(2015) 08 BOM CK 0242

In the Bombay High Court

Case No : Criminal Appeal Nos. 383 and 394 of 2009

Ganesh and Others APPELLANT

Vs

The State of Maharashtra RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Prevention of Corruption Act, 1988 — Section 12, 13(1)(d), 13(2), 7

Citation : (2016) ALLMR(Cri) 224

Hon'ble Judges : M.T. Joshi, J

Bench : Single Bench

Advocate : N.S. Ghanekar, for the Appellant; V.P. Kadam, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M.T. Joshi, J—Heard both sides.

2. Both the present appeals have arisen out of same Special Case bearing No. 15 of 2005, whereunder the appellant in Criminal Appeal No. 383 of 2009 -Ganesh Survyawanshi (original accused no. 1) was convicted by the learned Special Judge (P.C. Act), Aurangabad vide judgment and order dated 21/7/2009 for the offence punishable under section 7 and 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act; while the appellant in Criminal Appeal No. 394 of 2009 -Eknath Bodkhe (original accused no. 2) was convicted for the offence punishable under section 12 of the Prevention of Corruption Act.

3. For the sake of convenience, the appellants would be termed as "accused no. 1" and "accused no. 2", respectively, as arrayed before the learned trial Court.

4. Accused no. 1 was sentenced to suffer rigorous imprisonment for 1 year and to pay fine of Rs. 3000/-, in default to suffer simple imprisonment for 3 months, for the offence punishable under section 7 and under section 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, respectively, on each of the counts.

5. Accused no. 2 was sentenced to suffer rigorous imprisonment for 1 year and to pay fine of Rs. 3000/-, in default to suffer simple imprisonment for 3 months for the offence punishable under section 12 of the Prevention of Corruption Act. Hence, both the present appeals.

6. Accused no. 1 -Ganesh Survyawanshi was working as Sub-Registrar of Documents at Soygaon, Dist. Aurangabad while accused no. 2 -Eknath Bodkhe is the Licensed Bond Writer cum Stamp Vendor working in the very same premises.

7. The prosecution case in short is as under:-

That P.W.1 complainant Waman Thamaji Lokhande had purchased a field from one Mr. Shaukat for a consideration for Rs. 1,32,000/-. Accordingly, on 4/2/2005, all of them visited the Registration Office at Soygaon including one witness Sukhdeo Sapkal. The complainant as well as Shaukat met accused no. 1 -Ganesh Suryawanshi -the Sub Registrar. At that time, accused no. 1 told him that in all the amount of Rs. 12,000/- would be needed for registration of the sale deed. He gave the bifurcation of the said amount as Rs. 5300/- regarding value of the stamps, Rs. 200/- as fees of the bond writer, Rs. 1,500/- as registration charges and Rs. 5000/- as the on-money for himself. The complainant however said that the amount of on-money is very excessive. Ultimately, accused no. 1 agreed to accept amount of Rs. 2000/- as on-money and told that in absence of said on-money, the document would not be registered. Thereafter, accused no. 1 called accused no. 2 and told him to draft the sale deed and also further told that he should accept Rs. 200/- as his fees and Rs. 2000/- for himself (accused no. 1) personally.

Thereupon accused no. 2 took them out of the Office. He exactly calculated the amount. He told that an amount of Rs. 5300/- will be required for stamps, Rs. 1640/- as registration fees, Rs. 200/- as his own fees and Rs. 2000/- as on-money for accused no. 1. He asked the complainant to pay whatever the money brought by him. Accordingly, the complainant gave him Rs. 6200/-. Upon that, accused no. 2 got purchased stamps of Rs. 5300/- from another stamp vendor i.e. Mr. Pathade and the sale deed was also written over the said stamp paper. Accused no. 2 told that on the day of the registration of the sale deed, the complainant should pay him Rs. 940/- towards the balance of the registration charges and on-money of Rs. 2000/-, so that he would bring the receipt of Rs. 1640/- from the Registration Office on that day. Since the complainant did not want to pay any bribe, he approached Anti Corruption Bureau at Aurangabad and filed his complaint on 5/2/2005.

