(2011) 02 BOM CK 0115

In the Bombay High Court

Case No : Criminal Appeal No. 578 of 1999

Shri. Chandrakant Kisan Pujari Since Deceased through his widow Smt. Jayashree Chandrakant Pujari	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 20, 7

Citation : (2011) 02 BOM CK 0115

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : A.M. Joshi, for the Appellant; S.D. Shinde, APP, for the Respondent

Final Decision : Allowed

Judgement

R.C. Chavan, J.—This appeal is being pursued by legal representative of the convict questioning the conviction recorded by the learned Special Judge, Sangli, for the offences under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, sentencing the Appellant to suffer R.I. for one year on each count and fine of Rs. 1,000/- each on the two counts or in default R.I. for one month on each count.

2. Facts which are material in deciding this appeal are as under;

3. One Mahadeo Sadashiv Patil had applied to the District Industries Centre, for setting up a factory for making cement blocks in the year 1994. He had also been sanctioned necessary subsidy and loan by the authority concerned. Accused Chandrakant Pujari was Noting Assistant in the office of District Industries Centre. The complainant had approached District Industries Centre to get requisite documents which would enable him to have money released from the bank as also to get seed money from the D.I. C. It is the case of prosecution that Mahadeo, alongwith his cousin Vijay, approached to D.I.C. office on 25.7.1995. Accused Chandrakant Pujari demanded a sum of Rs. 400/- and received sum of

Rs. 100/- , out of it. The balance was to be paid before matter was forwarded to the authorities. Accordingly on 28.8.1995 and 30.8.1995, Mahadeo claimed to have gone to the District Industries Centre office. On 30th August, Mahadeo was told to bring Stamp papers in the denomination of Rs. 500/- , Rs. 20/- and Rs. 10/- . These stamp papers were given to accused by Chandrakant Pujari. Since in purchasing stamp papers, Mahadeo had exhausted the money with him and he was asked to come on next day with bribe of Rs. 300/- for Chandrakant.

4. Mahadeo approached the office of the Anti Corruption Bureau and thereafter a trap was laid. Panchas were called. A pre-trap panchnama was drawn and Mahadeo was asked to go with panch Ramakant Gondhali to pay bribe money. It is alleged that accused Chandrakant asked about the remaining amount of Rs. 300/ to which Mahadeo agreed to pay. The Appellant said that there were persons around and so they may go to the tea canteen on terrace. When money was first demanded in the canteen, sum of Rs. 300/- which had been smeared with the anthracene powder, was handed over by Mahadeo with his right hand and was accepted by Chandrakant with his left hand and and kept in his left side trouser pocket. Upon receiving signal, raiding party rushed and caught the accused and the money in the trouser pocket was taken out by the other panch Ramzan Baig. The Pants of the accused were also seized as also petty cash of Rs. 2/- found with him. A post trap panchnama was drawn up and an offence was registered. On completion of investigation, the investigating officer sent papers to Balkrishna Patil, the Officer authorized to sanction prosecution of Appellant. Upon receiving sanction order, the Investigating Officer filed chargesheet before the Special Judge at Sangli.

5. Learned Special Judge, charged the Appellant Chandrakant Pujari for the offences under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 on 26th May, 1999. Since the Appellant pleaded not guilty to the charge, he was put at the trial at which prosecution examined in all five witnesses.

6. After considering their evidence in the light of defence of denial and false implication raised by Chandrakant, learned Special Judge, convicted and sentenced Chandrakant Pujari as mentioned in preceding paragraphs. Aggrieved thereby Chandrakant preferred this appeal, which was admitted on 29th October, 1999. Appellant Chandrakant died on 4th January,2008. His legal representatives have been allowed to prosecute the appeal.

7. I have herd learned Counsel for the legal heirs of Appellant and learned Additional Public Prosecutor for the state. With the help of both the learned Counsel, I have gone through the entire evidence.

