

(2002) 03 BOM CK 0086
In the Bombay High Court
Case No : Criminal Appeal No. 28 of 1994

Punyakar Rajaram Gajbhiye

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Corruption Act, 1988 — Section 13, 19, 7

Citation : (2002) 104 BOMLR 450

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Judgement

D.G. Deshpande, J.—Heard Mr. Shah for the accused/appellant and learned A.P.P., for the State/Respondent.

2. In Special Case No. 11 of 1990 two accused were prosecuted under the Prevention of Corruption Act. Accused No. 1 was working as a Sub-Engineer in M.S.E.B. He was convicted. He filed appeal to this Court and the same was decided by me and he was acquitted. This appeal is filed by the original accused No. 2 [who is referred to appellant hereinafter]. He is also convicted under the Prevention of Corruption Act for demanding and taking bribe and sentenced to suffer R.I. for six months and fine of Rs. 100/ in default R.I. for one month u/s 7 of the Prevention of Corruption Act and u/s 13(1)(d)(i)(ii) read With Section 13(2) of the said Act and sentenced to suffer R.I. for one year and fine of Rs. 100/ in default R.I. for one month.

3. At the relevant time appellant/accused No. 2 was working as Meter Tester in the M.S.E.B. The complainant in this case was one Shivaji Ramchandra Jachak. He had some complaints about working of his electric meter. The meter was ultimately given by the complainant to the appellant/ accused No. 2, the Meter Tester, who started demanding bribe. Even after some amount was paid to appellant/accused No. 2 his demands continued. Therefore, the complainant lodged a complaint to the Anti-Corruption Office, Nashik. The amount was to be

given on 5.7.1989. Two panchas were called. A note of Rs. 100/- was given to the complainant which was subjected to anthracene powder and, after taking all the precautions a trap was arranged, the manner in which the complainant was to give signal was also fixed, panchanama was prepared and the raiding party went there in the electricity office at Panchavati.

4. The complainant went inside the office. Accused No. 2 was standing there near the counter. Accused No. 1 was sitting in the corner. The complainant asked appellant/accused No. 2 whether his meter was ready. Appellant/accused No. 2 told that the meter was tested, then without saying anything further Mr. Gajbhiye came out of the office and stood on the footpath. The complainant and panchas followed him. The appellant/accused No. 2 was asked by the complainant whether the money as agreed was brought. While they were talking, the accused No. 1 came out of the office and went to the parking place where his motorcycle was parked and when he was across the appellant/accused No. 2, the complainant and the panchas, the appellant/accused No. 2 pointed his finger to accused No. 1 and the complainant went to accused No. 1, gave the money to accused No. 1 which was kept by accused No. 1 in his left side pocket. Thereafter a signal was given and the accused No. 1 was trapped with money. This is the prosecution case.

5. Challenging the conviction Mr. Shah contended that firstly, the sanction to prosecute this appellant was not given by the Authority Competent to remove him. According to Mr. Shah the appellant was working in Grade II field service and, he was removable by Executive Engineer. The sanction to prosecute was granted by Joint Secretary and, even though, he is higher in post and rank, he has no power to grant sanction. Therefore, since the sanction is illegal, the appellant was entitled for acquittal.

6. Secondly Mr. Shah contended that the sanction was not properly proved in the sense that the evidence of the Stenographer, who took the dictation and typed the sanction and proved the signature of the Joint Secretary, is false evidence because she was not attached to the office where the Joint Secretary was working. Mr. Shah further contended that the application of mind by the Sanctioning Authority was also not proved by the prosecution. So far as facts are concerned Mr. Shah contended that the evidence of the complainant was full of contradictions, omissions and improvements, that the appellant was not dealing with repairing of meter and, therefore, was not supposed to make any demand, that the trap was not properly proved and that there was no proof that the appellant made any demand before the trap or on the date of trap and, since, according to the prosecution, the amount of bribe was found with the acquitted accused No. 1 and not this appellant, the conviction of the appellant was not liable to be sustained. Mr. Shah relied upon following judgments in support of his contentions :- (1) Chiman Keshavdas v. State of Maharashtra 1989 (1) Bom. C.R. 422 : 1988 Mah. L.J. 913; (2) Virendra Pratap Singh v. State of U.P. 1991 Cri.L.J. 2964 : 1991 All. L.J. 983; (3) Mansukhlal Vithaldas Chauhan Vs. State of