P.W. 4 - the then Police Inspector of Anti Corruption Bureau, Aurangabad Mr. Ashok Rajput had recorded the complaint at exhibit 17. Thereupon, on requisition, he collected two panch witnesses namely P.W. 3 Ajay Bhokare and one Mangesh Kulkarni, two public servants by sending requisition letter to the Office of Municipal Commissioner, Aurangabad. Pre-trap activity i.e. demonstration of the application of anthracene powder was carried. Decoy money of Rs. 2000/- brought by the complainant was kept separate and anthracene powder was applied to it. It was put in the shirt pocket of the complainant. The complainant was instructed to meet accused no. 1 in his Office alongwith the panch i.e. P.W.1 -Ajay Bhokare and had talk with him about the work and regarding the on-money and to ask for receipt for the payment. Further, if the accused makes demand of the bribe to him, then to hand over the bribe amount. Pre-determined signal was also agreed in case the bribe amount is demanded and accepted by the accused.

Accordingly, the complainant and shadow panch witness together visited the Office. Rest of the raiding party followed them.

On the day i.e. on 7/2/2005, accused no. 1 came late i.e. at 12:30 p.m. in his Office. At that time, the complainant asked accused no. 1 to register the sale deed. Accused no. 2 who was present at that time, also asked accused no. 1 to register the sale deed. Upon that, necessary procedure of obtaining the photo on the computer, taking of thumb impression of the relevant persons and passing of receipt for Rs. 1640/- had taken place. At that time, accused no. 1 asked accused no. 2 to accept the registration charges as well as the balance of the amount from the complainant. Thereafter, he handed over the registered sale deed and other documents to the complainant. Thereupon, all of them went outside of the Office of accused no. 1. In the adjoining hall, accused no. 2 made demand of the remaining amount of Rs. 940/- as well as Rs. 2000/- towards the on-money. Accordingly, the complainant first handed over an amount of Rs. 940/-. The accused no. 2 accepted the same and kept it in his trouser''s pocket. Thereafter, accused no. 2 asked for the on-money of Rs. 2000/-. Accordingly, the complainant took out the decoy money from his left hand side chest pocket and handed over it to the accused no. 2. He kept the same in his left side shirt pocket. Thereafter, the complainant went in the nearby gallery and gave the pre-determined signal.

Upon getting the pre-determined signal, P.I. Rajput as well as other members of the raiding party including second panch came at the spot. Accused no. 2 was apprehended. The amount of Rs. 940/- was found in his trouser pocket. The decoy money was found in his chest pocket. His shirt pocket, the decoy money found in it, as well as hand and the shirt of the accused no. 2 was seen positive to the application of the anthracene powder. Similarly, personal search of accused no. 1 was taken. Thereafter, the complainant was called. The necessary panchanama was prepared and, thereafter, the necessary investigation was carried. Upon suggestion by the Investigating Officer, both accused submitted their explanations in writing.

Statement of the relevant witnesses were recorded. Sanction to prosecute accused no. 1 was obtained from P.W. 1 -Mr. Omprakash Gupta, the then Inspector General Registration and Controller of Stamps, Maharashtra State, Pune (at exhibit 11) and the chargesheet came to be filed.

8. Before the learned Special Judge (P.C. Act), Aurangabad, in all four witnesses were examined, as detailed above. Necessary documents were also pressed into service.

9. The defence of accused no. 1 was that one Sukhdeo Sapkal, the person who was allegedly present on the first day of the meeting i.e. 4/2/2005, is the maternal uncle of the complainant. Both of them had approached in his Office. At that time, they had only certified copy of 7/12 extract of the land with them. In fact, the land to be purchased was coming under the Baoti Minor Irrigation Project. Therefore, the certificate was required to find out as to whether the land is not covered under the benefited area as value of the land would vary. Accused no. 1 therefore asked to get the said certificate. Further, certified copy of 8-A extract was also required to find out the total area owned by the purchaser i.e. the complainant. The complainant was not having these documents and, therefore, the document could not be registered on 4/2/2005. The complainant however insisted to register the sale-deed by saying that he would submit the documents lateron. Accused no. 1 however refused for the same. The complainant therefore was displeased. In fact Sukhdeo, the maternal uncle of the complainant is a busy body, who indulges in filing similar complaints against some of the Officers and also criminal cases against the other villagers. In the circumstances, as both of them were annoyed, false complaint was filed. In fact accused no. 1 acted like a public official during the entire transaction.

