
(1994) 06 BOM CK 0013
In the Bombay High Court
Case No : Criminal Appeal No. 566 of 1991

Kishan Khashapa Gogawale

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 27-06-1994

Acts Referred:

Evidence Act, 1872 — Section 3, 59
Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : (1994) 4 BomCR 399

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

Bench : Single Bench

Advocate : S.R. Chitnis, for the Appellant; B.R. Patil, for the Respondent

Final Decision : Allowed

Judgement

M.F. Saldanha, J.—The appellant in this case, who at the relevant time was working as Talathi, Saja Urali Devachi, is alleged to have demanded Rs. 100/- as a bribe from the complainant, Bhairu Shripati Holkar, and received the same on 29-8-1986. The prosecution alleges that Bhairu had complained to the Anti-Corruption Bureau Authorities, who arranged for a trap. According to the prosecution the complainant, Bhairu, along with the Panchas met the accused in the office on 29-8-1986. The reason for the demand as set out by the complainant is that he had purchased two lands in a connection with which there was an enquiry under the Bombay Tenancy & Agricultural Lands Act. Furthermore, he contends that he had remained absent on two occasions and that the Talathi had served a notice on him and warned him that if did not remain present in the enquiry that his lands will be forfeited to the Government. He states that having been so pressurised, the accused told him that if he (Bhairu) paid Rs. 100/- that everything would go well for him. According to him, therefore, the demand constituted a bribe and he went to the A.C.B. Authorities in order to ensure that action was taken in respect of such a corrupt act.

2. According to the complaint, the complainant Bhairu and the Panch Lamb (P.W. 4) went to the Talathi's office and met him. The accused is alleged to have taken down two statements of the complainant, which is a matter of record, and after some time he is supposed to have gone out of the office along with a bag containing his papers and he asked the complainant to follow him. When he went to his motorcycle, he is alleged to have asked the complainant as to what happened about the other matter and the complainant told him that he had brought the money which he took out and gave to the accused counted it and put it into his trouser pocket. Thereupon the complainant raised his cap as a signal and the raiding party immediately apprehended the accused. The currency notes in question, which consisted of two notes of Rs. 20/- and six notes of Rs. 10/- each, had been treated with anthracene powder and on an examination a bluish colour was noted on the hands of the accused as also on the entrance of his trouser pocket and on the eight notes as also on another note of Rs. 100/- which was also found in the same pocket. The traces of the bluish tinge were also found on his hand and his shirt pocket where he kept the treated notes. The accused was placed under arrest and on completion of the investigation, a chargesheet was filed before the learned Special Judge, Pune. The learned trial Judge convicted the accused u/s 161 of the Indian Penal Code and section 5(1) (d) read with section 5(2) of the Prevention of Corruption Act. On the latter charge, he was awarded rigorous imprisonment for one year and to pay a fine of Rs. 500/-, in default, to undergo rigorous imprisonment for one month. No separate sentence for the charge u/s 161 of the Indian Penal Code was awarded. It is against this conviction and sentence that the present appeal has been filed. The appeal is of the year 1991. Shri Chitnis pointed out that, as is the case with all public servants, the accused was immediately placed under suspension and he was undergoing hardship for the last eight years. Consequently, in keeping with the liberty granted at the stage of admission, he has requested that the appeal be disposed of on a priority basis. This application, to my mind, is justified.

3. The defence in this case is not unusual, but, to my mind, is of some significance. The accused, as pointed out by me, was a revenue officer, namely, a Talathi. It has come on record, strangely enough through no other than Vijay Dedge (P.W. 1) and Vasant Patil (P.W. 2) themselves, that at the relevant time the Government had set a target of Rs. 75,00,00,000/- for Pune District as far as National Small Savings were concerned. There is no harm in setting ambitious targets, but the prosecution witnesses themselves admitted that the Collector and the Prant Officer issued specific circulars to their subordinates, such as the present accused, to ensure that the maximum collections were made by them under this head. This fact is borne out by the fact that the accused himself, in keeping with these directions had been collecting the amounts under this head and he has also produced his receipt book and other documents in order to establish this fact. It was not the function of the revenue officers to collect National Small Savings Amounts which they could have done on their own if they so desired de hors their work functions, but in the present instance we find a

