

(2010) 03 GUJ CK 0049
In the Gujarat High Court
Case No : Criminal Appeal No. 97 of 1998

Dhirajlal Vithalbhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 02-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Evidence Act, 1872 — Section 18, 8
Prevention of Corruption Act, 1988 — Section 13(1), 20, 7

Citation : (2010) CriLJ 2547

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : D.R. Bhatt, for the Appellant; R.C. Kodekar, Ld. APP, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The present appellant has preferred this appeal u/s 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 9.1.1998 passed by the learned Special Judge, Navsari Dist. Valsad in Special Case No. 1/1992, whereby, the learned Special Judge has convicted the appellant-accused for the offence punishable under Section 13(1)(d) (1)(2) of the Prevention of Corruption Act and sentenced him to undergo R/I for 2 years and a fine of Rs. 2000/-, in default, to further undergo S/I for four months, which is impugned in this appeal.

2. The brief facts of the prosecution case is as under:

3. The Director of ACB, Gujarat State, Ahmedabad had received an application from one Shamjibhai Mehta, resident of village Vedchha, taluka Navsari dated 26.3.1990, inter alia, alleging that the present appellant who is a Medical Officer was issuing false medical certificates by accepting money illegally. It is further the case of the prosecution that on the strength of the said application, an intimation was received by P.I. Shri A.M. Yadav of Valsad ACB to lay the trap and

report the same. Therefore, PI Shri Yadav called two panchas (I) Shri Govinddas Ramlakhan Morya and (ii) Barjulbhai Chalubhai Gavit and one fake patient Shri Hemantkumar Dhansukhlal. Thereafter, the information which the Trapping Officer has received was disclosed before the three independent witnesses and thereafter the trap was arranged and trap amount of Rs. 40/- was produced by the Trapping Officer and the sprinkling of anthracene powder was done and also the ingredients of anthracene powder was explained to the witnesses and then preliminary panchnama was prepared. Thereafter, as per the information regarding complaint, all the three witnesses and members of raiding party reached to the place of incident and then the witness fake patient met the appellant and asked for false sick medical certificate. At that time, the appellant had demanded Rs. 40/- and it was accepted by the present appellant-accused. Thereafter, after the signal given by the witness fake patient, the members of the raiding party rushed to the place of incident and physical verification of the appellant was carried out in the light of UV Lamp and muddamal trap amount was recovered from the same place and anthracene powder was also found on the finger, tips and hand of the appellant and thereafter second part of panchnama was prepared accordingly. Thereafter, P.I. ACB, Valsad, Shri AM Yadav, the Trapping Officer, has given the complaint against the appellant - accused for the offence punishable u/s 7 and 13(1)(d) of the Prevention of Corruption Act.

4. Thereafter, the charge (Ex. 9) was framed against the appellant-accused. The accused pleaded not guilty to the said charge and claimed to be tried.

5. In order to bring the home the charge levelled against the appellant-accused, the prosecution has examined the witnesses and also produced documentary evidence before the trial Court.

6. Thereafter, after examining the witnesses, further statement of the appellant-accused u/s 313 of Code of Criminal Procedure was recorded in which the appellant-accused has denied the case of the prosecution.

7. After considering the oral as well as documentary evidence and after hearing the parties, learned Special Judge, Navsari Dist. Valsad, vide impugned judgment and order dated 9.1.1998 held the appellant-accused guilty to the charge levelled against him for the offence punishable u/s 13(1)(d)(1)(2) of the Prevention of Corruption Act and convicted and sentenced the appellant-accused to suffer R/I for two years and to pay a fine of Rs. 2000/-, in default, to undergo further S/I for one month.

8. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Special Judge, Navsari, Dist. Valsad, the present appellant has preferred this appeal.

