
(2013) 01 BOM CK 0184
In the Bombay High Court
Case No : Criminal Appeal No. 18 of 2001

Pandurang Devidasrao Joshi (Deceased)	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 20, 7

Citation : (2013) ALLMR(Cri) 1682

Hon'ble Judges : P.V. Hardas, J

Bench : Single Bench

Advocate : S.S. Bora, for the Appellant; S.D. Shelke, Assistant Public Prosecutor, for the Respondent

Judgement

P.V. Hardas, J.—The appellant/original accused No. 1, who stands convicted for an offence punishable u/s 7, 13(1)(d) read with section 13 (2) of the Prevention of Corruption Act and sentenced to R.I. for one year and to pay fine of Rs. 1,000/-, in default of which to undergo further R.I. for three months and R.I. for one year and to pay fine of Rs. 1,000/-, in default of which to undergo further R.I. for three months, by the Additional Sessions Judge, Beed, by judgment dated 26.12.2000 in Special Case No. 69 of 1991, by this appeal questions the correctness of his conviction and sentence. During the pendency of this appeal the original appellant expired and his legal heirs were permitted to prosecute this appeal. Reference in this judgment to "appellant" means the original appellant/accused. Facts in brief as are necessary for the decision of this appeal may be stated thus:-

P.W.7 Police Inspector Vikas Kohok, who at the relevant time was working as the Police Inspector in the office of the Anti Corruption Bureau, Beed, was present in the office on 18.4.1991. On that day, P.W.6 Ashruba contacted him and orally complained to him about the allegations of demand of bribe being made by the appellant for mutating the names of the sons of P.W.6 Ashruba. Accordingly his complaint was reduced into writing and thumb impression of Ashruba was

obtained on the said complaint. The said complaint is at Exh. 47. Thereafter presence of two panchas was secured, namely, P.W.1 Popat and another panch. On arrival of the panch witnesses in the office of the Anti Corruption Bureau, the panchas were introduced to complainant P.W.6 Ashruba and thereafter the complaint of P.W.6 Ashruba was handed over to the panchas for perusal. Thereafter the marked currency notes were smeared with anthracene powder and demonstration of the anthracene powder was conducted. The complainant and the panchas were apprised about the detection of anthracene powder on the finger tips of the accused under the ultra violet lamp. A panchnama was accordingly drawn and the complainant was instructed to offer the bribe amount to the accused only when demanded and upon acceptance of the marked currency notes, the complainant was instructed to remove his cap and to dust it against his legs.

2. Accordingly, P.W.1 Popat and P.W.6 Ashruba proceeded to the office of the accused. The accused met them and informed them that he would come subsequently. Ashruba and Popat waited for the accused and after the arrival of the accused, Ashruba inquired with accused if his work is done and the accused replied in the affirmative. The accused also asked Ashruba if necessary amount had been brought and to pay it to original accused No. 2, who was a shop-keeper. The complainant Ashruba and P.W. I Popat accordingly proceeded to the shop of accused No. 2 and handed over an amount of Rs. 450/- to accused No. 2. On accused No. 2 accepting the marked currency notes, the agreed signal was given by P.W.6 Ashruba. Accordingly the members of the raiding party arrived at the shop and apprehended accused No. 2. Accused No. 2 was thereafter taken to the office of the accused No. 1 but the accused No. 1 was not present in his office. Certain documents from the office of the accused No. 1 were seized and a panchnama to that effect was drawn at Exh. 33.

3. A complaint was, therefore, lodged by P.W.7 Vikas Kohok. On the basis of the complaint of P.W.7 Vikas Kohok, P.W.3 Uttam registered an offence. Subsequent to the completion of investigation, a charge-sheet against the appellant and original accused No. 2 was filed.

