(2022) 06 BOM CK 0058

In the Bombay High Court

Case No : Criminal Appeal No. 67 Of 2019

Rajendra Waman Varade APPELLANT

Vs

State Of Maharashtra RESPONDENT

Date of Decision : 14-06-2022

Acts Referred:
Prevention Of Corruption Act, 1988 — Section 7, 13(1)(d), 13(2)

Citation : (2022) 06 BOM CK 0058

Hon'ble Judges : R.G. Avachat, J

Bench : Single Bench

Advocate : Ajuj A. Phulphagar, P. R. Katneshwarkar, Geeta L. Deshpande

Final Decision : Allowed

Judgement

R. G. Avachat, J

1. The challenge in this appeal is to the judgment and order dated 17.01.2019 passed by the learned Additional Sessions Judge-4 cum Special Judge (ACB), Nanded in Special Case (ACB) No.14 of 2014, convicting the appellant for the offence punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short, 'P.C. Act') and consequential sentence of rigorous imprisonment for a period of two years and four years, respectively. He was also directed to pay total fine of Rs.25,000/-.

2. Facts giving rise to the present appeal are as follows: PW1 – Manda (complainant) was a small saving agent.

Her agency license dates back to November, 1983. The license was due for renewal in November 2011. She had, therefore, in September 2011, applied for renewal of the license. The appellant was serving as an Assistant, Small Savings Officer, Nanded. The matter for renewal of the complainant's license was to be processed by him. The complainant had therefore met the appellant many a times for renewal of license on time. The appellant initially asked her to pay him Rs.2,000/- as illegal gratification for renewal of the license. He, later on, scaled down his demand first Rs.1,500/- and then to Rs.1,000/-. Since the complainant did not want to pay him money, she approached the Anti Corruption Bureau (ACB), Nanded on 03.11.2011. The Deputy Superintendent of Police Shri Rajput (PW4) recorded her complaint (Exh.22). It was first decided to have verification of the demand and then to lay a trap.

3. Shri Rajput (PW4), therefore, secured presence of two Government officials to act as panch witnesses. He gave the complainant and panch witnesses necessary instructions in that regard. The complainant accompanied by a shadow witness (PW2) Vaishali, went to the complainant's office. The voice recorder was concealed on the person of the complainant. During interaction with the appellant, he made a demand of Rs.1,000/-. The complainant assured him to be back within a while to pay him the amount since the amount was not with her that time. Both, the complainant and the panch witness came back to PW4 Rajput. The recorded conversion was played. It was reduced to writing. Thus, the demand verification panchanama (Exh.32) was drawn. Thereafter, the complainant accompanied by a shadow witness again went to the office of the appellant. He demanded the bribe money. He, however, asked the amount to be kept in a file. He refused it to receive by his hands. The complainant, therefore, placed the bribe money on the printer at the complainant's table. She, then, gave a predetermined signal. PW4 - Rajput accompanied by his team members rushed to the room. Took charge of the bribe money. Scene of offence-cum post trap panchanama (Exh.33) was drawn. He, then, lodged the First Information Report (FIR) (Exh.72.) on behalf of the State. He, himself did the investigation. Statements of the persons conversant with the facts and circumstances of the case were recorded. The same came to be sent along with the recorded conversations to Central Forensic Science Laboratory (C.F.S.L.) The report thereof was received. Then, all the papers of investigation were submitted to the Commissioner, Small Savings and State Lottery.

4. PW3 - Amitabh, Commissioner, Small Savings and State Lotteries, in turn accorded the sanction for prosecution of the appellant. The appellant, therefore, came to be proceeded against by filing a charge-sheet before the Court constituted for trial of offences under the P.C. Act.

5. The learned Judge, framed the charge. The appellant pleaded not guilty. His defence was of false implication. According to him, he did not have authority to renew the license. The license had already been renewed and intimation thereof was sent to the complainant by post long before she lodged the complaint. The sanction for prosecution was also taken exception to.

6. Prosecution examined four witnesses and produced in evidence certain documents in proof of the charge. The learned Judge, on appreciation of the evidence in the case, convicted and sentenced the appellant as stated above.

