(2022) 11 BOM CK 0084

In the Bombay High Court

Case No : Criminal Appeal No.67 Of 2010

Keshav	APPELLANT
Vs	
State Of Maharashtra	RESPONDENT

Date of Decision : 24-11-2022

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13(1)(d), 13(2)
Code Of Criminal Procedure, 1973 — Section 437A

Citation : (2022) 11 BOM CK 0084

Hon'ble Judges : Kishore C. Sant, J

Bench : Single Bench

Advocate : N. L. Choudhari, Y. G. Gujrati

Final Decision : Allowed/Disposed Of

Judgement

Kishore C. Sant, J

1. This appeal is by the Original Accused prosecuted for offence punishable under Section 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (P.C. Act for short). After trial, by judgment dated 21.01.2010, the Special Judge, Dhule in Special Case No. 75/2005, has held the Appellant guilty of the said offences and the Appellant is accordingly convicted. He is sentenced to suffer Rigorous Imprisonment (R.I.) for two years and to pay fine of Rs.1000/- in default to suffer Simple Imprisonment (S.I.) for three months for the offence under Section 7 of P.C. Act. He is further sentenced to suffer R.I. for two years and to pay fine of Rs.1000/- in default to suffer S.I. for three months for the offence under Section 13(1)(d) read with Section 13(2) of PC Act.

2. The story of the Prosecution in short is as below:

The present Appellant/Accused was working as a Junior Clerk in Shri Bhausaheb Hire Govt. Medical College, Dhule. He demanded an amount of Rs.1500/- from the Informant Dr. Mahendra Rajole for accepting the resignation of wife of Informant, Kiran Mahendra Rajole, who was temporarily appointed till January, 2005 as Medical Officer in the said College and not to deduct one month salary in lieu of the notice period.

3. It is a case that the Informant and his wife decided to start practice, for that she decided to resign. Accordingly in December, 2004 she submitted her resignation. However she stopped coming to College even before the expiry of notice period. It is for this reason, the office of Dean issued her a notice directing to deposit one month's salary Rs.8000/-. The Informant therefore, approached the Appellant, who was working as Clerk in establishment section. This Appellant told Informant to deposit Rs.8000/- or else the resignation will not be accepted. He suggested that if medical certificate is submitted then resignation will be accepted and there will be no need to deposit of Rs.8000/-. The Informant thereafter sent medical certificate to the Health Department of Dean. Thereafter Informant made an enquiry with the Appellant, who demanded amount of Rs.1500/- for the work, which was settled to Rs.1000/-. The Informant therefore approached the office of Anti-Corruption Bureau and lodged a complaint against the Appellant on 20.04.2005. On lodging of the complaint, ACB decided to lay a trap by following usual procedure. Panchas were called. The procedure of trap was explained to them. On the day of complaint, only a trap was arranged. It is stated that the trap was successful and Appellant was caught red handed after he accepted the bribe amount.

4. It is the defence of the Appellant/Accused that he was working only as a Clerk in the College and he had no power or authority to accept the resignation letter etc. He had only prepared a note on resignation letter for approval of the Superior officer. It is the Dean of the College, who accepts the resignation. His work is over after the note was put up by him. On the date of trap, in fact the entire file was ready, the letter was handed over to the Informant by one lady clerk Asha Gavali. Thereafter there was no reason for the Informant to contact the Accused person. However, the Informant came on his own near the Appellant and thrusted the amount in his pocket. Immediately the Appellant took out the amount (currency notes) and thrown it away. However, as anthracene Powder was applied to the currency notes, same came in contact with his fingers. The story is that since the procedure was taking long time, the Complainant got fed up, he thought that it is this Appellant who is deliberately delaying the procedure and therefore he decided to falsely implicate the Appellant.

5. The Prosecution in its support examined four witnesses. The first witness is Complainant namely Mahendra Parshuram Rajole, PW-1. In his deposition, he stated that his wife namely Kiran Rajole was serving in the Govt. Medical College. She was appointed on temporary basis from October 2004 to January, 2005 and her appointment was to come to end on 31.01.2005. However, before completing the term, Informant and his wife decided to start practice at Nashik in December, 2004 and therefore one month notice of resignation was given to the Dean of the College. Before the expiry of the notice period, wife of Informant fell ill and therefore could not go to duty. For this reason, Dean issued notice to her

directing to deposit Rs.8000/-, as she stopped coming to College before completion of notice period. It is thereafter, the Informant approached the Appellant. Appellant demanded amount as bribe from the Informant as stated above. This witness therefore lodged the complaint against the Appellant with ACB. On 20.04.2005, in the office of ACB, two panchas were called. They were explained the procedure of the trap. After that, the raiding party proceeded towards the College.