Gujarat, ; (4) Jagannath Maruti Tekade Vs. State of Maharashtra, .

7. As against this the learned A.P.P., for the State Mr. Singhal contended that as per the Rules of the M.S.E.B. the superior officers were competent to exercise the powers of their subordinates and, as such there is no illegality in the sanction though the same was given by the Joint Secretary who was higher in rank and post than the Executive Engineer.

8. So far as facts are concerned, the learned A.P.P. contended that the prosecution has succeeded in proving the demand of bribe and acceptance of bribe by the appellant/accused No. 2. He submitted that even though the bribe amount was actually found with the original accused No. 1, he accepted the same at the gesture of appellant/accused No. 2 who had demanded the amount, and therefore, that circumstance cannot be exploited by the appellant for his acquittal.

9. It is necessary at this juncture to consider the case laws relied upon and referred to by Mr. Shah, in the case before the Allahabad High Court i.e. 1991 Cri.L.J. 2946 the petitioner was a Naib Tahsildar. He was prosecuted as per the report of Vigilance Committee set up specially for that purpose and the prosecution was for offence under the Indian Penal Code as well as u/s 5(2) of the Prevention of Corruption Act, 1947. Sanction to prosecute the petitioner was accorded by the Governor on 18.11.1982, the charge-sheet was filed and the accused prosecuted. In the course of trial, the petitioner filed a petition to the Allahabad High Court u/s 482 of the Code of Criminal Procedure for quashing the proceedings and one of the grounds raised was that there is no valid sanction to the prosecution. The petitioner was selected by U.P. Public Service Commission and appointed as Naib Tahsildar. After completion of probation he was confirmed. He was appointed by Board of Revenue. There was no dispute before the Allahabad High Court that the petitioner was a person not appointed by the Governor and was removable from the office by the Board. Sanction to prosecute was granted by the Governor. The services of the petitioner were removable by the Board and not by the State Government or by the sanction of the State Government and in that background the Court held that the question was whether the State Government which is the higher authority can remove the public servant or not but it is just other way i.e. as to whether public servant is only removable by the State Government or with the sanction of the State Government and not otherwise. In that case the petitioner was removable otherwise than by the State Government or with the sanction of the State Government and therefore, in this background, the Court held that the sanction was not proper and along with other grounds that petition was allowed and proceedings were quashed. It was on the basis of the aforesaid case Mr. Shah contended that the sanction is prosecuted against the present appellant by the authority higher than the Executive Engineer was not proper and the trial was vitiated.

10. Mr. Shah in order to substantiate his contention produced a book "Employees" Service Regulations", published by M.S.E.B. itself through its

Secretary. Advocates from both sides agreed that these, Rules applied to the appellant/accused and, service conditions are included in these rules. Both of them relied upon these rules and no other rules, and therefore, they are required to be considered.

11. Further it was agreed by both Mr. Shah and Mr. Singhal that as per Schedule "C" the appellant is at Sr. No. 4 (iii) - Employees in Pay Gr. III in the Field and the Competent Authority, as per Column 3 of the said Schedule vis-a-vis the appellant, is the Officers of the rank of EE/ACPO/ EE (Stores)/ACOS or equivalent and above. According to Mr. Shah, as per this Schedule and the Rules the Authority Competent to remove the appellant is EE and since the Joint Secretary who accorded the sanction was higher than Executive Engineer, the sanction was invalid.

