

(2023) 12 BOM CK 0044
In the Bombay High Court
Case No : Criminal Appeal No. 863 Of 2008

State Of Maharashtra

APPELLANT

Vs

Dr. Sau. Ujwala Ratnakar Mane

RESPONDENT

Date of Decision : 18-12-2023

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13(1)(d), 13(2)
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2023) 12 BOM CK 0044

Hon'ble Judges : R. N. Laddha, J

Bench : Single Bench

Advocate : HJ Dedhia, Rahul S. Kate

Final Decision : Dismissed

Judgement

R. N. Laddha, J

1. This Appeal is directed against the judgment and order passed by the Special Judge at Satara in Special Case No.5 of 2004, whereby the accused/respondent came to be acquitted of the offence punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the Act').

2. It is the case of the prosecution that between 1.8.2001 and 15.9.2003, the accused worked as a Class-2 Medical Officer (a public servant) at Civil Hospital in Satara. The complainant, Rahul More's mother, was running a cloth shop in the village Shendre, Satara, where Mahesh Baban Taware (PW4) was employed. According to the prosecution, on 11. 9.2003, Mahesh Baban Taware (PW4) was assaulted by Mahendra Kadam and one Chavan. As a result, Mahesh Taware (PW4), along with Rahul More (PW1), went to the police station to lodge a complaint. The police then sent Mahesh Taware to Civil Hospital, Satara, for treatment, where he was treated by the respondent/accused. However, on asking for a medico-legal certificate (hereinafter referred to as 'the certificate'), the respondent/accused demanded Rs.200/-as illegal gratification for issuing the

certificate. The complainant, therefore, went to the Anti-Corruption Bureau, Satara and lodged a report detailing the facts.

3. Madhav Dattatraya Solaskar (PW2) and Vaishali Mohan Rajmane, employed at the office of the Collector in Satara, were appointed as panch witnesses. After verifying the contents of the complaint, the complainant was given currency notes worth Rs.200/- that were smeared with anthracene powder. Madhav Solaskar (PW2) was instructed to accompany the complainant during the trap at Civil Hospital, Satara. The complainant, panch witnesses and other police staff then went to the Civil Hospital, Satara, to conduct the raid on 15.9.2003, around 1.40 hrs. The accused was nabbed in the hospital after accepting the bribe of Rs.200/-.

4. A report (Exh.49) was lodged at City Police Station, Satara, by Mr Netaji Bhausahab Shinde, the then Deputy Superintendent, Anti-Corruption Bureau, Satara, (PW 5). Based on this report, an offence vide C.R.No.100 of 2003 was registered against the accused under Sections 7, 13(1)(d) read with 13(2) of the Act.

5. Mr Subhashchandra Tatyasaheb Magar, the then Under Secretary, Public Health Department, Mantralaya, Mumbai, accorded sanction to prosecute the accused, and a charge sheet was subsequently filed.

6. Charge came to be framed against the accused for the offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Act. The accused abjured his guilt and claimed trial.

7. At the trial, to substantiate the indictment against the accused, the learned trial Court recorded the evidence of witnesses, namely Rahul Ramchandra More (PW 1), the complainant; Madhav Dattatraya Solaskar (PW 2), the panch witness; Subhashchandra Tatyasaheb Magar (PW 3), the sanctioning authority; and Mahesh Baban Taware (PW 4), the injured; and Netaji Bhausahab Shinde (PW 5), the investigating officer.

8. The statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, came to be thereafter recorded, consisting of a denial and false implication. The accused had examined herself in her defence.

9. After hearing the learned Counsel for the parties, the learned trial Court held that the evidence regarding the demand and acceptance of the bribe was questionable in several significant ways. The defence put forth by the accused was found to be probable. As a result, the accused was acquitted.

10. Being aggrieved by and dissatisfied with the impugned judgment and order of acquittal, the appellant/State has preferred this appeal.

11. I have heard Mr HJ Dedhia, the learned Additional Public Prosecutor for the State and Mr Rahul Kate, the learned Counsel for the accused/respondent and perused the impugned judgment, grounds in the appeal memo, evidence of the

prosecution witnesses and the accused; and the entire material on record.

12. Mr HJ Dedhia, learned Additional Public Prosecutor, submitted that the order of acquittal was not in accordance with the law. He stated that the trial Court misinterpreted the evidence presented by the prosecution and was swayed by several assumptions not supported by the evidence on record, resulting in a grave miscarriage of justice. He argued that minor inconsistencies, contradictions, embellishments or improvements on trivial matters that do not affect the core of the prosecution's case should not be grounds for rejecting the evidence entirely. He stated that the complainant provided a detailed account of events, which was corroborated by other witnesses. His main contention is that the accused accepting the bribe is conclusive evidence that cannot be brushed aside.

