
(2010) 11 BOM CK 0008
In the Bombay High Court
Case No : Criminal Appeal No. 308 of 2007

Bhagwan Mahadeo Sathe

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(2), 13(i)(d), 13(ii), 19, 7

Citation : (2012) BomCR(Cri) 545 : (2011) 8 RCR(Criminal) 1486

Hon'ble Judges : Kanade V.M., J

Bench : Single Bench

Advocate : S.V. Kotwal, for the Appellant; M.R. Tidake - , Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Kanade V.M., J.—Heard Shri Kotwal the learned Counsel appearing on behalf of the appellant and learned APP for the State. The appellant has filed this appeal, being aggrieved by the judgment and order passed by the Special Judge under the Prevention of Corruption Act, 1988 and the Additional Sessions Judge, Greater Bombay in Special Case No. 72 of 2001. By the said judgment and order, the Special Judge was pleased to convict the appellant for the offence punishable u/s 7 of the Prevention of Corruption Act and sentenced to suffer R.I. for two years and to pay fine of Rs. 5,000/- and, in default, to suffer S.I. for three months. The appellant was also convicted for the offence punishable u/s 13(i)(d) read with 13(2) of the Prevention of Corruption Act and sentenced to suffer R.I. for four years and to pay fine of Rs. 5,000/- and, in default, to suffer S.I. for three months.

2. The brief facts are as under:-

The appellant was working as Senior Licencing Inspector in Bombay Municipal Corporation. One Satish Halwai, resident of Jogeshwari (E), Mumbai was carrying on business of selling pani puri. His father was also doing the same business for

last about 43 years and having the licence issued by the Mumbai Municipal Corporation for carrying on the said business. After the death of his father, the Complainant filed an application for transferring the licence in the name of his mother on 28.7.2000. The necessary formalities were complied viz. filing the affidavit of his brothers, sisters and mother along with an indemnity bond. Some objections were raised and the complainant complied with the said objections. The officer, who was scrutinizing his application, was transferred and when he made enquiry, he was told that his licence was not transferred. According to the complainant, he went to the office of the accused on 25.1.2001 at 11 a.m. and at that time, the appellant demanded a bribe of Rs. 5,000/- to transfer the licence in the name of complainant's mother and when the complainant told the accused about his inability to pay the said amount, it was agreed that the complainant would pay an amount of Rs. 2,000/- . Accordingly, the complainant agreed to pay Rs. 2,000/- on 31.1.2001 at 10-00 a.m. The Complainant lodged the complaint with the Anti Corruption Bureau and, thereafter, pre-trap panchnama was prepared. Four currency notes of Rs. 500/- were applied with anthracene powder. Panchnama was prepared. The number of the currency notes were also noted. Thereafter, the accused and the raiding party went to the office of the accused. The complainant along with the panchas went to the office of the accused. They went inside his cabin and noticed that accused was not present in the office. After some time, he again went there and noticed that the accused was present in the cabin. He informed the complainant that he had done the work of the complainant. The accused demanded Rs. 2,000/- from the complainant and, accordingly, he gave him anthracene powder coated money to the accused. The accused accepted it and kept in his table drawer. Thereafter the complainant gave a signal and the raiding party came inside, arrested the accused, the notes were taken out from table drawer. The right hand of the accused showed bluish glow on the fingers and thumb of both the hands. The panchanama was (sic)ared. The currency notes tallied with in number of the notes in the pre-trap panchnama. Personal search of the accused was taken. Post-trap panchnama was prepared. The Investigating Officer applied for sanction to prosecute the accused and after sanction was granted, the charge-sheet was filed. Charge was framed for the offence punishable under sections 7, 13(i)(d) read with 13(ii) of the Prevention of Corruption Act. The prosecution in all examined four witnesses and filed documentary evidence on record. The appellant also examined three defence witnesses and also produced on record the file pertaining to the action taken by him against the father of the Complainant. The trial Court, however, convicted the accused and, therefore, he has preferred this Appeal.

3. Shri Kotwal, the learned Counsel appearing on behalf of the appellant submitted that the first demand was not proved. He submitted that there was sufficient material on record to show that on 25.1.2000, the appellant was not in the office. Secondly, he submitted that the second demand at the time of raid which was conducted, also was not proved. He submitted that the Complainant stated in his evidence that the accused had demanded money in "Marathi".

Whereas the papers show that the demand was made in "Hindi". He submitted that there was clearly a discrepancy in recording the demands. He then submitted that both the Complainant and Investigating Officer as well as the pancha witnesses have stated in their evidence that one Mr. Jadhav was present in the cabin of the accused at the relevant time. He submitted that though his statement was recorded by the police, he was not examined. He submitted that, therefore, an adverse inference ought to have been drawn by the trial Court. He submitted that this witness was examined as a defence witness by the appellant. He submitted that this defence witness had clearly stated in his evidence that no such demand was made and the incident narrated by the Complainant did not take place. He then submitted that the Complainant in his evidence had admitted that the appellant had prosecuted his father and he knew about the prosecution and revocation of licence. Though the entire file which was produced by the appellant, was not admitted, some of the documents which contained the signature of the Complainant's father were admitted. He submitted that therefore, the Complainant clearly had a grudge against the appellant herein. He then submitted that the sanction to prosecute was not properly granted and there was clear non-application of mind. He submitted that the draft sanction was accepted without making any changes, which was another indication regarding non-application of mind by the sanctioning authority.

