
(2011) 02 BOM CK 0092
In the Bombay High Court
Case No : Criminal Appeal No. 231 of 1999

Manohar Bodade	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 24-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 248(2)
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 19(2), 2(1), 20

Citation : (2011) 02 BOM CK 0092

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : M.M. Ambhore, for the Appellant; V.D. Rakh, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This appeal is filed challenging judgment and order of the Special Judge at Aurangabad in Special Case No. 01/1993. By the impugned judgment and order the Appellant herein was convicted u/s ec. 248(2) of the Code of Criminal Procedure for the offence punishable u/s ec. 7 of the Prevention of Corruption Act 1988 and he is sentenced to suffer R. I. for 6 months and to pay fine of Rs. 1,000/in default to suffer further R. I. for three month. He is further convicted for the offence punishable u/s ec. 13(1)(d) r/w 13(2) of the Prevention of Corruption Act 1988 and he is sentenced to suffer R. I. for one year and to pay fine of Rs. 1,000/and in default to suffer further R. I. for six months. Both the sentences are directed to run concurrently.

2. The prosecution case in nutshell is as under:

It is alleged by the prosecution that accused had accepted the bribe amount of Rs. 130/for doing official act of issuing ration card to the complainant. It is case of prosecution that, accused is public servant who was working as E. G. S. candidate in the office of District Supply, Aurangabad on financial benefit of Rs. 100/per month. His job was to assist the clerical staff therein.

3. Further, case of the prosecution is that, complainant on 22.09.1992 had given an application in the said office for issuing ration card. At first complainant met one Mr. Sonwane, who endorsed on the application and had sent him to Mr. Bansode clerk. Mr. Bansode clerk directed him to meet accused and accordingly printed form along with the document were handed over by the complainant to the accused.

4. It is case of prosecution that, accused demanded Rs. 150/for the work. When complainant showed his inability to pay, accused showed his reluctance towards the work and asked to give whatever amount complainant had. Accordingly, complainant paid Rs. 20/. Accused further told the complainant to pay remaining amount of Rs. 130/on the next day morning at his residence and also gave him his residential address.

5. It is case of the prosecution that, complainant went to A. C.B. Office and gave complaint. Accordingly, his complaint was reduced into writing, panchas were called, pretrap panchanama was prepared and thereafter trap came to have been arranged on 23.09.1992.

Accordingly, complainant and panchas at about 11.00 a.m. along with raiding party proceeded to the office of accused. Complainant and panch No. 1 proceeded further while other raiding party followed them. Complainant and panch first went to the office of accused and asked about the work. Accused told him wait for 10 minutes and after 10 minutes he came out of office and took them to the canteen where they had tea and bill was paid by the accused. When they returned, complainant questioned about the work, at that time accused told them, it will take 8 to 10 days. Thereafter, accused asked whether complainant has brought the amount, amount was given by the complainant to the accused who accepted it and kept in his shirt pocket. Accordingly, signal was given to the raiding party and raiding party caught hold of accused.(emphasis supplied)

6. It is further case of prosecution that on checking the fingers and shirt pocket of the accused, traces of anthracene powder were seen, so also the trap amount, note numbers tallied with the number of the notes mentioned in the prepaid panchanama. Accordingly, detailed panchanama to that effect was drawn, documents were also attached from the custody of the accused and complaint was lodged in City Chowk Police station, which came to have been registered as Crime No. 153/1999. The raiding party thereafter returned to the office, where unsealing panchanama was carried on. The documents and other papers were forwarded to sanctioning authority and after obtaining the sanction order to prosecute the accused, charge sheet was filed against the accused.

7. The learned Counsel appearing for the Appellant submitted that, the Appellant herein was not incharge of the work for which application was filed by the complainant. He was not authorized to issue ration card and, therefore, when he was not authorized to issue ration card, there is no question of accepting bribe amount as alleged by the complainant. The learned Counsel further submitted

that, the Appellant herein was appointed under the E.G.S. Scheme and, therefore, he was not public servant. He in support of his contention has tendered across the bar circular issued by the Government of Maharashtra dated 01st December, 1998. He further submitted that, even P.W. 3 and 4 who are Government authorities i. e. Tahsildar and Collector they have also stated that, there is no record showing that the Appellant is a public servant. Therefore, according to the learned Counsel for the Appellant, if there is circular issued by the Government of Maharashtra and when superior officers like Tahsildar and Collector, they have deposed before the Court that, there is no record traceable in the office to show that the Appellant is public servant, in that case the provisions of Prevention of Corruption Act cannot be made applicable to the Appellant/herein.