6. After going to the College, Informant and Panchas met with the Appellant/ Accused near his table in the office and Informant introduced Accused to Pancha. He made enquiry with the Appellant as to whether his work is done? Appellant shown his file to the Informant. Informant saw the papers of resignation were there in the file. After verifying the said fact, the Appellant handed over that file to one lady Clerk and told her to put outward number on it. After putting outward number, the letter was given to the Informant. Then the Appellant told Informant to come outside in Verhanda. Appellant asked the Informant whether amount is brought? On saying yes, Appellant directed to hand over the amount.Informant asked Appellant whether has to hand over the amount? Appellant answered affirmatively and accepted the amount and kept the same in right hand pocket of his pant. Appellant returned towards his table. After giving signal by the Informant, raiding party came in the office.

7. In cross-examination, question was put that the office note was prepared on 13.04.2005 itself. He stated that on 19.04.2005 when he had made enquiry with the Appellant, he was told that the order is not signed by the Dean and he was asked to come next day. On 20.04.2005, Informant again went to the office in the morning, the Appellant told him to come in the afternoon at about 03:00 to 03:30 pm. At 03:00 pm. the Appellant told him that the order is lying on the table of Smt. Ujwala Gavali and to take the same from her. He accepted that he collected the letter from Smt. Ujwala Gavali and put up a signature to acknowledge the receipt of letter and came out of the office. He accepted that Appellant has no power to pass any order. Further he accepted that even Dean cannot pass order unless it is approved by his Superintendent and Account Officer. It has come that after the work was over, the Informant went to the Appellant again within two minutes.

8. The next witness is Dean of the Government Medical College (PW-2), namely Dr. Nandkumar Vishwanath Dravid. In his evidence, he stated that he had received the papers from ACB. He perused all these papers and after applying his mind, he accorded sanction for prosecution of the Appellant /Accused. He also deposed that he had submitted the information in respect of Appellant and the documents in connection with his appointment, designation etc. to the Investigating Officer. Though application was made for resignation on 01.01.2005, no medical certificate was produced alongwith it. He stated that the Appellant was not empowered to pass any order and his work was only to put up a note. It is only after the note is approved by Office Superintendent and

Administrative Officer, the note sheet is to be placed before him. He accepted that the Appellant had put up the note and the same was approved by this Witness.

9. The third witness is Anil Sampatrao Khonde (PW-3), Account Officer in Panchayat Samiti, Dhule. This witness was called by the ACB to act as panch. He stated that as per the direction of his superior officer, he went to the ACB, where complaint was read over to him. Investigating Officer explained procedure to this witness for laying down a trap and shown him use of Anthracene Powder etc. As decided by the ACB, this witness alongwith Informant went to the office of Appellant. In the office, Informant wished the Appellant and told this witness that he is the accused. Informant made enquiry with the Appellant about his work and on that the Appellant took out his file from his table gave it to the Informant and asked him to personally see the file. The Informant saw the file personally and returned back the same to the Appellant. Thereafter Appellant gave that file to one lady staff for giving outward number. By putting outward number on that file, she handed over a letter to the Informant and obtained his signature towards acknowledgment on the outward register and returned the file to the Appellant.

Then Appellant told Informant to come in the verhanda. Both went in verandha and within two – three minutes, they returned back. He stated that the Appellant did not throw the currency notes from his pocket before arrival of ACB – raiding party. He further deposed about the post trap panchnama that on examining the hands of Appellant under ultraviolet lamp, the fingers of Appellant and right pocket of his pant were shining under the ultraviolet lamp. Both currency notes of Rs.500/- were also found shining.

10. The last witness is the Investigating Officer (PW-4), who conducted the investigation. He deposed the procedure about the investigation. He accepted that there is no specific provision regarding temporary appointment. He also accepted that Accused has no right to pass any order. He further accepted that till the order was handed over to the Informant, there was no question of giving or taking of bribe amount.