8. P.W.1, Mahadeo Patil is the person at whose instance a trap was laid. He has stated about the demand of Rs. 400/- made by the accused Chandrakant, out of which payment of Rs. 100/- made prior to the trap. His evidence is substantially in tune with the prosecution case about performance of pre-trap panchnama,

trap details, and post trap panchnama. Panch Ramakant Gondhali, who accompanied him at the trap was examined as P.W.2 and deposed in tune with the panchnama which had been drawn. P.W.3-Balkrishna Patil, who accorded sanction for prosecution against accused Chandrakant Pujari, stated that after receiving a draft sanction order from the Anti Corruption Bureau, he accorded sanction after examining the papers, but without altering even a coma in the draft order. P.W.4. Jayant Kulkarni, working as Manager in the District Industries Centre, stated about the duties allotted to various persons including Chandrakant Pujari. P.W.5-Mahadeo Chougule, had laid the trap and had investigated into the crime.

9. Learned Counsel for the Appellant submitted that the first demand was allegedly made by Chandrakant in the presence of complainant''s cousin Vijay, who has not been examined by the prosecution. Therefore, he submitted that complainant''s evidence should not have been believed. For this purpose, he relied on a judgment of this Court, in Avinash S Garware v. State of Maharashtra, reported at 2008 ALL (Cri) 15. In that case too, a person who was supposed to have been present when the demand was first made was not examined. In para 27 of the judgment, the Court observed that in a situation like the one which was presented to the Court where prior demand was not proved, and the most relevant witness was not examined, defence of the accused will get probablized. Learned Counsel for the Appellant, therefore, submitted that in view of this, non examination of Vijay, the cousin of complainant, in this case should be fatal to the prosecution case.

10. As rightly countered by the learned Additional Public Prosecutor that this judgment was given on the facts of that case, since learned Single Judge, in the very next sentence in para 27 has observed that it was true that in criminal cases it was difficult and not always advisable to contend that the ratio of a particular judgment is applicable to the case an hand because factual matrix of criminal case widely differ.

11. Apart from this, laying down a rule or requirement that the witness who was present when prior demand was made must be examined would run counter to the settled principle of appreciation of evidence that it is not number of witnesses but the quality evidence which counts and if a fact can be proved by unimpeachable evidence of one witness, non examination of witnesses who may have been present at the time of incident would be inconsequential.

12. Further in this case, charge comprises of events in three parts; first part is about payment made between 27th July, 1995 to 31st, August, 1995. Second part is about demand made on 27th July, 1995, presumably in the presence of Vijay, he third part is about incident which took place on 31st August, 1995. Therefore, non-examination of Vijay may lead to failure to prove, the demand made earlier. This in my view cannot eclipse appreciation of evidence about incident dated 31st August, 1995.

13. Learned Counsel for the Appellant, however, submitted that even as regards to incident dated 31st August, 1995, the evidence of the witnesses, is discrepant and not worthy of being accepted. He pointed out that P.W.2 Ramakant Gondhali stated in his cross examination, which is at page No. 103 of the paper book, in the latter half of para 7 that Mahadeo Patil had suggested to the accused Pujari, as well as Ramkant for having a cup of tea. There would be no occasion, therefore for accused Chandrakant to suggest that Mahadeo should pay him in the canteen since there were several persons around them in the office when money was first offered. Learned APP pointed out that Mahadeo himself denied that he made any such suggestion to Chandrakant Pujari. Mahadeo''s denial would result in contradiction in the evidence of two witnesses about the incident. Curiously Mahadeo did state in his cross examination at page No. 86 of the paper book that on the terrace where canteen is situated, there was absolutely no talk between him and the accused, ruling out any demand being made on the terrace. Thus, the probability of demand being made in the office is ruled out by suggestion of Mahadeo that they should go for cup of tea to canteen and demand in canteen is ruled out as per Mahadeo''s own version that there was no talk on the terrace. Therefore, learned Counsel for the Appellant is right in submitting that there was possibility of without there being any demand, simply because the complainant was meeting repeatedly the Appellant for his work, he was annoyed, and that Chandrakant was trapped by pushing money in his pant pocket.

14. Learned Counsel for the Appellant submitted that in C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala, , it is held that mere seizure of tainted money from accused was not enough to prove offence punishable u/s 7 of the Prevention of Corruption Act, though there is presumption u/s 20 of the Act. Learned Counsel for the applicant is right in submitting that the presumption could be rebutted even by cross examination of the witness and not necessarily by examining witnesses on behalf of defence. Consequently in this case, presumption stood rebutted by the defence on preponderance of probabilities. In view of this it has to be held that the learned Special Judge ought to have seen this glaring discrepancy and held the demand, which was pre-requisite of payment of bribe, was not established.