The learned Counsel further submitted that, so far initial demand on 22.09.1992 is concerned, except bare words of complainant, there is no corroboration to the alleged demand on 22.09.1992. He further submitted that, pre trap panchanama also suffers from not following proper procedure as laid down under the relevant Act and Rules. He further submits that, Mr. Dalvi who is instrumental for removing the currency notes from the pocket of the Appellant and examining his fingers and shirt, etc. under ultra violet lamp has not been examined by the prosecution. Therefore, entire case of the prosecution should fail. It is further submitted that, the Anr. panch witness is also not examined. There is only evidence of P.W. 1 and P.W. 2. Except their bare words, the prosecution failed to establish its case by cogent and convincing evidence. Therefore, the benefit of doubt should be given to the Appellant/accused. The learned Counsel has also placed on record notes of arguments which are taken on record. Therefore, relying on the notes of arguments and also the oral submissions, the learned Counsel for the Appellant submits that, the evidence brought on record by the prosecution is not convincing. Therefore, the benefit of doubt should be given to the Appellant. The Appellant was not involved in the alleged offence. He was falsely implicated. He is now in government service. There are dependent children and parent and, therefore, by taking lenient view, this Court may allow this 231.99 appeal. The learned Counsel in support of his contention placed reliance on the reported judgment of this Court in case of Ramnath Radhakishan Mahale v. State of Maharashtra reported in 2008 MCR 1042 and submitted that in that case also there was alleged demand of Rs. 120/-. This Court has taken a view that for such a trifle amount the department can take departmental action against the Officer or Government Servant or any other appointed person on consolidate pay and they can be given reasonable punishment by taking departmental proceedings. He further submitted that, like in the judgment cited supra, in this case also Tahsildar who is sanctioning authority to lodge the prosecution against the Appellant herein in his evidence has stated that in the office record there is no document available to suggest that the Appellant/accused was in the regular employment of the Government at the relevant time and, therefore, the Appellant is entitled for the acquittal. The learned Counsel

further submitted that, under provisions of Sub-Section 2 of Section 19 of the Prevention of Corruption Act, the Tahsildar is not removing authority of the Appellant. Therefore, relying on the notes of arguments and also oral submission and the judgment of this Court cited supra, the counsel would submit that, this appeal deserves to be allowed.

8. On the other hand, the learned Additional Public Prosecutor relying on the reasons and findings recorded by the Trial Court and evidence of P.W. 1 and P.W. 2, posttrap and pretrap panchanama would submit that the prosecution has proved its case beyond reasonable doubt. The tahsildar was the appointing authority. It has come on record that the Tahsildar appointed the Appellant. Therefore, this appeal is devoid of any merits and hence same may be dismissed.

9. I have given due consideration to the submissions of learned Counsel for the Appellant and learned A.P.P. appearing for the State. So far as first contention of the learned Counsel for the Appellant that, the Appellant/accused was not Government servant at the relevant time on the date of alleged demand and trap and, therefore, he cannot be said to be public servant and, therefore, provisions of Prevention of Corruption Act cannot be made applicable to him, therefore, the case of the prosecution is devoid of any merits is concerned, the Special Court in para 13 of the impugned judgment has considered the provisions of Section 2(c) (1) of the Prevention of Corruption Act and held that, at the relevant time the Appellant/accused was appointed vide document Exhibit 35 by the Tahsildar and he was getting Rs. 100/per month as a financial benefit. I am not persuaded to take the different view than taken by the Special Court in para 13 of the impugned judgment. The circular of Government of Maharashtra or evidence of P.W. 3 or P.W. 5 cannot prevail over the provisions of Section 2(c)(1) of the Prevention of Corruption Act, where public servant is defined u/s ec. 2(c) of the said Act. Therefore, the first contention of the learned Counsel for the Appellant stands rejected.

