
(2016) 02 BOM CK 0036
In the Bombay High Court
Case No : Criminal Appeal No. 97 of 2005

Madhukar

APPELLANT

Vs

State of Maharashtra Through Anti corruption Bureau,
Wardha

RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13, 19, 7

Citation : (2016) ALLMRCri 2279

Hon'ble Judges : A.B. Chaudhari, J.

Bench : Single Bench

Advocate : O.D. Kakade, Advocate, for the Appellant; M.J. Khan, Addl. Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A.B. Chaudhari, J.—Being aggrieved by the judgment and order dated 24.1.2005 in Special Case No. 2/1998 passed by the learned Judge, Special Court, Wardha, by which the learned Judge convicted the appellant for the offences punishable under sections 7, 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs. 1,000/-, in default, further R.I. for two months and was further convicted for offence punishable under section 13 (1)(d) r/w Section 13(2) of the Prevention of Corruption Act and sentenced to undergo R.I. for three years and to pay a fine of Rs. 1,000/- in default to undergo further R.I. for two months, which were directed to be run concurrently, the present Appeal was filed by the appellant.

Facts :

2. It is the prosecution case that the appellant-Madhukar Gedam, was working as a Talathi (Patwari) of Halka No. 21, Mouza Kharannga (Gode) Tahsil & District: Wardha. Complainant-Kundan Champatrao Sukalkar of village Karanji (Kazi)

succeeded to the estate left by his father-Champatrao, who died on 1.4.1996, along with his brother, two sisters and mother-Shakuntalabai. Complainant-Kundan therefore met appellant-Madhukar, who was Talathi of concerned area. He gave him blank Form No.9 and asked him to get the signatures of legal heirs of deceased-Champatrao and also gave one more application addressed to the Tahsildar to be signed by all the legal heirs for effecting mutation. The appellant is stated to have told him that he is required to pay a sum of Rs. 1,000/- for effecting mutation. Kundan requested him to reduce the amount and after bargaining, the sum was settled at Rs. 400/-. PW 1-complainant- Kundan, thereafter, met the appellant on 19.3.1997 and supplied him the application signed by all legal heirs. At that time, the appellant demanded Rs. 400/- from him, towards illegal gratification. The complainant, at that time, said that he did not have the amount and thereupon the appellant told him to come to his office with an amount of Rs. 400/- on 25.3.1997. However, Kundan could not arrange the money by that date. He went along with his cousin Omprakash Korde (PW 5) to the office of the appellant and told him that the money could not be arranged. The appellant told the complainant that it would not be possible to carry out the mutation unless the money is paid. The appellant himself suggested to the complainant to take the amount as hand-loan from his cousin and, accordingly, he borrowed Rs. 200/- from PW 5-Omprakash, which was given to the appellant. The appellant then asked him to give the remaining amount of Rs. 200/- on 1.4.1997 at Tahsil office, Wardha in order to get the work done. But, PW 1 Kundan went to the office of the Anti Corruption Bureau and lodged his report. Thereafter a trap was arranged in the Office where several Patwaris were found working, the trap was completed and thereafter necessary procedure was followed. Before filing the charge-sheet since it came to the fore that appellant was saying that he had prepared receipt of the even date, namely, 01.04.1997 in respect of re-measurement charges in the sum of Rs. 223/- in the name of the party, since PW 1- Kundan had come to him for making payment thereof, but then he was to accept the money in token of that receipt, and was caught red handed by the trap party. PW 6 ? Investigating Officer (Dy. S.P), then made enquiry about the re-measurement fees etc., as to whether really the appellant was recovering re-measurement fees from the cultivators/farmers and accordingly, he placed those documents on record. The sanctioning authority, namely, Sub-Divisional Officer, Wardha granted sanction to prosecute the appellant and thereafter the trial was held. Ultimately, the appellant was found guilty and was convicted, as narrated herein above. Hence this Appeal.

Arguments:

3. In support of the Appeal, Mr. O.D. Kakade, learned counsel for the appellant submitted that the learned trial Judge failed to consider the fact that the prosecution was totally vitiated for want of legal and proper sanction as the Sub-Divisional Officer PW 3-Ravindra Thakre, was not competent to remove the appellant from service and, therefore, for want of legal and valid sanction, order of acquittal should have been made. Learned counsel then contended that

perusal of the sanction order shows that the A.C.B. had supplied him the draft sanction order and though PW 3-Ravindra knew that two Talathis were involved in the said trap, no explanation was sought by him from the A.C.B. as to the said aspect of the matter. He then submitted that perusal of the sanction order read with his cross-examination will clearly show that the PW 3-Ravindra has mechanically and rather in a pedantic way, granted sanction, that too without application of mind. The learned counsel invited my attention to the entire cross-examination of PW 3 -Ravindra and urged that the cross-examination in terms shows total non-application of mind on his part and therefore the sanction that was granted, was fully vitiated. The learned counsel for the appellant then submitted that the learned trial Judge has unjustifiably brushed aside the defence that was taken ignoring the clear document/receipt (Exh. 93) on which the names of the parties were clearly mentioned so also the amount of Rs. 223/- along with the date, namely, 01.04.1997 for recovery of the re-measurement charges. The trial court, however, did not accept the said defence by comparing with serial numbers of the receipts etc when, as a matter of fact, no such evidence was brought or produced before the Court by the prosecution nor was it the case of the prosecution that the numbers did not tally. He, therefore, submitted that the defence was clearly probabalized and benefit of doubt should have been given to the appellant. Eventually, the learned counsel has prayed for setting the conviction and sentence.

