

(1992) 09 BOM CK 0015
In the Bombay High Court
Case No : Criminal Appeal No. 153 of 1985

Dhonaji Vyankatrao Ghatage	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 03-09-1992

Acts Referred:

Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1947 — Section 5(2)

Citation : (1994) 2 BomCR 213

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

Bench : Single Bench

Advocate : A.Y. Sakhare, for the Appellant; Y.V. Patil, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M.F. Saldanha, J.—The appellant before me, at the relevant time, was working as a Talathi in the office of Waghare Saja, Taluka Radhanagari and it is alleged that in relation to certain mutation entries, which had to be done for the complainant who is P.W. 3 Ananda Arade, he had made a demand of Rs. 150/-. According to Arade, the matter had been pending for quite some time and he was anxious that it should be concluded. The accused had visited the village on 15-8-1983 at the time of the flag hoisting function and Arade met him along with P.W. 4 Pundalik and requested him to complete his work. The accused is alleged to have demanded Rs. 500/- which, after some bargaining, was reduced to Rs. 150/- and the complainant agreed to come with the money after two days. On 16-8-1983, he went to Kolhapur and lodged a complaint with the Anti-Corruption authorities, who arranged a trap.

2. It is relevant to record that the Investigating Officer very clearly instructed Arde that he should engage the accused in a conversation in the presence of the pancha Gurav, and that, he should, within the hearing of the pancha, ensure that the accused demands the amount and it is only after this is done that he should

hand over the money and give the signal by lifting his cap with his left hand. Pursuant to this arrangement, Arde and Gurav met the accused in his office at about 4.30 p.m. on 17-8-1983. There was only one other person in the office on the adjoining table. Instead of talking about the bribe amount, Arde invited the accused out to the Sahyadri Hotel for a cup of tea. The accused, Arde and pancha Gurav went to the hotel and the record indicates that they were the only customers in the hotel. For some strange reason, Arde did not refer to the transaction there but it is only after they came out of the hotel, that he asked the accused about his work. The accused asked him whether he, in turn, had done the needful and the complainant answered in the affirmative. The complainant thereupon handed over the money to the accused which he put in his shirt pocket at which time, pursuant to the signal from the complainant, the raiding party came and apprehended the accused, the money was recovered from him and traces of anthracene powder were found on his hands, and on his clothing. The accused was arrested, put on trial and came to be convicted by the trial Court u/s 5(2) of the Prevention of Corruption Act and u/s 161 I.P.C. He was sentenced under the first charge R.I. for one year and to pay a fine of Rs. 500/- in default R.I. for one month and under the second charge, to R.I. for one year and to pay a fine of Rs. 500/- in default R.I. for one month.

3. It needs to be mentioned here that the two charges in respect of the same incident and the same amount deal with the same offence and it is rather strange that two separate charges were framed under the two statutes and that separate sentences have been awarded for both of them. That issue, however, is considerably insignificant unless the question arises of confirming the sentences in question.

4. Mr. Sakhare, learned Counsel appearing on behalf of the appellant has argued this matter with a considerable amount of efficiency and has taken me through the evidence, both oral and documentary. To start with, he has pointed out that the sanction order in this case is liable to be struck down on the ground of non-application of mind. The sanction order which is at Exhibit 12 has been signed by the Sub-Divisional Officer Badakhakar, who is P.W. 1. Mr. Sakhare has pointed out that as normally happens, the case papers along with the draft sanction order were put up to the office and that it was the Sharistedar who has filled in the requisite blanks in the draft sanction order. All that the S.D.O. has done is to have signed it and to have initialled the submission put up to him. That there was an obligation on the part of his subordinate is not disputed but Mr. Sakhare is justified in pointing out that it is not the clerk or the superintendent who is the sanctioning authority but that the officer concerned who is required to act with a sense of responsibility in serious cases of the present type where the effect of according sanction would virtually finish the career and future of the officer concerned. Mr. Sakhare was critical of the procedure adopted and went to the extent of stating that the evidence of this witness when he states that he went through the papers for two days and thereafter accorded the sanction is obviously an attempt at covering up his having mechanically signed the papers.

It would be rather difficult to accept the submission in its entirety but the fact does remain that nowhere in the papers that are before the Court is there any indication that the S.D.O. did in fact apply his mind carefully to the facts of this case. To my mind, it would be highly desirable if the case papers or the sanction order were to contain some reflection however brief that would be indicative of the fact that the officer concerned did carefully apply his mind to the material placed before him. The highest that can be said in this case is that it is extremely doubtful as to whether there was due application of mind.

5. Mr. Patil, learned A.P.P. has pointed out that the sanctioning authority is not required to pass a speaking order and that if he is satisfied, that sanction should be accorded, it would be perfectly in order if the sanction which is in the prescribed draft form were to be approved of. It is not disputed that a draft sanction order, if found to be in order, can be approved of but the fact still remains that in matters of such importance, something more than this is necessary on the basis of which a Court can be re-assured that it is not only when the witness got into the box in the Court room that for the first time, he states that he had applied his mind to the facts of the case.

