

(2022) 07 BOM CK 0012
In the Bombay High Court
Case No : Criminal Appeal No.276 Of 200

Rafiq Beg Mirza And Others

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 08-07-2022

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 12, 13 (1) (d), 13(2)
Indian Penal Code, 1860 — Section 34, 201
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2022) 07 BOM CK 0012

Hon'ble Judges : Vibha Kankanwadi, J

Bench : Single Bench

Advocate : Govind A. Kulkarni, D. R. Deshmukh, S. P. Deshmukh

Final Decision : Allowed

Judgement

Vibha Kankanwadi, J

. Present appeal has been filed by original accused No.1 challenging his conviction by learned Special Judge, Jalgaon, Dist. Jalgaon on 04.04.2005 in Special Case No.10 of 2004; thereby convicting him for the offence punishable under Section 7, 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "P.C. Act" for short).

2. Original accused No.1/present appellant No.1 was serving as Police Head Constable in the year 2004 and was attached to Pahur Police Station, Dist. Jalgaon at the time of incident. Original accused No.2/ present appellant No.2 was not a Government Servant.

3. Prosecution had come with a case that original complainant – one Dhanraj Pratap Jadhav was in cattle business in the weekly market at Wakod. He had sold pair of bullocks to one Rangnath on 02.07.2003. Some amount was remaining to be paid by Rangnath to complainant. In spite of repeated demands, he had not paid that amount for a period of two months. Complainant, therefore, went to

accused No.1 and narrated the story. Accused No.1 had asked him to give a complaint-application, which was given accordingly. Accused No.1 had then called Rangnath to Police Station. Rangnath went along with his brother-in-law. They both had requested complainant that he should not lodge any report. They promised to pay the remaining amount within 10-15 days. It is the further story that, said brother-in-law had brought his pair of bullocks in the weekly market for sale and they were purchased by complainant through one Gopichand Chavan. Complainant paid part amount and promised to pay remaining within 8 days. After 8 days, he asked complainant to pay his balance. Complainant then told that his amount from Rangnath be arranged first and then he would pay. Said brother-in-law Arjun Kalal then lodged report against complainant in the police station. Complainant was then called by the accused No.1. Complainant then says that accused No.1 had demanded amount of Rs.5000/-.

Accused No.1 had given threat to complainant that if he fails to bring the amount, he would be put behind bars. Accused No.1 had gone to Wakod bazar on 14.02.2004 and after giving threats, recovered Rs.1000/- from complainant. Complainant says that he promised accused No.1 to pay amount of Rs.4,000/- within 2-3 days. Complainant's story is that he was proceeding to Pahur on 20.02.2004 and was near police station, when he was called by accused No.1. Accused No.1 demanded remaining amount of Rs.4,000/-. Complainant agreed to give Rs.2,000/- in weekly bazar. According to complainant, nothing was due to accused No.1 from him and the amount which the accused No.1 was demanding was illegal gratification. Complainant was not ready to give bribe, hence, he approached Anti-Corruption Bureau, Jalgaon and lodged complaint.

4. It is further prosecution story that after Dhanraj made complaint to Anti-Corruption Bureau, Jalgaon, two panchas were called and arrangement of raid was made. The prior formalities were completed. Complainant produced amount to be given as bribe in the form of twenty currency notes of Rs.100/- each. After giving of instructions to complainant and panchas, the police party, panchas and complainant went to spot i.e. which was near the Bus stand, Wakod, near the gate of cattle market in noon time. Complainant and the panch No.1 met accused No.1. There was conversation, but then accused No.1 went towards Pahur. He again came to the same place with another person. Thereafter accused No.1 asked accused No.2 to go near complainant and panch No.1 and then accused No.2 had demanded the amount, accordingly, it was given by complainant and was accepted by accused No.2. Complainant gave signal to the raiding party. Till the raiding party arrived accused No.1 went with accused No.2 on his mother-cycle. Panchnama was executed. Police Inspector, Mahajan lodged First Information Report (FIR) against the accused persons. Accused No.2 came to be arrested on the same day; whereas accused No.1 came to be arrested on the next day.

5. Investigation was undertaken after the registration of the offence. Statements of the witnesses were recorded. Accused was arrested. Certified/ true copies of

certain documents were collected. Sanction was obtained. Therefore, after the completion of the investigation, charge-sheet has been forwarded against accused persons.

