
(2010) 07 BOM CK 0096
In the Bombay High Court
Case No : Criminal Appeal No. 87 of 2001

Shri Suresh Pandav

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

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

Citation : (2011) 8 RCR(Criminal) 2821

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : R.M. Daga, for the Appellant; D.B. Patel, Assistant Public Prosecutor, for the Respondent

Judgement

A.H. Joshi, J.—The appellant was charged for commission of offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, and has been convicted and sentenced to undergo Rigorous Imprisonment for one year and a fine of Rs. 500/-, in default, Rigorous Imprisonment for two months for the former offence, and Rigorous Imprisonment for two years and a fine of Rs. 600/-, in default, Rigorous Imprisonment for three months for the latter offence.

2. Prosecution has examined in all eleven witnesses.

3. Panch witness one Shri Ramesh Ambadas Linge has not been examined.

4. PW 6 Shri Somaji Mahaguji Meshram, the complainant, has turned hostile.

5. Entire reliance of the prosecution is on oral testimony of PW 3 Shri Sadashiv Yeshwantrao Ingale.

6. Crux of the matter is the demand of bribe amount, its acceptance by the accused and recovery thereof from him.

7. In so far as the demand is concerned, PW 6 Somaji Mahaduji Meshram, the complainant, has stated as follows:

2. On the next day, I alone went to A.C.B. Office. Rizvi has given/put 600 Rs. in my pocket. From Anti Corruption office, one person, myself and staff members went to the Corporation office, by a jeep. The person who was accompanying with me and myself went to the office of Pandav. I have put 600/ Rs. on his table, and asked him for the receipt. He has put 600/ Rs. in his pocket. He has started to prepare the receipt, in the meantime, police came and accosted him. Police has taken the search of Pandav. The amount of Rs. 600/- was taken from him. Police has seized that amount. Then we came back. No further incidence taken place. The receipt now shown to me is of my name.

[Quoted from page No. 114 of the Appeal paper-book. Underlining is done to highlight the important and relevant portion].

8. This witness was cross-examined, and even in the cross-examination, he has reiterated what he told in Examination-in-Chief. The relevant portion from the cross- examination is quoted below:

13. ... It is not true that, I have given Rs. 600/- to Pandav. Pandav has counted the currency notes by both hands, and put the fold in his Manila pocket. It is not true that, accused said that now, I should not worry, there will be tax demand to the lady, soon. Portion mark K from my statement now read over to me is not correct.

[Quoted from page No. 121 of the Appeal paper-book. Underlining is done to highlight the important and relevant portion].

9. PW 3 _ Sadashiv Yeshwantrao Ingale, Panch witness, states that he was not present when the demand was made by the accused. His version in Examination-in-Chief reads as follows:

2. Myself and other trap party members were waiting outside the office of the accused, after 10 to 15 minutes Somaji has given the signal by rubbing and handkerchief on the face. Myself and other trap party members entered to the office. Both hands of the Pandav were caught. The accused before the court is the same. Rizvi has given his identity to Pandao. I was with Rizvi. Rizvi has introduced us with Mr. Pandav. Pandao was frightened. Rizvi asked him to be calm.

[Quoted from page No. 46 of the Appeal paper-book. Underlining is done to highlight the important and relevant portion].

10. In the Cross-examination, PW 3 Sadashiv Ingale confirms what he has stated in Examination-in-Chief as to talk, if any, between the complainant and the accused. Text of cross-examination of PW 3 Sadashiv Ingale reads as follows:

4. Cross by Shri Rizvi Adv., for accused. Pandao has not demanded anything in my presence to Somaji or Kalpanabai. I do not know the talk between complainant, Linge and accused. There were 20 to 25 clerks in the office of accused and they were sitting adjacent to each other. I cannot say from whose

custody Articles from Exh.37 were seized. I cannot say whose signature is on Exh.37. I cannot say from whom the seizure of Exh.38 was made.

[Quoted from page No. 48 of the Appeal paper-book].

11. Based on this evidence, learned Adv., for the appellant has placed reliance on following judgments in support of his contention:

1. Panalal Damodar Rathi Vs. State of Maharashtra, ,
2. Arjun Bajirao Kale v. State of Mah. 2009 ALL MR (Cri) 85, and
3. Manohar Dhondur Sawant v. State of Maharashtra and Anr. 2006 (2) AIR Bom R 294.

12. These judgments are relied upon to urge that:

[1] Bare recovery of amount of bribe from the accused is not sufficient, and demand ought to be proved.

[2] In the event of suspicion, the accused is liable to be given benefit of doubt.

13. Probably another witness of Panchanama Mr. Ramesh Ambadas Linge could have been examined to prove what prosecution desired, however, prosecution has failed to examine him.

14. It is, thus, a clear case where demand was not proved by the complainant, as he turned hostile, and prosecution witnesses, who were examined, have also failed to prove the demand as well the acceptance of bribe money.

15. Thus, on what is shown by the prosecution, demand of amount of bribe by the accused is not proved. In the result, recovery of amount of bribe from the accused becomes insignificant.

16. Moreover, it has come on record that complainant had demanded receipt of money paid and the accused had started writing and completed the writing of Tax Receipt towards amount received by him.

17. Collective effect of the evidence is that accused is not guilty.

18. Judgment and Order of conviction and sentence is liable to be set aside. Appellant is acquitted.

19. His Bail Bonds stand cancelled.