
(1997) 12 BOM CK 0011
In the Bombay High Court
Case No : Criminal Appeal No. 833 of 1990

Shri Natha Bhau Dabhade	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 22-12-1997

Acts Referred:

Evidence Act, 1872 — Section 45, 59
Penal Code, 1860 (IPC) — Section 161, 165
Prevention of Corruption Act, 1947 — Section 5(1)(d)

Citation : (1998) BomCR(Cri) 444 : (1998) CriLJ 1354

Hon'ble Judges : V.H. Bhairavia, J

Bench : Single Bench

Advocate : S.R. Chitnis, for the Appellant; R.P. Behere, Assistant Public Prosecutor, for the Respondent

Judgement

V.H. Bhairavia, J.—This appeal is preferred against the judgment and order dated 13-11-90, passed by the learned Special Judge, Sangli in Special Case No. 5 of 1986, wherein the learned Judge acquitted original accused No. 2 and convicted the appellant-original accused No. 1 for the offences punishable under sections 161 of I.P.C. and u/s 5(1)(d) read with section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him to suffer R.I. for one year and to pay a fine of Rs. 500/-, in default, to suffer R.I. for 3 months for the first count and to suffer R.I. for one year and to pay a fine of Rs. 500/-, in default, to suffer R.I. for 3 months for the second count. Both the sentences were ordered to run concurrently.

2. The appellant alongwith another accused were charged for the offences punishable under sections 161 and 165 of I.P.C. and u/s 5(1)(d) read with section 5(2) of the Prevention of Corruption Act, for demanding and accepting illegal gratification for a sum of Rs. 1,200/- on 30-9-85.

3. The prosecution case in short is that, at the relevant time, the appellant was working as a Senior Clerk in the office of Superintending Engineer, Environmental

Engineering Circle, Sangli. It is alleged that the appellant has demanded Rs. 1,500/- from the complainant Adinath Devappa Magdum, P.W. 1, through original accused No. 2 as illegal gratification for securing permanent posting order in the same office as Tracer. According to the prosecution, the complainant P.W. 1 Adinath agreed to pay Rs. 1,200/- as part payment against the demand of Rs. 1,500/-. The demand alleged to have been made on 16-9-85 and thereafter, the complainant P.W. 1 informed A.C.B. and lodged complaint against the appellant and other accused who was working as Assistant Draftsman in the same department. Accordingly, a trap was arranged and carried out on 30-9-85 at about 20.15 hrs. at Sangli on public road in front of hotel Kohinoor. It is the prosecution case that original accused No. 2 Raghunath Anandrao Pandhare accepted Rs. 1,200/- from the complainant and handed over to the appellant-accused and at that time, they were caught red handed by the raiding party of A.C.B.

4. After drawing the panchanama and recording the statements of the witnesses, chargesheet was submitted to the Special Judge and the learned Special Judge framed the charges (Exhibit 14) against both the accused. After recording the prosecution evidence, the learned Special Judge held the charges proved against the appellant-accused for the offences punishable u/s 161 of I.P.C. and u/s 5(1) (d) r/w. section 5(2) of the Prevention of Corruption Act, 1947. Therefore, he has been convicted and sentenced accordingly. However, the learned Judge acquitted original accused No. 2 as the charges were not held proved against him.

5. Heard Mr. Chitnis, learned Counsel for the appellant. It has been submitted that the charge is not held to be proved. The finding of the learned Special Judge regarding the charge held proved against the appellant-accused, is erroneous and illegal. It has been submitted that the prosecution story has been totally changed before the Court. The charge against the accused is that the appellant-accused demanded and accepted bribe of Rs. 1,200/- through original accused No. 2. The charge was framed as per the complaint of the complainant P.W. 1 and the "statements recorded by the Investigating Officer. The post trap panchanama (Exhibit 26) shows that the complainant has given currency notes to original accused No. 2 and the anthracene powder was found on the fingers of original accused No. 2. Further, it is the prosecution case that original accused No. 2 immediately handed over that currency notes to the appellant-accused. The panch has also supported the panchanama. However, the complainant P.W. 1 does not support the prosecution story. He has deposed before the Court that he has tried to insert the currency notes in the pocket of original accused No. 2 but he refused to take it and thrown away. In his deposition, he has deposed as follows:---

