
(1992) 09 BOM CK 0005
In the Bombay High Court
Case No : Criminal A. No. 59 of 1985

Laxman Baliram Mali

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-09-1992

Acts Referred:

Citation : (1993) MhLj 731

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

Bench : Single Bench

Advocate : A.P. Mundargi, for the Appellant; S.B. Patil, Assistant Public Prosecutor for State, for the Respondent

Final Decision : Allowed

Judgement

M.F. Saldanha, J.—The appellant, who at the relevant time was a record keeper under the District Inspector of Land Records, Bombay, was charged under a total of five different counts by the learned Special Judge, Greater Bombay, in respect of having received illegal gratification of Rs. 700/- . The prosecution alleges that over and above the prescribed fee payable, the accused had demanded and received the balance amount as a bribe. The complainant, Prakash Khale (P.W.2), had alleged that he was interested in developing six plots belonging to the Kanjoor Co-operative Housing Society Ltd. and that these lands had to be demarcated, for which purpose an application had been made to the office of the District Inspector of Land Records. It was alleged that the accused indicated that an amount of Rs. 700/- will have to be spent in respect of the first two plots and that the complainant paid Rs. . 300/- on 4-1-1983 against which a receipt was issued for only Rs. 100/- . He is alleged to have asked for a further amount of Rs. 500/- whereupon a complaint was made with the Anti-Corruption Bureau. A trap was laid on 11-1-1983 when the complainant is alleged to have passed on five notes of Rs. 100/- each, which had been treated with anthracene powder, to the accused. He was immediately apprehended and the money was recovered from him and traces of the powder were found on his hand and certain parts of

his clothing. The accused was arrested, put on trial and came to be convicted by the learned Judge of the trial Court which inflicted a sentence of rigorous imprisonment for one year on him. The present appeal is directed against that conviction and sentence.

2. Shri Mundargi, learned counsel appearing on behalf of the appellant-accused, has taken me through the entire evidence on record. With the assistance of Shri Patil, the learned A.P.P., and Shri Mundargi, I have scrutinized all the material that was before the trial Court. The first submission canvassed by Shri Mundargi is that the conviction is liable to be quashed on the ground that the sanction order in this case is defective. He relied on the evidence of Anant Shinde (P.W.I), who is the office superintendent from the office of the District Inspector of Land Records. This witness has produced and proved the sanction order (Exhibit 6), which has been signed by Shri M. R. Lanje, Deputy Director of Land Records, Bombay Region, Bombay. The witness has not indicated to the Court as to whether Shri Lanje was available or not. In the absence of any such material, it will have to be presumed that Shri Lanje was available but was not examined as a witness, even though he was cited as one. Shri Mundargi has pointed out to me that he does not desire to be technical with regard to his approach in this appeal, but that it is a requirement of law and one of procedural propriety in serious cases of the present type that the authority who accorded the sanction must satisfy the Court with regard to the circumstances under which the sanction order was given. Anant Shinde (P.W. 1) has, undoubtedly, stated that in his presence the Deputy Director perused various documents and said to him that he was satisfied about the case against the accused and then passed the order sanctioning the prosecution. It is rather incredible to accept that the superior officer would have made such a statement to his subordinate. Regardless of this aspect of the matter, however, since the law on the point envisages that in the absence of a valid sanction order the prosecution itself is vitiated, the sanctity of establishing that the sanction order was valid in all respects rests heavily on the prosecution. Towards discharging that duty, in my mind, the prosecution was obliged to have summoned Shri Lanje so that he could have satisfied the Court that there was due application of mind before sanctioning the present prosecution. Shri Mundargi is right when he states that this is not an attempt to play with technicalities because, as I shall subsequently illustrate, this was not merely an issue of ascertaining whether a prima facie case existed against the accused but, more importantly, of ascertaining as to whether at all there was any justification for sanctioning a prosecution against him. The absence of Shri Lanje assumes deep significance and, to my mind, the sanction order that has been mechanically produced by the office superintendent cannot be treated as a valid sanction order as far as the present proceeding is concerned. This ground itself would vitiate the prosecution.

3. Shri Patil, the learned A.P.P., has stoutly defended the sanction order. Though he did concede that it would have been far better if Shri Lanje had been examined or if he was not available that the reasons therefore should have been

placed before the Court, he, however, maintained that if the persons who had dealt with the file were to depose that his superior officer had specifically stated that he was satisfied that this was a fit case in which sanction should be granted that this was adequate. I am unable to accept this submission because apart from what has been pointed out by me above, it would sanction a decree of laxity in the conduct of serious cases of the present type which it is not in the public interest to permit. Undoubtedly, corruption must be dealt with ruthlessly, but in that enthusiasm one cannot short circuit the procedure prescribed by law, particularly when the consequences to the Government employee concerned are close to total annihilation because a suspension followed by a long period of trauma and a lengthy trial and possibly a long wait as has happened in the present case, till the appeal is disposed of, would almost completely destroy not only the Government servant but his family. Having regard to the gravity of the situation, there can be no compromise with regard to a strict adherence to procedure.