12. In the same rules the hierarchy of the officers is given in the 20th Schedule beginning from the top most officer to the lowest in succession. Joint Secretary (Tech.) is at Sr. No. 17 and Executive Engineer is at Sr. No. 41. Both of them, therefore, admitted that Executive Engineer is much more junior cadre wise than the Joint Secretary who accorded the sanction.

13. Section 19(1)(c) of the Prevention of Corruption Act requires that before launching prosecution against public servant under the said Act, the Authority Competent to remove the said person should accord the sanction. Since both Mr. Shah for the appellant and Mr. Singhal, A.P.P., for the respondent have relied upon Maharashtra State Electricity Board Employees' Service Regulations (hereinafter referred to as "the M.S.E.B. Regulations") referred to above as governing the service of the accused/appellant and no other rules or regulations were shown in this regard, the entire controversy has to be resolve with reference to the aforesaid rules i.e. M.S.E.B. Regulations.

14. Schedule "A" of the M.S.E.B. Regulations is about the minor lapses with reference to Regulation 86(2). Regulation 86 is about classification of offences and Regulation 86(2) is about minor lapses as mentioned in Schedule "A" which may result in a punishment up to the limit prescribed in (1) of the Statement below Regulation 91.

Schedule "B" of the M.S.E.B. Regulations gives details of acts of misconduct with reference to Regulation 86(3) for which maximum penalty is as prescribed in (2) of the statement below service Regulation 91 according to the gravity of the misconduct.

Regulation 91 is about punishment for minor lapses and acts of misconduct and, at Sr. No. 2 under punishment column different punishments are prescribed which include removal from service at (f) and; dismissal at (g).

Schedule "C" of the M.S.E.B. Regulations is about [Competent Authorities to impose punishment and hear appeals] and at Sr. No. 4 (iii) employees in Pay Gr. III in the Field, (excluding employees in Security Dept.) and the Competent

Authorities to impose punishment are

Officers of the rank of EE/ACPO/EE (Stores)/ACOS or equivalent and above.

Therefore, it will be clear that from the aforesaid three Schedules and, particularly Schedule-"C" 4 (iii) that the authority to remove the accused/appellant was given to EE/ACPO/EE (Stores)/ACOS or equivalent and above. Further Regulation 5 in Chapter-1 provides as below:

No authority other than the Competent Authority prescribed under these Regulations shall exercise or delegate powers under these Regulations without general or specific orders from the Board.

Provided that it shall be open to the authority higher than the Competent Authority to exercise the powers delegated to the Competent Authority when exigencies of the situation so warrant. When the authority higher than the Competent Authority acts accordingly, it shall be to the exclusion of the Competent Authority.

15. It will be clear from the aforesaid Regulation that as per Regulation 5 powers of Competent Authority are to be exercised by only them initially and they cannot be delegated to other by those Competent Authorities. However, as per the Proviso, which is equally important for Regulation-5, the powers of the Competent Authority can be exercised by the Authority higher than the Competent Authority. In the instant case the sanction is granted by the Joint Secretary (Tech.) who is higher than Executive Engineer and in view of the Proviso to Regulation 5, it is perfectly permissible and legal.

However, Mr. Shah, then, contended that if the authority higher than the Competent Authority exercises these powers, that can be done only if exigencies of the situation so warrant and according to him, nothing is brought on record by the prosecution that the exigencies of the situation warranted the Joint Secretary (Tech.) to accord the sanction instead of Executive Engineer. Apparently this contention appears to be correct. However, it is required to be rejected because of the Schedule "C" itself. In the Schedule "C" itself as stated above the following are included as Competent Authority to impose the punishment. They are Officers of the rank of EE/ ACPO/EE (Stores)/ACOS or equivalent and above.

Schedule "C" therefore directly empowers the offices above the rank of Executive Engineer to accord the sanction and Schedule "C" does not require that those powers can be exercised if exigencies of the situation so warrant. Further Proviso (2) of Regulation 5 lays down that if the higher authority exercises those powers that will be to the exclusion of the Competent Authority.

