
(2013) 11 BOM CK 0144

In the Bombay High Court

Case No : Criminal Appeal No. 103 of 2011 in ACB Special Case No. 93 of 2004

Pradeep Purshottam Pimperkhede

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 3064

Hon'ble Judges : Sadhana S. Jadhav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sadhana S. Jadhav, J.—The appellant herein challenges the judgment and order dated 22.12.2010 passed by the learned Special Judge in Special Case No. 93 of 2004 whereby the appellant is convicted for the offence punishable u/s 7 of the Prevention of Corruption Act, 1988 and sentenced to suffer R.I. for three years and to pay fine of Rs. 5,000/- in default to suffer S.I. for six months. He is also convicted for the offence punishable u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and is sentenced to suffer R.I. for three years and to pay fine of Rs. 5,000/- in default S.I. for six months. Such of the facts which are necessary for the decision of this Appeal, are as follows:-

One Ashok Shankar Tiwari (hereinafter referred to as the complainant) was working as a Travel Agent in Gallop Travels Agency . Prior to working in Gallop Travels Agency, he was working for Madhura Travels. On 14.3.2000, the complainant was arrested by Flying Squad of Local Crime Branch on the accusation that he had booked tickets for passengers without licence. Crime No. 3007/2007 was registered against the complainant u/s 143 of Indian Railways Act. Charge-sheet was filed against him before 36th Court, Mumbai Central Railway, Mumbai. The said case was registered as CC No. 162/P/2000. In the said case, the evidence of the Investigating Officer was to be recorded on 25.3.2003.

2. The appellant herein was representing the State as a prosecutor. On 25.3.2003, the Investigating Officer was absent. The next scheduled date was 27.3.2003. The accused was being represented by Advocate Shri Vora. It is alleged that after the matter was adjourned to 27.3.2003, the present appellant had asked the complainant to wait outside the Court. At about 2 p.m., the appellant had allegedly discussed with the complainant the evidence against him. He had asked the complainant to accompany him to his office. At about 2.15 p.m., the appellant had allegedly demanded Rs. 2,000/- as a gratification for favoring the accused and also for receiving Rs. 40,120/- from the Court. The said amount was seized from the complainant in the course of investigation. The complainant had expressed his inability to extend any gratification. The appellant had allegedly threatened the complainant that he will make it sure that the accused would be awarded maximum punishment. The complainant was scared and had given Rs. 300/- and the appellant had instructed him to give the balance amount of Rs. 1700/- on 27.3.2003.

3. The complainant therefore decided to approach the Anti-Corruption Bureau. Accordingly, he went to the A.C.B. Office on 26.3.2003 and had narrated his complaint. The Investigating Officer had arranged for a trap. He followed the procedure by calling upon the panchas. After having completed the formalities, it was decided to lay a trap on 27.3.2003. According to the prosecution, the trap was successful. It is alleged that the appellant had accepted the amount however, he had entrusted the same to the original accused No. 2 (since deceased). The amount was recovered from accused No. 2 (since deceased). The Investigating Officer lodged a report on the basis of which Crime No. 20/2003 was registered against the appellant and the deceased-accused for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the said Act). The appellant was a public servant and hence the Anti-Corruption Bureau had obtained sanction for prosecution and thereafter, the charge-sheet was filed on 10.11.2008. The case was registered as Special Case No. 93/2004. Sanction was obtained on 15.6.2004. The prosecution examined following six witnesses to bring home the guilt of the accused:-

1. P.W. 1 - Ashok Shankar Tiwari, the complainant.
2. P.W. 2 - Somnath Mandhaji Bhabad, Police constable attached to Mumbai Central Railway Station.
3. P.W. 3 - Namdeo Rabaji Gaikar, Panch No. 1.
4. P.W. 4 - Kalyanrao Govindrao Deshpande, the Sanctioning Authority.
5. P.W. 5 - Ramakant Atmaram Yesaji, Panch No. 2.
6. P.W. 6 - Abhay Achyut Paradkar, the I.O.