15. Learned Counsel for the Appellant also points out that Mahadeo Patil claims to have given money with his right hand and Chandrakant is stated to have received tainted money with his left hand and kept it left pocket. He submits that for such a transaction, the parties would be standing side by side and the complainant''s right hand would therefore easily reach the left pocket of the pants of accused. Therefore, probability that money was pushed cannot be ruled out, in the context of the fact that there is discrepancy in the evidence of Mahadeo and Ramakant about demand.

16. Learned Counsel for the applicant next submitted that sanction accorded by P.W.3 Balkrishna Patil itself depicts total non application of mind and therefore, there was no sanction at all. He pointed out that P.W.3 Balkrishna had admitted

that sanction accorded by him was word by word the same as per draft which was forwarded by the A.C.P. to him. As rightly submitted by the learned Additional Public Prosecutor that there is nothing wrong on the part of Sanctioning Authority, sanctioning draft which had been sent by A.C.P., if after application of mind, the authority found that the draft to be perfect. It is not necessary, just in order to show application of mind, to make alterations in the draft which is otherwise perfect.

17. Learned Counsel, for the Appellant, however, submitted that in this case, non application of mind stares in the face of prosecution, because of admission by Balkrishna Patil in his cross examination that he did not understand what is meaning of the word "Paritoshan" used by him in the Marathi sanction order. If without understanding the meaning of the word "Paritoshan" Balkrishna Patil had accorded sanction for prosecution against Janardan Pujari for offence of "Paritoshan" i.e receiving illegal gratification, it would be difficult to say that this was done with due application of mind. Therefore, even on this count, contention of the learned Counsel for the Appellant is unassailable, as has been held by the Supreme Court, in Panalal Damodar Rathi v. State of Maharashtra 1979 SC 1191, and also in Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, wherein it has been observed that grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government Servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the public servant concerned. In view of this, even on the count of non-application of mind in according sanction for prosecution of the accused, the prosecution must fail.

18. The learned Counsel for the Appellant further submits that on the basis of discouragement to frivolous prosecution referred to by the Supreme Court, a learned Single Judge of this Court has consistently held that if the amount of bribe is trivial, prosecution can not succeed. For this purpose, he placed reliance on the judgment in Hanmantappa Murtyappa Vijapure v. State of maharashtra, 2004 ALL MR Cri 2117 which was followed in an unreported judgment Dinanath Pursushottam Dani v. State of Maharashtra Criminal Appeal No. 432 of 1998, decided on 19th October, 2005, by Nagpur Bench of this Court. The judgment in Hanmantappa (supra) itself followed, the judgments of Justice Saldhana in Arun Prahlad Kale Vs. The State of Maharashtra, , Shivchallapa Loni v. Sate of Maharashtra, 1993 Mh. LJ 573, and Bhagwan Jathya Bhoir v. State of Maharashtra, 1992 Mh LJ 1144.

19. I have carefully gone through these judgments. It has to be observed that the observations therein pertain to consideration by the sanctioning authority while granting sanction and triviality of amount would be one of those considerations. The judgments did not and could not have laid down any rule of law or ratio that if bribe amount is a trivial sum, prosecution must fail. There could be no judgment holding that if bribe amount is trivial sum, prosecution must fail, since there can be no definition of trivial amount. What may appear to

be trivial today while looking at an instances in the year 1995, as in the present case, may have been substantial sum at that time. Also whether the amount is trivial or not would have to be considered in the light of status of parties affected and nature of work. As far as bribe is concerned, whether it is one rupee or one lakh, it hardly matters and a person cannot be acquitted only because the amount is trivial.

20. However, in view of the finding that the evidence of the prosecution as regards the demand is discrepant as also finding that sanction order depicts non application of mind, appeal must succeed. Appeal, therefore, is allowed. The order dated 5th October,1999, passed by Special Judge for Prevention of Corruption Act, Sangli in Special Case No. 4 of 1996 convicting the Appellant of the offences of Section 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 is set aside. Fine amount if any paid by the Appellant be refunded to the legal representatives of the Appellant.