4. On committal of the case to Court of Sessions, Trial Court vide Exh. 19 framed charge against the accused for offence punishable under sections 7, 13(1)(d) read with section 13 (2) of the Prevention of Corruption Act. The accused denied their guilt and claimed to be tried. Prosecution in support of its case examined seven witnesses, while the accused in his defence examined D.W.1 Govind. The accused has taken a belated defence that he was not present in his office on the day of the trap. The Trial Court upon appreciation of the evidence convicted and sentenced the appellant as afore stated while acquitting original accused No. 2.

5. In order to effectively deal with the submissions advanced before me by Shri S.S. Bora, learned Counsel for the appellant and thee learned A.P.P., it would be useful to refer to the evidence of the prosecution witnesses.

6. P.W.6 Ashruba states that he had approached the appellant for mutating the names of his sons Deelip and Satish in respect of the agricultural land. According to Ashruba, he had executed a partition deed. The appellant had then demanded an amount of Rs. 500/- for mutating the names of sons of Ashruba. However, after negotiation the demand was scaled down to Rs. 450/-. Ashruba had assured the appellant that the amount would be paid to him within 2 to 4 days. Ashruba thereafter proceeded to Beed and lodged his complaint at Exh. 47 in the office of the Anti Corruption Bureau. Upon his complaint being reduced into writing, the presence of the panchas was arranged and in the presence of panchas and Ashruba, demonstration of anthracene powder was given. The marked currency notes were smeared with anthracene powder and Ashruba was informed that he should not hand over the amount to appellant unless demanded. Upon the amount being received by the appellant, Ashruba was instructed to give the agreed signal. A panchnama to that effect at Exh. 32 was drawn and thereafter the members of the raiding party, the two panchas and Ashruba proceeded in a jeep to the office of the appellant. On reaching Beed, they had gone to the office of the appellant and had noticed the appellant present in his office. The appellant, however, proceeded to the Tahsil office informing Ashruba that he would return after some time. The appellant accordingly returned at about 1.30 to 2.00 p.m. Ashruba and P.W. 1 Popat were waiting for the appellant near his office. On his return, the appellant asked Ashruba whether he had brought the money and on Ashruba disclosing that he had brought the money, the appellant asked that the money be paid to the grocery shop keeper i.e. accused No. 2. Ashruba and Popat accordingly proceeded to the grocery shop and handed over the money to the shop-keeper, Ashruba thereafter gave the agreed signal and on seeing the signal, the members of the raiding party arrived there and apprehended accused No. 2. Accused No. 2 was thereafter taken to the office of the appellant. The appellant, however, was not present in his office.

7. In cross-examination Ashruba has admitted that he had obtained a loan of Rs. 40,000/- from the State Bank of India in respect of the agricultural land which had been mortgaged to the Bank. He has also admitted that he could not state as to how many days prior to his submitting an application to the appellant he had prepared a document of partition. He has also admitted as true that after eight days of his filing the partition deed the appellant had informed him that the necessary entry in respect of the names of the sons of Ashruba had been taken in the mutation register. The entry, however, remained to be certified by the Circle Inspector or the Naib Tahsildar. He has then admitted that about 4 to 8 days prior to his lodging the report with the Anti Corruption Bureau, the appellant had demanded the amount to him. He could not state as to when he had decided to lodge a report against the appellant. He was confronted with portion marked "A" from his statement which he has denied to have stated. He then gives a very startling admission and i.e. the contents of the report were narrated by one Advocate Shri Muley in the office of the Anti Corruption Bureau.

He has admitted that Advocate Shri Muley had accompanied him on the next day of the lodging of the report. He has admitted that till arrival of the appellant he and the panch witness were standing outside the office. He then states that he was loitering in front of the office of the appellant. He has admitted that the members of the raiding party had inquired from him as to where the appellant had gone. Ashruba has admitted that he had informed the members of the raiding party that the appellant would return shortly. Ashruba states that he had gone near the members of the raiding party where they had concealed themselves for informing them about the whereabouts of the appellant. He has admitted that about 5 to 6 persons were present inside the office of the appellant when he and P.W.1 Popat had gone to the grocery shop.