10. The evidence of P.W. 1 complainant is at Exhibit 15. It is not necessary to advert to his entire deposition, suffice it to say that on 22nd September, 1992 , he went to Collector Office for getting ration card. He submitted written application to one Mr. Sonwane. Mr. Sonwane endorsed the application and asked the complainant to show it to one Mr. Bansode. It was shown to Mr. Bansode, Mr. Bansode issued printed form and directed the complainant to fill up the form and annex the documents i. e. certificate from the Corporator. The complainant further states in his deposition that, he handed over the form and certificate to the accused/Appellant. "Accused demanded him Rs. 150/for his work. I expressed my inability. He showed reluctance to my work. Accused then asked me to give whatever amount I possessed on that day. I was having Rs. 20/. On his demand I gave the amount of Rs. 20/to the accused. Accused then asked me to make payment of remaining amount of Rs. 130/on the next day morning at his residence. I was not knowing his residential address. Accused then in his own handwriting reduced into writing his residential address overleaf my application

for issue of Ration card in my presence.

I again expressed my inability and told him that in the early hours I may not be in a position to collect the amount. thereon accused told me that I can meet him in the office at about 11.00 a.m. to 12.00 noon and give the amount."

(emphasis supplied).

The complainant has further deposed that, he was not willing to pay the bribe amount. Therefore, he went to the A. C. B. Office, reported the matter to one Mr. Jagtapsaheb in the A. C. B. office. He thereafter narrated minute details what had happened in the A. C. B. Office. He has specifically stated that, he has no any inimical terms with the accused. This witness P.W. 1 has identified the signature on the complaint at Exhibit 16 and he reiterated that the contents of the said complaint are correct. Thereafter, he has narrated the event which took place on 23rd September, 1992. On 23rd September, 1992 he went to the office of A. C. B. and thereafter the concerned office had taken necessary steps to arrange the trap and pretrap panchanama was accordingly, drawn. It is not necessary to narrate that part of the deposition of P.W. 1 before the Court, since it is not seriously challenged by the defence.

11. So far actual trap is concerned, the complainant has stated that he himself, Nalwade, Yaqub, panchas Ramdin, Dalvi proceeded in a car towards the office of accused. They reached near Subedari Guest House. The car was stopped there. As already decided, he himself and Ramdin (panch) proceeded ahead of other raiding party. The member of raiding party followed them with a short distance towards the Collector Office. He himself and Ramdin firstly went to office in the House building and under ground floor. He went near the chair of accused and saulted him and asked about his work of Ration card. Accused asked him to wait 10 minutes outside office. Then complainant and panch Ramdin went outside the office. After 10 minutes accused came to them. He asked them to accompany him for a tea. They went to canteen. They took tea. Accused paid the bill of the tea. Again they returned near the office of accused. The complainant enquired about his card. Accused told him that it will take about 8 to 10 days. The complainant requested accused to do the work as early as possible. The accused then repeated that either to wait for 8 days or take back the application. When the complainant asked the accused as to whether after 8 days his work will be done definitely. Then Appellant/accused asked about the amount of Rs. 130/-. The complainant replied that he brought that amount. Accused asked him to give the amount there only. The complainant took out the amount of Rs. 130/kept in the left hand side pocket of his shirt. Accused accepted the same with right hand and he kept the same in the left hand side of pocket of his shirt. He then started proceeding towards his office. The complainant signaled with the handkerchief to the raiding party. The members of the raiding party rushed there. They then went in the underground floor in the office of accused. Mr. Yaqub and Mr. Chavan caught hold of wrist of both the hands of accused and Mr. Nalwade introduced the accused as person from Anti Corruption Department and enquired about his

name, etc. Accused told his name and profession. Mr. Nalwade asked the complainant to wait outside the office. After about three hours, complainant was again called inside the office of the accused. His hands were checked under the rays of lamp. His hand glittered blue. The left hand side pocket of the complainant was unfolded and the rays were focused from the lamp, it also glittered bluish. The search of the complainant was also taken by the panch. The note of Rs. 5/, handkerchief and pen at Banyan was found.

