
(2006) 10 BOM CK 0102

In the Bombay High Court

Case No : Criminal Appeal No's. 386 and 387 of 2001

Prabhakar Balaji Bhoge and Another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-10-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 468

Prevention of Corruption Act, 1988 — Section 12, 13(1), 13(2), 7

Citation : (2007) CriLJ 532

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : Shashank Manohar, for the Appellant; D.B. Yengal and B.H. Lanjewar, Assistant Public Prosecutors, for the Respondent

Final Decision : Allowed

Judgement

R.C. Chavan, J.—Appellant-Prabhakar Balaji Bhoge in Criminal Appeal No. 386 of 2001 challenges his convictions for offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and sentences of rigorous imprisonment for two years and fine of Rs. 250/- and rigorous imprisonment for two years and fine of Rs. 100/- respectively imposed upon him on the two counts by the learned Special Judge, Gadchiroli, vide judgment dated 12-12-2001 passed in Special Case No. 2 of 1994. Appellant-Murlidhar Namdeo Sarpe in Criminal Appeal No. 387 of 2001 challenges his conviction for offence punishable u/s 7 read with Section 12 of the Prevention of Corruption Act by the same judgment of the learned Special Judge, Gadchiroli.

2. Facts, which led to prosecution and conviction of the two appellants, are as under:

Appellant-Prabhakar was working as Assistant Police Sub-Inspector, whereas appellant-Murlidhar was working as servant in a Tea Stall at the relevant time. Complainant Devidas Balaji Meshram and his two sisters had been picked up on 20-1-1992 by appellant-Prabhakar and other policemen in connection with a

prohibition offence. They had been bailed out on the same day, for which sums of Rs. 280/- and Rs. 500/- had been paid to appellant-Prabhakar by the complainant's friends and relations. Thereafter, appellant-Prabhakar started demanding a sum of Rs. 1,000/- and threatened that otherwise he would arrest the complainant's parents. Eventually, on 24-1-1992, when the complainant offered a sum of Rs. 100/-, appellant-Prabhakar refused to accept it and said that at least a sum of Rs. 800/- should be paid in two installments of Rs. 400/- each. The complainant agreed to pay a sum of Rs. 250/- on Monday, which was to come after this meeting. The complainant approached the Anti-Corruption Bureau, where, after recording the complaint and completing the pre-trap formalities, a trap was arranged by PI G.R. Shende to be laid on 29-1-1992 at Chamorshi. On 29-1-1992 accordingly the complainant approached appellant-Prabhakar and on his making a demand, paid the money, which, according to the prosecution story, was lifted by appellant-Murlidhar for changing the currency notes. Appellant-Murlidhar took the notes to the shop of one Nalini, where the tainted money was seized by the police. Necessary panenanas were drawn up. After completion of investigation, sanction to prosecute appellant-Prabhakar was sought and after receipt of sanction, charge-sheet was sent up.

3. The learned Special Judge, Gadchiroli, charged both appellant-Prabhakar of offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) and appellant-Murlidhar of offence punishable u/s 7 read with Section 12 of the Prevention of Corruption Act. Since the appellants pleaded not guilty, they were put on trial; in course of which, the prosecution examined as many as fourteen witnesses. Upon consideration of the evidence tendered, the learned Special Judge came to convict the appellants and sentenced them as mentioned above. Aggrieved thereby, this appeal has been filed.

4. I have heard Shri Shashank Manohar, the learned Counsel for the appellants, and Shri B.H. Lanjewar, the learned Additional Public Prosecutor for the State. With the help of both the learned counsel, I have gone through the entire evidence.

5. The learned Counsel for the appellants submitted that the very story of appellant-Prabhakar making a demand of Rs. 1,000/- for not arresting the complainant's parents, is unbelievable. In this case, the complainant and his sisters, who had been arrested, were released on bail by appellant-Prabhakar. There was no question of appellant-Prabhakar arresting the complainant's parents. The offence for which the complainant had been arrested, had been duly investigated and the charge-sheet had been filed after appellant-Prabhakar was suspended and, therefore, it cannot be contended by the prosecution that appellant-Prabhakar had lodged any false cases against the complainant or his relations. He submitted that the story of demand of Rs. 1,000/- for not arresting the complainant's parents, is only a figment of imagination for the purpose of trapping appellant-Prabhakar at the instance of Raiding Officer P.W. 12 PSI Shende, who had disputes with the appellant. It would not be necessary to go

through the evidence pertaining to arrest and bail of the complainant and his two sisters. It would be enough if the evidence about the trap itself is examined to find out whether the prosecution had proved that appellant-Prabhakar demanded a sum of Rs. 250/- or accepted it from the complainant and whether appellant-Murlidhar had acted as agent of appellant-Prabhakar in the aforesaid transaction.

