

(2022) 06 BOM CK 0017
In the Bombay High Court
Case No : Criminal Appeal No. 48 Of 2002

Raghunath Kasinath Moka And Others	APPELLANT
Vs	
State Of Maharashtra	RESPONDENT

Date of Decision : 06-06-2022

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13(1)(d), 13(2), 20
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2022) 06 BOM CK 0017

Hon'ble Judges : C.V. Bhadang, J

Bench : Single Bench

Advocate : Shekhar A. Ingawale, S. R. Agarkar

Final Decision : Allowed

Judgement

C.V. Bhadang, J

1. The challenge in this Appeal, is to the judgment and order dated 15 December 2001 passed by the learned Sessions Judge, Raigad at Alibag, in Special Case No.02/1996, by which the Appellant Raghunath Mokal (since deceased) has been convicted under Section 7 and 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988 ('the said Act'). The Appellant – Accused has been sentenced to suffer Rigorous Imprisonment, for one year, on either count, with fine. The original Appellant died during the pendency of the Appeal and the Appeal is prosecuted by his legal representatives.

2. The prosecution case may be briefly stated thus-

The deceased Appellant was working as a Talathi at village Saja Kolad, Tehsil Roha, District Raigad. On 25 January 1996, P.W.1 Vasant Shelar had applied to the Tehsildar for effecting mutation in respect of a purchase of land Gat No.127 at village Pale by his sister-in-law Mitali Shelar from one Harishchandra and his family members by a sale deed dated 9 June 1995 and for issuance of certified copy of 7/12 extract. The application for mutation was sent to the Appellant for

necessary action. It is the prosecution case that on 16 February 1996, the Appellant made a demand of Rs.500/- as illegal gratification from P.W.1 for effecting the mutation and issuance of certified copy and accepted an amount of Rs.200/- and the balance amount of Rs.300/- was accepted on 22 February 1996. In the interregnum, P.W.1 made a complaint to the Anti Corruption Authorities, in pursuance of which, a trap was arranged on 22 February 1996. After the initial formalities were gone into and the procedure was explained to complainant P.W.1 and panch P.W.2 Harishchandra More who is working in the B & C department, a pre-trap panchanama was drawn. The raiding officer P.W.4 Bharat Sarwade alongwith the complainant and the panchas has went to the office of the Talathi at Saja Kolad. The complainant accompanied by P.W.2 went to the Appellant. The Appellant demanded the balance amount of Rs.300/- which was paid by P.W.1 and accepted by the Appellant – Accused, after which P.W.1 gave the predetermined signal, upon which, other members of the raiding party came in. P.W.1 was asked to wait outside. After the formalities were completed including the finding of the anthracene powder on the person of the Appellant – Accused, a Post Trap Panchanama was drawn.

3. The matter was referred to Sub Divisional Magistrate Mr. Nitish Thakur P.W.3 who granted sanction for prosecution by order dated 23 September 1996, after which, a chargesheet was filed, before the Special Court, which was registered as Special Case No.02/1996.

4. The learned Special Judge at Raigad framed a charge against the Appellant-Accused for the offence punishable under Section 7 and Section 13(1)(d) r/w. 13(2) of the said Act. The Appellant pleaded not guilty to the charge and claimed to be tried. The defence of the Appellant is one of total denial and false implication.

The specific defence as elicited from the cross examination and the statement recorded under Section 313 of Cr.P.C., is that the Appellant had received the papers of the case on 7 February 1996 and on the same day the mutation was taken which was subject to the certification by the Circle Officer. It is thus claimed that there was no occasion for the Appellant to have demanded or P.W.1 having paid any illegal gratification.

5. The prosecution examined in all four witnesses at the trial and produced the record of the investigation. The Appellant did not lead any evidence in defence. The learned Special Judge by impugned judgment has found the Appellant guilty. Hence, this Appeal.

6. I have heard Mr. Shekhar Ingawale, learned counsel for the Appellant and Mr. S. R. Agarkar, learned APP for the State. With the assistance of the learned counsel for the parties, I have gone through the record.

7. It is submitted by the learned counsel for the Appellant that Harishchandra Phale who was Power of Attorney of the vendor in the sale deed dated 9 June 1995 was allegedly present alongwith P.W.1 at the time of the first demand.

However, he has not been examined by the prosecution and thus, the aspect of demand which is necessary prerequisite, has not been established. It is pointed out that even the sister-in-law of P.W.1 who was the purchaser and in whose name the mutation was sought for, has not been examined.