6. Mr. Sakhare has concentrated his arguments on establishing that the essential ingredient of a corruption charge is lacking in the present case. To summarise, he contends, that even if it is established that a sum of Rs.150/- was handed over to the accused, that this would be a perfectly innocuous circumstance because a Talathi is entitled to receive various amounts of monies such as Government dues, etc. What the prosecution has to establish is that the amount was illegal gratification. In other words, that it was tainted money and unless this can be established beyond reasonable doubt, even if the passing of the money is proved, the accused can never be convicted. Towards this end, Mr. Sakhare has analysed in great detail what had transpired between the accused and the complainant on 15-8-1983. The defence has succeeded through meticulous cross-examination in this case in establishing that there is a very serious doubt as to whether at all any such talk had taken place on 15-8-1983. The complainant Arde is unable to answer such simple and elementary questions as to what had transpired during the flag hoisting ceremony. Such a ceremony is an unusual one and takes place only on a day like independence day and the fact that the complainant was unable to give a single satisfactory answer with regard to this function does cast serious doubt as to whether at all he could have been present there. The problem gets compounded because Mr. Sakhare has very rightly pointed out to me that the only witness from whom corroboration could have been sought, who is P.W.4, has not supported the prosecution on this vital point. The entire evidence with regard to the so-called demand made by the accused of Rs. 500/- which was settled at Rs. 150/- is therefore, rendered suspicious. Mr. Patil, the learned A.P.P. has seriously contested this position by adopting the traditional line of argument viz., the question as to why the complainant should falsely implicate the accused who, admittedly was a government servant. He further goes on to argue that it was quite possible that Arde was not paying any

attention to the function on that date. This, to my mind, is extremely improbable. As regards the first aspect of the matter, the defence has pointed out that like all villages, in this one also, there were two groups. Considerable village politics and some amount of hostility had been generated because of a report in respect of compensation that has been submitted by the accused whereby the complainant was seriously aggrieved. Some basis for an animus has been established by the defence and this, to my mind, answers the question posed by the learned A.P.P.

7. Mr. Sakhare has endeavoured to attack the evidence with regard to the trap but this effort of his is in vain. That the Police Officer had arranged the trap, that the complainant and "Pancha Gurav" went there, that they did take the accused out to the hotel and ultimately handed over to him the amount of Rs.150/- which had been treated with anthracene powder appears to have been established. Where Mr. Sakhare is on stronger footing, however, is with regard to the reason for the amount of money having been paid to the accused. Whereas it is the contention of Mr. Patil that the Talathi had no business to accept money from the complainant outside the hotel and this circumstance alone is sufficient to establish the acceptance as illegal gratification and further that the defence version with regard to some government arrears being settled must necessarily be discarded, does not appear to be that simple. The defence has in the first instance, established that there were two amounts outstanding from the complainant's father - of Rs. 173 and Rs. 29/-. It has also been established by them from documentary evidence that these amounts were not only outstanding but that the Tahsildar has instructed the Talathi to ensure that the recoveries were made. The defence has also brought on record the fact that the complainant Arde was liable to settle these dues. It is the defence contention that the accused was fully justified and well within his rights in having told the accused that before the mutations were completed, that he must pay up the dues in question. Undoubtedly, the arrears were relatively old ones and the complainant was not happy about the state of affairs and possibly, he also considered it a form of unfair arm-twisting. Having regard to the other background of hostility, it was quite possible that this circumstance impelled him to go to the A.C.B, with a false charge. Mr. Sakhare has laid considerable emphasis on the fact that the Investigating Officer Mandlik had repeatedly drilled into the complainant the necessity of the fact that he must engage the accused in a conversation whereby he should establish that he is demanding a bribe and that this should be done in the presence of "Gurav". The second specific instruction given to the complainant was that he was to see to it that the transaction took place in the office and thirdly, that he should not part with the money unless the first ingredient was established. For some strange reason, the complainant decided to breach all the instructions given to him. It is the defence contention that the reason for this was very obvious viz. that if the money were handed over in the office, that the accused would have demanded the remaining Rs. 52/- in the first instance because the arrears were Rs. 202/- and not Rs.

150/- and secondly, that the accused would have made out a receipt for the amount in which case, the plan of complainant would have been frustrated. It is for this reason that he, on his own initiative, called the accused to the hotel and even after having done so, hesitated considerably and hurriedly, while they were on the way out, handed over the money to him. In this regard, one needs to take special note of the fact that the only conversation which took place between the two was started by Arde, asking the accused as to what had happened to his work to which the accused asked him whether he had brought as he had been instructed and the complainant replied that he had brought. This is all the conversation that took place and is deposed to not only by the complainant but also by Mr. Sakhare submits, and rightly to my mind, that this conversation can never be construed in law as either being a demand for a bribe or acceptance of any illegal gratification.

8. It is true, as pointed by the learned A.P.P., that a Court will sometimes have to take an overall view of a case and to this extent, Mr. Patil submits that having regard to the background of what had transpired on 15-8-1983, there was no need for Arde to have amplified in so many words about the demand for a bribe and the quantum of the amount settled and that, he was entitled to proceed on the basis of the understanding. Mr. Patil vehemently contends, that the Court will have to draw an inference from the statements which are sufficient to bring the offence within the four corners of the legal requirements. Unfortunately, I am unable to agree, nor can a Court of law in such a serious case sanction any short-circuiting of procedure. A Court will have to insist in all criminal proceedings and more so in cases of the present type that there is no laxity, no ambiguity and in any event, that evidence which is sorely lacking with regard to the material ingredients cannot form the basis of a conviction.

9. These aspects, to my mind, constitute the major and well defined facts of the prosecution case. The learned A.P.P. has vehemently contended that the Court must take note of the fact that there was some work of the complainant pending and that there was ample ground for the accused to have demanded a bribe and that, it was only pursuant to this demand that the complainant who is a poor agriculturist was required to go all the way to Kolhapur to the Anti-Corruption authorities. One cannot delve into the status etc. of the complainant and one cannot conjecture as to what the other possibilities in such cases are. Going by the record as it exists, to my mind, the infirmities in the prosecution case are so gross that it is not only unsafe but impossible to sustain the present conviction.

10. In this view of the matter, the appeal succeeds. The conviction and sentence recorded against the appellant are set aside. The fine, if paid by him, is directed to be refunded. The appellant is on bail. His bail bond to stand cancelled.

11. Appeal allowed accordingly.