6. After the accused persons appeared before learned Special Judge, Charge vide Exhibit-13 has been framed for the offence punishable under Section 7, 13(1)(d) punishable under Section 13 (2) of the P.C. Act against accused No.1. Charge has been framed for the offence under Section 12 of the P.C. Act. Further, charge under section 201 read with Section 34 of Indian Penal Code was also framed against both the accused persons. Contents of the charge were read over and explained to both the accused in Marathi. They pleaded not guilty. Trial has been conducted. Prosecution has examined in all four witnesses to prove the guilt of the accused persons. It appears from the cross-examination of the prosecution witnesses taken on behalf of both the accused and from their statement under Section 313 of Code of Criminal Procedure, that their defence is of total denial and false implication.

7. After perusing the evidence and hearing both sides, the learned Special Judge, has held that the prosecution has failed to prove the guilt of the accused No.2 for the offence punishable under Section 12 of the P.C. Act beyond reasonable doubt. Hence, accused No.2 came to be acquitted for that offence. However, it was held that offence under Section 7, 13 (1)(d) read with Section 13(2) of the P.C. Act has been proved against accused No.1. It was also held that offence punishable under Section 201 read with Section 34 of Indian Penal Code has been proved against both the accused. Accused No.1 was sentenced to suffer rigorous imprisonment for two years and pay fine of Rs.2,000/- in default to suffer rigorous imprisonment for six months for the offence punishable under Section 7 of the P.C. Act. He was further sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.2,000/-in default to suffer rigorous imprisonment for six months for the offence punishable under Section 13 (1) (d) read with Section 13 (2) of the P.C. Act. Accused Nos.1 and 2 both were sentenced to suffer rigorous imprisonment for one year and pay fine of Rs.500/- each in default to suffer rigorous imprisonment for three months for the offence punishable under Section 201 read with Section 34 of Indian Penal Code. Hence, this appeal by both the accused.

8. Heard learned Advocate Mr. Govind Kulkarni for the appellant-accused and learned APP Mr. S. P. Deshmukh for the respondent – State. Perused the record and proceeding.

9. It has been vehemently submitted on behalf of the appellants that the learned Trial Judge has not appreciated the evidence properly. It is not in dispute that the accused is a public servant. It has not come on record as to how the appellant No.1 was knowing appellant No.2. It is not the case of the prosecution that accused No.2, who was the villager of Pimpalgaon Kamani, was acquainted with accused No.1, as he was the Head Constable, Pahur Police Station and the accused No.2 used to collect money illegally for accused No.1 Even the

complainant does not say that he was acquainted with accused No.2 prior to the incident.

How accused No.1 could have asked accused No.2 to collect money on his behalf is a question. From the contents of the FIR as well as the testimony of P.W.1 Dhanraj, it is certain that he had some outstanding amount as against Rangnath and the Arjun Kalal was brother-in-law of Rangnath. Complainant was interested in his outstanding money from Rangnath, which according to him Arjun had promised to pay after certain period, but then the transaction between P.W.1 Dhanraj and Arjun Kalal was different, because Arjun Kalal's cattle were purchased by Dhanraj at a subsequent time and complainant had not paid that amount to Arjun. Even P.W.1 Dhanraj for his outstanding amount against Rangnath alleged to have approached accused No.1 and similarly, it is stated that Arjun also approached accused No.1, when outstanding amount was due from complainant to him. The possibilities therefore created that complainant had no intention to pay the outstanding amount to Arjun and found that the accused No.1 was not helping him in recovery of his outstanding amount from Rangnath; falsely implicated accused No.1.

10. It has been further submitted on behalf of the appellants that the entire prosecution evidence would disclose that there was absolutely no verification of the demand allegedly made by accused No.1. The Investigating Officer erred in believing P.W.1 Dhanraj and arranging raid directly without verification of the demand. The second point on which the accused persons need to be acquitted is that the tainted currency notes have never been recovered in this case and the prosecution has now come with the case that accused Nos.1 and 2 had caused that evidence to disappear to screen themselves. It is stated that the accused persons fled away after accepting the amount. That itself is surprising. When in spite of instructions given to the complainant not to give the amount when the accused would have been on a vehicle, yet he gave that amount. The Investigating Officer and other persons were having Government Jeep, yet it is stated that even after chase, they could not find the accused persons, which is surprising. How police officers can allow the accused to fled away.