4. PW-1 Ashok Tiwari is the original complainant. He has deposed before the Court that he was an accused in one case pending in the Railway Court of

Bombay Central. The case was scheduled on 25th March, 2003. He had been to the Court on 25th March 2003. The witness was not present and, therefore, the matter was adjourned to 27.3.2003. On 25th March, the prosecutor representing the State had asked him to wait in the Court. He has identified the appellant as the prosecutor. At about 1.30 p.m., the accused demanded Rs. 2,000/- from him in connection with the case. The complainant gave him Rs. 300/- behind the Court Hall where the Advocates used to sit. It was agreed that the remainder would be paid on 27th. On 26th March he went to the office of the Anti-Corruption Bureau (ACB) and gave a report. The report is at Exhibit 19. The officers of the ACB had recorded his statement. He was apprised of the procedure to be followed in the trap case.

5. On 27th March, he went to the Court along with the raiding party. They went to the Bar Room. The accused was present in the Bar Room. Upon seeing the complainant, the accused had allegedly asked him as to whether he had brought the money. The accused demanded the said money. He accepted it with his right hand and then handed over the money to Advocate Shinde and asked him to keep the money with him. Thereafter, the complainant gave a signal and the accused-appellant was apprehended by the ACB.

6. It is elicited in the cross-examination that the complainant is the original resident of Uttar Pradesh. He is educated upto 10th Standard. He has deposed before the Court that he has a licence of travel agent, that he was remanded in police custody for one day. It is pertinent to note that the witness has admitted in the cross-examination that the panch witnesses were present in the office of the ACB when he had been for lodging the complaint. It is also admitted that on 25th March the accused had not asked him to wait in the Court of Metropolitan Magistrate at 10 a.m. and that the complainant had gone home without meeting anybody after the matter was adjourned. The complainant has specifically admitted that the accused had not demanded Rs. 2,000/- from him in connection with the case pending in the Metropolitan Magistrate Court. It is also admitted that the accused had not accepted any amount outside the Advocates' Bar Room as the complainant was not asked to wait there.

7. It is also pertinent to note that the complainant has specifically admitted that on 27th March, 2003, at the time of raid, he had alone been to the Bar Room. This would eliminate the presence of panchas along with the complainant. The Court had asked a specific question to the complainant in respect of the demand of Rs. 2,000/- on 25th March 2003 and had drawn the attention of the witness to the cross-examination wherein he had stated that he had left the M.M. Court on 25th March, 2003 without meeting anybody and the same is admitted by the witness. By inference it can be said that on 25th March, 2003, the appellant had not demanded any amount from the complainant as the complainant had not met him.

8. It is further elicited in the cross-examination that the complainant was required to deposit an amount of Rs. 40,120/- before the Railway Court on the

basis of the application filed by the accused. He was annoyed. In the further cross-examination, the complainant has again changed his version and has stated that on 25th March 2003, except the accused, he had not met anybody. He has denied the suggestion that he had not met the accused on 25th March.

9. PW-2 Somnath Bhabad was attached to Mumbai central Railway Police Station. It was his duty to register remand and hawkers cases which are on the daily board. He has deposed before the Court that on 27th March 2003, he had resumed his duties in the 36th Court at 9 a.m. He came to the Court Room at about 10 a.m. He had kept his tiffin on the table of one of the Advocates in the Bar Room. He then remembered that on the earlier day, he had forgotten to take the tiffin box from the Advocates' Bar Room and, therefore, returned back to the Bar Room. At that time, he saw the Police Prosecutor Mr. Pimparkhede and Advocate Shinde sitting opposite each other. Two persons had come to meet them. They were standing near the table of Mr. Pimparkhede. One of the two persons gave currency note of Rs. 500 denomination to Pimparkhede, who in turn entrusted the said amount with Advocate Shinde. Advocate Shinde had kept the amount in the inner side of his coat and at that time, he heard Mr. Pimparkhede telling Mr. Shinde to give him the amount afterwards. The other two persons left the Bar Room and immediately came back accompanied by other 4-5 persons who apprehended the accused. He then learnt that the other members were from the Anti-Corruption Bureau. According to the witness, he was attached as an assistant to Court Clerk for about 3 years. The lawyer of accused-appellant was by the side of Advocates' Bar Room. He has further admitted that Advocate Hasmukh Vora, Advocate Harish Vora and Advocate Shinde were regular advocates in 36th Court, Bombay Central. There was a common table for all three Advocates. He has admitted that he was in civil dress and on other earlier occasion, he had been warned to attend the Court in a uniform. It is further admitted that the then Commissioner of Police, Railway, Mumbai, had issued orders to file charge-sheet after being scrutinized by Public Prosecutor. The appellant had then subjected the witness to cross-examination which were treated as irrelevant questions.

