(2014) 10 BOM CK 0149

In the Bombay High Court

Case No : Criminal Appeal No. 541 of 2004

Pradip Dhondopant Nagpurkar APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 498-A
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 20, 7

Citation : (2015) ALLMR(Cri) 594 : (2015) 3 BomCR(Cri) 281

Hon'ble Judges : P.N. Deshmukh, J

Bench : Single Bench

Advocate : A.S. Mardikar, Sr. Adv, Advocates for the Appellant; S.M. Bhagde, A.P.P, Advocates for the Respondent

Judgement

P.N. Deshmukh, J.—This criminal appeal takes exception to the judgment dated 2/8/2004 passed by the Special Court, Nagpur in Special Case No. 11/1990 convicting the appellant for the offence punishable under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and sentencing him to suffer simple imprisonment for one year and to pay fine of Rs. 1000/- and in default of payment of fine, to suffer further simple imprisonment for three months. The case of prosecution can be stated briefly as under:

On the day of incident, accused was posted as Police Head Constable (Buckle No. 849) at Police Station, Khaparkheda. A report was lodged by Shobha, wife of complainant Damodhar Raut, against complainant, on the basis of which offence punishable under Section 498-A of Indian Penal Code was registered and investigation was carried out by accused. Accused called complainant to Police Station and informed him about fact of lodging of report by his wife against him and registration of crime and that in the said crime, complainant was to be arrested. At the same time, accused demanded Rs. 100/- from complainant for not immediately arresting him, which amount was paid on 7/10/1989. A few days thereafter accused again called complainant and his mother to Police

Station, Khaparkheda for recording their statements. On their attending the Police Station, statement of complainant alone was recorded and at that time, accused demanded Rs. 200/-, upon which complainant informed accused that he had already paid Rs. 100/-. Accused informed that the said amount was not sufficient and, therefore, complainant agreed to pay further amount of Rs. 200/-. However, since complainant was not willing to make the said payment, he approached Office of Anti Corruption Bureau and submitted his report (Exh. 62).

2. On receiving the said report, P.W. 7 Deshmukh, Deputy Superintendent of Police, Anti Corruption Bureau arranged two panchas from Sales Tax Office being P.W. 1 Purushottam, who has acted as first panch and P.W. 4 Mahesh, who has acted as second panch. Both the panchas were introduced to complainant and they also verified contents of complaint (Exh. 62) from complainant. After they agreed to act as panchas, complainant and both panchas were given demonstration of chemical reaction of phenolphthalein powder with sodium carbonate solution, from which they learnt that when phenolphthalein powder comes into contact with sodium carbonate, colour of solution turns into purple. Complainant then produced amount of Rs. 200/-, upon which phenolphthalein powder was applied and same was kept in his chest pocket with instructions not to pay the bribe amount unless demanded by accused and to give signal by wiping his face by handkerchief after making payment. P.W. 1 Purushottam was instructed to remain with complainant and to hear conversation whatsoever takes place between complainant and accused while P.W. 4 Mahesh was instructed to remain with the raiding party. Panchanama of all these facts was recorded (Exh. 45).

3. Trap was accordingly laid at Police Station, Khaparkheda when complainant along with P.W. 1 Purushottam went to Police Station, Khaparkheda, however, did not find accused and on enquiry, they were informed that accused would arrive in a short time and, therefore, they went to nearby Tea Stall and waited for accused. In a short time, accused arrived, who was pointed out by complainant to be the same person, who had demanded bribe. It is the case of prosecution that looking to complainant, accused asked him whether the work was done, to which complainant answered in affirmative upon which accused said "Chal Aan, Chal De". Complainant, therefore, took out amount of Rs. 200/- from his shirt pocket and tendered it to accused, which he accepted and kept in the chest pocket of his shirt of uniform. Complainant then gave proposed signal, upon which members of the raiding team arrived on the spot and apprehended accused. The finger tips of accused as well as those of complainant were tested in the solution of sodium carbonate when it turned purple. Amount of Rs. 200/- was recovered from the shirt pocket of accused. Solution of sodium carbonate was sprinkled upon the currency notes as well as on the shirt pocket of accused when purple colour dots were found upon them. Panchanama of all these facts was drawn as per Exh. 52.