11. In Anti-Corruption cases, when the complainant himself is a party for giving bribe, the testimony of such complainant will have to be considered cautiously and in this case, there is sufficient material to show that due to the grudge against the accused No.1, he has been falsely implicated. The complaint was only against accused No.1. Prosecution has not proved that accused No.2 has accepted that amount cautiously with knowledge that it is a bribe amount and it was for accused No.1.

12. It has been further submitted on behalf of the appellants that P.W.3 Devram is the panch witness and his entire testimony would show that he has not whispered about verification. He does not say about the alleged demand in his presence. Further, his testimony is inconsistent with the testimony of P.W.1 Dhanraj on material aspects. According to P.W.3 Devram, at the time of trap, at

about 1.00 p.m., accused No.1 came near the gate of Bazar along with accused No.2 and it is then stated that the accused No.2 demanded amount of Rs.2,000/- from complainant. At that time, complainant did not pay that amount to accused No.2, but went towards accused No.1. Accused No.1 started his motorcycle and made a gesture to accused No.2 to sit on his motorcycle as pillion rider and then accused No.1 abused complainant and asked him to give the amount to accused No.2. According to P.W.3 Devram, complainant gave that amount as he was frightened to accused No.2 as per the say of accused No.1. All these facts have not been stated by P.W.1 Dhanraj. The cross-examination of the said witness would disbelieve his testimony. Further, he says that the raiding party brought accused No.2 from his village at about 3.30 p.m. to Pahur Police Station and at that time, physical search was taken, but the tainted amount could not be found. However, if we see the arrest panchanama of accused No.2, it has been drawn between 22.15 hours to 22.35 hours on 21.02.2004.

Thereafter, his house was also searched which appears to be by the same panchas and the tainted money could not be found with him. In spite of that the panch witness says that some inadmissible portion was told i.e. the accused No.2 was asked by accused No.1 to wash his hands carefully and the amount was given by accused No.2 to accused No.1. There is no corroboration to this part of the evidence of P.W.3 Devram. The conduct of P.W.4, Police Inspector Mukund Rajaram Mahajan is doubtful. How he could allow the accused persons to fled away is a question and he is not explaining as to why no verification was conducted. He had taken written say from accused, but it appears that it was not sent to the sanctioning authority. P.W.2, then Superintendent of Police, Jalgaon – Pravin Salunkhe was the sanctioning authority. The sanction he had accorded vide order Exhibit-23 appears to be without application of mind. In fact, there was also typographical mistake in his order. He accepts that there was a draft of sanction order in the sealed packet given to him but then he says that it was not opened by him. He has not stated that the written say taken from the accused was considered by him before according sanction. Anthracene powder was not found on the hands of accused No.2, though it is stated that he had accepted the tainted amount. It is then stated that the anthracene powder was found to the pocket of his pant, however, further details are not coming forward.

13. The learned Advocate appearing for the appellants further submitted that the learned Special Judge had not considered the evidence given by the accused persons in defence. D.W.1 Pandurang Patil was the Police Patil of village Wakod and he has stated that he had met accused No.2 on Wakod Bus stand on 21.02.2004 at about 1.30 p.m. During their talk, accused No.1 arrived. Accused No.1 had given work to him i.e. the defence witness, as he was the Police Patil and then accused No.2 was supposed to go to Pahur and, therefore, D.W.1 Pandurang requested accused No.1 to take accused No.2 with him. It shows that accused No.2 was not knowing accused No.1 prior to that date. Nothing has been brought in his cross-examination by the prosecution to disbelieve his contention. D.W.2 Sheikh Sadique Abdul Kadir has deposed that he is a taxi driver and at

about 1.45 to 2.00 p.m., he was caught by accused No.1 and a memo in respect of violence of traffic rules was given to this witness. It shows that around 2.00 p.m., accused No.1 was at a distance of 2 kms away from Pahur-Wakod Road. Accused No.1 was doing his duty on the respective date and there was no talks about bribe between him and the complainant. The complainant has falsely implicated the accused persons and, therefore, when the learned Special Judge has erred in convicting both the accused, the appeal deserves to be allowed.