7. The learned Advocate for the appellant would submit that the license renewing authority was the Collector. The license had already been renewed and a copy

thereof was sent to the complainant by post long before the complaint was lodged. According to the learned Advocate, a person who himself or member of his family is in Government service is not permitted to work as an agent of small saving scheme. The complainant was in service. Her son was also serving as a Teacher. The appellant had, therefore, made an inquiry in that regard. The complainant had a grudge against the appellant. The persons requested to act as witnesses in the case, has acquaintance with the complainant. They were purposely selected so as to ensure the appellant was successful in trap. On the question of sanction for prosecution, the learned Advocate would submit that that the sanctioning authority did not apply his mind. There was intervention of number of persons in the Mantralaya for grant of sanction. The sanction order therefore lost its sanctity. The learned Advocate, therefore, ultimately urged for allowing the appeal.

8. The learned APP would, on the other hand, submit that although the appellant was not licence renewing authority, the papers in that regard were to be routed through him. Although the licence had been renewed before the complaint was lodged, the appellant had demanded the bribe for issue of licence. The learned APP took me through the evidence in the case to ultimately submit that the demand and acceptance of illegal gratification has been duly proved. She, therefore, urged for dismissal of the appeal.

9. Considered the submissions advanced. Perused the evidence relied on. Gone through the documents produced in support of the prosecution.

10. Let us appreciate the evidence in the case.

The complainant gave her evidence consistent with her complaint Exh.22. It is in her evidence that she was an agent of a small savings postal scheme. She had been working as an agent since November 1983. Her agency licence was due for renewal in November 2011. The appellant was serving as an Assistant, Small Saving Officer at the relevant time. The papers regarding renewal of the licence were to be routed through him. She had, therefore, met him time and again so as to ensure that the licence was renewed in time. The appellant first made demand of Rs.2,000/-, then it was scaled down to Rs.1,000/-. She was reluctant to pay the appellant bribe. She, therefore, approached the ACB Nanded and lodged the complaint Exh.22.

11. PW4 - Rajput, Dy.S.P., ACB Nanded, recorded the complaint. He first decided to verify the demand. He, therefore, secured presence of two Government officials to act as panch witnesses. It was 03.11.2011. The complainant accompanied by PW2 - Vaishali (shadow witness) were duly instructed. The voice recorder was concealed on the person of the complainant. Both, the complainant and the shadow witness went to the office of the appellant. There was interaction between the complainant and the appellant. The appellant informed the complainant that her work was done. He, however, asked for illegal gratification. Since the complainant did not have money to pay him that time, both, the

complainant and the panch witness came back to PW4 Rajput. The tape recorded conversation was placed. They reduced it to writing. Thus, the demand verification panchanama (Exh.32) was drawn. After a while, the complainant accompanied by a shadow witness, again went to the appellant's office. The voice recorder was concealed on the person of the complainant. During conversation, the appellant made a demand of the amount. The complainant held up the money before him. He refused to accept it personally. He asked her to place the same in a file. The evidence indicates that the complainant was insisting him to receive the amount by his hands. She, ultimately, kept the amount (currency notes) on the printer and immediately gave predetermined signal. The trap party arrived. The amount came to be seized. Post trap panchanama was drawn. The rest is the history.

12. On the lines of the evidence given by the complainant, we have the evidence of shadow witness PW2 – Vaishali and the Investigating Officer PW4 – Rajput.

13. These three witnesses were subjected to searching cross examination. In response to the questions put to the complainant in her cross examination, it has come on record that she was earlier in Government service. Her small saving agency license dates back to 1983. Her son has already been serving as a Teacher. She admitted that no small saving agency licence is issued to the person who himself or whose family member is in Government service. True, she was categorical to state that such a rule came into being long after she was granted the licence. She has, however, admitted in her cross examination that the appellant had made an inquiry in that regard. Due to such inquiry having been made by the appellant, she was annoyed with him. It is further in her evidence that she had discussion with her son and husband, as well and then she approached the ACB and lodged the complaint Exh.22.

