
(1991) 08 BOM CK 0035
In the Bombay High Court
Case No : Criminal Appeal No. 253 of 1984

Bhagwan Jathya Bhoir

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-08-1991

Acts Referred:

Penal Code, 1860 (IPC) — Section 161, 95
Prevention of Corruption Act, 1988 — Section 4, 5

Citation : (1992) 94 BOMLR 388 : (1992) 2 MhLj 979

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : S.R. Chitnis and N.S. Mohite, for the Appellant; R.F. Lambay, Assistant Public Prosecutor, for the Respondent

Judgement

1. An issue of immense importance which would concern a large number of pending corruption prosecutions and appeals, as also curtail numerous others that would otherwise have been mechanically dumped on the Courts had arisen in this appeal, which is summarised as follows :

Whether it is not fundamental for a sanctioning authority, while according sanction under the provisions of the Prevention of Corruption Act, to withhold sanction in petty cases where facts allege an isolated instance, and where the case would not justify the minimum sentence of one year R.I. and fine, and whether in such cases the public servant ought to be dealt with through disciplinary proceedings at the departmental level ? Whether a sanction order issued without application of mind to these considerations would be bad in law ?

2. This criminal appeal relates to an incident that had taken place as long back as on 9-2-1982. The appellant who, at the relevant time, was working as a clerk in the Rationing Office at Bhiwandi is alleged to have demanded and received illegal gratification of a trifling amount of Rs. 30/- from one Abdul Salam Gulam Mustafa Momin.

3. It is alleged that the accused had been approached by the complainant in the course of his duties in the office with a request that the names of two of his brothers should be deleted from the existing ration card. The accused is alleged to have completed the formalities a few days prior to 9-2-1982 and he is supposed to have, at that time, asked the complainant to come on the 9th of February 1982 with an amount of Rs. 30/-. The complainant approached the Anti-corruption Authorities and a trap was laid. It is alleged that on the 9th of February 1982, the complainant went to the office, met the accused and that the accused asked him as to whether he had brought the money or not. The complainant replied in the affirmative and sometime later, the accused is alleged to have asked the complainant who was accompanied by a Panch witness, to get him a "paan", from the person sitting outside. The complainant obliged and it is his case that the accused had also told him while going for the paan to put the money in an envelope and to hand it over to him. According to the complainant, when he told the accused that an envelope was not available, the accused handed over a paper with instructions that the same be folded and the money placed inside. The complainant followed these instructions and the accused is alleged to have put the folded paper along with the amount of Rs. 30/- with the two notes protruding therefrom, into his left trouser pocket. On the complainant giving the requisite signal, the police party apprehended him and it is alleged that the paper along with the amount of Rs. 30/- was recovered from his left trouser pocket. It is also alleged that traces of anthracene powder were found on both his hands and further, that there were traces of anthracene powder also on his trousers. The accused was thereafter charge-sheeted and put on trial. The learned Sessions Judge found the accused guilty and sentenced him to suffer R.I. for one year and to pay a fine of Rs. 500/- in default to undergo R.I. for 3 months on each of the charges respectively. viz., u/s 161, I.P.C. as also u/s 5(1) (d) read with Section 5(2) of the Prevention of Corruption Act. It is against this conviction and sentence that the present appeal has been filed.

4. Mr. Chitnis, learned counsel appearing on behalf of the appellant has taken me through the entire record of this case and has advanced several submissions, some of them on points of fact and some others on point of law. The matter has been very vehemently contested by Mr. Lambay, learned A.P.P. appearing on behalf of the State, who was at pains to virtually point out every piece of correspondence on record in his attempt to sustain the conviction. I shall briefly deal with the different heads of challenge that have been raised by Mr. Chitnis.

5. The first submission canvassed by Mr. Chitnis is that the complainant's entire story which is to the effect that the accused demanded from him an amount of Rs. 30/- by way of illegal gratification, is in fact, total fabrication. Mr. Chitnis has pointed out to me the relevant parts of the evidence, and in particular, the evidence of PW 4 Bhalchandra Shantaram Patil, who is a colleague of the accused and working in the same office, who has admitted the suggestion that there was some sort of a quarrel between the accused and the complainant at the time when the complainant had originally visited the Rationing Officer on 7-2-1982. As

against this position, Mr. Lambay has submitted, that it would be too far-fetched to assume that the complainant, the Pancha and all the other witnesses on record would go to the extent of fabricating enough material to sustain a prosecution of the present type, merely because of a petty altercation. The fact that there is some reference to an argument or a quarrel having taken place does undoubtedly appear on record but, to my mind, it would be rather unsafe to hold that even if there was some argument or quarrel, that the complainant would go to the extent of fabricating the entire case as made out before the Anti-Corruption Authority. This challenge, to my mind, is rather weak.

