
(2014) 08 BOM CK 0213
In the Bombay High Court
Case No : Criminal Appeal No. 546 of 2013

Mohansingh	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(a), 13(1)(d), 13(2), 7

Citation : (2015) ALLMR(Cri) 1901

Hon'ble Judges : M.L. Tahaliyani, J.

Bench : Single Bench

Advocate : Anil S. Mardikar, Senior Advocate, for the Appellant; S.M. Bhagde, APP, for the Respondent

Final Decision : Allowed

Judgement

M.L. Tahaliyani, J.?The appellant has been convicted for the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act" for brevity) and has been sentenced to suffer rigorous imprisonment for two years for the offence punishable under Section 7 and five years for the offence punishable under Section 13(1)(d) of the Act. The appellant was working as Police Head Constable attached to Badnera Police Station. Complainant Vinod Ambadas Lakde, Milk Vendor, resident of village Nimbha, Tahsil: Bhatkuli, District: Amravati had one motorcycle of Rajdoot make. There was a puncture in the tube and therefore, his two sons viz. Laxman and Ram took the said motorcycle for puncture repairing. While the motorcycle was being taken to puncture repairer, it had hit the motorcycle of one Nilesh Ghan. Nilesh Ghan was driving his own motorcycle and his wife was pillion rider. His wife had a suitcase in her hand when the incident had occurred. She had fallen down from the motorcycle and Nilesh Ghan had sustained some injuries in the incident. The son of the complainant returned home and narrated the incident to the complainant. Thereafter Nilesh and few others had visited the house of the complainant and had demanded

compensation. After fifteen days of the incident, a meeting of Dispute Resolution Committee (Tantamukti Samiti) of the village (hereinafter referred to as "DRC") was convened. In the said meeting it was decided that the complainant should pay Rs. 10,000/- to Nilesh Ghan. The complainant refused to pay the same.

2. It is on 27th December, 2010 that police had come to the house of the complainant and took his son Laxman into custody. Laxman was taken to police station and was made to sit at Police Station till midnight. The complainant accompanied by his nephew Chetan Lakade had visited Police Station at about 9.00 p.m. The appellant had told the complainant that Nilesh had suffered total loss of Rs. 40,000/- to Rs. 50,000/- due to the said incident and that the complainant should pay the said amount. The complainant showed his inability to pay the amount. Therefore, he was also detained at the Police Station. The complainant and his son were relieved at about midnight between 27th and 28th December, 2010. The complainant was threatened that if he did not pay the amount, he and complainant's son both would be prosecuted as owner and driver of the motorcycle respectively.

3. On 28th December, 2010 the complainant, his brother Prakash and one Rajesh Wade were called by the appellant at his official residence being Quarter No. 338 at Amravati Police Lines. The appellant had told the complainant that the offence had not yet been registered and that the complainant would have to pay Rs. 5,000/- to the appellant and Rs. 5,000/- to Nilesh Ghan in order to avoid registration of the offence against the complainant and his son Laxman. Since the complainant did not want to pay the amount, he reported the matter to Anti Corruption Bureau. The Anti Corruption Bureau had verified the demand made by the appellant and found the same to be correct.

4. After verification of the genuineness of the complaint, it was decided to trap the appellant while accepting bribe money. The complainant was, therefore, directed to bring Rs. 5,000/- to the office of Anti Corruption Bureau ("ACB" for short). He brought Rs. 5,000/-. The currency notes were in the denomination of Rs. 500/- each. They were smeared with anthracene powder and were kept in the left pocket of the shirt of the complainant. The complainant was directed to pay the money only on demand. The complainant was directed by the appellant to meet the appellant near Chitra Junction. The complainant and the ghost panch witness had gone to Chitra Junction. The complainant was later on directed by the appellant on telephone that the complainant should meet one Mama Jalebiwala whose shop was situated near Chitra Junction. The said Jalebiwala, however, refused to accept the money and therefore, the complainant had spoken to the appellant. The complainant was directed to visit the Police Station as Jalebiwala was not ready to accept the money. The complainant and the panch witness, who was directed to accompany the complainant, had visited Badnera Police Station. The appellant instead of accepting the amount had directed the complainant to visit Police Station on 30th December, 2010 at about 9.00 a.m.