4. On the other hand, the learned APP for the State has invited my attention to the judgment and order passed by the trial Court and submitted that the trial Court had rightly held that the demand and acceptance of bribe has been proved.

5. After having heard both the Counsel at length, in my view, the Special Judge has clearly erred in coming to the conclusion that the prosecution has proved its case beyond reasonable doubt. In the present case, the prosecution has examined only four witnesses including PW-1 the Complainant. The complainant, in his evidence has clearly admitted that on the first occasion when he went inside the cabin, the accused was not there and, thereafter, after waiting sometime, they again went inside his cabin. There is some substance in the submissions made by the learned Counsel appearing on behalf of the appellant that the Complainant had ample opportunities of putting those tainted notes in the drawer of the appellant. The Complainant, in his cross-examination has admitted that the appellant had prosecuted the complainant's father and has also admitted some of the documents. In his cross-examination, he states as under:

It is true that initially licence was issued to my father for stationery hand cart and not for permanent stall. Same is the position till today. It is true that in the year 1998-99, BMC has taken action against me.

He then further stated that;

I do not know about cancellation of my father's licence by the BMC in the year 1999. A copy of the order of cancellation of licence along with Exhibit 14/1 is

shown to the witness. I do not know about document Exhibit 14/1.

The aforesaid admissions reveal that there was sufficient reason for the Complainant to have a grudge against the accused.

6. Apart from that, so far as the evidence about presence of Jadhav in the cabin is concerned, that has been corroborated by the evidence of PW-3 Panch witness and also by the Investigating Officer. The said Jadhav has been examined by the appellant as a defence witness -DW-2. He has not only given the evidence to show that the appellant was with him on 25.1.2001 when the alleged demand was made, but he has also stated that no demand or payment was made by the Complainant on the date of the incident i.e. 31.1.2001. From the aforesaid evidence, therefore, it is clear that ultimately it is word to word between the Complainant and Shri Jadhav regarding the demand and acceptance of bribe.

7. As rightly submitted by the learned Counsel for the appellant that so far as the evidence of panch witness is concerned, no reliance could be placed on the evidence of the said panch witness for two reasons- (i) in his cross-examination, he has stated that the building of BMC Officer where the accused was trapped, consist of ground plus two floors and the office of the accused was situated on the ground floor. He was also given description of the said ground floor and veranda and stated that if a person enters in the cabin, a person cannot be seen from the outside and at the same time he has stated that he saw the incident of conversation and transaction between the accused and informant by standing outside the cabin, (ii) so far as the description of the building is concerned, the Investigating Officer in his evidence has clearly stated that the building was situated below the flyover and it consist of only ground floor. This is a vital discrepancy in the evidence of the panch witness and it creates a doubt about his presence at the time of the said incident. Therefore, no reliance can be placed on the evidence given by this witness.

8. In my view, therefore, the prosecution has reasonably failed to prove the demand as well as acceptance of money which was admittedly taken out from the drawer of the table of the accused. Apart from that even sanction does not appear to be given after proper application of mind. The purpose for obtaining sanction u/s 19 of the Prevention of Corruption Act, is to ensure that the sanctioning authority applied its mind before giving sanction to prosecute. A public servant on account of discharge of his duties has to take unpleasant decisions, as a result of which, several people may have a grudge against him. It is the duty of the appointing authority to ensure that frivolous complaints are not entertained and, therefore, order granting sanction is not an empty formality. The Apex Court in the case of (Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh)¹, 1979 DGLS (soft) 46 : 1979 CRI. L.J. 633 has observed as under.

The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with

before any prosecution can be launched against the public servant concerned.

The Privy Council in the case of AIR 1948 82 (Privy Council) , has observed as under:

The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction. They are not, as the High Court seem to have thought, concerned merely to see that the evidence discloses a prima facie case against the person sought to be prosecuted. They can refuse sanction on any ground which commends itself to them, for example, that on political or economic grounds they regard a prosecution as inexpedient.

9. In the present case, the record indicates that the draft sanction letter was forwarded to the sanctioning authority along with the other papers. The actual sanction which is granted is verbatim reproduction of the draft sanction. This also clearly discloses that there was a non-application of mind while granting sanction to prosecute. Under all these circumstances, in my view, the prosecution has failed to establish its case beyond reasonable doubt. The judgment and order passed by the Sessions Court is set aside and the appellant is acquitted for the offences of which he is charged. The appellant is on bail. His bail bond shall stand cancelled. Appeal is, accordingly, allowed and disposed of.