16. For both the aforesaid reasons and, particularly the provisions of Schedule "C" quoted above empowering the authority higher than the Competent Authority to exercise the powers of removal without any restraint on their powers nullifies the argument of Mr. Shah that the sanction to prosecute granted by the Joint Secretary (Tech.) is not valid sanction. The judgment of Allahabad High

Court relied upon by Mr. Shah also cannot help him because the sanction to prosecute the accused before this Court is granted by the authority who is the Competent Authority under Regulation 5 and in Schedule "C" (4)(iii). Therefore, there is no illegality in the sanction in this case.

17. Second attack of Mr. Shah was that the sanction has not been properly proved by the prosecution nor it stands proved by the evidence of P.W. 3 - Smt. Ramabai.

It is not disputed fact that when the sanction was to be proved in Court, Mr. Ghisad who was working as Joint Secretary, Technical Branch, Bombay and who had accorded the sanction was dead. However, he could not have been examined in Court for proving the sanction. Therefore, prosecution examined P.W. 3 Ramabai. She has stated that on 8.3.90 she was working in Discipline Branch, Bombay of M.S.E.B and at that time Shri Ghisad was working as Jt. Secretary. Shri Ghisad was the Competent Authority to remove the Jr. Engineer, Lineman and Meter Tester. She further stated that on 8.3.90 she was called Shri Ghisad to his cabin in Prakashgad office as she was working as a typist. Shri Ghisad was having case papers of this accused and other accused. Shri Ghisad asked her to type. He gave dictation to her. She gave the typed papers to Shri Ghisad. He checked the typed papers and then signed them as per Exhibit 48. She has also stated that Shri Ghisad dictated one letter and the said letter is at Exhibit 49.

18. Mr. Shah for the accused/appellant attacked the evidence of this witness on the ground that this witness was working at Dharavi office and Mr. Ghisad was working at Fort and, therefore, there was no propriety for this witness being called from Dharavi to Fort or to Prakashgad. I do not find any merit in this contention. There is no dispute that Prakashgad is the office of M.S.E.B. at Bandra and, Dharavi is not far away from Bandra. There is no dispute that Mr. Ghisad was the Joint Secretary, Technical Branch and, as such authority to visit the office of M.S.E.B. at Prakashgad even though his office was at Fort. Witness P.W. 3 stated that in 1990 she was working in Discipline Branch. It cannot be therefore said that calling this witness, who was concerned with the department for typing sanction order, was in any way illegal. It cannot also be said that the witness ordinarily had no concern with the kind of work entrusted to her by Mr. Ghisad on that day.

19. Mr. Shah for the accused contended that even if the evidence of this witness is accepted, it does not prove that the sanction was accorded after application of mind. This contention is also required to be rejected because admittedly Mr. Ghisad is dead and whether the sanction was granted by application of mind or not has to be perused from the sanction itself. P.W. 3 has stated that the entire sanction was dictated by Mr. Ghisad to her. In the said sanction all the facts, pertaining to the complaint, laying of trap and all that followed thereafter, have been given precisely but accurately. No contradictions in the sanction or in the prosecution case are brought on record, nor pointed out to me during the course of arguments by Mr. Shah. It is clear that the sanction is accorded after

considering all the circumstances independently. Therefore, it cannot be said that there was non-application of mind while granting the sanction. Having dealt with this legal aspect regarding sanction what remains now from the arguments of Mr. Shah is challenge to the oral evidence of the complainant and case of the prosecution.

