

(2000) 02 BOM CK 0105
In the Bombay High Court
Case No : Appeal No. 178 of 1991

Chintaman Narayan Natu

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-02-2000

Acts Referred:

Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 120, 34
Prevention of Corruption Act, 1988 — Section 5(1), 5(2)

Citation : (2000) 02 BOM CK 0105

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : Mr. Nitin Deshpande, for the Appellant; Ms. R.P. Sabarwal, Assistant Public Prosecutor, for the Respondent

Judgement

D. G. Deshpande, J. 1. In a case u/s 161 read with 34 and 120-B of the I.P.C. and u/s 5(1)(d) read with 5(2) of the Prevention of Corruption Act (hereinafter referred to as "P.C. Act" for short), two accused were prosecuted. The present petitioner is accused No. 2 and original accused No. 1 Dattatraya Mahipati Chavan. Out of them Dattatraya was acquitted by the Special Judge, Pune and present accused - Appellant came to be convicted u/s 5(1)(d) r/w 5(2) of the P.C. Act and was sentenced to suffer R. I. for one year and to pay a fine of Rs. 1,000/- in default R. I. for two months, The present accused was also convicted u/s 161 of the I.P.C., but no separate sentence was awarded under that section. The original accused No. 1 Dattatraya was acquitted of all the charges.

2. I have heard Mr. Deshpande for the appellant and the learned A.P.P. for the State.

3. The prosecution case was as under :

The appellant was working as a Chief Officer for Saswad Municipal Council in 1984 and acquitted original accused No. 1 was the Administrator of the Council. The complainant in this case was one Dharmaraj Maruti Kolte. who was running

printing press styled as Kolte Printing Press. According to him on 12.11.1984 accused appellant informed him that voters list were to be printed and council was inviting tenders for the same. Present appellant - accused asked the complainant to submit his tender for doing the said work. On 15.11.1984 complainant submitted his tender and deposited tender amount of Rs. 200/-. However, accused appellant told him that at least three tenders were necessary and therefore as . advised by the accused - appellant, complainant Kolte submitted two other tenders or caused them to be submitted from two persons related to him. The tender of the complainant was accepted because tender amount was not deposited by other two persons. After the acceptance of the tender of the complainant, certain calculations were made and accused is alleged to have demanded Rs. 1350/- for sanctioning the tender work. Accused appellant took the complainant to acquitted accused, they had a talk and it was agreed that amount of Rs.675/- each should be paid to accused-appellant and the acquitted accused. On the same day both the accused went to the press of the complainant, where complainant paid Rs. 500/ - out of the agreed amount to the accused No. 1.

On 17.11.1984 complainant deposited security deposit amount in respect of the said tender on 29.11.1984 he printed 1400 voters list and submitted to the Council and remaining voters list was submitted on 17.12.1984. The appellant-accused on seeing the delivery note dated 17.12.1984 asked the complainant to change the date from 17.12.1984 to 29.11.1984 otherwise the complainant would be required to pay penalty for causing delay in submitting the tender work in time. Accordingly, the date was changed, bill was submitted by the complainant for Rs. 7140.

On 20.12.1984 accused went to the office of the Council to enquire about the cheque. The cashier told him that the cheque was ready and asked him to sign on the voucher, the cashier asked the complainant to see the appellant-accused. Accused No. 2 is alleged to have told the complainant that accused No. 1 was dissatisfied because voters list of Jejuri Municipal Council were printed at the rate of Rs. 26/- to Rs. 27/ - per page and therefore the rate quoted by the appellant were excessive. It is alleged that on this pretext both the accused increased their demand. Calculations were made and the complainant was asked to pay Rs. 2320/ - as extra amount to both the accused. Complainant did not agree. However, the amount was agreed to Rs. 1,000/- each to the accused-appellant and the acquitted accused- He had already paid Rs. 500/- and therefore Rs. 1,500/- were to be paid for which the complainant was called on 24.12.1984.

