
(2015) 07 BOM CK 0133
In the Bombay High Court
Case No : Criminal Appeal No. 553 of 2001

Purushottam Vasant Joshi

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

Citation : (2016) ALLMR(Cri) 665 : (2015) 4 BomCR(Cri) 564

Hon'ble Judges : A.M. Thipsay, J

Bench : Single Bench

Advocate : Ganesh Gole, for the Appellant; S.V. Gajare, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.M. Thipsay, J—The appellant and one Shrikant Kulkarni were prosecuted on the allegation that they had committed offences punishable under section 7 and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988. The learned Special Judge at Sangli, by a judgment and order dated 12th July 2001 convicted the appellant of the said offences and imposed a composite sentence of Rigorous Imprisonment for 1 1/2 year and a fine of Rs. 100/-with a default sentence on him. He, however, held that the charges against the said Shrikant Kulkarni (Accused no. 2) had not been proved and acquitted him. Being aggrieved by his conviction and the sentence imposed upon him by the learned Special Judge, the appellant has approached this Court by filing the present Appeal.

2. The appellant, at the material time, was working as a Maintenance Supervisor in the office of the Taluka Inspector of Land Records, Miraj.

3. The prosecution case, as put forth before the trial court, may be stated thus :-

One Shirish Kabnure had, on 14th November 1006, purchased a certain land

bearing Gram Panchayat No. 1126 and City Survey No. 339 from one Tukaram Sakharam Omashe. After purchasing the land, Kabnure (hereinafter referred to as "the complainant") had given an application in the City Survey office at Miraj for mutation of his name in the relevant records. This application was given to the appellant who was working in the said office at Miraj. The appellant kept the application and demanded an amount of Rs. 1,000/- from the complainant. The complainant asked the appellant as to why that amount was needed, when the appellant told him that it was needed for completing the work as mentioned in the application. The complainant thereupon told the appellant that it would not be possible for him to arrange for the said amount, and that it may be reduced. The appellant then agreed to accept Rs. 500/-. The complainant agreed to accept Rs. 500/-, and gave an amount of Rs. 300/- to the appellant.

On 6th October 1997, the complainant went to the office of the appellant and asked him whether his work had been done. The appellant then told the complainant to give Rs. 200/- by evening, and that he would do the work. The complainant then felt sure that the appellant was asking for a bribe, and therefore, reported the matter to the office of the Anti Corruption Bureau (ACB) at Sangli. He gave his complaint in the office of the ACB, Sangli which was recorded by Mr. M.S. Chougule (PW 4), Dy. Superintendent of Police. Chougule (PW 4) then called two persons Anil Koli (PW 2) and Pandurang Garad to act as panchas. He then laid a trap. The complainant was asked to produce cash of Rs. 200/- and when the complainant produced the same, the numbers of the currency notes along with their denominations were noted down in the pre-trap panchnama. Anthracin powder was applied to the notes. The property of the Anthracin powder was explained to the complainant and the panchas, by giving a demonstration to them. The tainted amount was then kept in the shirt pocket of the complainant.

After recording the pre-trap panchnama, the police party and the panchas left for the City Survey office at Miraj. The complainant and panch Anil Koli (PW 2) walked ahead, and Chougule and others followed them by keeping some distance. The complainant entered the office of the appellant and met him. The appellant asked him to sit. At that time, one person came there and the complainant asked him to come inside the office by saying "come in Kulkarni". Now, this Kulkarni is the Accused no. 2 who, as aforesaid, was prosecuted along with the appellant but, who was acquitted. The Accused no. 2 Kulkarni then occupied a chair which the complainant had vacated for him. The complainant then asked the appellant about his work when the appellant asked him whether he was knowing the City Survey number. When the complainant told him that he did not know the City Survey number, the appellant took out some record and gave it to the accused no. 2 Kulkarni, asking him to do the work. The appellant then asked the complainant if the complainant had brought "as had been told" in the morning. The complainant answered in affirmative. Accused no. 2 Kulkarni then prepared a document and gave it to the appellant. The appellant obtained the signature of the complainant on the back side of a receipt, and then asked

for the money. The complainant took out the currency notes and held them in front of the appellant, but the appellant told him to give the money to the accused no. 2 Kulkarni. The complainant then held the notes in front of Accused no. 2 Kulkarni who accepted the same with his right hand and kept them in the left side chest pocket of his shirt. The appellant had given to the complainant copies of the document. The complainant then came out and gave the pre-determined signal to the raiding party. The members of the raiding party then came inside the office. The complainant was asked to wait outside. Anil Koli (PW 2) pointed out towards the accused no. 2 Kulkarni and told the raiding party that he had accepted the bribe amount as per the instructions given by the appellant. The amount was taken out from the accused no. 2 Kulkarni, and on examination, found it to be consisting consisting of the same currency notes, the numbers of which had been mentioned in the pre-trap panchnama. The traces of Anthracin powder were noticed on the right hand and shirt pocket of the accused no. 2 Kulkarni. The amount was seized under a panchnama.