4. P.W. 7 Deshmukh, Deputy Superintendent of Police thereafter prepared his

report and sent it to Police Station, Khaparkheda, on the basis of which Crime No. 109/89 was registered for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 and further investigation was carried out, during the course of which he entered into necessary correspondence with the competent Authority for grant of sanction to prosecute accused and on receipt of sanction (Exh. 67), he submitted charge-sheet before the Special Court.

5. Charges were framed against accused for the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988, to which he pleaded not guilty and claimed to be tried. The defence of accused was of total denial and false implication.

6. To establish charges levelled against accused, prosecution examined P.W. 1 Purushottam, first panch, P.W. 2 Patil, Head Constable, who deposited muddemal articles with Chemical Analyser, P.W. 3 Raut, Head Constable, who submitted report to Khaparkheda Police Station, on the basis of which present crime came to be registered, P.W. 4 Mahesh, second panch, who was accompanying the raiding party, P.W. 5 Damodhar Raut, complainant, P.W. 6 Bacchewar, Superintendent of Police, who accorded sanction to prosecute accused, P.W. 7 Deshmukh, Deputy Superintendent of Police and concluded the evidence by examining P.W. 8 Thakur, Station Duty Officer on the point of registration of offence under Section 498-A of Indian Penal Code against complainant initially at Mangrulpir and forwarding of documents to Police Station, Khaparkheda, which was accordingly investigated by accused.

7. The learned trial Judge considering the evidence and documents on record acquitted accused of offence punishable under Section 7 of Prevention of Corruption Act, 1988 and convicted him for the offence punishable under Section 13(2) read with Section 13(1)(d) of the said Act and sentenced him as stated above. Hence, this criminal appeal.

8. Heard Shri Mardikar, learned Senior Counsel for appellant and Shri Bhagde, learned Additional Public Prosecutor for respondent. To effectively evaluate their submissions, I have with their assistance scrutinized the evidence on record.

9. Shri Mardikar, learned Senior Counsel for appellant, by referring to the evidence of P.W. 5 Damodhar Raut, complainant, P.W. 1 Purushottam, first panch, P.W. 4 Mahesh, second panch and P.W. 7 Deshmukh, Investigating Officer and contents of pre-trap panchanama (Exh. 45) and post trap panchanama (Exh. 52) has pointed out how evidence of above witnesses is contradictory to each other on the material aspects of the case. The learned Senior Counsel has contended that in view of inconsistency in evidence of these witnesses, prosecution cannot be said to have proved its case beyond reasonable doubt establishing involvement of accused in the present trap. It is submitted that the criminal appeal may be allowed.

10. Shri Bhagde, learned Additional Public Prosecutor for respondent, on the

other hand, has supported the judgment of the learned trial Court and prayed for dismissal of the criminal appeal.

11. In the light of above submissions, I have scrutinised the evidence of P.W. 5 Damodhar Raut, complainant, who is found to have stated that he was married to Shobha in the year 1985, who after cohabiting with him for sometime, left his company and while staying with her parents, lodged complaint against him alleging ill-treatment, on the basis of which offence was registered and the said fact was informed to him by accused by visiting his house and directed him to attend Police Station on the following day. Admittedly, accused was working as Police Head Constable at Police Station, Khaparkheda on the day of incident. Accordingly, complainant visited Police Station, Khaparkheda where accused is stated to have demanded from complainant amount of Rs. 100/- for not immediately effecting his arrest, which he paid. Two-three days thereafter accused visited complainant along with summons against him and his mother with reference to complaint lodged by his wife and directed complainant to visit Police Station along with his mother. Accordingly, complainant visited concerned Police Station with his mother. Their statements were recorded and accused informed complainant that he would be arrested for the offence punishable under Section 498-A of Indian Penal Code. It is further stated by complainant that he informed accused that he had already paid Rs. 100/-, upon which accused said that it was not sufficient and demanded Rs. 200/- immediately. Complainant since was not having amount on that day, he was told by accused to come on Sunday and if no amount was paid on that day, he would be arrested. Complainant, therefore, came to the office of Anti Corruption Bureau and lodged his report (Exh. 62).