Thereafter, complainant lodged the complaint with the Inspector Harshe of Anti Corruption Bureau, a trap was laid in presence of panchas and on 24.12.1984 the raiding party with complainant went to the office of the appellant. He had gone out for some work therefore they again came back in the afternoon and in the evening the complainant is said to have paid the amount of Rs. 1,500/- of bribe to the accused - appellant by keeping that currency with anthracene powder in

an envelope given by the accused. The said envelope was recovered from the drawer of the table of the accused and thereafter the charge-sheet was filed and accused appellant came to be convicted whereas the original accused No. 1 Dattatraya was acquitted.

4. It was contended in this background by Mr. Deshpande that if the Trial Court disbelieves the evidence of the complainant regarding demand by the acquitted accused No. 1, then there was no reason to accept that part of evidence as against the present accused only. Secondly, he contended that the complainant has admitted that there were certain admissions on the part of the complainant, which clearly shows that the entire case of the prosecution was false. Thirdly, according to him even from the prosecution evidence it could not be held that the accused appellant had accepted the bribe. Fourthly, It has come in the evidence that cheque for the amount payable to the complainant was ready and there was nothing on record to show that after the accused appellant accepted the bribe amount (as alleged) accused appellant gave any instructions to the cashier to issue cheque to the complainant and this therefore proves that there was no demand on the part of the accused appellant from the complainant. On the other hand it was contended by the A.P.P. that prosecution has proved its case beyond reasonable doubt as against the present accused and therefore the Special Judge rightly convicted the accused.

5. The first thing that weakens the prosecution case is that even from the evidence of the complainant and the panch, it cannot be said that the present accused accepted or took the delivery of the currency notes with anthracene powder. P. W. 1. in this regard has stated in para 4 page 131 of the paper book that : Accused No. 2 asked whether the complainant had brought Rs. 1500/- Complainant replied in the affirmative. The Accused No. 2 handed over one envelope to the complainant and asked the complainant to keep the said amount in the said envelope. Then complainant took the envelope in his left hand and with the right hand he took the amount of Rs. 1500/- from the left hand chest pocket of the manila and kept the said amount in the envelope. Then as directed by accused No- 2 complainant kept the said envelope on the drawer of the table of the accused on his left side. It will be clear from this evidence that accused No. 2 has not accepted the amount. He had not touched the notes and the envelope containing the notes was recovered by the inspector from the drawer i.e. from the open space which is open between the top of the table and the drawer.

6. The second point that weakens the prosecution case is that according to the complainant, the envelope was given by the accused appellant it contains some writing of Silver Jubilee etc., but even though this envelope was shown to him during his examination. It was not exhibited by the Trial Court nor the currency notes of Rs. 1500/- which were used for the trap were ever exhibited. This has left a lacuna in the prosecution case may be due to fault of the Prosecutor or of the Court but the important document, namely, the envelope has not been

proved.

7. Second most important thing is that if giving of a cheque for the amount to the complainant in respect of the work done by him, namely, printing of voters that was depending on complainant giving bribe to the accused appellant, then the prosecution should have tendered evidence In that regard and should have brought on record that after the bribe amount was accepted by the accused (in the manner stated above) the accused gave directions to the cashier to hand over the cheque to the complainant. However, absolutely nothing in this regard had been brought on record. To the contrary, the complainant says that after accepting the bribe, accused asked the complainant to collect the cheque and complainant went to the cashier and got the cheque. Complainant nowhere states that accused gave any instructions, directions or signal to the cashier to hand over the cheque to the complainant. There is therefore no link between giving of the bribe and receipt of the cheque by the complainant, therefore, as rightly argued by Mr. Deshpande the very foundation of the prosecution case showing nexus between the demand of bribe and the work alleged to be done by the accused appellant is lacking and remains unestablished.