"Shri Dabade came to us at about 8.15 p.m. I told him that I have come prepared as per his directions. Shri Dabade told me that I should meet Shri Pandhare pointed his finger in the direction of Shri Pandhare. On getting this signal, Shri Pandhare came out from his shop. He came to us and stood in front

of me near us. Dabade told me that I should give money to Shri Pandhare. I, therefore, took-out the currency notes and held it in front of Shri Pandhare. Shri Pandhare got annoyed and said that he has no concern and why money is being given to him. He told Shri Dabade that he should accept the money. Shri Pandhare has pushed my hand touching the notes. When Pandhare refused to accept the money, Shri Dabade took the currency notes with his right hand and put them in his left breast pocket of the shirt."

Rajan Ganapati Honugare, P.W. 2 in his deposition (Exhibit 24) has deposed as follows:---

"Accused No. 1 Shri Dabade said that now that complainant, has brought money should give it to Shri Pandhare. Magdum then took-out money from his pocket and gave it to Shri Pandhare. Accused No. 2 Pandhare said that money should not be kept with him and gave it to accused No. 1".

6. It is the prosecution evidence that the anthracene powder was found on the finger of accused No. 2 as well as on the fingers of appellant-accused and the learned Judge has observed the same in his judgment in para 20. However, the accused No. 2 has been acquitted. Mr. Chitnis, learned Counsel for the appellant submitted that the charge is that the appellant-accused has demanded and accepted the bribe through accused No. 2 and that is not held proved in view of the "evidence of P.W. 1 complainant himself. In his deposition, he has stated a different story than the complaint and the charge. He does not support the charge that the appellant-accused accepted the bribe amount of Rs. 1,200/- through accused No. 2. The learned Counsel Mr. Chitnis for the appellant submitted that the complainant changed the prosecution story with a view to exonerate accused No. 2 who was also a public servant. In support of his arguments, he has cited a case reported in G. V. Nanjundiah v. State (Delhi Administration, 1988 (Cri.) S.C.C- 77, wherein it has been observed thus-

"Therefore, the very foundation of the prosecution case is shaken to a great extent. The question as to the handing over of any bribe and recovery of the same from the accused should be considered along with other material circumstances one of which is the question whether any demand was at all made by the appellant for the bribe. When it is found that no such demand was made by the accused and the prosecution has given a false story in that regard, the Court will view the allegation of payment of the bribe to and recovery of the same from the accused with suspicion."

7. Having gone through the record and proceedings of this case, the order of conviction is unsustainable in view of the fact that it is the specific charge that the appellant-accused demanded and accepted money through original accused No. 2 and that has not been held proved and the prosecution has failed to prove that the money was not accepted by the appellant-accused through original accused No. 2 and therefore, the original accused No. 2 was acquitted. Therefore, the question is; can the appellant-accused be held responsible for the

alleged charge independently? In my view, unless the charge is altered and in the absence of evidence, the appellant-accused cannot be convicted. The Government has not filed appeal against the acquittal of accused No. 2. In the complaint, the complainant P.W. 1 alleged that the appellant-accused demanded and accepted the illegal gratification through original accused No. 2 and accordingly, a trap was arranged and was carried on 30-9-85. Panchanama was also drawn accordingly that P.W. 1 handed over currency notes to accused No. 2 and accused No. 2 taken the same and gave it to accused No. 1 i.e. the appellant. The panch witness supports the panchanama. The anthracene powder was found on the fingers of accused No. 2 and appellant-accused but the complainant P.W. 1 does not support the story and has been contradicted with the panch witness. I can understand that the evidence of the complainant may be ignored and full weight to be attributed to the panchanama and evidence of panch witness and both the accused could be held guilty for the offence but the learned Judge has committed a blunder in acquitting accused No. 2 and held the appellant-accused No. 1 solely responsible for accepting the illegal gratification from the complainant. In my view, therefore, under these facts and circumstances of this case, the appellant is entitled for the benefit of doubt.

8. In the result, appeal is allowed. The order of conviction and sentence dated 13-11-90, passed by the learned Special Judge, Sangli, in Special Case No. 5 of 1986, is set aside and the appellant-accused is acquitted. His bail bond shall stand cancelled. Sureties stand discharged.

9. Appeal allowed.