20. P.W. 1 - Shivaji Jachak is the complainant. He has stated that an employee of the M.S.E.B. told him that his metre was not in order and he should get it repaired. Two days thereafter after making necessary enquiry in that regard one lineman Gaidhani went to his house on 23.6.1989, removed the metre and gave it to the complainant. The complainant carried the metre to the office of Board. One Mr. Sohani took Rs. 10/- from him, gave him a receipt and two forms as per Exhibits 35, 36. The complainant paid Rs. 10/- in the Bank. After ten days he went to Mr. Soni and he was asked to go to Panchavati. At Panchavati office the complainant handed over the metre to one worker. That worker broke the seal of the metre, wrote something on the back of the receipt Exhibit 34 and the person to whom he had given the metre and who broke the seal is the present accused/appellant Senior Clerk Gajbhiye. It is at this time that Gajbhiye made demand of Rs. 100/-. The complainant did not have that much amount, therefore, Gajbhiye, the accused, asked the complainant to come later on.

21. According to the complainant on 4.7.1989 he met Gajbhiye in the office. He enquired about the metre. Gajbhiye took out the metre, showed it to the complainant, tested it and kept it aside. Mr. Gajbhiye asked the complainant whether he brought Rs. 100/-. The complainant told him that he had no money, but Gajbhiye asked him to make arrangement of the money till next day and then collect the metre. It was thereafter that the complainant went to Anti-Corruption Office and lodged complaint.

22. Thereafter the complainant has given evidence regarding laying of trap, calling of witnesses and all the precautions that were taken by the officers in that regard. Thereafter he went to the office of Gajbhiye. Gajbhiye was standing inside the counter. He asked Gajbhiye about the metre and then the complainant gave following narration:

Gajbhiye then came out. While coming out of counter Mr. Gajbhiye told me that my metre was ready. Then Mr. Gajbhiye came to the foot steps we followed him. When I was following Mr. Gajbhiye he asked me whether I had brought money as agreed, This question was put to me by Mr. Gajbhiye. When we were on the footpath Mr. Thorat came there and ride the motorcycle that was kept by the side of the road. I told Mr. Gajbhiye that I had brought money as agreed. Mr. Thorat gave a start to his motor cycle. At that time Mr. Gajbhiye pointed his finger towards Thorat?.

When I went to near Thorat, he put his left hand forward. At that time, I took out the money from right side pocket of my trouser and gave it to Thorat.

23. Mr. Shah for the accused contended that admittedly, from this evidence of

the complainant supported by the panchanama it was clear that the present accused had not accepted the bribe money, and therefore, according to him, the accused/appellant was liable to be acquitted.

24. It is impossible to accept the aforesaid contention of Mr. Shah. Even though the bribe money was not accepted by the accused/appellant and it was given to the acquitted accused, it was meant for the present accused, and because it is the case of the prosecution that it was this accused/appellant who had demanded the bribe, against whom the report was lodged, for whom the trap was arranged and who, on that day and time of the trap, asked the complainant whether he had brought the money as agreed. It was the accused/appellant who pointed his finger towards the acquitted accused. From all these circumstances, it has to be held that the money was to be accepted by the accused/appellant as it was meant for him.

25. Mr. Shah relied upon the judgment of this Court in *Chiman Keshvadas Bhatia Vs. State of Maharashtra*, . In that case the amount of bribe of Rs. 125/- was accepted by the accused and it was found with him. However, the accused was acquitted because the Court found that there was no corroboration to the testimony of the complainant in that case. The Court held that bare words of the complainant could not be accepted in the absence of corroboration.

26. It appears that in that case, Civil Surgeon Dr. Gogate, on whose behalf the accused had made demand and accepted the amount, had not given consistent evidence regarding the fees which he was charging for signing the certificate of illness of government servants. The Court definitely came to a conclusion that reasonable doubt has been created as to whether the complainant was giving true version or not and, therefore, benefit of doubt was given to the accused.