5. The complainant and said witness again visited on 30th December, 2010 at

about 11.35 a.m. The appellant was not available at Police Station. It was learnt that he had gone to Irvin Hospital for some official work and he would be available at Mortuary of the Irvin Hospital. The complainant had, therefore, along with panch witness visited Mortuary of Irvin Hospital. The appellant did not accept the money and directed the complainant to visit Police Station in the evening on the same day. On 30th December, 2010 in the evening also the appellant was not available at Police Station and he directed the complainant on mobile phone that the complainant should visit him on 31st December, 2010. Accordingly, they visited Badnera Police Station. The appellant met them near entrance gate of the Police Station but did not accept money.

6. Since repeated attempts from 28th to 31st December, 2010 had failed and no trap could be laid, it was decided to terminate further proceedings and to register an offence for demand of bribe money. Panchnama, in which all the events had been recorded, was concluded at about 17.00 hrs. on 31st December, 2010. The matter was reported to Superintendent of Police of the District and on his directions offence was registered on 4th January, 2011.

7. During the course of investigation, statements of the witnesses including those who were present at the residence of the appellant at the time of the alleged demand, were recorded and after completion of investigation chargesheet was filed for the offence punishable under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act.

8. Charge under Section 7 and 13(2) and 13(1)(d) of the Act was framed against the appellant by the learned Special Judge vide Exh. 12. He pleaded not guilty vide Exh. 13. The prosecution had examined in all seven witnesses in support of its case. P.W. 1 is complainant Vinod Lakde. P.W. 2 is panch witness who was accompanying the complainant. P.W. 3 is another panch witness. P.W. 4 Prakash Lakde is nephew of the complainant. P.W. 5 Rakesh is another panch witness who was accompanying when the complainant had visited quarter of the appellant. P.W. 6 is Sanctioning Authority and P.W. 7 is Investigating Officer.

9. The defence of the appellant before the trial Court was that the appellant had never demanded money for himself and that he had directed the complainant to pay money to Nilesh Ghan in view of the decision arrived at by the DRC of the village and that therefore, despite repeated attempts made by the complainant and ACB they could not trap the appellant. The appellant had examined one witness in support of his case to establish that there was no demand of bribe on the part of the appellant.

10. At the outset, it may be mentioned here that the conviction of the appellant for the offence punishable under Section 13(2) of the Act was wrong inasmuch as no such allegations have been made in the chargesheet. The then learned Additional Sessions Judge who was hearing the case had framed charge for the offences punishable under Sections 7 and 13(1)(a) r/w. 13(2) of the Act. Framing of charge for the offences punishable under Sections 13(2) r/w 13(1)(a)

itself was incorrect inasmuch as there are no such allegations in the chargesheet. Even the sanctioning authority had accorded sanction for prosecution of the appellant only for the offence punishable under Section 7 of the Act. As such, the appellant will have to be acquitted of the offence punishable under Section 13(2) r/w 13(1)(a) of the Act.

11. As far as charge under Section 7 of the Act is concerned, the case is mainly based on the evidence of P.W. Nos. 1 and 2. P.W. 1 is complainant and P.W. 2 is witness who was accompanying P.W. 1 when P.W. 1 had visited the appellant.

12. Since the charge is for the offence punishable under Section 7 of the Act and since it is apparent from the case that the bribe amount had not been accepted by the appellant the respondents were under obligation to establish only demand of bribe on the part of the appellant. The first ever demand was made at the Police Station when the appellant wanted Rs. 50,000/- to Rs. 70,000/- to be paid to Nilesh Ghan. Obviously, P.W. 2 was not present at that time. According to P.W. 1, Govindrao Ghan and members of Tanta Mukti Samiti were present. On next day of the said demand P.W. 1, his son Laxman, his brother Prakash Lakade had gone to Police Station, Badnera. The appellant had night duty and therefore, he directed P.W. 1 and others to visit his house. P.W. 1 and others had accordingly visited the house of the appellant. It is stated by P.W. 1 that the appellant had demanded Rs. 10,000/-. P.W. 1 requested for reduction of the amount. It is stated by P.W. 1 that the appellant had agreed to accept Rs. 5,000/-. Since P.W. 1 was not ready to pay amount, he reported the matter to Anti Corruption Bureau. The Anti Corruption Bureau laid the trap as usual. P.W. 1 and panch witness P.W. 2 were sent to the appellant for verification of genuineness of the complaint of P.W. 1. P.W. 1 has stated that the appellant wanted to know whether P.W. 1 had brought money. P.W. 1 told that his son was not well and therefore, he would manage the amount next day. Thereafter they left the Police Station. The ACB officers decided to trap the appellant on next day. Accordingly, currency notes of Rs. 5,000/- were smeared with anthracene powder and they were kept in the pocket of P.W. 1 for being handed over to the appellant on demand. It is stated by P.W. 1 that the appellant had directed him on telephone to hand over money to one Mama Jalebiwala. The said Mama Jalebiwala refused to accept the money. The appellant was informed that Jalebiwala had refused to accept the money. P.W. 1 was asked to visit Police Station on next day. P.W. 1, accompanied by P.W. 2, had visited Police Station on next day. It is stated that the appellant had asked to pay money if P.W. 1 had brought the same. P.W. 1 did not pay money to the appellant as the appellant was sitting on motorcycle at that time. It may be mentioned here that P.W. 1 was instructed not to hand over money to the appellant if he was found on vehicle. He, therefore, followed the instructions given to him by ACB officers. Next time the appellant was not found in the Police Station and he was on duty at Irvin Hospital. P.W. Nos. 1 and 2 visited Irvin Hospital, Amravati to handover the money. The appellant had refused to accept the money because his senior officers were present. As repeated attempts had failed, the further process of laying trap was terminated and running panchnama