10. PW-3 Namdeo Gaikar, is a public servant who was attached to the Sales Tax, Bandra Office. On 26.3.2003, he was called in ACB Office to act as a panch. Therefore, he was introduced to the complainant and had again called on 27th March 2003. After following the initial procedure, they had decided to proceed for a raid. The panchas were directed by ACP to accompany the complainant. The witness therefore accompanied the complainant to the place where the amount was to be paid. The witness was further directed to attentively hear the conversation between the complainant and the accused. The raiding party reached the court. The witness was with ACP Bhagat near the canteen. The complainant and the two constables proceeded and went in one room. In fact, the complainant went inside the room and the constables were waiting outside. After some time, the complainant gave signal and therefore, the two constables standing outside immediately rushed in and were followed by the members of

the raiding party. They saw two persons sitting opposite each other. The witness has voluntarily disclosed to the Court that prior to 27.3.2003, he had never seen the accused. He has further stated that when he entered the room, he saw that right hands of both the said persons were caught hold by two constables. The amount of Rs. 1700/- was recovered from the inner pocket of Mr. Shinde. They had seized the amount. He has denied to have signed the pre-trap panchnama at Ex. 27 after reading the same and therefore it can be said that he has not proved the contents of the panchnama. The witness has further admitted that he had not asked the concerned officer as to what was written in the post-trap panchnama and had blindly signed it. He was under the impression that the post trap panchnama was recorded as per the events that have occurred and therefore, he has signed it. He had signed on the document purportedly showing that the statement was recorded. In fact, the statement was already prepared as per the panchnama, and the events occurred on that day. Prior thereto, he has denied to have visited the ticket counter near the Advocates' Bar Room.

11. The witness had not accompanied the complainant to the Bar room and had entered the room only after the accused-appellant was apprehended. He has denied to have made statements to the court. He admits that he had not given any detailed narration of transactions before the police. It is pertinent to note that the witness has further stated that except for the right hand of the Advocate and Pimparkhede there were no traces of anthracene powder on any other part of the body. The rough sketch of the Bar was drawn. It is pertinent to note that the witness has specifically admitted before the court that the pre-trap panchnama was not recorded in ACB office, but it was reduced into writing at Mumbai Central Police Station.

12. PW-4 Kalyanrao Deshpande was working as the Deputy Secretary, Home Department, Government of Maharashtra, in the year 2004. He has deposed before the court that he was empowered to sign of behalf of the Government under the Rules of Business. He was also empowered to examine proposals received by the Government and submit the same for approval to Government. He had received the proposal from ACB through Desk Officer on 16.10.2003 along with the letter of ACB and forwarding letter Pol. 2. The said Pol. 2 branch had obtained approval from the Addl. Chief Secretary, Home Department, to prosecute Mr. Pimperkhede. He had also received investigation papers of ACB and draft sanction order. PW-4 thereafter obtained opinion from the Law and Judiciary Department and further sent the draft of sanction for scrutiny. On 9.2.2004, he received approval from the Law & Judiciary Department. He thereafter submitted the same before the Deputy Chief Minister (Home) for sanction. Sanction order was issued on 15.6.2004. PW-4 has categorically stated that he had not granted sanction as per draft sanction but had independently examined and sanctioned the same.

13. It is elicited in the cross-examination that PW-4 was independently not empowered to remove or appoint prosecutors, but he is only empowered to sign

on behalf of the Government.

