(2015) 08 BOM CK 0105

In the Bombay High Court

Case No : Criminal Appeal No. 998 of 2009

State of Maharashtra APPELLANT

Vs

Balwantsingh Routela RESPONDENT

Date of Decision : 03-08-2015

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

Citation : (2015) ALLMR(Cri) 4180

Hon'ble Judges : A.M. Thipsay, J

Bench : Single Bench

Advocate : Deepak Thakre, APP, for the Appellant; A.S. Khandeparkar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.M. Thipsay, J—This appeal is directed against the judgment and order dated 19th January 2009, passed by the learned Special Judge, (Under the Prevention of Corruption Act), Pune, in Special Case No. 1 of 2005, acquitting the respondent, who was the sole accused in the said case, of offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (P.C. Act hereinafter). The State of Maharashtra, feeling aggrieved by the said order of acquittal, has approached this court by filing this appeal, praying that the same be set aside, and that, the respondent be dealt with in accordance with law.

2. I have heard Mr. Deepak Thakre, the learned APP for the State. I have heard Mr.A.S. Khandeparkar, the learned counsel for the respondent. With their assistance, I have gone through the relevant evidence adduced during the trial. I have carefully gone through the impugned judgment and order.

3. For the sake of convenience and clarity, the respondent shall hereinafter be referred to as ''the accused.''

4. The accused, at the material time, was working in Oriental Insurance

Company ("Insurance Company" hereinafter) as Divisional Manager, in the Division Office at Pune. One Ajaypalsingh Harpalsingh Hunjan (PW1) (hereinafter referred to as ''the complainant''), at the material time, was in the business of transport. He was having 37 trucks, out of which, three were insured with the Insurance Company. In the year 2003, all the said three trucks had met with an accident on different dates and the complainant had submitted O.D. claims with the Insurance Company. That, on 26th March 2004, the complainant met the accused in the Division Officer of the Insurance Company and inquired about his claims. At that time, the accused demanded an amount of Rs.5,000/- from the complainant for processing his claims. The accused bluntly stated to the complainant that unless the said amount was paid, his claims would not be processed. On 29th March 2004, the complainant again met the accused and requested him to accept a smaller amount, viz., an amount of Rs.3,000/-, but the accused refused to accept the same, and insisted on the amount of Rs.5,000/-. The accused also asked the complainant to come to Hotel Seven-Loves at about 9.30 p.m. with the said amount of Rs.5,000/-, if he wanted to get his work done.

5. That, since the complainant did not want to pay the said amount, he approached the office of Anti Corruption Bureau (ACB), and filed a complaint against the accused. The ACB Officer recorded the complaint, called two panchas-Mahesh Datar (PW2) and Manohar Mondhe. The panchas were introduced to the complainant and were also made to read the complaint that had been recorded. Then, a trap was laid. An amount of Rs.5,000/- was taken from the complainant. Anthracene powder was applied to the notes provided for by the complainant, and then, the police party and the panchas, all, in a government jeep, proceeded to Hotel Seven-Loves. The complainant and the panch Mahesh Datar walked inside the hotel. The other persons of the raiding party were following them by keeping some distance. The accused came to the hotel after about 15 to 20 minutes. He sat with the complainant and the panch Mahesh Datar. However, instead of accepting the bribe amount on the table, the accused asked the complainant to come out and pay the amount. The accused ultimately accepted the said amount while he and the complainant were proceeding towards the main door of the hotel, and after they had reached near the door. The accused accepted the tainted amount and kept it in the left pocket of his Kurta. The complainant then gave the pre-determined signal to the raiding party, after which, the members of the raiding party rushed to the spot and caught hold of the accused. The hands and clothes of the accused were examined by using Ultra Violet lamp. Blue glittering was noticed on the right hand and inner part of the left chest pocket of the shirt of the complainant.

6. On completion of investigation, the accused was prosecuted, and as aforesaid, the trial resulted in his acquittal.

7. The prosecution examined four witnesses during the trial. The first was the complainant himself. The second, as aforesaid, was the panch Mahesh Datar. The

third one was Dilip Dhar, General Manager of Insurance Company, who had granted sanction to prosecute the accused, and the fourth and last witness was Sudam Darekar, the Investigating Officer.

8. The learned Special Judge found the evidence adduced by the prosecution unreliable. He came to the conclusion that the initial demand itself had not been satisfactorily proved. The learned Special Judge observed that the evidence of the demand on 29th March 2004, as given by the complainant, was not corroborated by the evidence of the panch Mahesh Datar. The learned Special Judge also disbelieved the version of the complainant that the accused had called him to Hotel Seven-Loves with the bribe amount. The learned Special Judge observed that there was evidence to the effect that the complainant was carrying a mobile telephone instrument with him, and that, after the complainant had gone to the office of the ACB, he had given two to three telephone calls to the accused. A suggestion was given to the complainant in the cross-examination that on 29th March 2004, he had contacted the accused telephonically thrice between 8.00 p.m. to 9.15 p.m. The learned Special Judge noted that the complainant did not deny this, but merely stated that he did not remember about it. The learned Special Judge then observed that in the facts of the case, as stated by the complainant, there was no occasion for the complainant to have made telephone calls to the accused during the period from 8.00 p.m. to 9.15 p.m., that is just before the trap. The learned Special Judge observed that there was every possibility that it was the complainant, who had somehow made the accused to come to Hotel Seven-Loves, as per the defence of the accused, that he had been called there by the complainant under the pretext of introducing his Manager to the complainant. In my opinion, considering the evidence that was adduced during the trial, the conclusion arrived at by the learned Special Judge, viz., that there was no satisfactory evidence to establish the demand of bribe, is proper and correct.

9. The learned Special Judge also observed that even the acceptance of the tainted money by the accused was not satisfactorily proved. The learned Special Judge noted that though the case of the prosecution was that the accused had accepted the tainted amount by his right hand and then kept it in the left pocket of his kurta, the evidence did not indicate that there were any traces of anthracene powder on the right hand fingers of the accused. The evidence indicated that the traces of anthracene powder were noticed only on the left hand fingers of the accused and the left pocket of his kurta. This was consistent with the defence version that the complainant had thrust the tainted amount in the kurta of the accused and the accused was asked to take it out, after he had been trapped. Indeed, a doubt really existed about this aspect of the matter, and therefore, the conclusion arrived at by the learned Special Judge that the prosecution had failed to prove in a satisfactory manner that the accused had consciously accepted the tainted amount, appears to be proper and legal.

10. The learned Special Judge also observed that there was no occasion for the

complainant to have offered bribe to the accused, or for the accused to have demanded the bribe from the complainant, in as much as, the claims, for approving which the accused is supposed to have demanded the bribe, had not at all reached the accused, who was the final sanctioning authority for such claims. The evidence that has been adduced indicated that the papers in respect of the said claims were still to be processed and would not be placed before the accused at all. The learned Special Judge observed that when the complainant''s proposal had not at all reached the accused, an experienced person like the complainant, would not approach the accused for getting the claim sanctioned. This conclusion arrived at by the learned Special Judge is also proper and legal.

11. The learned Special Judge additionally noted some other discrepancies in the prosecution case in the concluding part of his judgment.

12. The view of the learned Special Judge that the evidence of the prosecution was contradictory, conflicting and unreliable, appears to be proper. The appreciation of evidence, as done by the learned Special Judge is proper. The ultimate conclusion arrived at by him viz., that the prosecution had failed to prove its case, cannot be faulted at all. On an independent re- appraisal of the evidence, this court also comes to the same conclusion.

13. There is no merit in the appeal.

14. The Appeal is dismissed.