was concluded.

13. P.W. 1 in his cross-examination has admitted that he had tried to give money to the appellant on four occasions during the period between 28th and 31st P.W. 1 has denied that the appellant had told him that he should pay money only after arrival of Nilesh Ghan. Whereas, P.W. 2 has categorically stated that though P.W. 1 had told the appellant that he had brought money. The appellant did not accept the same saying that let Mr. Nilesh Ghan come and that money will be accepted only after arrival of Nilesh Ghan. It has come repeatedly in the evidence that P.W. 1 wanted to give money and the appellant avoided to accept it. It has been stated by P.W. 2 that when P.W. 1 wanted to give money to appellant at Irvin Hospital, the appellant did not bother and went away by saying that he was in hurry and he had some other work. It has been repeatedly stated by P.W. 2 that the appellant wanted Mr. Ghan to come before money was accepted.

14. The appellant had examined D.W. No. 1 who was President of Tanta Mukti Samiti. This witness had stated that there was a compromise and that Tanta Mukti Samitee had decided that P.W. 1 should pay Rs. 5,000/- to Nilesh Ghan. P.W. 1, however, was not ready to pay the said amount to Nilesh Ghan.

15. The defence of the appellant is that, in fact, the said amount of Rs. 5,000/- was to be handed over to Nilesh Ghan in view of the decision of Tanta Mukti Samiti. P.W. 2 has repeatedly stated that the appellant was every now and then insisting for presence of Nilesh Ghan. In view thereof, it is possible that the appellant wanted Rs. 5,000/- to be paid to Nilesh Ghan by P.W. 1. It is in this background that the appellant himself had never accepted money and the trap had ultimately failed. In view of this part of the evidence it is very risky to accept that the appellant had demanded Rs. 5,000/- from P.W. 1. In this regard, it may be noted here that the matter had reached Police Station only after decision of Tanta Mukti Samiti could not be implemented. It is, therefore, possible to say that the appellant wanted the order of Tanta Mukti Samiti to be executed.

16. As such, I have come to a conclusion that the defence taken by the appellant is probable. The admissions made by P.W. 2 have to a larger extent created doubt about correctness of evidence of P.W. 1 and therefore, in my opinion the allegations of demand of bribe money of Rs. 5,000/- against the appellant were not proved.

17. The evidence of other witnesses was not required to be discussed inasmuch as the demand could have been established only by evidence of P.W. Nos. 1 and 2. P.W. 3 is Mama Jalebiwala who did not support the prosecution case. P.W. 4 was also declared hostile. P.W. 5 was also hostile to the prosecution. P.W. 6 is Sanctioning Authority. P.W. 7 is Investigating Officer. In view of my finding in respect of the evidence of P.W. Nos. 1 and 2 and in view of the fact that the other witnesses have been declared hostile by the prosecution, the evidence of P.W. 6 in respect of sanction and evidence of P.W. 7 in respect of panchnama etc. is not required to be discussed in this judgment. Obviously, the appellant must succeed

and hence. I pass the following order.

(i) The appeal is allowed.

(ii) The judgment and order passed by the learned Special Judge (CBI), Amravati in Special (ACB) Case No. 8 of 2011 is set aside.

(iii) The appellant is acquitted of the offences punishable under Section 7, 13(2) r/w 13(1)(a) of the Prevention of Corruption Act, 1988.

(iv) His bail bonds shall stand cancelled.

(v) Fine, if any, paid by him shall be refunded to him.

The appeal stands disposed of accordingly.