11. It is submitted by the learned Advocate for the Appellant that the Prosecution has not proved material aspects as required to prove an offence under the Prevention of Corruption Act. He submits that though there is no demand verification or pre-trap panchnama, directly the Investigation Officer has decided to lay down a trap without verification. Paragraph No.3 of Cross-examination of Informant – PW-1 shows that the letter was already given to the Informant and thus there was no question of any demand. From the evidence of PW-3, he pointed out that when the alleged demand was made and the amount was given, this witness was not present in verandha. Thus, the submission is that there is no corroboration to the evidence of Informant on the point of demand of amount at the time of handing over the amount. He further argued that it has come in the evidence of PW-3 and PW-4 that there was no power with the Appellant/

Accused to sanction the resignation. He further pointed out that the work was already completed and there was no question of making any demand on the point of sanction. He submitted that the sanction order does not reflect that the sanctioning authority has applied its mind. It is clear that the sanctioning authority has not considered the fact that already work was done and there was no question of making any demand. Further the sanctioning authority has not discussed as to whether the Appellant had any power to accept the resignation. He pointed out on the point of pre-trap demand verification panchanma that there is already a circular dated 28.06.2004, which requires that before a trap, verification panchnama should be drawn so as to see that there is no unnecessary harassment to the Government Officer. He submits that in this case this circular is violated. In support of his submissions, he relied upon the following judgments :

(1) P. Sirajuddin, Etc. Vs. State of Madrs, Etc. [1970(1) SCC 595]

(2) Sunil Hirassingh Rathod Vs. State of Maharashtra [2022 All.M.R.(Cri) 647]

(3) B. Jayaraj Vs. State of A.P. [AIR 2014(SC)(Supp) 1837]

(4) State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede [2009 AIR (SCW) 5411]

(5) Khaleel Ahmed Vs. State of Karnataka [2015 (16) SCC 350]

(6) Vinod Savalaram Kanadkhedkar Vs. State of Maharashtra [2016 All.M.R.(Cri) 3697]

(7) Usha Dhondiram Sarwade Vs. State of Maharashtra [2011 (4) Mh.L.J.(Cri) 55]

(8) Unreported judgment delivered by this Court in the case of Madhumati Baburao More in Criminal Appeal No. 421/2011 dated 05.09.2022.

12. It is submitted by the learned APP that the evidence of PW-1 and 3 is consistent on the point of demand and acceptance of amount, they corroborated each other in all material facts. From the order of sanction, the application of mind is clearly reflected. Money was found with the Appellant, the fingers of the Appellant and his right hand pocket of pant also shown presence of Anthracene Powder. He submitted that there is no cross-examination of the sanctioning authority on material points. About demand verification, he submits that there is no cross-examination on this point. The cases cited by the Appellant are distinguishable on facts of the case. This is a case, where amount was given as reward as covered under Section 7 of the P.C. Act. He thus submits that the learned trial Judge has rightly considered all these aspects and has rightly recorded the conviction.

13. We need to appreciate the evidence and material brought on record by the Prosecution during the course of the trial. From the complaint, it is seen that the Accused has demanded amount from the Complainant for giving papers in respect of resignation of his wife and thus he went to the ACB. From his

evidence, it is seen that at the time of handing over the papers, the file was given to one lady staff and the Informant also collected letter from that lady staff. The evidence of panch also clearly shows that the accused told the Informant to come out of the office at verandha and where he made a demand. The panch witness accepted that after taking letter, the accused and Informant, both went to verendha and returned within two three minutes and thereafter, raiding party came there. Thus in the defence that this witness had no occasion to see the conversion of demand and to see the acceptance appears to be probable.

14. From the evidence of sanctioning authority, it is seen that the accused had no power to sanction or to accept the resignation letter. In his cross, he further accepted that alongwith resignation letter / application, no medical certificate was produced. It was produced only thereafter on 15.03.2005. Again the application was submitted with Medical certificate for grant of medical leave for a period from 01.01.2005 to 08.01.2005 and to accept the resignation. It has come in the evidence of this witness that accused has put up note and on 13.04.2005, Administrative Officer and Office Superintendent both have put signature on the said order.

15. This is the evidence, which needs to be discussed in the light of the judgments cited by the parties. In the case of P. Sirajuddin, etc. (supra), it is held that though it was a case of sanction under the Code of Criminal Procedure, however the said consideration would also be applicable in the case of sanction under the P.C. Act. It is in respect of powers of the investigation with the Police Officer. In the second judgment in the case of Sunil Rathod (supra), this Court has held that it is necessary to prove by oral or documentary evidence that there was a demand and acceptance. These are two necessary ingredients for proving an offence under Section 7 of P.C. Act. It is further held that the inconsistencies in the version of the prosecution witnesses are not in form of mere marginal variation but the inconsistencies and the omissions which amount to contradictions in material particulars go to the root of the case and materially affect the case of the prosecution. This version makes the prosecution case doubtful and such evidence is liable to be discredited. It is further held that the demand of illegal gratification is sine qua non to constitute an offence under the provisions of the Act. This judgment was delivered by relying upon the judgment in the case of Dnyaneshwar Laxman Rao Wankhede (supra).