(emphasis supplied)

12. The evidence of P.W. 2 is at Exhibit 22. He acted as panch to the pretrap panchanama and also posttrap panchanama. At the relevant time he was working as a junior clerk in the Sales Tax Office, Railway Station, Aurangabad. He was called to act as a panch. He has narrated the detail events which had happened on 23rd September, 1991 and also he has stated in minute details about the instructions given to him, what procedure he is supposed to follow at the time of actual raid. Therefore, it is not necessary to burden this judgment by reproducing that part of his evidence before the Court which is not seriously challenged by the defence. So far actual incident on 23rd September, 1992 is concerned, this witness in his examination in chief has stated thus,

Thereafter, myself, Mr. Bodhade and Lokhande returned back to the office. Mr. Lokhande thereafter questioned the accused, what happened about the ration card. Mr. Bodhade told that, it will take 8 days. On further questioning Mr. Bodhade questioned if the remaining amount has brought. When Mr. Lokhande told that, he had brought the amount. Accused told that amount should be given. Accordingly, Mr. Lokhande removed Rs. 130/and held in front of Mr. Bodhade. Mr. Bodhade accordingly took the amount by his hand and kept in the left pocket. At that time he was with Mr. Lokhande throughout. Mr. Bodhade accordingly, went in his office. In the mean time, Mr. Lokhande removed his handkerchief and signaled the raiding party by wiping his face. Accordingly, the raiding party arrived. Mr. Lokhande thereafter pointed out and showed that he was Mr. Bodhade. In the mean time, two raiding party constable came and caught hold both the hands of Mr. Bodhade. Mr. Nalawade also arrived and introduced himself Mr. Bodhade. At that time, accused could not talk and he was sweating .On questioning, Mr. Bodhade by nod of his head showed that it was in his pocket. Mr. Lokhande was told to go out. The doors and windows of the room were closed and raise of the lamp were directed on the hands of Mr. Bodhade, we could see blue shining on his hand. Mr. Dalvi thereafter removed the cash from the pocket of accused. The raise of the lamp were directed on the said amount and it was shining blue. Thereafter the amount was packed in an envelop. Even when the raise of lamp was directed on the inside part of the pocket it was also shinging blue. The shirt came to have been attached and it was sealed with out signatures. Even our signatures were on packet, in which notes were kept and sealed. Thereafter, panchanama was drawn. Mr. Bodhade was told to remove application and documents. The application and documents were removed and

attached under the said panchanama. So also some papers were attached from the pocket of Mr. Bodhade and unwanted papers were returned to Mr. Bodhade. Panchanama now shown to me is the same, it bears my signature, it's contents are correct, it is at Exhibit 24. Thereafter, application Exhibit 19 shown to me it bears my signature. Similarly Anr. document shown to me bears my signature. So also other documents (8) namely set of 8 papers came to have been marked. The consolidated documents is at Exhibit 25. One register was also attached from one Mr. Bansode. The register now shown to me is the same. It bears my signature. The same is marked at Exhibit 26. Thereafter, Mr. Lokhande who was waiting out was called inside. Thereafter, light of lamp was focused on right hand of his fingers and face and handkerchief, pocket showed blue shining. Copy of panchanama was given to Mr. Bodhade and signature was obtained of having received. After taking all the articles in our custody, we came back to A. C. B. office at about 4.00 p.m

(emphasis supplied)

13. P.W. 3 Tahsildar Aurangabad, who is sanctioning authority has stated in his evidence that, he has accorded sanction to prosecute the accused/Appellant. He has further stated in his cross examination that, there are orders by way of Government Resolution that candidate should be appointed by the Tahsildar. The circular is of November 1978. The P.W. 4 Bhaginath Nalawade was I. O. in the case, whose evidence is at Exhibit 38. In his evidence before the Court, he has stated minute details about the pretrap panchanama and also posttrap panchanama and about actual trap. He has specifically stated in his evidence that, the papers were shown to the Tahsildar and he accorded sanction to prosecute the accused/Appellant.