14. The sanction order dated 15.6.2004 is signed by PW-4 although he was not the appointing authority or the authority who could remove the prosecutors from service.

15. The basic salary of the appellant was Rs. 10,650/- and therefore as per the said circular, the authority to accord sanction would be the Chief Minister and not the Deputy Chief Minister. It is pertinent to note that the sanction order does not indicate that the Deputy Chief Minister had accorded sanction. PW-4 has stated that he had presented the matter before the Deputy Chief Minister for sanction and it was approved by the Government on 30.5.2004. There is no reference to the order dated 30.5.2004 in the sanction order dated 15.6.2004 and therefore, the deposition of PW-4 is not corroborated by any document much less the sanction order itself. The appellant arguing in person submits that in fact it was only the Chief Minister who could have accorded sanction and, therefore, the sanction is invalid.

16. PW-5 Ramakant Yesaji was working as Sales Tax Officer. He was called as a panch by the ACB Office. He has deposed before the Court that they had followed the preliminary rules for conducting the raid. He has further deposed that he was waiting outside the P.P. Room. The complainant and Gaikar went in the P.P. Room and thereafter according to him, the complainant made some sign from within the room and the ACB rushed in. He saw the police officers holding hand of an old Advocate and also of the present appellant. Some currency notes were recovered from the inner pocket of the other old Advocate. He has identified the panchnama at Exhibit 36. He has deposed before the Court that he does not remember the sequence of events as the incident was very old. He has not stated anything in respect of the demand and acceptance of the amount of gratification by the present appellant as he was not a shadow witness, but was only a member of the raiding party.

17. PW-6 Abhay Achyut Paradkar was working as Assistant Commissioner of Police in the year 2003, he has deposed before the Court that on 26.3.2003, he was called in the office of the Addl. Commissioner of Police, who instructed him to hear the grievances of the complainant and take appropriate action. PW-6 had arranged the raid. He had given specific instructions to the complainant and the shadow and independent witness. He has deposed before the Court that on the date of raid, they had been to the 36th Metropolitan Magistrate's Court. When they reached near the Bar Room, one of the 3 persons present in the Prosecutors' office, had called the complainant inside. At about 10.20 a.m. the complainant and Gaikar (PW-3) had entered into the room. After some time, the complainant and Gaikar came out of the said room and the complainant had given the signal as directed.

18. In the cross-examination, PW-6 has admitted that inadvertently, he had not written date and time of despatch of the FIR to the Court in column No. 15 to the

first information report. He has admitted in the cross-examination that he had not recorded the statement of constable who was instructed to bring panchas. He had also not recorded the statement of the driver. It is admitted in the cross-examination that the amount of Rs. 1700/- was first taken out by panch No. 2 Yasaji from Mr. Shinde and the other articles were taken out by panch No. 1. The personal search of the accused-appellant was not taken. He has also admitted that he had not recorded the statement of the witnesses on 27.3.2003 and that they were called to ACB Office subsequently. He has further admitted that he had not conducted any enquiry in respect of change of Advocate of the complainant, but ha stated that on 27.3.2003, Vora was absent The house search of the accused was not conducted. He has further admitted that he had entered the Bar Room after the complainant gave signal and after the constables had caught hold of both the hands of Mr. Shinde and the appellant.

19. PW-3 Namdeo Gaikar is an independent panch witness. He has specifically stated in the Examination-in-chief that the complainant and two police constables proceeded ahead and went in one room and that the complainant went inside the room, whereas the two constables accompanying him had waited outside the room. That after some time, the complainant came out and then gave a signal. The witness has further clarified that he had entered the room only after both the accused were caught hold by two constables. By inference, it would mean that Mr. Gaikar had not accompanied the complainant in the bar room and was not present when the money was actually handed over.