8. The learned counsel pointed out that the evidence shows that on 22 February 1996, the Circle Officer was present and sitting next to the table of the Appellant in the same office and it is improbable that the Appellant would accept illegal gratification in the presence of the Circle Officer who is his superior officer. P.W.1 did not make any complaint to the Circle Officer who was sitting next to the Talathi. It is submitted that the Tehsildar or the Circle Officer has not been examined. The learned counsel pointed out the letter dated 7 February 1996 (Exh.13) and the mutation entry No.79 which is shown to be recorded on 7 February 1996 itself, which was subject to certification by the Circle Officer. It is thus submitted that the mutation entry already having taken / recorded by the Appellant, the whole edifice of the prosecution story of the demand of illegal gratification for recording the mutation, falls through. It is pointed out that in the absence of the demand, the mere recovery of the tainted currency notes, even if established, is of no consequence. Reliance is placed on the decision of the Supreme Court in *Mukhtiar Singh (Since deceased) through his Lrs. Vs. State of Punjab* (2017) 8 SCC 136 and *State of Maharashtra Vs. Dnyaneshwar Laxman RaoWankhede* (2009) 15 SCC 200.

9. It is submitted that the certified copy of the 7/12 extract can be issued only after certification by the Circle Officer and could not have been issued immediately after recording the mutation. It is pointed out that even according to the prosecution, the Appellant told P.W.1 that the certified copy of 7/12 extract would be issued on the next day, which is in consonance with the procedure followed. The learned counsel pointed out that after the mutation entry is taken, there is no further work to be done by the Talathi and thus, there was no occasion for the demand / payment of any bribe. It is submitted that there is no evidence to show that the hands of P.W.1 were checked for presence of anthracene powder after the raid to show that the tainted currency notes were handed over by P.W.1 to the Appellant. It is submitted that the tainted currency notes were thrust in the pocket of the Appellant, which sufficiently explains the presence of anthracene powder on the person of the Appellant, so as to dislodge the presumption under Section 20 of the said Act. The learned counsel pointed out that the presumption can be rebutted on the basis of preponderance of probability.

10. Learned APP has supported the impugned judgment. It is submitted that there was a demand on 16 February 1996 and a part of the amount demanded was accepted on the same day and the balance amount of Rs.300/- was accepted on 22 February 1996 i.e. at the time of trap. It is submitted that the prosecution is not obliged to examine all the persons present in the office of the Talathi which is a public office for establishing the demand and acceptance. In

the submission of the learned counsel, the aspect of demand and acceptance is sufficiently established on the basis of the evidence of P.W.1 and P.W.2 which is further corroborated by the Post Trap Panchanama including finding of anthracene powder on the person of the Appellant. He submitted that the Appellant had handed over the notice book (vardi book) to P.W.1 for obtaining the signature of his sister-in-law Mitali Shelar and had made a demand of the illegal gratification for effecting the mutation and issuance of the certified copy. It is submitted that the defence of the amount being thrust in the pocket of Appellant cannot be accepted, as it is improbable. In the submission of learned APP, the evidence of P.W.1 and P.W.2 is sufficient to establish the demand and acceptance as their evidence has not been discredited in the cross examination. He therefore submitted that the Appeal be dismissed.

11. I have considered the rival circumstances and the submissions made.

12. It has come on record that three guntas of land from out of Gat No.127 of village Pale was purchased by Mitali Shelar, sister-in-law of P.W.1 Vasant Shelar, under registered sale deed dated 9 June 1995. The sale deed is said to have been executed by one Harishchandra Phale holding the POA on behalf of the owners of the said land.

13. On 25 January 1996, an application was made before the Tehsildar Roha for recording the mutation in the name of Mitali Shelar and for issuance of certified copy of 7/12 extract. P.W.1 claims that on the same day, a letter / order (Exh.13) was issued under the signature of the Naib Tehsildar asking the Talathi Kolad to record the mutation, after verifying whether the purchaser is an agriculturist. A copy of the sale deed was enclosed with the original application. It is significant to note that the copy of the letter (Exh.13) produced on record bears an endorsement about the mutation entry No.69 dated 7 February 1996. P.W.1 does not make any reference in the complaint or in the chief examination of having visited the office of the Talathi Kolad i.e. the Appellant on 7 February 1996. The first demand is alleged to have been made on 16 February 1996 in the presence of Harishchandra Phale. However, Harishchandra has not been examined. An amount of Rs.200/- was allegedly paid on 16 February 1996 after which P.W.1 approached Anti Corruption Authorities and a raid was arranged and conducted on 22 February 1996, on which date the balance amount of Rs.300/- is alleged to have been paid by P.W.1 and accepted by the Appellant when the Circle Officer was sitting by his side. The Circle Officer Mr. Shirsale is also not examined. No complaint was made before the superior officer including the Tehsildar about the alleged demand made on 16 February 1996. It is true that the prosecution is not obliged to examine all the witnesses or the persons present in the public office at the time of the demand and the raid. However, this is a case where the Circle Officer, who is the immediate superior of the Appellant was allegedly sitting on a table by the side of Appellant on 22 February 1996, when the balance amount of Rs.300/- was paid and accepted by the Appellant. In so far as the first demand is concerned made on 16 February 1996, P.W.1 was accompanied by Mr.