4. IO Chougule (PW 4) then lodged a report (Exhibit-47) with the Miraj City Police Station which was treated as the First Information Report.

5. Further investigation into the matter was carried out. On completion of investigation, the appellant and the Accused no. 2 Kulkarni came to be prosecuted on the allegation of having committed the aforesaid offences.

6. I have heard Mr. Ganesh Gole, the learned counsel for the appellant. I have heard Mrs.S.V. Gajare, learned APP for the State. With the assistance of the learned counsel for the appellant, I have gone through the evidence oral and documentary adduced during the trial. I have gone through the impugned judgment.

7. Mr. Gole contended that the judgment and order of conviction as recorded by the learned Special Judge is not in accordance with law. According to him, there was no satisfactory evidence to hold the appellant guilty. He submitted that there are material variations in the version of the complainant, and that the complainant is not consistent even with regard to the purpose for which the bribe was allegedly demanded/given. It is submitted that no amount was actually found with the appellant and it was not the case of the prosecution that the tainted amount was accepted by the appellant. He submitted that it was the accused no. 2 Kulkarni who had accepted the tainted amount as per the prosecution case, but he has been acquitted. Mr. Gole also submitted that even the sanction to prosecute the appellant and the other accused as accorded by the Dy. Director of Land Records, Pune Division one Shri Dagdu Madke (PW 3) is not valid as the same suffers from factual errors and indicates non-application of mind.

8. The learned Addl. Public Prosecutor, on the other hand, submitted that the evidence that was adduced before the Special Judge was sufficient to hold the appellant guilty and the evidence has rightly been believed by the learned

Special Judge.

9. Since in this case, the tainted amount is said to have been recovered not from the appellant, but from the accused no. 2 Kulkarni, the evidence of the initial demand needs to be carefully examined. This evidence consists of the uncorroborated testimony of the complainant.

10. In his examination-in-chief, the complainant did not give any date as to when the demand of bribe was made by the appellant. He does not give any date of his going to the office of the appellant. In the complaint (Exhibit-25) this date is mentioned as "27/08/1997", but in the cross-examination, the complainant admitted that it was a mistake, and that actually he had met the appellant on "'29th July 1997'". This admission was elicited from him when his application (Exhibit-26) for mutation of his name in the relevant records as given by him in the office of the appellant was shown to him, and it was pointed out that it bore a date as "29th July 1997".

11. The complainant is also not consistent about what had happened when he had met the appellant in his office for the first time on which date the appellant is supposed to have demanded illegal gratification. After saying that the appellant initially demanded an amount of Rs. 1,000/-, then agreed to accept Rs. 500/- and that the complainant actually gave an amount of Rs. 300/- to him, the complainant stated that the appellant told him to come after 2-3 months. However, the complainant immediately changed the version and said that the appellant had told him to come to his office after every 4-5 days. However, whether he indeed used to visit the office of the appellant every 4-5 days, is not clear and the complainant thereafter narrates only the happenings that took place on 6th October 1997 indicating that nothing had happened in the meantime. On that day, the complainant had gone to the appellant's office in the afternoon and had asked him whether his work had been done. It may be recalled that this work was of getting the mutation entry in the relevant records made, by showing the name of the complainant. This is also clear from the complaint (Exhibit-25) made by the complainant with the ACB. Thus, the theory is that an amount of Rs. 300/- had already been paid to the appellant on 29-7-1997 for effecting the mutation, and the balance of Rs. 200/- was demanded by the appellant when the complainant visited his office on 6th October 1997 to ask whether his work had been done.

12. In the cross-examination of the complainant, and that of IO Chougule (PW 4), it was revealed that the work of making the mutation entry had already been completed before 6th October 1996. The evidence clearly shows that as per the procedure, notices were issued on 30th July 1997 to the complainant, Omashe and Khade who all, had received the same on 1st August 1997. It was suggested to the complainant that his name was already mutated on 16th August 1997 in accordance with the notices dated 1st August 1997, but interestingly, the complainant stated that he "did not know about it". It was suggested to the complainant that when he had come to the office of the appellant and had given

an application for making a mutation entry in the relevant records, he had insisted that the mutation be done immediately, and that, the appellant at that time had stated that there were certain procedural requirements, and that therefore, the change would not be effected immediately. It was also suggested to the complainant that the complainant had told the appellant that the necessary mutation needed to be done immediately as the complainant wanted to obtain a loan from the bank soon. It was suggested that since the appellant had expressed his inability to affect the mutation immediately, the complainant was angry and therefore, lodged a false complaint against the appellant. These suggestions however, were denied by the complainant.