10. The defence of accused no. 2 was that he is a regular stamp vendor. The complainant had purchased stamp papers worth Rs. 5300/- from other stamp vendor as accused no. 2 had no sufficient stamp papers. Thereafter, he again approached accused no. 2 for writing the sale deed. When accused no. 2 demanded an amount of Rs. 200/- as charges, upon writing the same, the complainant went away. He however, again came to him for preparation of affidavit. Accused no. 2 advised him to go to the Tehsil Office and get the affidavit prepared. Thereafter, the complainant again approached him for registration of the document. Thereafter, the complainant himself went to the Sub Registrar''s Office. All this has occurred on 4/2/2005. Thereafter, on 7/2/2005, the complainant again came for getting the sale deed registered. Accused no. 2 asked him to stand in the queue in the Office of the Sub Registrar. After registration, the complainant again came to him and he has thrust the amount of Rs. 2000/- in his pocket shirt while Sukhdeo Sapkal caught his hands.

11. The learned Special Judge however came to the conclusion that the prosecution case has been proved beyond reasonable doubt. Hence, the conviction and sentences against both the appellants, as detailed supra came to be recorded.

12. Mr. Ghanekar, learned counsel for accused no. 1 -Ganesh Suryawanshi i.e. appellant in Criminal Appeal No. 383 of 2009 submitted that the complainant was enraged as he was required to return without registration of the sale deed on 4/2/2005 for want of the relevant documents, as the valuation of the land and

ultimately the required stamp and the registration charges were dependent on those documents. His maternal uncle being a busybody, wanted that on the very same day, the sale-deed should be registered while necessary documents would come lateron.

He further submitted that the evidence on record would show that on 7/2/2005, in regular course of business, the document was registered and no demand of money was made by accused no. 1 though according to the prosecution case, the Investigating Officer has specifically asked the complainant to have a dialogue regarding the demand and acceptance of specific on money, to avoid the confusion in the payment of registration fees and the on-money.

Mr. Ghanekar further submitted that admittedly, there was crowd in the Office on that day and one after another, the work of registration was going on. As on that day, the necessary documents were placed, the valuation was correctly made. Even as per the prosecution case, the tape-recorder was offered by the Investigating Officer to the complainant but he refused to operate the same. Admittedly, as per the prosecution case, no demand was made at all by accused no. 1 during the trap. Many people were present in the Office. The evidence of shadow panch witness would also fortify all these facts. Though, the complainant P.W. 1 stated that he had given his hand written complaint, the same is missing and we have the typewritten complaint. In the circumstances, only to show that the trap was successful, the Investigating Officer has caused to make appearance of acceptance of the illegal gratification. In the circumstances, he submitted that the appeal be allowed.

13. Mr. Bhosale, learned counsel for accused no. 2 i.e. appellant in Criminal Appeal No. 394 of 2009 submitted that as per the evidence itself, it would be clear that when Sukhdeo Sapkal had caught the hands of this appellant, at that time, the complainant was absent. The stamp papers were not purchased by the present accused. There is confusion as to what was the exact amount and in the circumstances, he submitted that the appeal be allowed.

14. On the other hand, learned A.P.P. supported the reasoning forwarded by the learned Special Judge and submitted that the prosecution case is proved beyond reasonable doubt.

15. On the basis of this material, following points arise for my determination:-

I) Whether the prosecution has proved that on 4/2/2005, accused no. 1 being a public servant made the demand of Rs. 2000/-, as gratification other than the legal remuneration as motive or reward for doing the official act in connection with the registration of the document of land from the complainant ?

II) Whether the prosecution has further proved that on 7/2/2005, at Sub Registrar Office at Soygaon in the noon, accused no. 1 attempted to obtain pecuniary advantage of Rs. 2000/- for himself from the complainant through accused no. 2 by corrupt or illegal means ?

III) Whether the prosecution case has further proved that on 7/2/2005 in the noon, at the Sub Registrar Office at Soygaon accused no. 2 abetted accused no. 1 in commission of the above offence ?

IV) Whether the sanction granted to prosecute accused no. 1 is legal and valid ?

My findings to all the points are in the affirmative. Both the appeals are therefore dismissed for the reasons to follow.

REASONS

16. The statement of complainant P.W. 1 and the shadow panch witness P.W. 3 Ajay Bhokare regarding the respective incidents that has occurred in their presence, would show that on the previous date i.e. on 4/2/2005, both the accused had told about the amount required for purchase of stamps, registration fees, bond writer''s fees and on-money, but on the next occasion i.e. on 7/2/2005, at the time of registration of the document, the accused no. 1 had asked accused no. 2, as to whether the "fees" is already paid. The prosecution case is that an amount of Rs. 940/- towards the balance of the legal amount remained to be paid, on-money of Rs. 2000/- was kept separately as decoy money and both the amount was accepted by accused no. 2 in the hall adjoining to the proper Sub Registrar''s Office. Thus, according to the prosecution, an amount of Rs. 2940/- was paid to the accused no. 2 at the time of the trap and no amount was directly paid to accused no. 1.