8. In this regard, the conduct of the complainant, as rightly argued by Mr. Deshpande is doubtful because of the date of the trap. According to the complainant he was called in the morning in the office of the Council by the accused appellant. The complainant went to the office of the Council at 11.30 a.m. along with the panch. The complainant was told that his cheque was ready, there is no explanation from the complainant why he did not approach the cashier then and there to get the cheque if the same was ready. If the complainant had gone to the cashier and had demanded the cheque and then if the cashier had refused to give on the ground that he has been instructed by the accused appellant not to issue cheque to the complainant till receiving signal from the accused appellant, then the prosecution case would have been strengthened. But neither at this time the complainant went to the cashier and took the cheque nor the cashier gave any indication when the complainant went to collect the cheque, that he has any instructions from the accused - appellant to withhold the delivery of the cheque until some signal was given by the accused appellant.

9. So far as the conduct of the complainant in the whole episode is concerned is full of suspicion. He was entrusted with the work of preparing voters list. He was to complete the said work within a stipulated period, but he admitted in para 15 of his deposition that he could not complete the tender work in the prescribed time limit. He also admitted that notice was issued to him why penalty at the rate of Rs. 5/- per day should not be recovered from him for the said delay. He also admitted that he was informed that since he had not completed the work in time, his name could be included in the black list and he also admitted that once his name was included in the black list, he could not get any work from the Council in future. He further admitted that he was anxious that his name should

not be entered in the black list. Apart from this, the important damaging admission that is given by the complainant is that because of the issue of notice of penalty, he was annoyed with accused No. 2 and he has decided to teach lesson to the accused No. 2. He has further admitted that he was required to print the voters list of 20 Wards but he printed voters list of 15 wards and the remaining voters list of 5 wards were submitted by him which were printed by him previously in 1983 and which were with him and this was done after scoring the figure 2 and rewriting the figure 4.

10. All these admissions will clearly show that the complainant is not at all a man of integrity. He has done dishonesty in his work of printing voters list. Old voters list of 1983 were tendered by him by changing the name of the wards to show that they were newly printed voters list.

11. When the complainant in a corruption case admits of dishonesty and also admits that he has decided to teach a lesson to the accused, then his evidence has to be scrutinized with great care and should be accepted only when his evidence is fully corroborated on all material particulars. In fact, Court can disregard his evidence considering his conduct.

12. So far as evidence of admission of bribe is concerned, the Trial Court has rejected the evidence of the complainant relating to acquitted accused No. 1. If this is so, no different criteria can be applied for making of demand of the bribe by the present accused appellant. If the complainant is disbelieved regarding the demand of bribe in respect of accused No. 1, then his evidence in that regard has also to be disregarded, particularly, when he is found to be a man of disintegrity and when his conduct is totally suspicious and is motivated, and since he is motivated by motives or prejudice against the present accused.

13. So far as corroboration to the complainant on the point of demand of bribe by the accused on the date and time of the bribe is concerned, the evidence of panch witness was tried to be pressed into service by the prosecution. P.W. 2 Baban Borade has been examined by the prosecution as a panch who accompanied the complainant in the cabin of the accused as a panch and who was asked to hear the talk that takes place between the accused and the complainant and also to witness what happens thereafter. According to this witness the complainant asked the accused No. 2 what happened about his work. Accused No. 2 told that his work was completed, the cheque is already prepared, then accused No. 2 asked whether the amount of Rs. 1500/- was brought, the complainant replied in the affirmative and then the amount was given in the manner deposed by the complainant. The evidence of this panch witness was criticised by Mr. Deshpande on the ground that from his evidence and particularly para 9. it can be said that this witness was not at all present at the time of the raid. Because in this para the witness was cross-examined regarding the cabin of the accused - appellant and its location, its internal arrangement with furniture, the sitting place of the accused, the place where the complainant sat, the place where panch witness himself sat and his evidence in this regard was compared

with the evidence of I. O. i.e. P.I. Harshe and it was contended by Mr. Deshpande that If evidence of Harshe is accepted as true then the evidence of this panch witness was liable to be rejected as has been totally contradictory. I find strong force in this argument.