8. P.W.1 Popat in his evidence states that the appellant had asked P.W.6 Ashruba to wait for him when Popat and Ashruba were outside the office. Popat states that they had accordingly waited near one shop. On going to the office of the appellant, Ashruba had asked the appellant whether the mutation entries had been taken in the revenue record. The appellant had informed Ashruba that signature of the Tahsildar was required to be obtained. The appellant then asked Ashruba whether he had brought the money and on Ashruba answering in the affirmative, the appellant had asked Ashruba to pay the money to one Kapse, a shop-keeper. Popat states that thereafter they had gone to the shop of Kapse and had noticed that younger brother of Kapse was present in the shop. Popat and Ashruba had again come to the office of the appellant and had inquired from him if the amount should be paid to accused No. 2, who was the younger brother of Kapse. The appellant replied in the affirmative and thereafter the marked currency notes were paid to accused No. 2.

9. In cross-examination he states that the appellant had initially met them near the General Stores. He has admitted that they were waiting at that shop for about 45 minutes. He has also admitted that neither he nor Ashruba had approached the members of the raiding party to disclose to them that the appellant had gone away stating that he would return back shortly. He then admits that on getting down from the jeep, he and Ashruba were proceeding towards the office of the appellant and the appellant had met them near a tailoring shop. He has then admitted as correct that he and Ashruba had waited near the tailoring shop for a period of 1 to 1-1/2 hours and thereafter the appellant had come there. Popat has admitted that the appellant had come near the place where they were waiting. He has admitted that thereafter when they were proceeding towards the office of the appellant, the members of the raiding party did not follow them.

10. Shri Bora, learned Counsel for the appellant has urged before me that the evidence of the complainant P.W.6 Ashruba and the evidence of panch P.W. 1 Popat is at variance and, therefore, no reliance at all can be placed on their evidence. It is also urged before me by Shri Bora, learned Counsel for the appellant that in the light of acquittal of accused No. 2, the prosecution has

utterly failed to establish acceptance of the amount by the appellant through accused No. 2. Learned A.P.P. has supported the findings arrived at by the Trial Court.

11. I have reproduced the evidence of P.W.1 Popat and P.W.6 Ashruba. There is variance in their evidence in respect of the place where the appellant had initially met them. There is variance also in respect of the actual conversation which took place between the appellant and P.W.6 Ashruba. According to P.W.6 Ashruba, the appellant had asked him whether he had brought the money and thereafter had asked him to pay the amount to the shop-keeper, while P.W.1 Popat states that P.W.6 Ashruba had inquired from the appellant if the mutation entries had been effected and thereafter the appellant had asked Ashruba to pay the money to the shop-keeper. According to Ashruba, they had gone to the shop-keeper and had paid the amount, while P.W. 1 Popat states that they had returned back to the office of the appellant to inquire if it was alright to pay the money to accused No. 2, who was the younger brother of the shop-keeper. In the light of the aforesaid discrepancy, according to me, implicit reliance cannot be placed on the testimony of either P.W. 1 Popat or P.W.6 Ashruba. The evidence of P.W.6 Ashruba, according to me, is not fully corroborated by the evidence of P.W.1 Popat. I further find that the presumption u/s 20 of the Prevention of Corruption Act, 1988 also cannot be drawn against the appellant as original accused No. 2 has been acquitted, who is alleged to have accepted the amount on behalf of the appellant. Thus, the acceptance of the amount by the appellant through accused No. 2 has not been proved. In the face of this evidence, the presumption u/s 20 of the Prevention of Corruption Act, therefore, cannot be drawn. All that the prosecution has been able to establish is that accused No. 1 had directed P.W. 6 Ashruba to pay the money to the shop-keeper. Beyond that the prosecution has not been able to prove anything. Since the presumption is not available to be drawn by the prosecution, the accused is entitled to be given the benefit of doubt. Accordingly, Criminal Appeal is allowed and the conviction and sentence of the appellant is hereby quashed and set aside and the appellant is acquitted of the offence with which he was charged and convicted. Fine, if paid by the appellant, be refunded to him. Bail bonds of the appellant stand cancelled.