17. It is an admitted fact that registration fees was Rs. 1640/-. Admittedly even receipt of the same was passed by the accused no. 1. It is not the defence of any of the appellants that in-fact, an amount of Rs. 1640/- was paid by the complainant in the Office of the Sub Registrar and, thereafter, the receipt was handed over to him.

Thus, admittedly, without payment of Rs. 1640/-, accused no. 1 prepared the receipt and handed over the said receipt to the complainant. Even, the documents after registration were also handed over to him and, thereafter, he came out of the Office of the accused no. 1.

Had there been no previous discussion, as alleged by the complainant, then accused no. 1 would not have handed over the receipt of Rs. 1640/- to the complainant or atleast in normal course would not have allowed to hand over the registered sale deed and other documents to the complainant before paying the amount of Rs. 1640/- i.e. the official registration fees, which would be ultimately credited to the Government. The facts therefore would clearly establish that without any protest, accused no. 1 allowed the complainant to go out of his Office without payment of Rs. 1640/-.

P.W. 3 the shadow panch witness Ajay Bhokare in clear terms has deposed all these facts. His evidence would show that accused no. 2 made a demand of Rs. 2000/- to the complainant and upon catching of the accused no. 2, not only the amount of Rs. 2000/- i.e. decoy money was found on the person of accused no.

2 but an amount of Rs. 940/- was also found on his person. It is thus clear that accused no. 2 had accepted an amount of Rs. 2940/- while as per the defence case, his drafting fees was only Rs. 200/-. The claim of the accused no. 2 is that the amount was thrust in his pocket.

18. If the defence is believed then the complainant or his maternal uncle had grievance only against accused no. 1 -the Sub Registrar, who did not accept their request to register the document on 4/2/2005 without the requisite documents and accused no. 2 had no role to play in all this episode. According to accused no. 2 also, there was no enmity or there was no any grievance from the side of the complainant against him.

19. In the circumstances, whether the maternal uncle of the complainant is a busybody or as to whether the specific instructions issued by the Investigating Officer that the complainant should get from accused no. 1 or accused no. 2, the specification of bifurcation of amount made during the dialogue, is followed or not, would not be of that much significance as ultimately the complainant could not have been said to have domain as to how the dialogue should proceed.

20. The prosecution case would show that the accused no. 1 came late in the Office. Therefore, there was crowd and one after another the documents were required to be registered. Thus the signal from the accused no. 1 to accused no. 2 just by merely saying as to whether the "fees is received", as deposed to by both these witnesses would be an enough conversation for them and the complainant would not have forced them to make further statement regarding demand of on-money in view of the crowd in the Office.

21. The glaring facts however as pointed out earlier would show that accused no. 1, a responsible Sub Registrar had allowed the complainant to go away from his Office without payment of registration charges of Rs. 1640/- and asking accused no. 2 as to whether the fees is received, is enough material to come to the conclusion that both these accused in connivance with each other had demanded an amount of Rs. 2000/- as illegal gratification and, thereafter, accepted the same from the complainant.

22. Accused no. 2 does not deny that the amount of Rs. 2000/- was found on his person. His case is of thrusting of the decoy money. We have already found that if at all any grievance would have been there in the mind of the complainant, it was not at all against accused no. 2, since his defence would show that he had nothing to do with the earlier conversation between the complainant and accused no. 1. In that view of the matter, the reasoning of the learned Special Judge cannot be faulted with.

23. As regards the defence of insufficiency of documents on the first date, as per the specific defence of the accused no. 2, the bond writer, only affidavit remained to be prepared and nothing further. The issue of refusal to avail the tape-recording facility by the complainant cannot be doubted as he is a rural agriculturist. Merely because there was no specific demand on the day of the

trap, in the background of the facts, as detailed supra, when the present accused no. 1 -Sub Registrar simply handed over the receipt without receiving the registration fees and allowed to go the complainant out of his office would speak in volumes. In the result, the following order:-

24. Both Criminal Appeals are hereby dismissed.

25. Bail bonds of both the appellants shall stand cancelled.

26. The learned Special Judge (P.C. Act), Aurangabad is directed to take steps for securing the presence of the present appellants to serve the sentences.