13. Mr. Gole contended that since it was clear that the work of making mutation entry was already over much before 6th October 1997, there was no occasion for the complainant to approach the appellant for effecting such a change, and there was no occasion for the complainant to demand illegal gratification for doing the needful. Mr. Gole contended that it is in order to overcome this defect in the prosecution case, the original theory as to the purpose for which the illegal gratification was being demanded was shrewdly changed by the Investigating Officer by projecting that the amount of Rs. 200/-was being paid for getting the certified extracts of the mutation entry.

14. I have carefully considered this aspect of the matter. Indeed, Chougule has attempted to make out a case that the demand of illegal gratification had been made not only for making the necessary mutation entries, but also for providing certified extracts of the same. In the First Information Report (Exhibit-47) he has mentioned that the appellant and the said accused no. 2 Kulkarni had demanded Rs. 200/-as bribe from the complainant "for giving extract of property register card to him". Now, this is totally inconsistent with what the complainant states. Not only in the oral evidence, but also in his complaint (Exhibit-25) the complainant has categorically stated that the demand related back to the date on which he had first met the appellant and had given an application for effecting the mutation in the relevant records. It was not at all the case of the complainant that any amount was to be paid for obtaining certified extracts of the relevant entries. The possibility of the version regarding the work for which the bribe amount was demanded paid having been changed to overcome the difficulty arising from the fact that the work in question had already been completed, cannot be ruled out in the circumstances. This is particularly so because the complaint claims that he was not aware that the mutation had been already effected. He claimed ignorance about that, and according to him, on 6th October 1997, he was not aware of that, at all. In such a situation, it would not be possible for him to demand the extract of the mutation entries, as that would not serve his purpose at all. The complainant would demand such extracts only after he would know that the mutation entry had been effected. Therefore, the part of the amount of the bribe i.e. Rs. 200/-could never have been for securing the extracts of the mutation entries, if the claim of the complainant that he did not know that the mutation had been effected is to be accepted. Conversely, if the

amount was being paid for obtaining the extracts of the relevant records, then it could not have been pursuant to any alleged demand made on 29th July 1997 when the mutation was not effected at all.

15. It is thus a fact that the version as to why the bribe was being demanded has been attempted to be suitably modified after the revelation of the fact that the work for which the bribe was supposed to be given, was already over. This clearly casts a doubt not only on the credibility of the complainant and Chougule, but also shatters the very basis of the prosecution case.

16. In this context, it is also significant that according to the complainant, he had already paid an amount of Rs. 300/- to the appellant on 29/07/1997 itself, and the balance was to be paid later for which no date had been fixed. It may be recalled that there is a discrepancy in the evidence of the complainant as to whether thereafter, he had been visiting the office of the appellant, or whether thereafter he for the first time, went to the appellant's office on 6/10/1997. Interestingly, it is revealed that the complainant had made an application for the certified extracts of the property card on 6/10/1997 itself. He appears to have received the extracts on 6/10/1997. The complainant in his complaint did not speak about having made any such application. In fact, he was reluctant to admit the authenticity of this application (Exhibit-28) and even of his signature thereon. The possibility of this record having been subsequently created after the trap failed, and after the significance of the fact that the work for which the bribe was allegedly being demanded was already over was grasped, cannot be ruled out.

17. In my opinion, in the facts and circumstances of the case, the variation about the purpose for which the bribe was to be paid is fatal to the case of the prosecution.

18. There is also another aspect of the matter. What is the connection of the accused no. 2 Kulkarni with the appellant, has not been explained by the prosecution. The evidence shows that while the complainant and Anil Koli(PW 2) were sitting in the office of the appellant, the accused no. 2 Kulkarni came there and he was asked to come inside by the appellant by saying "Come in Kulkarni". There is absolutely nothing to indicate that accused no. 2 Kulkarni was aware of the demand of bribe. There is nothing to show that there was some understanding between the appellant and the accused no. 2 Kulkarni in that regard, and that it is pursuant to that understanding, that the accused no. 2 Kulkarni accepted the amount of bribe on behalf of the appellant. There is no evidence to suggest that the entry of the accused no. 2 in the office of the appellant at that point of time was pre-planned. Without there being any evidence of the association of the appellant and the accused no. 2 Kulkarni with each other, and without there being any evidence of any understanding between them, the appellant cannot be held to be responsible for the money that was found with the accused no. 2. The accused no. 2 has been acquitted by the learned Special Judge by holding that he was not aware as to for what the

amount was being given to him. Once this is so, it would be difficult to accept the theory that the appellant had obtained the bribe amount by asking it to be handed over to the accused no. 2 Kulkarni. The transaction could be something different, which the complainant is suppressing.