14. PW2 – Vaishali, shadow witness was a Clerk serving with the office of the Assistant Registrar, Co-operative Society, Mahur. It is in her evidence that she and the complainant have been residing in one and the same vicinity, namely, Kailash Nagar. It is also in her evidence that she had acquaintance with the another panch witness long before the trap was laid. It is the case of the appellant that the second panch witness – Suryakant Mangnale is a relation of another small saving agent. This small saving agent had stood guarantor for the complainant for renewal of license in her favour. In view of this Court, the appellant has, therefore, every reason to contend that the panchas were selected at the instance of the complainant. It is true that the learned APP may be justified in contending that the demand of illegal gratification and acceptance thereof, have been duly proved in the light of the evidence on record. She was also right in submitting that although the licence had been renewed, the same had not been informed to the complainant. The bribe was demanded for issue of licence.

15. In view of this Court, the evidence of the complainant was required to be tested with a pinch of salt. Admittedly, she was annoyed with the appellant in

view of he having made an inquiry about the complainant's son for renewal of the licence. Admittedly, the licence could not be issued to a person who himself or whose family member is in Government service. The complainant's son was a teacher. The complainant was in Government service, earlier. Although the complainant testified that such rule came into being long after the agency licence was granted to her way back in 1983, the fact remains that the complainant had an axe to grind against the appellant. Her demeanor at the time of payment of bribe would indicate the appellant was not ready to accept money by his hand, she was insisting therefor. She placed the bribe amount on the printer and immediately gave predetermined signal. The shadow witness though appears to be an independent witness, has admittedly been residing in Kailash Nagar, whereat the complainant was residing. Her husband was a practising lawyer. He would accompany her to Court on each date. Another witness was stated to be a relative of the another small saving agent who stood guarantor for the complainant. Although the demand was verified on tape record, the C.D. containing the tape-recorded conversation had neither been played before the trial Court. True, the recorded conversations along with the voice samples of both, the appellant and the complainant, have been examined by an expert as C.F.S.L. and a report thereof (Exh.79) is against the appellant. It is, however, not known as to why the tape-recorded conversation was not played before the trial Court so as to have first hand evidence in that regard. All these facts lead me to observe that the prosecution evidence does not inspire confidence.

16. There is another aspect of the matter. Sanction for prosecution of the appellant was accorded by PW3 – Amitabh. It was in his evidence that he was the appointing authority of Gazetted Class-II (B Group) officers. He, therefore, accorded sanction (Exh.58) after having gone through the papers of investigation supplied to him in that regard.

The record indicates that the appellant had obtained certain documents from the Finance Department of the State Government under R.T.I. All those documents were placed on record of the trial Court (Exh.60). Those documents undoubtedly indicate that the papers submitted for obtaining sanction, there was a note that in the papers be submitted to Finance Minister. Those documents further indicate that all the papers of investigation had therefore been submitted to the Principal Secretary, Finance Department. There are nothings put up by the officials from the cadre of Desk Officer upto the Commissioner and even Principal Secretary, Law and Judiciary Department. The record further indicates that the draft sanction was prepared at Mantralaya level. It was vetted/scrutinized by the Secretary, L & J. It, therefore, appears that the sanctioning authority (PW3) took six months to grant sanction. I do not propose to scrutinize all those papers. Suffice it to say that PW3 – Amitabh appears to have had forwarded all the papers of investigation to the officials in the Mantralaya. The papers were scrutinized by the officials from the rank of Desk Officer upto the Principal Secretary and even the Minister of State for Finance. The draft sanction was approved by the Secretary, L & J. In such circumstances, it has to be observed that the sanction accorded for prosecution of the appellant, lost his sanctity.

17. The evidence referred to herein above was found to be of not sterling quality. The evidence ought to be such which would lead the Court to hold the prosecution to have proved the guilt beyond reasonable doubt. As stated above, the evidence in case was found to be of not such standard. The trial Court therefore ought not to have convicted the appellant. This Court is therefore inclined to interfere with the impugned judgment and order.

18. For the reasons given herein above, the appeal succeeds.

19. The appeal is allowed.

20. The conviction and sentence passed against the appellant vide impugned Judgment and Order dated 17.01.2019 passed by the learned Additional Sessions Judge-4 and Special Judge (ACB) Nanded in Special Case (ACB) No.14 of 2014 is hereby quashed and set aside.

21. The appellant is acquitted of the offence punishable under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act.

22. Bail bonds of the appellant are cancelled.

23. Fine amount, if paid, be refunded to the appellant.