9. Heard Mr. DR Bhatt learned advocate for the appellant and Mr. RC Kodekar learned APP for the respondent-State.

10. Learned advocate Mr. Bhatt has contended that the judgment and order of conviction and sentence passed by the learned Special Judge is unjust, improper and illegal and against the weight of evidence on record and therefore, the same requires to be quashed and set aside. Mr. Bhatt has further contended that the sanction given by the authority was not given as per the provisions of law and therefore, the same is fatal to the prosecution case. Mr. Bhatt further argued that there was no previous demand, so Section 7 of the Act cannot be attracted in this case. He further submitted that only the Trapping Officer of ACB has received information in the form of complaint that the present appellant is accepting the bribe money by issuing false medical certificate. Mr. Bhatt submitted that to prove the said version the prosecution has not examined the maker of that application and has not investigated into the same. In the oral evidence of Trapping Officer, it appears that the Trapping Officer has not explained anything regarding the negligent act of the Trapping Officer, which is fatal to the prosecution case. Mr. Bhatt has read the evidence of PW-1 Hemantkumar Dhansukhlal Gandhi at Ex. 12 and PW-2 Govinddas Ramlakhan Maurya and PW-3 Ratilal Ranchhodbhai Dabhodiya and contended that there are number of contradictions in the deposition of these witnesses and no reliance can be placed on the testimony of these witnesses. Mr. Bhatt further contended that as per the oral evidence of panch witness, it is not as per the contents of panchnama. Mr. Bhatt further submitted that the demand is not established beyond reasonable doubt. Mr. Bhatt further submitted that from the oral evidence panch witness, it appears that the acceptance of trap amount of Rs. 40/- is also not proved beyond reasonable doubt. He has also submitted that the trap amount was recovered from the floor and not from the person of the appellant-accused. He further submitted that when the demand and recovery are not established, then the prosecution cannot say that the case against the appellant is proved beyond reasonable doubt. From the oral evidence of Trapping Officer, it appears that the same is corroborated by the evidence of PW-1 and PW-3. Mr. Bhatt submitted the Trapping Officer is an interested witness. Mr. Bhatt further argued that from the oral version of the witnesses, it is not produced on record in a form of total corroborative piece of evidence. Mr. Bhatt has read the sanction order and submitted that sanctioning authority is examined by the prosecution but it is established that the sanction is issued without application of mind and it cannot be said to be issued as per the provisions of law, which is fatal to the prosecution case.

11. On the other hand, learned APP Mr. RC Kodekar has supported the judgment and order passed by the learned Special Judge. He submitted that the judgment and order passed by the learned trial Judge is just and proper and requires to be confirmed. He has taken this Court through the relevant oral as well as documentary evidence led by the prosecution and submitted that there are no infirmity or error of facts and of law in appreciating oral as well as documentary evidence. He has further submitted that the sanction given by the authority is legal and valid sanction as the same is given in accordance with law. The three

witnesses examined by the prosecution are independent witnesses and no animosity is proved and, therefore, the trial court has rightly believed the evidence of the witnesses in favour of the prosecution. He has also argued that the presumption is not rebutted by the appellant-accused and anthracene powder was found from the tips and fingers of the appellant and therefore, the impugned judgment and order passed by the trial court requires to be confirmed.