19. Even the validity and propriety of the sanction to prosecute the appellant and the other accused as has been granted in this case, is not free from doubt. I have gone through the evidence of Dagdu Madke (PW 3) Dy. Director of Land Records, Pune Region, who has accorded the sanction and the sanction order (Exhibit-38). In the sanction order, the accused no. 2 Kulkarni has been described as "unpaid candidate". In the cross-examination, Dagdu Madke admitted that this was a mistake. Anyway, since the evidence adduced by the prosecution is not very satisfactory, it is not necessary to go into the question of the validity of the sanction.

20. In the light of the weaknesses of the prosecution case, I have examined the defence of the appellant, as can be seen from the cross-examination of the prosecution witnesses and answers given by the appellant in reply to the questions put to him in his examination under section 313 of the Code of Criminal Procedure. The appellant had also filed his written statement in the matter (Exhibit-52). According to the appellant, the application for mutation was given by the complainant on 29 July 1997, and that the complainant, on that day had pressed the appellant to effect the mutation urgently by saying that he wanted to take loan from the bank. According to the complainant, he then told the complainant that the same could not be done for at least a period of 15 days as per the law, whereupon the complainant got angry and challenged the appellant to show the law. The appellant then said that the Law and Circular would be available with his Senior Officer, and the complainant then left by saying that he will see the law and would also teach the appellant, law. The appellant further mentions in his written statement that he prepared and issued notices in Form no. 9 about mutation of Maruti Khade and Tukaram Omase as also the appellant and that the notices were served on 1st August 1997. That, after the period of 15 days was over, the mutation entry in the name of the complainant automatically stood confirmed. That, thereafter the complainant did not come to the office of the appellant at all.

21. There is no satisfactory answer as to what for the amount was being paid to the appellant on 6th October 1997. It may be recalled that the complainant's version is categorical i.e. that it was to be paid for effecting the mutation in the relevant record. Since that was already done, this theory cannot be easily accepted, and therefore, the possibility of the Investigating Officer having moulded the same suitably by saying that the bribe was to be paid "for effecting the entry and for getting the certified extracts of the entry". There is a big gap between the date of the alleged demand and the date on which the complaint was made with the Anti Corruption Bureau. In the meantime, the complainant's work had been done. What was the complainant doing during this period, has not

been mentioned by him clearly. There are inconsistent versions of the complainant in that regard and one version is that after that date, he went to the office of the appellant for the first time on 6th October 1997, and the other is that he used to visit his office over 4-5 days. Nevertheless, he does not state what happened in any of such visits.

22. The trap was laid without attempting to make any verification of the demand. The tainted amount was not recovered from the appellant, but from the other accused who has been acquitted. There was no evidence to show any connection between the appellant and the accused no. 2 Kulkarni. There was not even a claim that they had any association or connection with each other, and if so, of what nature. It appears that the accused no. 2 Kulkarni had come to the office of the appellant at the material time accidentally, and in any case, there was no evidence that the appellant had called him in anticipation of the fact that the complainant would be bringing the amount of bribe and that the same could be paid by the complainant to the accused no. 2 Kulkarni. The complainant did not speak about any application having been given for obtaining the extracts of the mutation entries on 6th October 1997, and attempted to suppress this fact. The complainant appears to have actually received the extract of the mutation entry on 6th October 1997 itself. Under what circumstances he received the same, is not clear.

23. The defence of the appellant was clearly plausible. The appreciation of evidence as done by the learned Special Judge is not in accordance with law. This was a case where certainly there was a reasonable doubt about the truth of the prosecution version. The appellant should have been given benefit of that doubt and acquitted.

24. The judgment of conviction of the appellant as recorded by him, therefore, needs to be interfered with in the interest of justice.

25. Appeal is allowed.

26. The judgment and order of conviction as recorded by the learned Special Judge and the sentence imposed by him is set aside.

27. The appellant is acquitted. His bail bonds are discharged.

28. Fine, if paid, be refunded to him.