4. Shri Mundargi has thereafter advanced a composite submission with regard to the general credibility of the prosecution case. He has not attempted to assail the evidence of the witnesses individually, but what he has pointed out, and to my mind very rightly, is that, admittedly, the complainant and one Shri Sathe had gone to the accused in connection with the survey and demarcation of certain plots. There is considerable ambiguity on record as to whether two plots were to be surveyed or all the six or whether they were divided into two different groups, but, in any event, the fact remains that initially two of the plots were to be surveyed. There is a gaping lacuna in the prosecution case in so far as nowhere do we find, in the course of the voluminous evidence, as to what exactly was the fee payable for the job in question. What worsens the situation for the prosecution is the positive admission by Kolekar (P.W.6) that the amount payable varied depending on the location and size of the plots in question. It, therefore, cannot be said with certainty as to what exactly was the fee payable. Shri Mundargi pointed out that in the course of these several visits to the accused he is at the highest alleged to have told the complainant that he would have to spend an amount of Rs. 700/- . There is no proper break-up as to what was the prescribed amount payable and what the accused intended to keep for himself as alleged by the prosecution. To compound matters, we have on record the requisite letter from the Society (Exhibit "20") dated 13-1-1982 which refers to the requisite fees and charges. To my mind, the prosecution ought to have defined as to what specifically were the fees and what specially were the charges in respect of these plots. In the absence of doing so, it would be impossible to ascertain as to whether or not the amount of Rs. 500/- which was handed over to the accused constituted illegal gratification or not. I am prepared to accept the evidence with regard to the handing over of the money and the fact that Rs. 500/- were recovered from the accused, but it is further necessary under the requisite provisions of law, particularly the provisions of the Prevention of Corruption Act, to establish the cardinal ingredient, namely, the fact that the

whole or part of the money was illegal gratification.

5. Shri Patil, the learned A.P.P., has vehemently submitted that the accused, admittedly, made out a receipt for Rs. 100/- when he had been paid Rs. 300/- on the first occasion and that, therefore, it must be assumed that the fee payable was Rs. 100/- only. Unfortunately, even Shri Kolekar (P.W.6) does not state in so many words that the fee payable was not only Rs. 100/- . It is true that the complainant and Shri Sathe (P.W.5), who is the society's clerk, both refer to the fact that on an earlier occasion there was some talk with regard to the amount that would have to be spent, that a figure of Rs. 700/- was indicated and that ultimately Rs. 300/- was paid. The matter was not over because four more plots had to be surveyed and the evidence itself is rather vague with regard to why the survey was being done piecemeal, first for two plots and thereafter for four others. In this state of total confusion, it would be difficult to arrive at an irresistible conclusion that even if Rs. 300/- had been paid that any part of it had been retained by the accused for himself or that it constituted illegal gratification. The main reason for this is because the prosecution is totally silent with regard to not only the amount payable but on the secondary aspect, namely, whether there were any other charges as referred to in the Society's letter. In view of this background, Shri Patil's submission that the issuance of receipt for only Rs. 100/- leads to the irresistible conclusion that the balance amount of Rs. 200/- was illegal gratification is, to say the least, difficult to accept.

6. We then come to the evidence with regard to the trap on the 11th January 1983. I need to mention here that a strange Panchanama had been drawn up and for good reason. Ramesh Govekar (P.W.3), who is a Rationing Officer, though a signatory to this Panchanama, has refused to stand by parts of it. The Panchanama records verbatim in a dialogue form all that is alleged to have transpired and thereafter it lists several events which ought not to have found place in the Panchanama. As far as the second Pancha. Narendra Shivalkar (P.W.4) is concerned, admittedly, he was not present when the money was handed over. The substratum of the evidence in this regard taken at his highest would indicate that under some rather vague circumstances an amount of Rs. 500/- was handed over to the accused and that his first reaction thereafter was to pick up his pen. Shri Mundargi submits that this is conclusive of the fact that the accused was to make out a receipt for the amount. The over enthusiasm of the authorities was such that they virtually pounced on the accused at the very moment as a result of which it is impossible to decide as to whether he would have issued such a receipt for the amount or would not have issued a receipt. Apart from this aspect, as indicated by me earlier, it was absolutely essential for the prosecution to have established in terms as to what was the quantum of money alone that was payable and what according to the prosecution had been collected over and above. This aspect goes to the root of the matter, and in the absence of any cogent and convincing evidence in this regard, it would be impossible to hold that even if the amount of Rs. 500/- was handed over to the accused that in accepting the same he has committed any offence.

7. I do not consider it necessary to enter into any further discussion with regard to some of the other aspects of the case which were argued. The absence of a valid sanction and the absence of material evidence in respect of the prescribed payments under the head "requisite fees and charges" are cumulatively sufficient to vitiate the entire prosecution. Having regard to this position in law, the conviction and sentence recorded against the appellant must necessarily be set aside. The appeal succeeds. The conviction and sentence are set aside. The bail bond of the appellant to stand cancelled. The appeal is allowed accordingly.