situation whereby their own superior officers had not only set almost impossible target but had directed them to achieve these targets. It is small consolation that they tried to get over this unhappy and improper practice by stating that a small prize would be given to the person who achieved the highest collection. It was sought to be contended that the entire exercise was a voluntary one and if the officers did well that they would get a small prize for the same. The real fact is that the revenue officers were pressurised into making these collections, principally, because of the abnormally high targets that the Government had set. One needs to take cognizance of the fact that the only persons from whom they could really make collections effectively or to put it more bluntly the only victims of the target they could unwillingly extort money from would be those with whom they had dealings. Undoubtedly, the persons who came to them for whatever work were vulnerable and would be obliged to join the scheme and open the account virtually under duress because they knew what the consequences would be if this was not done. It is the case of the accused that in this background he had asked the complainant, Bhairu, to deposit Rs. 100/- in the Small Savings Scheme, that Bhairu agreed and brought the money and that it had nothing to do with the official function of the accused. Vijay Dedge (P.W. 1) and Vasant patil (P.W. 2) have also admitted one significant fact, namely, that the Accused was in no way connected with the decision in the enquiry and that his function was limited to the service of the notice. The learned trial Judge has, however, rejected this defence principally on the ground that the complainant as also the Panch Lamb have both denied that there was any connection between the Small Savings Scheme and the demand for the money. Shri Chitnis has, however, submitted that having regard to the material on record that the accused has discharged the burden of refuting the presumption that arises in respect of the receipt of the amount of Rs. 100/-.

4. Shri Chitnis as also Shri Patil, the learned A.P.P. have taken me through the entire record of this case which is relatively simple. Vijay Dedge (P.W. 1), who is a Naib Tahsildar, and Vasant Patil (P.W. 2), who is an Awam Karkun, have accepted the position unequivocally that the huge target of Rs. 75,00,00,000/- was set for the National Small Savings Scheme and that instructions had been issued to the subordinates, including the accused, to go out all for the collection and that they were, in fact, collecting amounts under the scheme. They have also admitted that the accused was in no way connected with the decision of the revenue case. Furthermore, they have admitted that Bhairu did not complain to either of them about any demand for illegal gratification.

5. The crucial evidence consists of that of Bhairu (P.W. 3), the complainant, and Sadashiv Lamb (P.W. 4), who is the Panch. Shri Chitnis has taken me through this evidence and he has made a very limited comment with regard to this in so far as he has not disputed the fact that the accused asked for the amount of Rs. 100/- and that the same was given to him. Shri Chitnis states that this was in connection with the National Small Savings Scheme and that, however unpleasant the task was, the accused had asked the complainant Bhairu to bring

that amount because the accused had to meet the target and that he had no time to issue the receipt. Shri Chitnis heavily relied on the evidence of the Investigating Officer in order to establish that even though the receipt book was seized by the Investigating Officer, there is no conclusive evidence with regard to when and where from this book was seized. Shri Chitnis submitted that the accused had the book with him in his bag and the Police pounced on him, before he could issue the receipt. He further submitted that it is not for him to know as to why the complainant would have lodged a complaint, but the explanation put forward by learned Counsel is that by village standard, Bhairu must have been unhappy for being pressurised to part with Rs. 100/- that he could have possibly believed that the accused wanted the money for himself and that was why he went forward and complained.

