory presumption u/s 20 of the Act arose which was not rebutted so as to displace it even upon preponderance of probabilities. Learned Advocate Shri Wathore argued that the late accused is entitled for the benefit of doubt as the appeal is being prosecuted by his legal representatives and heirs who can get benefits of his employment at least posthumously. According to him, the Apex Court had in *Baliram (Dead) through the Legal representatives v. State of Maharashtra* (Criminal Appeal No. 1043 of 2005) had allowed the appeal giving benefit of doubt to the deceased accused. I cannot persuade myself to agree with this contention when offence of corruption is proved by sufficient evidence beyond reasonable doubts. The Court cannot apply a blanket formula to acquit the accused by giving benefit of doubt to him for the reason that the legal heirs would be benefited if appeal is allowed by giving benefit of doubt to the deceased accused. Court cannot be swayed away by sympathy, emotions or moral approach when in the facts and circumstances of the case no benefit of doubt can be granted, merely with reference to some cases wherein the Apex Court may have granted benefit of doubt in some cases continued by legal representatives. Each of the criminal case is required to be decided with reference to the individual facts of each case which may be different or distinguishable from other case. Witnesses in the present case appeared natural and truthful. Their evidence cannot be rejected because no guilty man shall be allowed to go unpunished or escape the consequences of the crime committed. Wrong acquittal will send a wrong signal to the society as corruption if proved, does not deserve leniency or sympathy. Having applied test of a reasonable prudent man's satisfaction beyond reasonable doubt to the evidence led by the prosecution in this case (not being rigid mathematical calculation by resorting to minor or insignificant discrepancies) it has to be concluded that the prosecution has proved the case against the appellant in the trial Court and no ground is made out for interference by this Court. To sum the discussion, therefore, there is no merit in the appeal. In the result, appeal fails and is accordingly dismissed. Fees payable to Mr P. S. Wathore, Advocate appointed as amicus curiae by the High Court Legal Services, Sub-committee at Nagpur, is quantified at Rs. 2500/-.