20. It is necessary that the evidence of the complainant should be corroborated in material particulars. It is the case of the prosecution that the marked notes were paid to the 1st accused who entrusted it with 2nd accused. As the entire case of the prosecution depends upon the acceptance of the evidence relating to the conversion between the complainant and the accused-appellant during which the appellant demanded the money and accepted the same and then entrusted it with 2nd accused, it would be necessary to see as to whether this aspect is corroborated in material particulars. The dialogue between the complainant and the appellant has not been heard by PW-3 and, therefore, he has not deposed to that effect before the Court. Hence, the issue of demand and acceptance has not been proved by the prosecution. Omission by PW-3 to refer to any mention of money by the appellant would show that there is no corroboration of the testimony of the complainant. Hence, the evidence of the complainant on this aspect cannot be relied upon.

21. There is no demand of any payment by the appellant for payment of the money or the direction by the appellant to the complainant to pay the money to the second accused. In the circumstances, it would be unsafe to base the conviction on the sole testimony of the complainant as his evidence is not corroborated by material particulars.

22. In the case of Panalal Damodar Rathi Vs. State of Maharashtra, the Hon"ble Apex Court has observed that "There could be no doubt that the evidence of the

complainant should be corroborated in material particulars." On facts, there was no corroboration of the testimony of the complainant regarding the demand of money by the appellant. On this crucial aspect, therefore, it is to be found that the version of the complainant is not corroborated and, therefore, the evidence of the complainant on this aspect cannot be relied upon."

23. In the present case, the sanctioning authority would be the Chief Minister. Upon perusal of the records, it is clear that the facts pertaining to the prosecution of the present appellant were never placed before the Chief Minister. PW-4 was working as Deputy Secretary, Home Department. He has specifically contended that he had obtained opinion from the Law and Judiciary Department. He had received approval from the Law & Judiciary Department and thereafter, he has independently examined and sanctioned the same. He has also admitted that he is not empowered to appoint or remove prosecutors, but is empowered only to sign on behalf of the Government. The admission itself is sufficient to hold that the sanction to prosecute the accused-appellant has not been accorded in accordance with law.

24. Section 19 of the Prevention of Corruption Act, 1988 reads thus:-

"19. Previous sanction necessary for prosecution - (1) No Court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed."

In the present case, the compilation of the papers of investigation were never placed before the appropriate authority. Hence, this Court is of the opinion that it is a fundamental error that has been committed in this case and this principally on this ground that the order according sanction to prosecute will have to be struck down. The Court cannot be oblivious of the fact that a public servant by virtue of his functions is naturally exposed to attacks by the general public from various quarters and, therefore, the statute cast a duty upon the sanctioning

authority to independently examine the material before granting sanction. The sanction which is accorded mechanically by an inappropriate authority would be no sanction in the eyes of law.

25. In the case of Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, the Hon''ble Apex Court has held that "the grant of sanction is not an idle formality or a acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned."

26. In the present case, illegal gratification was recovered from the accused No. 2. In absence of any corroborative evidence, there was no reason for drawing a presumption at the stage of according sanction and, therefore, this Court is of the opinion that there was no valid sanction to prosecute the accused.

27. Section 19 of the Prevention of Corruption Act clearly prohibits the Courts from taking cognizance of the offences specified therein in absence of a sanction to prosecute. It is however at the stage of recording of evidence that the person according sanction is subject to cross-examination and thereby it could be ascertained as to whether the sanction to prosecute was accorded in accordance with the established provisions of law as well as the circulars issued by the appropriate Government touching Rules of Business of administration of justice. For all the abovementioned reasons, the appellant herein is entitled to acquittal. There is no consistent and cogent evidence to hold that the accused is guilty of the offence with which he was charged and hence the judgment and order passed by the Special Judge, Greater Bombay dated 22.12.2010 deserves to be quashed and set aside. Hence, the following order:-

(i) Appeal is allowed.

(ii) The Judgment and Order passed by the Special Judge, Greater Bombay dated 22.12.2010 in ACB Special Case No. 93/2004 is hereby quashed and set aside.

(iii) The appellant is acquitted of the offence punishable u/s 7 and Section 13(10)

(d) r/w Section 13(2) of Prevention of Corruption Act, 1988.

(iv) The bail bonds of the appellant stand cancelled.

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

Appeal stands disposed of.