12. I have read the judgment and order of the trial Court and also perused the oral as well as documentary evidence led by the parties before the trial court. So far as the issue with regard to the sanction is concerned, I have gone through the oral evidence of prosecution witness No. 4 Prahladrai Duljibhai Patel Ex. 32. It appears from the evidence of this witness that prior to giving the sanction, the witness has perused the documents which were produced before him and after considering the same, the sanction was given. Even I have perused Ex. 11 list documents of prosecution and it is found that the sanction is exhibited, therefore, it cannot be said that the sanction is given without application of mind. I have also perused the oral evidence of PW-1 Hemant Dhansukhlal Gandhi Ex. 12 who has admitted that the information which was received by him has been explained by the ACB to him and both the panchas and practical of anthracene powder was done. PW-1 along with PW-2 went to the place of present appellant and at that time, he talked with appellant-accused. From the evidence of this witness, it appears that when appellant-accused told this witness that you know nurse Sumitraben, when this witness said "no", then appellant - accused told him to wait, he will issue the certificate. Thereafter, appellant told him to come with him and when they were going, at that time PW-2 was also following them. During that time, appellant told PW-1 that who was he. This conduct of appellant shows that he was not ready to allow PW-2 to come with them. I have also perused Section 8 of the Indian Evidence Act and the conduct of the present appellant establishes that there was some malicious intention regarding talk between the complainant and present appellant. Even from the oral evidence of PW-1 it appears that the appellant had demanded Rs. 40/- without preparing any paper. When the complainant had given Rs. 40/- to the appellant, the appellant told to put the same in drawer and the same was put in the drawer by the complainant PW-1 and within a minute, it was taken out by the appellant and during that time signal was given and Trapping Officer along with raiding party entered the chamber of the appellant and the appellant threw the said amount on the floor and in the presence of panch witness it was recovered and examination under UV lamp was also done of the trap amount where the anthracene powder was found. Thereafter, examination of the person of appellant was done and anthracene powder was found on the tips and fingers of both the hands of the appellant. Other witness have also supported the case of the prosecution. However, at the time of demand and acceptance, other witnesses were not present but from the contents of panchnama and oral evidence of independent witnesses it appears that the witnesses have disclosed everything in their oral evidence without any contradiction. I have also perused the statement

of the appellant recorded u/s 313 of CrPC, wherein, the appellant has failed to explain that as to how anthracene powder found on the fingers and tips of both the hands. The defence has miserably failed to produce any cogent defence to establish that the learned trial Judge has committed any error while convicting the appellant for the said offence. It is established from the oral evidence of the witness that present appellant is a public servant and PW-1 visited his place and discussed with him to issue false sick medical certificate and the present appellant had agreed to issue the same and for that demanded Rs. 40/- and accepted the said amount which later on was recovered from him, which shows that the conduct of the appellant is a guilty conduct in view of the provisions of Section 13(1)(d) of Prevention of Corruption Act. All the facts are brought on record through the witnesses and even it is also established that the prosecution has proved its case beyond reasonable doubt and also proved that the appellant has demanded Rs. 40/-, as an illegal gratification in the form of bribe and accepted the same. The prosecution has proved all the charges levelled against the appellant.

13. Learned APP Mr. Kodekar has also drawn my attention to the decision of the Division Bench of this Court in the case of State of Gujarat Vs. Laxmansinhji Dansinhji Gohil and Another, wherein, the Division Bench of this Court has observed in para-18.2 that as per the provisions of Section 18 of the Evidence Act it was the duty of accused to explain the presence of the anthracene powder as well as recovery of trap amount. In the present case, in the statement recorded u/s 313 of CrPC, the appellant-accused has not explained any thing just to remove the presumption of anthracene powder. When the presumption is not rebutted, then Section 20 of the Prevention of Corruption Act also come into force.

14. I am in complete agreement with the findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial Court and I am of the view that no other conclusion except the one reached by the trial Court is possible in the instant case as the evidence on record stands. Therefore, there is no valid reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence.

15. In the result, this appeal is dismissed. The impugned judgment and order of conviction and sentence dated 9.1.1998 by the learned Special Judge, Navsari, Dist. Valsad in Special Case No. 1/1992 is hereby confirmed. Bail bond stands cancelled. R & P to be sent back to the trial Court, forthwith.

16. At this stage, Mr. DR Bhatt learned advocate for the appellant requests that the appellant is a heart patient and, therefore, time of 90 days may be granted to the appellant to surrender before the Jail Authority. Considering the request made by Mr. D R Bhatt, learned advocate for the appellant, the appellant is hereby directed to surrender before the Jail Authority within 90 days from the date of this order, failing which, concerned Sessions Court shall issue non-bailable warrant to effect the arrest of the appellant-accused.