16. Further is the judgment in the case of B. Jayaraj (supra). In this case also, the Hon’ble Supreme Court relied upon the case of Dnyaneshwar Laxman Rao Wankhede (supra) and acquitted the accused holding that the demand of bribe amount is sine qua non.

17. The next judgment is in the case of Dnyaneshwar Laxman Rao Wankhede (supra), which is already discussed in above two judgments. It is thus clear that to prove an offence under P.C. Act, the Prosecution necessarily has to prove that there is a demand by the accused and the acceptance of the amount is pursuant

to the demand.

18. In the case of Khaleel Ahmed (supra), the Hon’ble Apex Court held that it is a golden principle of criminal law that the burden of proof required to be discharged by the prosecution is one of proof beyond reasonable doubt. In the present case also, the Prosecution has failed to discharge its burden beyond the reasonable doubt.

19. In the case of Vinod Savalaram Kanadkhedkar (supra), it is held that it is needless to state that sanction order was not a mere formality. It is further held that the absence of description of documents referred by sanctioning authority and only considering the grievances made by Complainant would show lack of application of mind by competent authority while according sanction. It is held that the documents should have been referred in the sanction order and on this count acquittal came to be recorded.

20. In the case of Usha Dhondiram Sarwade (supra), this Court had considered that the certificate was already issued and there could not be case of issuing certificate unless payment was made. In the case in hand also it has clearly come on record that the Accused had already handed over the file to one lady staff. It is pointed out that when the other staff person, who had already handed over the letter of sanction to the Informant and therefore there was no question of accused saying that, unless the payment was made, the work will not be done.

21. A circular dated 28.06.2004 to which attention is invited of this Court issued by the Joint C.P./Spl. G.P./ Anti Corruption Bureau, Maharashtra State. This circular is based upon the judgment in the case of P. Sirajuddin (supra), which is already discussed earlier. It is specifically directed to make proper verification of the Complaint before laying a trap. This circular is based upon the circular of CBI. It is issued with the view that there is a possibility of some public servants being falsely implicated or facts being exaggerated. This circular is specifically issued to minimize possibility of unnecessary prosecution against Government servants. On going through the said circular it appears that there is a specific direction issued that a proper verification shall be done before laying a trap. It is seen that in this case, no proper verification was done. Thus, there is a violation of this circular.

22. It is a submission of learned APP that the money was demanded for handing over the letter/certificate and not for accepting the resignation, cannot be accepted. Learned APP further submits that the sanctioning authority has considered the documents also cannot be accepted. His further submission that a demand can also be made for the work, which is already done. The present case was the case, where demand was made for the work, which was done. His submission is that since there was an urgency for acceptance of resignation, the Complainant was made to pay the amount. Looking to the fact that the resignation letter was given in the month of January without application for medical leave. On coming to know that there has to be an application for medical

leave, it is the Complainant who submitted such application for the first time on 25.03.2005 shows that in fact the Informant has not taken prompt action under such such circumstances, it cannot be said that he would make a payment in the month of April, when there was urgency in the month of January i.e. three months prior to the incident. What comes on record is that as it is the service of wife of the Informant was temporary and it was up to end on 8th January, 2005. Thus at any rate that already had come to end in January. It can hardly be believed that the professional like in the medical professional would show readiness to pay the amount for any such urgency in the month of April. In fact there was no urgency after January, 2005. The only question was of not depositing amount of Rs.8000/-, that was required to be paid as the wife of Informant had stopped coming to duty even prior to expiry of notice period. The defence thus appears probable that since the Informant was required to pursue the matter for over period of three to four months, he developed a grudge and therefore he implicated the Appellant, needs to be accepted. The Prosecution also has failed to prove the case beyond reasonable doubt. Hence, the following order.

ORDER

(i) Criminal Appeal is allowed.

(ii) The judgment passed by the Special Judge, Dhule in Special Case No. 75/2005 dated 21.01.2010 is quashed and set aside.

(iii) The Appellant is acquitted of the offences punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act,1988.

(iv) Fine amount deposited in the Trial Court be refunded to the Appellant.

(v) Bail bonds of the Appellant stand cancelled.

(vi) Appellant to furnish fresh bail bonds with sureties as per Section 437-A of the Code of Criminal Procedure, 1973.

23. With this, the Criminal Appeal is disposed off.