6. Mr. Chitnis has thereafter pointed out, that the complainant and the Pancha, both of whom have more or less given evidence on identical lines, have stated that the accused is alleged to have asked the complainant to put the amount of Rs. 30/- into an envelope and to hand over the same to the accused. Thereafter, the complainant is alleged to have informed him that he was unable to secure an envelope and the accused is alleged to have handed over to him a piece of paper with instructions that the money should be placed inside the paper and handed over to accused. Mr. Chitnis has drawn my attention to the relevant portions of the cross-examination of the complainant and also of the Panch witness Someshwar Ganpat Dikule, and he has submitted, that their evidence is fully borne out by the Panchnama in this case which is at Exhibit 22. The Investigating Officer has drawn up a very detailed Panchnama in which he has recorded each and every part of the incident with meticulous procedural precision. Mr. Chitnis has placed strong reliance on one special circumstances viz., the fact that the witnesses have in turn admitted that the money in question was put inside, what, according to them was a paper bundle. They have used the word "pudi" and at one place, have used the expression "purchundi". In either case, the witnesses appear to be correct because, the Panchnama does mention that a bundle of paper more akin to what one would call a "pudi" was recovered from the trouser pocket of the accused.

7. Mr. Lambay, the learned A.P.P. has submitted, that this is virtually a play with words, and it is his contention, that in so far as the recovery of a paper with the money contained therein, regardless of whether it was folded or crumpled or crushed into a little ball would virtually make no difference for the reason that in the end result, the recovery of the amount from the paper which was found in the pocket of the accused is all that matters. Normally, I would have straight-way accepted the explanation given by the learned A.P.P. but on the facts of the present case and in view of the further submission advanced by Mr. Chitnis, this aspect does assume some significance.

8. The complainant as also Panch Dikule are quite emphatic about the fact that the accused asked them to conceal the money in an envelope and since an envelope was not available, that the money was placed between the folds of the paper given by him and handed over to the accused. They are also very clear and repeated several times in examination-in-chief as also in the cross-

examination that the notes were protruding from the folded paper and were clearly visible. This statement, unfortunately, cannot be reconciled with the finding of the bundle in the form in which it was recovered from the pocket of the accused. In the first instance, I put a pointed question to the learned A.P.P. which was to the effect that if the accused did not desire to openly accept the money from the complainant, he could have devised several means of taking the same from the complainant and could have also asked him to place the notes wherever he directed him to do so. If the object of the accused in asking that they should be concealed in an envelope was in order to avoid coming into contact with the note and if the object was in order to avoid any third-party who may be watching them seeing his receiving the notes in question, then, the accused would not have under any circumstances accepted a folded piece of paper with the notes protruding therefrom. It is difficult to reconcile the version of the complainant and the Pancha with the version that emerges from the Panchnama and in a criminal prosecution, particularly one under the Prevention of Corruption Act, it is very necessary for the prosecution to completely pass the test of credibility. To my mind, this is a very basic requirement and one which every prosecution, particularly one under the Prevention of Corruption Act must satisfy. As indicated by me above, as far as this aspect of the matter is concerned, there does appear a very serious doubt as far as the prosecution evidence goes. There are, however, other aspects of the case which require to be decided, which I shall deal with presently.

9. The next submission raised by Mr. Chitnis, the learned counsel appearing on behalf of the appellant, is really the most substantial attack to the validity of the present conviction and to my mind, the issue that really goes to the crux of the present case. Mr. Chitnis has submitted, that since a valid sanction is a condition precedent or in other words is sine qua non for the institution of a valid prosecution under the Act, that he is within his rights to question the validity of the sanction order in the present case. Summarising the submissions made by Mr. Chitnis, he has pointed out to me that Mr. Panwala, who at the relevant time, was the Deputy Controller of Rationing of the Area and who admittedly was the competent authority to accord or refuse sanction in this case was approached by the Investigating Officer through a letter dated 2-6-1982, requesting for permission to prosecute the accused. The Investigating Officer had forwarded to the Deputy Controller, the draft sanction order in a sealed envelope. Mr. Chitnis submitted that this procedure is highly irregular and improper in so far as it is entirely within the province of the sanctioning authority to independently examine the record and come to the conclusion as to whether or not sanction ought to be accorded and that if the Investigating Officer were to forward a draft sanction order, there is nothing to stop the sanctioning authority from mechanically according approval without any application of mind.