6. It is true that both these witnesses have denied that the accused referred to the Small Savings Scheme because it is their version that after the work in the office was over and when they went out to the motorcycle that the accused asked what had happened about the other matter; whereupon Bhairu said that he had brought the money and that he had handed the same over to the accused. One needs to scan this evidence very carefully because the complainant, significantly enough, admitted the fact that the accused completed his work of recording the statement, etc., without so much as asking him about the money. I need to take a serious note of the fact that if the accused had demanded the amount for himself as consideration that he would never have completed Bhairu's work in the office without first having ascertained as to whether he had brought the money and possibly without having first taken it. The fact that he completed all the official work without reference whatsoever to this is a circumstance in his favour. Shri Patil, the learned A.P.P., submitted that since there were other persons in the office he completed the official work and thereafter called Bhairu outside so that he could take the money from him. I find it a little difficult to accept this argument only because if the accused was motivated by corrupt desire, nothing prevented him from asking the accused whether the money had been brought, even if the exchange was to take place later on. Secondly, the learned A.P.P. submitted that even when they were along the accused would not use any incriminating terminology because of the presence of the Panch Lamb. Here, again, one needs to take note of normal human conduct. Not only had the accused not questioned Bhairu inside but strangely enough if he was acting dishonestly it is rather unlikely that he would not have questioned as to who the second stranger, namely, Panch Lamb, was. Having taken the precaution of coming out to a secluded spot he would not have taken the money in the presence of the stranger without even asking as to what that person was doing there. These are factors which tend to cast considerable doubt on the prosecution version that the amount in question was illegal gratification. I am reinforced in this view by the admissions of Vijay Dedge (P.W. 1) and Vasant Patil (P.W. 2), who have admitted that the accused, who was a subordinate Revenue Officer, had nothing to do with this case except the service

of the notice on Bhairu. Cumulatively, therefore, it becomes a little difficult to accept this evidence at face value in the light of a serious charge against the accused.

7. The principal submission canvassed by Shri Chitnis is that this being a corruption charge, the limited burden on the accused was to refute the presumption and in so doing the degree of proof is not that the accused must establish beyond reasonable doubt but only to the extent of preponderance of probabilities. In this view of the matter, Shri Chitnis submitted that where the accused had produced the Government circular to him and his receipt book showing that he was, in fact, collecting amounts for the National Small Savings Scheme and where admittedly the accused was being pressurised to reach an abnormally high target that he needs to do nothing beyond this in so far as the defence fully and completely explains the facts in question.

8. This argument is sought to be repelled by Shri Patil, the learned A.P.P. who submitted that merely by going through the exercise of setting up a parallel theory which may be intelligently put forward in order to make it appear very plausible that the accused cannot get away from the evidence which conclusively establishes the receipt of the money by him. Shri Patil reiterated the fact that there is nothing on record to indicate any hostility between Bhairu and the accused, nor was there any ulterior motive brought on record to show as to why any one should implicate him in a false corruption charge, and in this background merely taking advantage of the fact that the accused was asked to collect some money would not be good enough.

9. I have, at the beginning of this judgment, gone through the exercise of analysing the effects of putting Government officers in a vulnerable position by making them collect money for schemes, such as this, from persons with whom they are required to deal. For such an exercise as indulged in, the authorities themselves run the serious risk of creating a situation which could be misused. Instances have been known where monies collected for such schemes have been misappropriated or where other form of advantage has been taken, but action again becomes impossible because there is a garb to the legality of the whole exercise. By preponderance of probabilities, the law envisages that since the cardinal maxim of criminal jurisprudence lays down that where two explanations are possible, the one in favour of the accused must be accepted. If the explanation put forward is reasonably probable and if, on a careful examination, it appears to the Court that the facts alleged against the accused can be completely explained through such a theory, then it is obligatory on the part of the Court to uphold such an explanation. The basic presumption of innocence is not done away in corruption cases merely because a presumption arises, because the law itself provides that the presumption is a rebuttable one.

10. On a consideration of the material before me, to my mind, this is one of those cases where it will have to be held that the accused has discharged the burden by explaining away the facts adduced against him through a

preponderance of probabilities. Having regard to this position in law, the findings recorded against the accused by the learned trial Judge must necessarily be set aside. The appeal accordingly succeeds. The convictions and sentence awarded to the appellant-accused are set aside. Fine, if paid, is directed to be refunded to him. Bail Bond of the accused to stand cancelled. Office to furnish certified copy on an expedited basis. Appeal allowed.