
(2012) 05 BOM CK 0096
In the Bombay High Court
Case No : Criminal Appeal No. 308 of 2001

State of Maharashtra

APPELLANT

Vs

Ashok Tukaram Gavai and Another

RESPONDENT

Date of Decision : 03-05-2012

Acts Referred:

Prevention of Corruption Act, 1988 — Section 12, 13(1)(d), 13(2), 7

Citation : (2013) 2 ABR 439

Hon'ble Judges : M.T. Joshi, J

Bench : Single Bench

Advocate : Y.M. Kshirsagar, app, for the Appellant; N.N. Shinde, for the Respondent

Final Decision : Dismissed

Judgement

M.T. Joshi, J.—Heard both sides. Aggrieved by acquittal of the present respondents from the offences punishable under Sections 7, 12 and 13(1)(d) r/w. S. 13(2) of the Prevention of Corruption Act, present appeal is preferred by the State.

In short, the prosecution case is as under:-

2. That respondent Ashok during the relevant time was a public servant working in the office of District Industries Center at Dhule as Industries Inspector. When he was on tour on 6.10.1994, the complainant (p.w.1) Sk. Majid met him with a proposal to seek an amount of Rs. 40,000/- from the Industries Department for his ongoing business of purchasing and repairing of wrist watches. After preliminary talk, the respondent No. 1 made it clear to the complainant that unless and until 2% of the amount to be sanctioned i.e. of Rs. 40,000/- is paid, the work may not be done. Ultimately, after negotiation, illegitimate demand was settled to Rs. 500/-. It was agreed that the complainant would go to Dhule and he will pay the amount. In these circumstances, complainant filed his complaint on 10.10.1994 with the And Corruption Bureau. P.W.4 Dr. Prabhakar Patil, Deputy

Superintendent of Police of A.C.B. took over the investigation. He collected two panch witnesses including P.W.2 Arvind Naik and one Mr. Suryawanshi. The regular exercise of pre-trap panchanama was carried. The currency notes were smeared with Anthrasene powder and were kept with the complainant.

3. The complainant and P.W.2 went to the office of the accused No. 1. Accused No. 1 asked the accused No. 2 who was standing nearby, to accept the money and beetle leaf from the complainant. Accordingly, the complainant and the panch witnesses along with accused thereafter went outside of the office where the accused No. 2 accepted the smeared money from the complainant. Accordingly, the other members of the trap party came there and the tainted money was found on the person of the accused No. 2. On the basis of these allegations, the charge-sheet was filed. Before the learned Special judge, in all four witnesses were examined. P.W.1 Sk. Majid is the complainant himself. P.W.2 Arvind Naik is the panch who is said to have accompanied the complainant at the time of incident. P.W.3 Yeshwant Development Commissioner of Industries was examined to show that he has granted sanction to prosecute the respondent No.1 while P.W.4 Mr. Prabhakar Patil is the investigating officer.

4. The learned Special Judge acquitted both the accused principally on the ground that there is no evidence that on the date of laying of the trap any demand was made by respondent No. 1 and there was contradiction between the witnesses examined as to from where the currency notes from the person of the respondent No. 2 were found, but another panch witness who would have clarified the fact, was not examined. Further the contradiction about as to whether the investigating officer has directed the complainant to hand over the money only to the respondent No. 1 and not to other person was there between the statements of the Investigating Officer and the complainant and in these circumstances, giving benefit of doubt, both the accused were acquitted.

5. The learned A.P.P. submits that the learned Special Judge has acquitted the accused on inappropriate ground. According to her, evidence of the complainant as well as independent panch witness would show that the respondent No. 1 has not only made earlier demand of money during trap also there is evidence to show that respondent has indicated by his gesture that he was making demand of money and even gave direction to the accused No. 2 to accept the illegal gratification. In these circumstances, she submits that the learned Special Judge ought not to have made capital of some variance between the statements of the witnesses.

6. On the other hand, Mr. N.N. Shinde, learned counsel appearing for respondent No. 1 submits that the evidence on record would clearly show that there was no demand of money in presence of any independent witness. Further, the prosecution suffers from contradictions which according to him, created suspicion about the prosecution case. In these circumstances, he supports reasonings forwarded by the learned Special Judge.

7. Upon hearing both the parties, in my view, prosecution has failed to prove beyond reasonable doubt that any offence as alleged is committed by any of the respondents for the reasons to follow :-

REASONS

8. So far as the first demand is concerned, prosecution has examined the complainant. The corroboration to his case would naturally be a subsequent demand claimed to have been made by respondent No. 1 on the date of laying of the trap i.e. at 1 p.m. in the office of the respondent No. 1. The evidence of complainant Sk. Majid would reveal that no specific demand at that time was made by the respondent No. 1. According to him, the respondent No. 1 has pointed towards the respondent No. 2 and directed the respondent No. 2 to obtain money from the complainant. Thereafter, according to complainant, he handed over the money to the respondent No. 2 outside of the office in presence of the second panch witness i.e. P.W.2.

9. During cross-examination, the complainant very specifically stated that he was directed by officers of the A.C.B. that he should hand over the tainted money only to Mr. Gavai i.e. respondent No. 1 on his demand and not to any other person. The panch witness as well as investigating officer however, denied that any such directions were given to him.

10. Had there been the specific direction that the tainted money should be handed over only to the respondent No. 1, then, the complainant would have followed the same and the trap may have failed which would have given rise to another trap. However, there is material contradiction in this respect as highlighted above. The complainant's evidence would show that against direction of the investigating officer, he has handed over tainted money to the respondent No. 3 while rest of the relevant witnesses denied that such directions were given.

11. Next of the contradiction is as to from where the money was recovered from the person of respondent No. 2. While complainant says that currency notes were actually in the hands of the respondent No. 2 at the time of its seizure. The panch witness however, states that the amount was recovered from the packet of the respondent No. 2. In these circumstances, the learned Special Judge observed that panch No. 2 Suryawanshi should have been examined because it is the prosecution case that in his presence, the search of the respondent No. 2 was carried.

12. All these circumstances on record would show that a reasonable suspicion has arisen as to whether the respondent No. 1 has made any demand of any illegal gratification and as to whether on his direction the illegal gratification was accepted by respondent No. 2. In that view of the matter, there is no need to advert to the argument of Mr. Shinde, learned counsel that the sanction granted in the present case is not valid. In these circumstances, the conclusion of the learned Special Judge that benefit of doubt will have to be given to the respondents, needs no interference. Appeal is therefore, dismissed.