10. Mr. Lambay, learned A.P.P. has countered this argument, and rightly to my mind, by pointing out, that the Investigating Officer, in this case, has done an admirable job by summarising all the evidence and the material and having so

marshalled all the evidence and having placed it consciously before the sanctioning authority, he has thereafter requested him at the concluding part of the letter, to examine the record and if he is satisfied, to accord sanction. There is no suggestion that the sanctioning authority should abdicate his responsibility and the reason for forwarding the draft sanction order is obvious in the second last para of the letter viz., that the Investigating Officer was particular that the sanction order should meet the requirements of law and he had, therefore, forwarded the draft form in which it was required to be accorded. The Investigating Officer was well within his rights to forward the draft sanction order and if the sanctioning authority had mechanically accorded sanction, that procedure was certainly open to question when he was produced at the time of the trial. As far as this part of the procedure is concerned, I see no cause for complaint.

11. The Deputy Controller thereafter, as is indicated in the correspondence that has come on record, forwarded the draft sanction order to his counterpart and superior authority at Bombay with the request that the authority at Bombay should examine the record and inform him as to whether the sanction should be accorded or not. This part of his action has come under fire and Mr. Chitnis has submitted that even if a draft sanction order was sent, the sanctioning authority ought to have independently applied his own mind to the material placed before him and if he came to the legitimate conclusion that this was a case which required a prosecution, his decision could not have been questioned. If, however, he mechanically forwards the papers to another authority as is evident from what has happened in this case, that authority examines the record and accords sanction, as has in fact happened, and thereafter, the Deputy Controller of Thane mechanically relays the sanction accorded by the authority at Bombay, making it appear as though the sanction accorded is on the basis of his own subjective satisfaction, to my mind, the procedure followed is certainly faulty and is liable to be struck down. The reason for this is obvious as I shall presently demonstrate. Undoubtedly, the learned A.P.P. has furiously defended even this part of the procedure by pointing out that it makes little difference in so far as if the authority at Bombay who accorded the sanction is an authority superior to the Deputy Controller, it is only a procedural irregularity and makes no difference whatsoever because that authority is still competent to sanction the prosecution. According to Mr. Lambay, the question which the Court could have to address itself to is as to whether the material justified the grant of sanction or not and not merely the question as to whether the right authority granted the sanction. Normally, I would have upheld Mr. Lambay's submission except for the fact in the present case, the accused is facing a criminal trial. The accused in such a situation is legally entitled to question every aspect of the validity of the prosecution and if the prosecution produced at the time of the trial as its witness only the sanctioning authority who has ultimately signed the sanction order, serious prejudice will be caused to the accused who can only cross-examine that witness, in this case, the Deputy Controller of Rationing, Thane as to on what

considerations the sanction was accorded. The sanction having been accorded by the officer at Bombay, the Deputy Controller, Thane was not the competent witness for this purpose. The procedure accepted in this case, therefore, must be held to be faulty and would, therefore, affect the validity of the sanction order. I do not propose to strike down the sanction order merely on this ground which could, possibly, on a very strict construction be regarded as academic but there is a far deeper and more valid ground on which the sanction order in the present case is liable to be set aside viz., the more basic issue which arises - non-application of mind to the more cardinal consideration in the matter of sanction, though unfortunately not even touched upon by Mr. Chitnis.

12. It is a paramount consideration that the sanctioning authority must apply its mind thoroughly to the material placed before it and thereafter alone accord sanction. I do not need to quote the case law on this aspect of the case because, the position is well crystallised and does not require any repetition. As indicated by me at the beginning of this judgment, the amount alleged to have been accepted by the present accused is a trifling sum of Rs. 30/-. On the ground that he had accepted this amount and assuming that everything alleged against him by the Investigating Officer was accepted to be established, the moot question arises as to whether the accused who is alleged to have accepted a trifling amount of Rs. 30/- should be subjected to the rigors of a criminal prosecution under the Prevention of Corruption Act. The sanctioning authority is well aware of the time-lag involved, once a case is sent up to Court, having regard to the arrears, and the consequent trauma that it will involve the employee in for years. Suspension in such cases is inevitable and the payment of subsistence allowance for years is one of the avoidable drains on the department.