4. Per contra, Mr. M.J. Khan, the learned Additional Public Prosecutor, opposed the Appeal tooth and nail and supported the impugned judgment and order and submitted that the evidence of the prosecution on record, is clear and without any blemish. The evidence of PW 1-Kundan about the demand and acceptance is crystal clear. In fairness, the learned APP submitted that though it appears that the learned trial Judge did not frame the point for determination about the demand, nor answered that any demand was made, the evidence on record shows about the demand and therefore this Court can record a finding about demand having been made. According to him, asking the trial Court to rewrite the judgment would be a sheer waste of time. The learned APP thereafter submitted that the judgment in question is well-reasoned, comprehensive and no other view is possible nor any benefit of doubt can be given to the appellant. He prayed for dismissal of the Appeal.

Consideration:

5. I have heard the learned counsel for the rival parties, at length. I have perused the entire evidence tendered by the prosecution so also the documents on record. As regards competency of Ravindra Thakre (PW 3) regarding grant of sanction, I am in full agreement with the finding recorded by the learned trial Judge, which is based on the entry in the service book. The appointment of the appellant was made by the Sub-Divisional Officer and not by the Collector and, therefore, in no case, it can be said that the appointing authority in this case was lower in rank as the sanction was granted by PW 3- Ravindra Thakre the SDO,

Wardha.

6. Coming to the very important aspect of application of mind for granting sanction, I have carefully perused the sanction order. The sanction order is an already drafted typed order, admittedly sent by the Anti Corruption Department to the Sub-Divisional Officer, Wardha, for granting sanction. The SDO, Wardha - Ravindra Thakare (PW 3) granted sanction under order at Exh.49. Perusal thereof clearly shows that he simply signed and put up a seal on the said sanction order without calling for any explanation or making any queries in relation to what he ultimately deposed before the Court, in his evidence. At this stage, it would be appropriate to quote paragraphs Nos. 3,5 ad 6 from the cross-examination of his evidence, which read thus:

"3. It is true that in this case the crime was registered against two Talathis. I do not remember that sanction was sought for both the Talathis. I do not remember that I had issued any order in respect of the other Talathi. I had opened note-sheet upon receipt of papers of investigation. Today I have not brought my office file. I had not taken any note in my note-sheet. I do not remember whether I had passed any order on that note-sheet.

5. It is true that in this case it was the say of the accused that he had taken money for remeasurement.

It is true that A.C.B. had sent to me document showing that prior to this case from how many persons the accused had accepted money. It is true that the accused had deposited all sums of money which he had accepted towards re-measurement charges with the Government. It is true that there is monthly meeting at the Division, and Patwaris also attend that meeting. It is true that we pressed for maximum recovery in that meeting. It is true that father and brother of the complainant were in arrears of re-measurement fee. The witness volunteers that prior to the incident, recovery of re-measurement fee was stayed by the Government. I am unable to tell with certainty that though the Govt. had stayed recovery of re-measurement fee, many of the Talathis were recovering that fee. It is true that in this case also there were documents showing recovery of re-measurement fee as well as the document showing deposit of that fees with the Government. It is true that in each month as I used to receive statement showing recovery effected on various heads. No action was taken against the Talathis for recovery of re-measurement fees despite stay by the Government. It is not true that on 1.4.97 there was no stay of Government in respect of re-measurement fees. I do not remember that along with papers of investigation were containing a notice issued for recovery of re-measurement fee. It is true that generally when the farmers comes to Talathi, Talathi recover the Govt. dues payable by him.

6. It is true that in this case I had received draft sanction order. I read that order. I made no changes in it. It is not true that I was not the appointing and removing authority of Talathi. It is not true that I have not studied any

documents and that I have not applied my mind to any of the document but mechanically accorded sanction on the basis of draft sanction order."

Perusal of above paragraphs clearly show that PW 3-Ravindra knew that in the crime in question two Talathis were involved, but he does not remember as to whether the sanction was sought for both Talathi or one and which one out of two? He does not remember whether he issued sanction order for other Talathi. He did not produce any note-sheet or file maintained for the purpose for which he granted sanction. In paragraph 5, he admitted that it was the say of the appellant/accused that he had taken money for re-measurement and that the accused had deposited all the money which he had accepted towards re-measurement charges with the Government. He also admitted that there is a monthly meeting at the Division and Patwaris also attend that meeting. He admitted that higher officers press for maximum recovery in such meetings. He then stated that the recovery was stayed by the Government but then did not depose as to whether the Patwari/the appellant, was knowing or informed about the stay or not to make recovery. He admitted that there were documents showing the recovery of fees by the appellant. He further admitted that in each month they used to receive statements showing recovery effected on various heads. No action was taken against the Talathis for recovery of re-measurement fees despite stay by the Government. He admitted that when the farmers come to Talathi, the Talathis recover the Government dues first. He admitted in paragraph no. 6 that he made no changes in the draft sanction order.