Complainant has further stated that in the office of Anti Corruption Bureau, two Government employees were present, who were introduced to him by the Investigating Officer where he produced four notes of Rs. 50/- each in denomination and was shown demonstration of effect of sodium carbonate solution upon phenolphthalein powder and about applying phenolphthalein powder on bribe amount produced by him and keeping the said amount in his right side chest pocket by Investigating Officer Shri Deshmukh. He has also stated about instructions given to him not to touch the currency notes and give the same to accused only on demand.

Complainant has further stated that he along with P.W. 1 Purushottam accompanying the members of raiding party then proceeded to Khaparkheda by Government vehicle and had alighted therefrom at some distance from Police Station, Khaparkheda. Complainant has stated that while he and P.W. 1 Purushottam were proceeding towards the place as directed by accused, accused was found passing-by, who was pointed out by complainant to P.W. 1 Purushottam. At that point of time, according to complainant, accused came near him and enquired from him whether work was done to which he replied in affirmative and demanded Rs. 200/-, which amount was taken out by him from his shirt pocket and paid to accused, which he received and kept in the shirt pocket of his uniform. It is further stated by complainant that he then gave proposed signal, upon which Shri Deshmukh, Investigating Officer and members of raiding party arrived on the spot and apprehended accused. According to complainant, on recovering amount from the shirt pocket of accused, water was sprinkled on the said recovered currency notes as well as on the shirt pocket of uniform of accused, upon which red colour dots were noted.

In the entire cross-examination of complainant, though nothing is elicited to doubt his evidence, he has admitted that he had already secured anticipatory bail order in his favour with reference to arrest in the said crime.

12. In view of above admission of complainant, it is necessary to first scrutinize the evidence of complainant and to satisfy if it finds corroboration from independent witnesses on the material aspects as deposed by complainant along with other evidence on record. Keeping this aspect in mind, before considering evidence of P.W. 1 Purushottam, an independent panch witness, evidence of complainant as stated above, reveals that on the day of demand of Rs. 200/- made by accused to him, since he was not intending to make payment of the said amount, he went to the Office of Anti Corruption Bureau where P.W. 7 Deshmukh was present to whom he lodged his report (Exh. 62) and he was introduced to two Government employees, who were appointed to act as panch witnesses. In that view of the matter, it is the specific case of complainant as revealed from his evidence that on the day of demand of Rs. 200/-, he visited Office of Anti Corruption Bureau though he has stated that 2-4 days prior to demand of Rs. 200/- as above, he had already paid Rs. 100/- to accused.

In view of his evidence, when evidence of P.W. 1 Purushottam is perused, he appears to have stated that while he was working in the Sales Tax Office along with P.W. 4 Mahesh and was in the Office on 21/10/1989, on the requisition of Officers of Anti Corruption Bureau, the Additional Sales Tax Commissioner had instructed them to attend the Office of Anti Corruption Bureau to act as panchas and had accordingly attended the Office of Anti Corruption Bureau at 3 p.m. on that day where on meeting with Mr. Deshmukh, they were directed to attend the Office on the following day at 6 A.M. Thus, from the evidence of this witness, they had visited the office of Anti Corruption Bureau on 21/10/1989 and were directed to remain present on 22/10/1989. Complaint (Exh. 62) is dated 21/10/1989 wherefrom it is revealed that complainant attended the Office of Anti Corruption Bureau on that date. According to evidence of P.W. 7 Deshmukh, Investigating Officer, on that date, complainant had attended his Office at 1.30 p.m. Though complainant has stated about presence of two Government employees in the Office of Anti Corruption Bureau, for want of specific evidence, particularly having no time mentioned by complainant about his visiting Office of Anti Corruption Bureau, it appears that even on complainant''s reporting to Office of Anti Corruption Bureau and lodging his report (Exh. 62), two panchas were already present there, who were introduced to complainant and then report was lodged.

13. Though according to evidence of P.W. 1 Purushottam, after his visiting the Office of Anti Corruption Bureau as stated above along with P.W. 4 Mahesh, they were directed to remain present on the following day when they appear to have been given demonstration and first panchanama was drawn. According to complainant, day on which he lodged his report, which appears to be dated 21/10/1989, after his introduction to both the panchas, he produced bribe amount of Rs. 200/- and he along with panchas were given demonstration of effect of phenolphthalein power on sodium carbonate solution and further instructions with reference to the proposed trap to be laid. No explanation is put forth by the prosecution on these aspects.