6. P.W. 2 Devidas, the complainant, stated that on a Thursday, accused-Prabhakar met him at Chamorshi Bus Stand and demanded a sum of Rs. 1,000/-. Accused-Prabhakar threatened the complainant that he would register an offence if the money was not paid. He then claimed to have promised to pay the appellant a sum of Rs. 500/-, whereupon the appellant told him to bring this money on Thursday. It may be seen that in the report filed by the complainant, the story is that the deal was fixed at Rs. 800/- to be paid in two installments of Rs. 400/- each. The complainant stated that he went to his house, but his father told him that only a sum of Rs. 250/- could be spared. Thereafter, he lodged a report with the Anti-Corruption Bureau.

7. As to the trap, complainant P.W. 2 Devidas stated that he, along with panch Naitam, went to the Police Station, where the accused was sitting. The accused stood up and directed the complainant to accompany him to a Tea Stall opposite the Police Station. The accused enquired as to how much amount was brought by the complainant and the complainant told him that he could arrange only Rs. 250/-. The accused thereupon told the complainant to pay that amount and the balance on some other occasion. The complainant then took out marked currency notes of Rs. 50/- denomination and placed them on a hard board, as directed by the accused. Accused-Prabhakar then directed accused-Murlidhar to change the notes from the shop of Chhabildas Gandhi. Murlidhar then went to the shop of Chhabildas Gandhi. Thereafter, the complainant claimed to have given a signal and the raiding party seized the amount from the shop of Chhabildas Gandhi. Thus, even according to the story of the complainant, the accused had not actually received the money and the money was not seized from accused-Prabhakar. In cross-examination, this witness admitted that his parents had not been called at the Police Station and had not gone to the Police Station on their own. He stated that he knew what a Chungdi (a small gunny/polyethylene bag) was and clarified that there was no such Chungdi on the table where they had taken tea. He denied that he had kept any amount under the Chungdi on the table.

8. Panch P.W. 5 Damaji, who had accompanied the complainant at the time of raid, stated that when he and the complainant went to the Police Station, the accused was sitting on a table. The accused called the complainant and told the witness about a prohibition case against the complainant. The witness claimed to have told the accused that he was with the complainant to stand as surety and introduced himself as Suresh Januji Meshram. It may be seen that complainant P.W. 2 Devidas does not report any such dialogue. According to P.W. 5 Damaji, the complainant then offered tea in the Police Station itself and then all of them

went out to have betel leaf. These facts too are not stated by the complainant. P.W. 5 Damaji then stated that they chewed a betel leaf at a betel leaf shop. According to the witness, the complainant offered money to the accused, but the accused said that he is not going to accept the same and that they should go to Lakhamapur. According to the witness, before them came to a tea stall, the accused had obtained his signature on the plain paper, which is at Exhibit 28. This seems to be so because the witness had stated that he offered himself as surety. The witness further stated that as the accused was not ready to accept the money, he (the witness) directed the complainant to place the currency notes at the Tea Stall below the Chungdi (gunny/polyethylene bag). According to P.W. 5 Damaji, the complainant took out the money and placed the same below the Chungdi. The accused asked them to go away and the accused himself went out of the Police Station. After they had taken 20 to 25 steps, the complainant gave a signal and then the raiding party rushed. According to this witness, the raiding party caught hold of the hands of the accused and took a search, but nothing was found. Then accused-Murlidhar went to the shop of Chhabildas Gandhi, while accused-Prabhakar was being searched. Thereafter the raiding party went to Santoshi Vastra Bhandar, where P.W. 8 Nalini was manning the counter. The raiding party enquired whether accused-Murlidhar brought the money and on her affirmative answer, the notes were seized from the cash counter along with Rs. 3,653/-. This entire story is different from the one deposed to by the complainant. While the complainant specifically denied that he had placed any such amount under the Chungdi on anybody's instructions, P.W. 5 Damaji stated that since accused-Prabhakar was not ready to accept the money, he asked the complainant to place it under the Chungdi.