14. Learned APP supported the reasons given by the learned Trial Judge. He submits that in the complaint application, P.W.1 Dhanraj clearly stated that accused No.1 was giving threats each time whenever they used to meet about lodging up of the reports against the complainant and, therefore, P.W.1 Dhanraj believed it and initially gave amount of Rs.1,000/-. Though the transactions between Rangnath and complainant are different than the transaction between complainant and Arjun Kalal, yet Arjun had unnecessarily gone to accused No.1 for illegally recovering the amount and then was pressurizing the complainant to repay the said amount. The demand has been proved by P.W.1 Dhanraj and it has been corroborated by P.W.3 Devram. P.W.2, the then Deputy Superintendent of Police – Pravin Salunkhe has accorded legal and valid sanction to prosecute against accused No.1. P.W.4 Mukund Rajaram Mahajan traced for accused No.1 on the same day, but he could not be found and accused No.2 came to be arrested on the same day. It was revealed by accused No.2 that after a distance, the amount was taken by accused No.1 from accused No.2 and, therefore, even after the arrest of accused No.2, the tainted money could not be found on his person. Accused No.1 came to be arrested on the next day and on the basis of the statements of the accused, it can be said that they have destroyed the tainted money and especially it applies to accused No.1, because though accused No.2 was arrested on the same day, arrest of accused No.2 was published in newspapers and then accused No.1 had opportunity to destroy the evidence. Accused Nos.1 and 2 fled away from the said spot. The testimony of the defence witnesses is unbelievable and, therefore, the prosecution was able to prove the demand and acceptance. The learned trial Judge has rightly convicted both the accused persons. There is no necessity to interfere with the said decision.

15. Taking into consideration the above submissions, following point arise for determination, finding and reasons for the same are as follows.

POINT

(i) Whether the prosecution has proved that the accused No.1 being the public servant working as Head Constable in Police Department, by corrupt and illegal means and by abusing his position as public servant demanded Rs.10,000/- and then reduced it to Rs.4,000/- from Complainant Dhanraj Pratap Jadhav for not taking legal action against him, as a motive or reward for doing the said work in the exercise of his official function and accepted amount of Rs.2,000/- from him, through accused No.2; and accused No.2 accepted the said amount on behalf of accused No.1; further both of them had destroyed the currency notes in order to

screen themselves and thereby, committed offence punishable under Section 7, 12, 13(1)(d) punishable under Section 13(2) of the P.C. Act and Section 201 read with Section 34 of Indian Penal Code?

FINDING

. In the negative.

REASONS

16. At the outset, it can be said that the offences under the P.C. Act are too technical and each and every circumstance will have to be proved by the prosecution meticulously. Major deviation would destroy the case itself. Here, the first and the foremost fact is that the tainted money has not been recovered. The Investigating Officer has not stated as to in pursuant to the introduction by him to accused No.1 whether any fact could be revealed and if that would have been revealed, what were the steps taken by him to search for the tainted amount. He has directly come to the conclusion that the currency notes might have been destroyed or are not forthcoming and thus, the evidence has been destroyed by the accused persons to screen themselves. At one place, the panch witness saying that in his presence accused No.2 made statement that after he and accused No.1 went from Wakod, he was dropped by accused No.1 near Pimpalgaon and he was asked to go home by bus and at that time, accused No.1 had taken the amount from accused No.2. It is to be noted that the said act of acceptance had alleged to have taken place around 1.00 p.m. and according to P.W.3 Devram the raiding party had brought accused No.2 from his village at about 3.30 p.m. to Police Station. The distances have not been brought on record, but then whether accused No.2 would have got time for the destruction of the tainted amount is a question.

17. Here, the Investigating Officer is not explaining as to how the accused Nos.1 and 2 could have managed to flee away, till what stage or distance he and his team had chased, why he had not gone immediately to the house of accused No.1 or to the police station where accused No.1 could have been found. Merely by saying that he had searched for accused No.1 on that day and he could not be found, is not sufficient. We are required to consider whether there was time available to accused No.2 to destroy the tainted currency notes and that was an act of common intention. If the accused No.2 would have had knowledge that, the said amount was a bribe amount, then only he could have shared common intention with accused No.1 in destroying the said evidence. The prosecution has failed to prove the existence of such intention since beginning with the accused No.2.