14. The fact that evidence of P. W. 2 Baban Borade regarding the location of the cabin. Its Internal condition is contradictory to the evidence of the I.O. and the panchnama has not been considered by the Trial Court as material contradiction. The Trial Court observed that these are minor contradictions and are required to be disregarded because the evidence of witness was recorded after seven years.

15. The reasoning given by the Trial Court could have been accepted by this Court, If contradictions regarding the size, location and situation of the cabin were brought on record in the cross-examination of P.W. 2 panch. However, in the instant case P.W. 2 is very specific about the said aspect. Para 9 of his deposition and it is P.W. 8 I.O. Harshe who gives a totally different picture of the cabin, its location and internal arrangement. The witness can be excused for lapse of memory in a given case but when two important witnesses give two contradictory versions then the same logic cannot be applied. One of the witnesses has to be believed and in that case the question arises as to who is telling the truth. When evidence of I.O. is found consistent with the panchnama and evidence of P.W. 2 in contradiction with the evidence of I.O. then evidence of P.W. 2 is required to be rejected. Because when P. W. 2 panch describes about the cabin, its location and its internal arrangement, he is speaking about the actual happening inside the cabin and only about material discrepancy in the description of the cabin, as compared to the evidence of the I.O. cannot be lightly taken. This contradiction or discrepancy in the background of the case and behaviour and conduct of the complainant can also be considered from the possibility of the panch witness not being present at the time of the actual raid or giving and taking bribe as alleged by the complainant.

16. The Trial Court's logic that because the witness giving evidence after 8 years, he is bound to give discrepant evidence could have been accepted if the witness himself had expressed inability to give details of the cabin where the raid took place but the witness had not given any such explanation, to the contrary he is very specific about the location of the cabin and its internal arrangement; he does not appear to have hesitated in giving a lengthy description of the cabin in para 9.

17. Apart from the aforesaid aspect, one more important angle is required to be considered and that is if P.W. 2 has contradicted the I.O. regarding the location of the cabin and its internal arrangement, it was open for the prosecution to examine other panch to lend corroboration to the evidence of the I.O. However the same has not been done.

18. So far as demand part of the prosecution case is concerned, Mr. Deshpande contended that the demand was made by both the accused and Trial Court gave

a positive finding in that regard because the Trial Court has observed in para 12 page 212 : "Further the said evidence of the complainant goes to show that accused No. 1 also made demand that the complainant should keep his amount ready." However, in spite of this finding, the Trial Court acquitted accused No. 1, no sufficient and proper reasons have been given by the Trial Court for adopting this course and according to Mr. Deshpande the rejection of the evidence of complainant regarding demand by acquitted accused also required the Trial Court to reject evidence in respect of demand against the accused appellant also.

19. In my opinion, it is not necessary to come to that aspect because if from the admissions given by the complainant, it is found that he had a strong motive to implicate the accused when his evidence shows that he is himself guilty of dishonesty in preparing voters list, when notice for imposing of penalty was issued to him for the latches on his part, then the evidence of complainant regarding demand of bribe should not have been accepted by the Trial Court. This is apart from the fact that there is no evidence to prove beyond reasonable doubt that the appellant accepted the bribe amount. The evidence that has come on record, as discussed above, is that the accused had not touched the bribe amount and the amount was found in an envelope which was not accepted by the appellant.

20. For all these reasons, the conviction of the appellant cannot be sustained and the appeal is to be allowed. Hence, order :

ORDER

Appeal is allowed. Conviction of the accused u/s 161 of the I.P.C. and u/s 5(1)(d) r/w 5(2) of the Prevention of Corruption Act and sentence imposed upon him is set aside. Accused is acquitted of the offence. Rest of the order of the Special Judge. Pune, remains as it is.