14. Therefore, on perusal of evidence of P.W. 1 and P.W. 2, so far demand of Rs. 130/on 23rd September, 1992 is concerned, the evidence of complainant is corroborated by the evidence of P.W. 2. P.W. 2 in his evidence categorically stated that, how there was demand of Rs. 130/by the accused/Appellant to the complainant and thereafter what events had taken place. Since the version of P.W. 2 is quoted hereinabove, it is not necessary to repeat the same, suffice to say that the evidence of P.W. 2 on actual demand by the accused and actual acceptance is proved by the prosecution with material particulars. The evidence of P.W. 1 is corroborated by the evidence of P.W. 2 so far demand, acceptance and recovery on 23rd September, 1992 is concerned. That apart, the posttrap panchanama is at Exhibit 24 which fully supports the version of P.W. 2 and P.W. 1. So far examination of hands of the accused/Appellant under ultra violet lamp and finding anthracene powder on his fingers is stated in the said panchanama. Therefore, in my opinion, viewed from any angle, the evidence of P.W. 1 and P.W. 2, pretrap panchanama and also posttrap panchanama does not suffer from any material irregularities. The counsel for the Appellant is right in arguing that Mr. Dalvi who has actually removed the currency notes from the pocket of Appellant is not examined. It is true that Mr. Dalvi is not examined, however, merely

because Mr. Dalvi is not examined the entire prosecution case cannot be thrown away, when there is cogent, clinching and sufficient evidence is brought on record by the prosecution in the nature of evidence of P.W. 1, P.W. 2, pretrap and posttrap panchanama and also other evidence including evidence of I. O. Therefore, in my opinion, merely because Mr. Dalvi or any other panch is not examined cannot be ground to throw out the prosecution case, when the sufficient evidence is brought on record by the prosecution.

15. The documents including copy of the application which was filed by the complainant on record along with annexures came to be recovered from the custody of the accused. It is not denied or disputed by the accused that these documents are not attached from his custody. This makes it clear that the accused was incharge of work. In this regard the Anr. circumstance which supports the case of prosecution is that, the complainant had stated that accused after having made demand had told him to come to the residence of the accused to pay the amount. That accused had given his address which is written on the backside of document Exhibit 17 and marked as Exhibit 18. It is no where denied or suggested by the accused that he had not written the said address at Exhibit 18, nor accused had stated that, address given which is in detail is not his own address. It is also not the case of the accused that, he was entitled to recover any amount from the complainant officially. Therefore, in absence of the same, as the amount has been accepted by the accused, presumption u/s 20 of the Prevention of Corruption Act, 1988 will have to be drawn, because accused accepted the said amount as gratification as motive or reward for doing some official work.

16. In case of Ramnath Radhakishan Mahale v. State of Maharashtra (cited supra), the complainant in that case without waiting for demand by the accused committed haste to hand over the currency notes. In the instant case it is not so. In the present case, there was explicit demand by the accused/Appellant which is stated by the P.W. 1 himself and P.W. 2 Ramdin who was acting as panch witness. Therefore, the facts of this case stands on different footing than judgment cited supra by learned Counsel for the Appellant.

17. It is true that, when amount of Rs. 20/was handed in to the accused by the complainant on 22nd September, 1992, there is no any independent witness to say so. However, the Special Court in para 28 has concluded that, it was agreed on 22nd September, 1992 to pay Rs. 150/to the accused/Appellant and remaining Rs. 130/on 23rd September, 1992. The accused/Appellant reiterated his demand on 23rd September, 1992 and there is independent witness to say so to corroborate the evidence of the complainant. Therefore, once that amount of Rs. 20/which was paid on 22nd September, 1992, was part of agreement and remaining amount of Rs. 130/was given on 23rd September, 1992 agreement gets completed. Therefore, in my opinion, the evidence brought on record by the prosecution on demand, acceptance and recovery is cogent, sufficient and conviction of the Appellant can be safely maintained. The Special Court taking

into consideration all aspects of the matter and the evidence brought on record by the prosecution and also defence taken by the accused convicted the accused/Appellant. The findings recorded by the Special Court are inconsonance with the evidence brought on record by the prosecution and in my opinion, there is no infirmity in the impugned judgment passed by the Special Court. The defence taken by the accused/Appellant is that, the complainant was every day coming to him and bothering him and false complaint is filed against him is no avail. In this view of the matter, I do not find any substance in the appeal. The appeal stands dismissed. The impugned judgment and order passed by the Special Judge, Aurangabad in Special Case No. 01/1993 stands confirmed. The bail bonds of the Appellant stands cancelled.

18. The Commissioner of Police, Aurangabad is directed to see that, the accused/Appellant surrenders himself to under go remaining part of the sentence. The Commissioner of Police shall report this Court through concern police station about surrender by the accused/Appellant. The original record and proceedings be sent back to the concerned Court forthwith.