9. The learned Additional Public Prosecutor submitted that the story given by P.W. 5 Damaji was unbelievable, as the witness had been cross-examined by the Additional Public Prosecutor and admitted that he could not give any reasons as to why all these facts were not recorded in panchanama No. 2, or in his statement, which had been recorded by the Investigating Officer. The witness virtually contradicted major part of the panchanama as well as the police statement.

10. Raiding Officer P.W. 12 PI Shende admitted in his cross-examination that he took voluntary retirement from service on 1-8-1992, when about 13 to 14 years of service was left. He denied that there were two departmental enquiries against him, but admitted that accused-Prabhakar was working as Head Constable with him on 11-12-1984 at Police Station, Gadchiroli, when he was working in the office of Superintendent of Police, Gadchiroli. He denied the suggestion about the disputes with the accused. He, however, admitted that Crime No. 16 of 1995 for offences punishable under Sections 420 and 468 of the Penal Code had been registered against him. He admitted in his cross-examination that at the time of raid, after receiving signal, he rushed towards the complainant and panch No. 1, and not to the shop. This conforms the complainant's story that after he gave a signal, the raiding party arrived at the tea stall and then on being told by P.W. 5

Damaji, it went towards the shop. P.W. 5 Damaji does not state having informed the PSI that accused-Murlidhar was going towards the shop.

11. The learned Counsel for the appellants submitted that the entire incident of trap would show that there is no cogent evidence that the accused had made a demand of money or had received the same. On the other hand, the fact that the money was found in the shop of P.W. 8 Nalini, would indicate that the accused had not received the money. The contention of the learned Additional Public Prosecutor that hostility of a witness should not result in failure of prosecution, is undoubtedly valid, but it does not follow that the conviction can be handed down on mere conjectures on the basis of the evidence of a witness, who is himself alleged to be involved in a prohibition case and has not been consistent in his version about the incident. The learned Counsel for the appellants pointed out that while the complainant P.W. 2 Devidas himself in para No. 7 of his deposition had admitted that the police had filed a charge-sheet in a prohibition case, against him and others, P.W. 12 PSI Shende had gone to the extent of first saying that the prohibition case was already filed by accused-Prabhakar in the Court, and then stating that it was not filed in the Court, but was in the Police Station. P.W. 12 PSI Shende then stated that the case was not filed by himself or other police officers in the Court. The learned Counsel for the appellants submitted that this would show that P.W. 12 PSI Shende had a scant regard for truth.

12. In view of the fact that the evidence of P.W. 5 Damaji clearly falsifies the evidence of P.W. 2 Devidas, the complainant, in respect of demand of money by appellant-Prabhakar and since both P.W. 2 Devidas and P.W. 5 Damaji did not state that appellant-Prabhakar had received the money, the charge of offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act cannot be held to have been proved against appellant-Prabhakar. There is no evidence whatsoever on record to show that appellant-Murlidhar had been instructed by appellant-Prabhakar to get the notes changed from the shop of P.W. 8 Nalini, except the word of P.W. 2 Devidas, which has to be discarded, because it is contradicted to that of P.W. 5 Damaji. The possibility of P.W. 12 PSI Shende's having an axe to grind against appellant-Prabhakar, cannot be ruled out because of his service record as also his evidence, as discussed above. In view of this, the convictions of the appellants recorded by the learned Special Judge, Gadchiroli, cannot be upheld. Hence, the following order is passed:

13. Both the appeals are allowed.

The convictions of appellant-Prabhakar in Criminal Appeal No. 386 of 2001 for offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and sentences of rigorous imprisonment for two years and fine of Rs. 250/- and rigorous imprisonment for two years and fine of Rs. 100/- imposed upon him on two counts, are set aside.

The conviction of appellant-Murlidhar in Criminal Appeal No. 387 of 2001 for offence punishable u/s 7 read with Section 12 of the Prevention of Corruption Act and sentence of rigorous imprisonment for two years and fine of Rs. 250/- imposed upon him, are set aside.

Both the appellants are acquitted of the above offences. Their bail bonds stand cancelled.

Fine, if paid, be refunded to the appellants.