18. P.W.4 Mahajan had not even taken care to collect the alleged complaint filed against P.W.1 Dhanraj just to consider as to whether there was any kind of substance in the complaint that because of such fear in mind, the complainant could have agreed to give bribe.

19. The conduct on behalf of P.W.1 Dhanraj is doubtful. When the money was due from Rangnath to him, he had approached same person i.e. accused No.1 and when Rangnath's brother-in-law Arjun had approached accused No.1 for the recovery of his outstanding amount from the complainant; P.W.1 Dhanraj would have objection. There appears to be some grudge for the complainant as accused No.1 was not helping him in the recovery of his amount from Rangnath.

20. Another important point on which the prosecution case is fail is that there was no verification of the demand by the Investigating Officer. As per the complainant, when after few days of 12.02.2004 accused No.1 threatened to put him behind bars if the amount of Rs.4,000/- was not paid to him, according to him he had agreed to pay amount of Rs.2,000/- on the coming Saturday and remaining on the next Saturday. He then says that he went to Anti-Corruption Bureau office and then he was called on the next day at about 7.00 a.m. with amount of Rs.2,000/-. Whether, in fact, that amount of Rs.2,000/- was demanded on that day by accused No.1 itself was a question. P.W.1 Dhanraj states that they have reached Wakod around 12.45 p.m. He and panch No.1 were near Wakod S.T. Stop. After sometime, accused No.1 came there, at that time, he and panch No.1 were near the tea stall. Accused No.1 went to Pahur Phata after taking tea. Thereby he intended to say that accused No.1 had taken tea along with them or even if he had himself taken the tea, he had no talks with P.W.1 Dhanraj at that time. The complainant further says that accused No.1 again came there after about 15 to 20 minutes and went to S.T. Stop side. Again came near the gate of Wakod Bazar and at that time, he was accompanied by accused No.2. Accused No.1 stopped his motorcycle and by sitting on the vehicle sent accused No.2 to collect amount of Rs.2,000/- from him. Accused No.2 demanded amount of Rs.2,000/-. Complainant asked accused No.2 as to for what purpose he is demanding the amount. Then accused No.1 by raising hand showed a gesture to give that amount to accused No.2, then complainant took accused No.2 to accused No.1. Complainant says that thereafter he asked whether the amount was to be paid to accused No.2 and accused No.1 accepted. That means, there was no demand as such from the accused No.1 to the complainant. Learned Special Judge went wrong in holding that the demand has been proved by the prosecution. Certainly, there are material inconsistencies between the testimony of P.W.1 Dhanraj and P.W.3 Devram. The benefit of the same should go to the accused.

21. As regards the sanction is concerned, it appears that the sanctioning authority had considered the documents which were given to him and, therefore, it cannot be said that there was no proper application of mind while according sanction. No fault can be found with the sanction order, however, at the final stage, the prosecution has failed to prove the demand and even acceptance in a sense that the tainted currency notes were not recovered and the Investigating Officer had not even bothered to collect the complaint application filed against the complainant on the basis of which he was allegedly giving threats. Interestingly, the learned Special Judge has acquitted accused No.2 of the

offence punishable under Section 12 of the P.C. Act. The natural corollary would be that if he had not aided or abetted the commission of the offence under the P.C. Act, why he should destroy or take part in destruction of evidence to screen himself and, further when he was allegedly arrested within few hours, where was the scope for him to destroy the evidence and, therefore, affairs are not proved beyond reasonable doubt against either of the accused. Point is, therefore, answered in the negative.

22. When the facts have been wrongly assessed, definitely interference is required and it is not a case that merely because second view is possible, this Court is taking second view. The appeal deserves to be allowed. Hence, the following order :-

ORDER

I) The appeal stands allowed.

II) The conviction of both the appellants in Special Case No.10 of 2004 by learned Special Judge, Jalgaon on 04.04.2005 for the offence punishable under Section 7, 13(1)(d) read with Section 13(2) of the P.C. Act as well as Section 201 read with Section 34 of Indian Penal Code stands set aside.

III) The accused No.1 stands acquitted of the offence under Section 7 punishable under Section 13(1)(d) read with Section 13(2) of the P.C. Act.

IV) Accused Nos.1 and 2 stands acquitted of the offence punishable under Section 201 read with Section 34 of the Indian Penal Code.

V) Their bail bonds stand cancelled.

VI) Fine amount deposited, if any, be refunded to the respective accused.