(2013) 12 BOM CK 0048

In the Bombay High Court

Case No : Criminal Appeal No. 1101 of 2003

Eknath Vishnu Naik APPELLANT

Vs

The State of Maharashtra RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2013) 12 BOM CK 0048

Hon'ble Judges : M.L. Tahaliyani, J

Bench : Single Bench

Advocate : M.S. Mohite instructed by Mr. Shailesh Kantharia, for the Appellant; S.S. Pednekar, Addl. P.P., for the Respondent

Final Decision : Allowed

Judgement

M.L. Tahaliyani, J.—The Appellant has been convicted by the Learned Special Judge for the offence punishable u/s 7 of the Prevention of Corruption Act 1988. He was prosecuted for the said offence as well as for the offence punishable u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. However, at the conclusion of trial, he has been acquitted of the offence punishable u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (hereinafter referred to as ''the Act''). The Appellant was working as Talathi at village Jamsande. The complainant was a practicing advocate. He had ancestral property including irrigated land belonging to his father and uncle. His uncle had given Power of Attorney in respect of the said land in favour of his father. Since father of the complainant was not keeping good health, the complainant himself was looking after the property of his father and uncle. A part of the agricultural land was converted into non-agricultural land under the orders of the District Collector. It was, therefore, necessary for the complainant to get the necessary changes made in the revenue record of the said land. He, therefore, contacted the Appellant for effecting changes in the revenue records. The Appellant reminded the complainant that a lot of help was extended by the Appellant to the complainant for conversion of land from agricultural land to non-agricultural land

and that the Appellant did not get anything for the same. The Appellant, therefore, demanded Rs. 5,000/- from the complainant for effecting necessary changes in the revenue record. After due deliberation on the issue of payment of Rs. 5,000/- it was decided that the Appellant would accept Rs. 2,000/- as a first installment and remaining amount of Rs. 3,000/- would be paid later on. It is alleged that the Appellant had also spoken to the complainant on telephone intimating him that unless the complainant pays the amount as demanded by the Appellant, necessary changes will not be made in the revenue record. The complainant therefore reported the matter to the Dy. S.P. of the Anti Corruption Bureau. On 11 October 1999 the Dy. S.P. called two panchas. The complaint of the complainant was read over to the said two panchas. An amount of Rs. 2,000/- given by the complainant was smeared with anthracene powder for laying a trap to apprehend the Appellant. After smearing the currency notes with anthracene powder, they were wrapped in a white paper and the notes were kept in a shirt pocket of the complainant by Head Constable Mr. Gavas. A panch witness Mr. Rasal was asked to act as a shadow witness and was directed to be in company of the complainant till the trap succeeds. Another panch by the name Mr. Redkar was directed to remain with the raiding party.

2. After completing preparation for trap, the raiding party proceeded to Devgad by a jeep. They reached in front of the office of the Appellant at about 12.30 p.m. The office was found locked. The complainant had informed the Dy. S.P. Mr. Domane that the Appellant had asked him to visit his house and therefore, they decided to visit the house of the Appellant at Devgad which is about 3 km from Jamsande. The complainant and panch witness Mr. Rasal sat in the office of the complainant. The raiding party officers and second panch sat in the eastern side room which was separate from the office of the complainant. The Appellant reached there at about 1 O''Clock and handed over 7/12 extracts and copies of mutations to the complainant and thereafter he enquired from the complainant as to what about his ''work''. The complainant gave him tainted currency notes worth Rs. 2,000/-. The said amount was accepted by the Appellant. He put the same in his shirt pocket. The complainant came out of his house on the pretext of bringing tea for the Appellant and gave signal to the raiding party. The raiding party reached the room where the Appellant had accepted the money from the complainant. The amount of Rs. 2,000/- was recovered from his pocket. It was examined under ultra violet rays. There was blue glittering when the notes were examined under ultra violet rays. The currency notes, the description and serial number of which were recorded in the pre-trap panchanama, were the same currency notes. The hands of the complainant were examined under ultra violet rays and it was found that there was blue glittering under the rays. The currency notes recovered from the Appellant and his shirt pocket were also glittered when they were put under ultra violet rays. Post trap panchanama was drawn after the raid was successful. Statements of witnesses were recorded. Sanction was obtained from the competent authority and the Appellant was prosecuted for the offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the Act.

3. The Appellant pleaded not guilty to the charge framed by the Special Judge.

4. The prosecution had examined the Sub-Divisional Officer of Kankavli as sanctioning authority. The complainant was examined as P.W. 2, Dy. S.P. was examined as P.W. 3. The panch witness Mr. Rasal was examined as P.W. 4.