14. Even on the point of incident, it has come in the evidence of complainant that after he and P.W. 1 Purushottam alighted from Government vehicle and were proceeding towards place as directed by accused, accused was found passing-by, who was shown by complainant to P.W. 1 Purushottam as the same person, who demanded bribe. Contrary to his evidence, it has come in the evidence of P.W. 1 Purushottam that after alighting from vehicle, he along with complainant went to Police Station, Khaparkheda and enquired about accused, but he was not present in the Police Station and they were informed by some Police officials that accused was out of Police Station for some investigation and, therefore, they waited for half an hour near Tea Stall while members of raiding team and P.W. 4 Mahesh, second panch were present near the vehicle. It is further stated by P.W. 1 Purushottam that after he along with complainant took tea, complainant by gestures informed him that accused was coming. Thereafter, complainant and he waited outside the premises of Khaparkheda Police Station. At this juncture, it is to be noted that though it is the case of complainant that he along with P.W. 1 Purushottam was proceeding to the place where accused had directed him to come, his evidence is silent about the place where he was asked to be ready with the amount. P.W. 1 Purushottam has further stated that thereafter accused asked whether work was done, to which complainant replied in affirmative and told accused to take the amount and by taking out the amount from his shirt pocket, gave it to accused. Evidence of this independent witness thus appears to be silent on the point of demand by accused as what is stated by P.W. 1 Purushottam is that immediately after accused had asked whether work was done, it is complainant, who had, on his own, taken out the amount from his chest pocket and asked accused to accept the same. Though in the latter part of his examination-in-chief P.W. 1 Purushottam has stated that amount was paid by complainant to accused as demanded by him, has admitted in his cross-examination that the amount was not demanded by accused in his presence. In view of the said admission coupled with above evidence, complainant''s version on the point of demand does not appear to be convincing. It is further admitted by P.W. 1 Purushottam that in his presence, there was no talk between complainant and accused and that complainant did not say to accused that he should not be arrested.

This witness has also admitted that he is not aware as to why accused asked complainant whether the work was done. This admission on the part of P.W. 1 Purushottam in fact raises reasonable doubt in the case of prosecution if he had attended the Office of Anti Corruption Bureau and had gone through the contents of the complaint (Exh. 62) and that same was truly recorded as orally informed by complainant. Had P.W. 1 Purushottam any knowledge of case of complainant, he would not have replied to the effect that he could not give reason as to why accused asked complainant whether work was done.

15. In the light of above evidence of P.W. 1 Purushottam, first panch, when evidence of P.W. 4 Mahesh, who has acted as second panch, is perused, he has stated that he along with P.W. 1 Purushottam had attended Office of Anti Corruption Bureau as directed by their superior Officers where Shri Deshmukh, Investigating Officer was present when they were directed to attend the Office on the following day. As evidence of P.W. 1 Purushottam, evidence of P.W. 4 Mahesh also falsifies the case of complainant, who, as already stated above, has deposed that on the day of demand, since he was not interested to make payment of bribe, he visited the Office of Anti Corruption Bureau and lodged his report, upon which he was introduced to two panch witnesses. No explanation is coming forth from prosecution on this aspect.

16. Apart from above, it is to be noted that according to case of prosecution, after apprehension of accused and recovery of bribe amount from his pocket, solution of sodium carbonate was sprinkled on the currency notes as well as on the shirt pocket of uniform of accused, upon which purple colour dots were found. Similar are the contents of post trap panchanama as well as evidence of P.W. 7 Deshmukh, Investigating Officer. Complainant has also specifically stated that water was sprinkled on currency notes and shirt pocket of uniform of accused upon which red dots were noted. Apart from Investigating Officer and contents of post trap panchanama, evidence of complainant is also to the effect that on the currency notes, water was sprinkled. However, according to Chemical Analyser''s report, apart from pink colour liquid and two bottles, shirt of accused was sent for analysis. According to Chemical Analyser''s report, though phenolphthalein powder is said to be detected on Exh. 3 - shirt of uniform of accused, there is no reference of finding any residue of sodium carbonate solution thereon. Similarly, as per requisition to Chemical Analyser, the recovered currency notes upon which said solution is alleged to have been sprinkled appear to have not been sent for analysis. The Investigating Officer in his cross-examination has admitted to have not sent the said currency notes for chemical analysis. He has also admitted to have not sent solution, which was sprinkled on the currency notes as well as on the shirt pocket of uniform of accused to Chemical Analyser and also admitted to have not seized the shirt of complainant. It is also admitted that solution, which was sprinkled on the shirt pocket of complainant was not sent for its chemical analysis.