27. In the instant case even after cross-examination of the complainant, it cannot be said that the accused/appellant had succeeded in creating doubt about the veracity of the witness. Firstly there is no enmity between the parties; secondly the complainant has no motive to falsely implicate the accused; thirdly the complainant has given his metre to the accused after fulfilling all the formalities of the Board; fourthly the metre was with the accused and it was the accused who demanded the money; fifthly the accused was concerned with the transaction because he took the metre from the complainant, broke the seal and wrote something on Exhibit 34 and gave two forms Exhibits 35 and 36 to the complainant and it was this accused who repeatedly demanded the bribe from the complainant. The evidence of the complainant therefore regarding demand is consistent and the accused has not been able to create any doubt about the veracity of the witness. The complainant is further corroborated by P.W. 2 Pundalik Pawar who acted as panch and who accompanied with the complainant at the time of raid. P.W. 2 Pawar has given following narration as to what happened at the time of trap and raid:

We were sitting facing Gajbhiye. Jachak uttered words "Namskar" addressed to

Gajbhiye and then asked Gajbhiye whether his meter was repaired and tested, Gajbhiye told him that meter was tested. Gajbhiye came outside the counter and went on the footpath. The complainant followed Gajbhiye and went to the same footpath. 1 also followed the complainant and stepped down on the foot path. At the same time Mr. Thorat came from behind us hastily and going ahead of us, rode on a motor cycle. The complainant told Gajbhiye that money was brought as settled. At that time Gajbhiye pointed out his finger towards Thorat i.e. the acquitted accused.

From the aforesaid version of witness Pawar Mr. Shah contended that this witness does not show anything about the demand made by the accused. It is true that this witness does not say that the accused demanded money. But excepting that, he is consistent regarding happenings on the date of trap and raid and the manner in which the accused treated the complainant and went out of the office and made gesture towards the acquitted accused indicating that money should be accepted by him.

29. If the accused has succeeded in creating doubt about the mind and the veracity of the complainant, the Court would have required to seek corroboration to his testimony. But when there is absolutely nothing on record to create doubt about the evidence of the complainant, then the evidence of P.W. 2 Pawar is sufficient to lend credence to the testimony of the complainant. To the contrary, in the cross-examination of P.W. 2 Pawar at paper book page 119 the accused has given following suggestions:

It is not correct to say that I did not see how Jachak gave money to Mr. Thorat. It is not true to say that only after Jachak had given money to Thorat, I came to know that the signal made by Gajbhiye was towards Thorat. When Mr. Thorat was sitting on the motor cycle his back was towards me. I did not hear the conversation between Mr. Thorat and Jachak.

This answer in the cross-examination however clearly indicates that before the present accused gave signal, there was some conversation between the complainant and the accused/appellant and, when the complainant in this background says that this conversation was about the demand of money by the accused, there are no reasons to disbelieve the complainant. Further in the cross-examination Mr. Pawar admitted that the contents of the panchanama Exhibit 53 are correct and true.

30. It will be clear that all the aspects of the matter have rightly considered by the Trial Court and the accused came to be convicted. I do not find any reason to come to different findings. Lastly it was contended by Mr. Shah for the accused that looking to the fact that the incident is of 1989; that the accused has lost his job; he is now in his 50; and he has suffered mental agony in all throughout this period, his sentence should be reduced to the maximum possible. The accused/appellant is sentenced to suffer R.I. for six months u/s 7 and fine of Rs. 100/- in default R.I. for one month and he is also convicted u/s 13(1)(d)(i)(ii) read with

Section 13(2) of the Prevention of Corruption Act and sentenced to suffer R.I. for one year and to pay fine of Rs. 100/-

31. Considering the aforesaid facts viz. pendency of case since 1989; that accused has lost his job and has suffered on that counts, his sentence is reduced to six months from one year. Hence I pass the following order:

ORDER

The appeal is partly allowed.

The conviction of the accused/appellant under both the sections is maintained. But his sentence u/s 13(1)(d)(i)(ii) read with Section 13(2) of the Prevention of Corruption Act is reduced from one year to six months.

Rest of the conviction and sentence remains as it is.

The accused to surrender before the Trial Court within eight weeks from today.