5. The defence of the Appellant before the Trial Court was that the complainant/ P.W. 1 was to pay arrears of land revenue belonging to his father and uncle. It is his case that he had gone to the house of P.W. 2 to collect the land revenue. As such, the Appellant has not denied the acceptance of Rs. 2,000/- from P.W. 2. In his written statement before the Learned Trial Court, he has stated that he was known to be a good Talathi in collection of land revenue and that considering his past record, he was given an extra increment. It was also stated by him that in the past also the land revenue was collected from P.W. 2 in installments. P.W. 2 wanted to take revenge from the Appellant as the Appellant was insisting for payment of land revenue. It was further stated by him that on 11 October 1999 at about 12.40 p.m. he received a phone call from P.W. 2 and was intimated that the Appellant could visit the house of P.W. 2 to collect Rs. 2,000/- as part of land revenue recoverable from P.W. 2. The Appellant lost no time and immediately rushed to the house of P.W. 2 to collect Rs. 2,000/-. He had also carried 7/12 extracts of the land to be handed over to P.W. 2. It was specifically stated by him that he was also carrying receipt book in the dicky of his motorcycle. He has further stated that as soon as the amount of Rs. 2,000/- was given to the Appellant by P.W. 2, he wanted to bring a receipt book from the dicky. P.W. 2 insisted that the Appellant should first have a cup of tea and then he could give receipt to P.W. 2. It is at this point of time that the officers of Anti Corruption Bureau entered the office/house of P.W. 2 and apprehended the Appellant. It is also the case of the Appellant that he had given his explanation on the spot in writing to A.C.B. Inspector, P.W. 3. It is alleged by him that the immediate explanation given by the Appellant has been suppressed by P.W. 3.

6. It is in this background that the evidence of the witnesses has to be evaluated. Considering the admission on the part of the Appellant that he had accepted Rs. 2,000/- from P.W. 2, it is not necessary to examine the evidence of the witnesses on this issue. The only issue for determination before the Court is as to whether the amount given to the Appellant by P.W. 2 was a bribe amount or it was accepted by the Appellant considering the same to be the amount paid towards part of the land revenue.

7. It is well settled that the accused is not under the obligation to prove his case beyond all reasonable doubts. The burden on the accused is much lesser as compared to the burden on the prosecution to prove his case. If the accused has taken a particular defence, he has to probabalize his case by cross examination of witnesses, in his statement u/s 313 or by examining defence witness.

8. In the present case, what is most striking is that P.W. 2 had not stated in his F.I.R. that he was told by the Appellant that in case the office of the Appellant

was not open, the Appellant would deliver 7/12 extracts at the residence of P.W. 2. P.W. 2 has admitted that the Anti Corruption Bureau officers never knew that the Appellant was likely to visit the residence/office of P.W. 2 to deliver the 7/12 extracts. As such the fact that the Appellant was likely to visit the house of P.W. 2 was not within the knowledge of either the officers of Anti Corruption Bureau or the independent panch witnesses. It is P.W. 2 who told the officers that the Appellant would come to his residence when the office of the Appellant was found closed. It has come on record that a phone call was received by the Appellant from P.W. 2. P.W. 2 in his cross-examination has further admitted that he had not stated before the Anti Corruption Bureau officers that the Appellant had assured him that 7/12 extracts would be delivered at the residence/office of P.W. 2. However, he later on improved his version by saying that he had stated this fact to the Dy. S.P. Mr. Domane. He was unable to give any explanation as to why this fact was not stated in his F.I.R. Dy. S.P. Mr. Domane in his cross-examination has clearly stated that he did not know that the Appellant was to visit the house of P.W. 2. This was stated by P.W. 2 for the first time when the office of the Appellant was found closed.

9. As such, what can be gathered from the evidence of P.W. 2, 3 and the statement of the Appellant u/s 313 and his additional statement in writing is that P.W. 2 has in all probabilities invited the Appellant at his residence after making necessary arrangements with the Anti Corruption Bureau officers. In the circumstances, it is very difficult to accept the prosecution case that the Appellant had accepted Rs. 2,000/- from P.W. 2 by way of gratification. The Appellant by cross-examining P.W. 2 and P.W. 3 and by filing his written statement before the Trial Court had been successful to probabalize his case that he accepted Rs. 2,000/- from P.W. 2 under the impression that the said amount was given to him by way of part-payment of land revenue due from P.W. 2. In the circumstances, the Appeal must succeed and hence, I pass the following order:

(i) Appeal is allowed;

(ii) The judgment and order passed by the learned Special Judge, Sindhudurg-Oros in Special Case No. 6 of 2000 convicting the Appellant for the offence punishable u/s 7 of the Prevention of Corruption Act is set aside;

(iii) The Appellant is acquitted of the said offence. His bail bonds shall stand cancelled;

(iv) Fine, if any, paid by the Appellant shall be refunded to him;

(v) The Appeal accordingly, stands disposed of.