Harishchandra Phale who has also not been examined. In my considered view, these were the relevant and material witnesses who could have lent corroboration to the demand made by the Appellant which is sine quo non for the offence of demand and acceptance of the illegal gratification by a public servant. In my considered view, the learned counsel for the Appellant is right that it is highly improbable that the Talathi as a Subordinate Office to that of a Circle Officer would demand and accept illegal gratification in the very presence of the Circle Officer. It is necessary to note that it is not the case of the prosecution that the amount was accepted for and on behalf of any superior officer.

14. It is necessary to note that the order / letter dated 25 January 1996 at Exh.13, also belies the prosecution case and makes the alleged demand on 16 February 1996 to be improbable. Exhibit 13 shows a specific endorsement dated 7 February 1996 about recording of the mutation entry No.69. P.W.1 has admitted that the initial entry taken by the Appellant in his capacity as a Talathi was required to be certified by the Circle Officer and only thereafter becomes effective. It is after this that the certified copy of the revenue record in the form of 7/12 extract could be issued. P.W.1 in para 10 of the cross examination has admitted that there was no demand made by the Appellant on 7 February 1996. This is the reason why according to the P.W.1, there is no reference made to the happenings on 7 February 1996 in his complaint, made to the Anti Corruption Authorities. In fact, the complaint totally lacks any reference to any visit by P.W.1 to the office of the Appellant on 7 February 1996.

15. The evidence on record shows that the Appellant informed P.W.1 that the notice of the application for mutation has to be issued and served on both the parties i.e. the vendor and vendee. Harishchandra Phale being the POA of the vendor had accompanied P.W.1 to the office of the Appellant on 16 February 1996 and therefore his signature was immediately obtained. In so far as Mitali Shelar is concerned who is the purchaser had not accompanied P.W.1 on 16 February 1996 and therefore the Vardi Book containing Vardi No.996077 was handed over to P.W.1 in order to enable him to obtain the signature of Mitali Shelar. P.W.1 claims that he obtained the signature of Mitali Shelar on Vardi Book on 19 February 1996 at her house. Vardi Book was carried to the Appellant on 22 February 1996. He claims that the Vardi was blank when the signatures were obtained, which were filled in by the Appellant on 22 February 1996 i.e. on the date of the raid. The Appellant also made certain entries in two registers and one book, probably the Vardi Book after which the Appellant was informed that the certified copy of the extract would be issued on the following day after certification by the Circle Officer. In my considered view, once it is disclosed from the record that mutation entry No.69 was taken on 7 February 1996, on which date there was no demand by the Appellant, as admitted by the P.W.1, there was no occasion for the Appellant to make any demand on 16 February 1996 or acceptance of any such illegal gratification on 16 February 1996 and the balance amount on 22 February 1996.

16. According to the learned counsel for the Appellant, P.W.1 was aggrieved by the delay in issuance of the certified copy of the 7/12 extract which is the reason for false implication of the Appellant. In such circumstances, I find that the prosecution has failed to establish the aspect of demand and acceptance beyond reasonable doubt. It is now well settled that the demand of the illegal gratification is sine quo non and the mere recovery of the tainted currency notes from the person of the accused is not sufficient. In any case, in my considered view, the Appellant has probalised the defence, thereby displacing the presumption, if any, under Section 20 of the said Act. It is well settled that the presumption can be displaced and the defence can be established on the basis of preponderance of probability (See the decision in the case of Dnyaneshwar Wankhede (supra)). In my considered view, the Appellant was entitled to benefit of doubt. In any event, the outcome of this Appeal is academic in nature, in so far as the deceased Appellant is concerned, except that his legal representatives, who are prosecuting this Appeal, are seeking removal of the stigma.

17. Be that as it may, in the circumstances the following order is passed.

ORDER

(i) The Appeal is allowed.

(ii) The Appellant Raghunath Kasinath Mokal (Since deceased) is acquitted of the offence punishable under Section 7 and 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988.

(iii) His bail bonds stand cancelled.

(iv) The order regarding disposal of the property is hereby maintained.