13. An examination of the scheme of the Act will indicate that the law has prescribed a minimum sentence of one year apart from fine as punishment for a charge that is proved under the Prevention of Corruption Act. This pre-supposes the fact that the legislature had in mind two things : The first of them was that a very rigorous view should be taken in respect of all offence of corruption where the Court finds a person guilty about which there can be no dispute. The second aspect of the matter which I propose to deal with is, that the legislature obviously intended by putting in the requirement for sanction of prosecution under this Act, unlike several other offences which comes to a criminal court, that the sanctioning authority must apply its mind to the gravity of the charge and decide as to whether or not assuming all the facts are established, the offence is serious enough to warrant a prosecution. The courts are groaning under the load of work which they are finding it difficult to come to grips with, and under these circumstances, it was certainly not the intention of the legislature to embark upon prosecution in trifling and petty cases. We find a further indication of this intention in the proviso to Section 4 of the Prevention of Corruption Act dealing with the aspect of presumption wherein again, a specific provision has been incorporated to the effect that if the case is a trifling one, that no adverse presumption shall arise. I have had occasion to deal with this aspect

of Section 4 in my judgment in O.S. Appeal No. 750 of 1987 in Writ Petition No. 655 of 1982, as also in Criminal Appeal No. 182 of 1984 decided on 11-4-1991.

14. To my mind, therefore, where a sanctioning authority is faced with the record of a case that is placed before him, the preliminary considerations that he is required to apply his mind to, is the all important question as to whether the facts alleged are serious enough to warrant a prosecution. The question necessarily arises as to on what basis the authority is to be guided in this regard. Undoubtedly, the issue is subjective and it cannot be left to the whims and fancies of the sanctioning authority to decide and to prosecute in a certain set of cases and refuse sanction in the remaining set of cases. For this purpose, we have an unmistakable guideline on the scheme of the Act wherein the minimum punishment that has been referred to by me above has been indicated. The guideline for the sanctioning authority would be to examine whether the case, if established, warrants the minimum punishment that is prescribed under the Act viz., the short question as to whether the offence alleged is of such seriousness that it would warrant a conviction of one year R.I. which is prescribed under the Act. To my mind, in trifling cases such as the present one, where even on a conviction for a solitary and single offence of acceptance of gratification of an amount of Rs. 30/-, a court would find it impossible to impose the minimum punishment, the sanctioning authority should evaluate the material and should withhold the sanction. By following such a procedure, not only would petty cases not be sent to the courts for protracted and lengthy trials but speedy disposal of the matter would also be achieved.

15. By indicating this procedure, I do not propose to take the view that the sanctioning authorities in minor cases or in isolated or single instances of corruption should close the matter on the ground that sanction is withheld. A parallel may be drawn from the provisions under the Customs Act and several other statutes where the law makes provisions for imposition of punishment departmentally, rather than through a prosecution before the criminal court. In those cases, the law provides for a departmental adjudication wherein relatively severe punishments in consonance with the offence alleged are imposed on the offenders. Similarly, in cases of the present type, it is open to the sanctioning authority to forthwith direct departmental proceedings by way of disciplinary action against the person who is alleged to have obtained the illegal gratification or accepted the bribe of a petty amount and through such proceedings, graded punishment in keeping with the offence alleged can be awarded to the employee.

16. The present case is one where unfortunately, had the sanctioning authority applied its mind to the fact that this was a rifling incident and a single isolated case, and not a case of habitual bribe-taking, the authority could have straightway ordered disciplinary proceedings against the employee concerned and punishment that bears a nexus to the charge alleged against the accused, if established, could have been awarded to him. In this view of the matter, the sanction order will have to be quashed and struck down on the ground that there

has been total non-application of mind on the part of the sanctioning authority.

17. It cannot be contended that the absolutely discretion vests with the sanctioning authority to order a prosecution even in petty cases, and if this is done, that the order will be legally valid. Support may be drawn from the provisions of Section 95, I.P.C. and the observations of the Supreme Court in the case of Veeda Menezes Vs. Yusuf Khan and Another, , wherein the Doctrine of Triviality has been discussed. The short question is as to whether the sanctioning authority should treat the acts complained about as an "offence" and the law conclusively states that trivial acts are not to be treated as offences. The institution of a prosecution in such case would clearly be barred.

18. In the result, it is unnecessary for me to examine any further aspects of the present appeal except one of them viz., the question as to whether the present accused, if exonerated of the charge on the aforesaid grounds, should be subjected to disciplinary proceedings at this point of time. The present appeal has gone through the Court. The facts of the present appeal have been examined by this Court and I have already held that the prosecution case does not pass the test of credibility. In this view of the matter, it would be unnecessary to subject the accused to any disciplinary proceedings because no other view is possible in the facts of the present case.

19. The appeal is accordingly allowed. The conviction and sentence recorded against the accused are set aside. The bail bond of the accused to stand cancelled. The fine, if paid, be refunded to him.

20. Appeal allowed.