7. Perusal of the cross-examination shows that this witness knew about the two Talathis being involved in the same crime that was registered. To say that he did not remember whether sanction was sought for the Talathis and whether for other Talathi he had issued any sanction order is a blunder. He did not claim to have made any investigation or sought any explanation from the Anti Corruption Bureau about it, shows that he did not apply his mind but simply signed the sanction order. Further fact that there was a receipt dated 01.04.97 (Exh.93) which was being relied upon by the appellant towards his defence that the amount was received by him towards re-measurement charges of the Government and accordingly he had prepared the receipt, but was not allowed to complete the process was not considered by him. The receipt shows the date as 01.04.97 in the name of the complainant/party. But there is a cancellation made by somebody. Who made cancellation and why should have been considered by PW 3 ? Ravindra, nay he was under an obligation to make enquiry as to this crucial aspect of the matter. He says that father and brother of complainant were in arrears. But in his evidence, he has not said that he made any enquiry. It was his duty to see the receipt Exh.93 and make enquiries as to the issuance of receipt for receiving the amount of Rs. 223/-. This clearly shows that PW 3-Ravindra mechanically signed the draft sanction letter Exh.49 for filing the charge-sheet. It is not possible to accept such type of sanction with no application of mind, having full knowledge about the say of the accused at the outset.

8. Then it is curious to note the finding recorded by the trial Court in paragraph 29 of its judgment wherein the trial Court has compared the serial number of the receipt and the other receipts, namely, receipt issued to one Sau. Shashi Marwah, on 27.3.1997 while receipt issued at Exh.68 having the last two digits at 54 as against that of Exh.93 as with last digit as 01. The trial Court has then assumed that separate receipt book must have been used in order to make a show of the recovery on 01.04.97. The finding recorded by the learned trial Judge about comparison of these receipts and Sr.Nos, to my mind, is based on his own assumption. Whether or not receipt Exh.93 was from different receipt book and the appellant ought to have issued from the same receipt book from which Sau. Shashi Marwah was given receipt, were the matters to be proved by the prosecution and assumptions cannot be made. However, the learned trial Judge has without any evidence on record about explanation for these various receipts and numbers, on his own, has drawn a conclusion that the appellant should have issued receipts from only one receipt book. In my opinion, this is a mistake on the part of the learned trial Judge in assuming something which was never the case either in the charge-sheet or in the evidence. At any rate, this aspect was never disclosed by the prosecution in the evidence so that the appellant/accused could have an opportunity to give his explanation or put the questions to the witness in the cross-examination. It clearly appears that all these aspects of variation of serial numbers of different receipt books have entered the judgment for the first time. That is in violation of the principles of natural justice. It is further seen that the trial Court has found that the date was 2.4.97 on Exh.93. I have myself seen the document Exh.93. This finding of fact is totally wrong. At the relevant column in the top of Exh.93, the date mentioned is 01.04.97 by the appellant. But the dated 2.4.1997 is mentioned under the signature of Panchas when the said receipt was seized. Therefore, it is factually wrong to say that the receipt is of 2.4.97. Thus, this is a factual error which has crept in the judgment. At any rate, the investigation made by the A.C.B. showed, as observed by the trial Judge himself, that despite stay order from the Government he was recovering re-measurement fees from the farmers and this is clear from letters issued by the concerned Tahsildar which has been exhibited on record. This clearly lends support to the defence taken at the first blush that the appellant wanted to recover the dues from the complainant. It is important to note that prior to 01.04.97 the document at Exh.A which shows that the complainant/party was served by the appellant with the notice on 18.2.1997 demanding re-measurement fees of Rs. 225.12. Therefore, the defence that demand was made for re- measurement fees one and half months before and thereafter receipt Exh.93 was prepared, in my opinion, was sufficiently probalilized. The trial Judge, however, did not carefully advert to these aspects of the case. In the light of the above discussion, I think there is no need to discuss about the aspect of "demand" as the appeal will have to be allowed.

9. In the result, I make the following order:-

Order

(i) Criminal Appeal No.97/2005 is allowed.

(ii) The judgment of conviction and sentence of the appellant for the offence punishable u/s Section 7, 13 (1)(d) r/w Section 13(2) of the Prevention of Corruption Act, passed by the learned Judge, special Court, Wardha, dated 24.1.2005, in Special Case No. 2/1998 is set aside. The appellant is acquitted of the offence with which he was charged.

iii) The bail bonds of the appellant shall stand cancelled.

(iv) Fine if paid, be refunded to the appellant.