17. No reason is put forth by the prosecution for Investigating Officer not

sending the above articles for analysis to Chemical Analyser, at least the currency notes to which, according to its case, phenolphthalein powder was smeared on both sides, which are alleged to have been recovered from the shirt pocket of accused and found to have stained with purple colour dots when sodium carbonate solution was sprinkled upon the same. In that view of the matter, I find it useful to refer to the case of Raghbir Singh Vs. State of Punjab, . In the similar set of circumstances, Their Lordships have observed thus:

"Where a trap is laid for a public servant, it is desirable that the marked currency notes which are used for the purpose of trap are treated with phenolphthalein powder so that the handling of such marked currency notes by the public servant can be detected by chemical process and the Court does not have to depend on oral evidence, which is sometimes of dubious character for the purpose of deciding the fate of the public servant."

In view of above stated facts and proposition of law, prosecution cannot be said to have established its case beyond reasonable doubt with reference to recovery of tainted money from the shirt pocket of accused.

18. The case of prosecution is thus doubtful right from its inception as from the evidence discussed above, it has come on record that on the day of complainant lodging report, both panch witnesses were already present in the Office of Anti Corruption Bureau and apart from that, it has come in the evidence of complainant that after phenolphthalein powder was applied on currency notes, they were kept in his shirt by P.W. 7 Deshmukh while according to P.W. 1 Purushottam, after application of phenolphthalein powder as above, complainant himself kept the currency notes in his shirt pocket and according to P.W. 7 Deshmukh, Investigating Officer, Head Constable Sangitrao kept those currency notes in the chest pocket of complainant. Though this contradictory evidence may appear minor in nature, it creates reasonable doubt in the case of prosecution of finding traces of powder on the hands of accused as well as complainant, more particularly in the absence of said currency notes being forwarded to the Chemical Analyser for analysis.

19. Having considered above evidence into totality, I find much substance in the defence of accused when it was suggested to complainant that accused had neither demanded nor accepted Rs. 200/-, as alleged. With reference to the inconsistent statements made by P.W. 5 Damodhar Raut, complainant and P.W. 1 Purushottam, first panch, thus their evidence is not found to be worthy to be acted upon.

20. In the absence of convincing evidence on the point of demand and acceptance and according to the well settled law that merely recovery of money from the person of accused is not sufficient to establish his guilt, I find it useful to refer to the decision in the case of State of Punjab Vs. Madan Mohan Lal Verma, wherein in para 7 of the judgment it is observed thus:

"7. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act, 1988. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act 1988. While invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the Court may look for independent corroboration before convicting the accused person."

On this aspect, reference can also usefully be made to the judgment of the Supreme Court in the case of Banarsi Dass Vs. State of Haryana, wherein it is held that recovery of the tainted notes divorced from the evidence in respect of demand and acceptance would not amount to establishing the offence against the accused beyond reasonable doubt.

21. Having considered above evidence, I find that evidence of complainant is not free from doubt and no corroboration is found to the evidence of complainant from independent witnesses. In that view of the matter, the case set out by accused of false implication cannot be ruled out. The criminal appeal is thus liable to be allowed by granting benefit of doubt to accused. In the result, the criminal appeal is allowed. The impugned judgment and order dated 2.8.2004 passed by the Special Court, Nagpur in Special Case No. 11/1990, thereby convicting and sentencing the appellant for the offence punishable under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 is quashed and set aside. The appellant is acquitted of the said offence. The bail bonds of the appellant stand cancelled. The fine amount, if any paid, be refunded back to the appellant.