13. According to the learned APP, the evidence of the complainant and panch witness, Madhav Solaskar, confirms the accused's demand and acceptance of the bribe. The evidence of PW3 Subhashchandra Magar demonstrates that he has thoughtfully accorded the sanction. Mr Netaji Shinde (PW 5) testified that necessary procedures for setting up the trap were followed, and the accused was nabbed while accepting the bribe. In his view, the defence of the accused is not at all probable as it was alleged that the bribe was demanded to give the certificate.

14. On the other hand, Mr Rahul Kate, the learned Counsel for the respondent/accused, supported the line of reasoning adopted by the trial Court to record the finding of acquittal. He made various submissions countering the arguments on behalf of the appellant/State. He argued that the accused never demanded any bribe amount from the complainant, nor did she accept the amount from him. According to the learned Counsel, it is the responsibility of the police officer to obtain the certificate. If the person who was examined wishes to receive the certificate, he must submit an application. However, neither the complainant nor the injured filed such an application.

15. Mr Rahul Kate, the learned Counsel for the respondent/accused, submitted that the prosecution concealed the evidence by not examining trainee doctors/medical officers who were present with the accused when she examined the injured Mahesh (PW 4) and allegedly demanded illegal gratification. According to the prosecution, the demand was made at around 1:30 pm on 11.9.2003, and the accused called him the next day to collect the certificate.

Learned Counsel submitted that on 12.9.2003, the complainant (PW 1) and Madhav Solaskar (PW 2) visited the Civil Hospital with the trap party and waited for the accused for several hours. When they came to know that the accused was occupied with the surgery, they were informed that someone was waiting to receive the certificate when she came out of the operation theatre. However, the evidence of the prosecution witnesses indicates that the accused did not recognise the complainant or the injured, nor did she demand a bribe. He further

submitted that the panchnama dated 12.9.2003 contradicts the complaint, which was drafted on 11.9.2003.

16. This Court acknowledges that the Appellate Court has limited power to interfere with an order of acquittal. However, in exceptional cases, where there are compelling circumstances, and the judgment under appeal is found to be perverse, the Appellate Court can interfere with the order of acquittal. It is a settled principle in law that there is a presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided unless there are good reasons for interference. This legal position is highlighted in the judgment of the Supreme Court in *Phula Singh Vs. State of HP* (2014)4 SCC 9.

17. The prosecution alleges that the accused demanded Rs.300/- initially and then negotiated for Rs.200/- in the presence of trainee doctors/medical officers to issue a certificate for Mahesh Taware (PW4). However, none of the trainee doctors/medical officers have been examined by the prosecution. According to the prosecution, the accused asked the complainant (PW1) and the injured (PW4) to come the next day to obtain the certificate. However, the evidence of the prosecution witnesses shows that on 12.9.2003, the accused did not identify the complainant and the injured and did not make any demand as alleged. There was no mention of the demand made earlier either. Furthermore, it is evident from the records that even after reminding the accused that the injured was examined by her, she neither identified him nor demanded the bribe amount as alleged.

18. The record demonstrates that on 13.9.2003, the raiding party visited the Civil Hospital along with the complainant and Madhav Solaskar (PW2). The accused did not specify a particular time or place to meet them. Instead, the complainant decided to chase the accused along with others from 12.9.2003 to 15.9.2003.

19. On 13.9.2003, a raiding party arrived at the Civil Hospital in the noon and were trying to locate the accused. However, they came to know that her duty hours had ended. She was only available for emergency duty after 14:00 hrs, so they decided to wait at the hospital. When the accused arrived, she went directly to the emergency room and began working. At that time, the complainant entered the room. Two hospital employees were present in front of the accused, and a peon was standing at the door. The accused did not identify the complainant, nor did she remember examining the injured or issuing a certificate.

20. According to the prosecution witnesses, the accused was willing to provide the certificate on 13.9.2003 but was unable to do so as the record room was closed. The complainant had ample time, chances, and opportunities to offer the bribe amount to the accused. It was possible for the complainant to pay the bribe amount to the accused on 12 and 13 of September 2003 but no such attempt

was made.

21. According to the prosecution, the accused threw the bribe amount on the table after seeing the trap party. However, the complainant has admitted in his cross-examination that nobody saw the accused when she threw the money on the table. Furthermore, none of the doctors or the hospital staff present at the time of the trap, nor the lady constable caught holding the accused's hands, have been examined.

22. The prosecution does not claim that the police were insisting on obtaining a certificate. Instead, the case of the prosecution is that the complainant (PW1), who was not the injured, was the one insisting on obtaining a certificate for Mahesh Taware (PW4), who was injured. It is worth noting that the complainant was not in any manner concerned with this certificate. The complainant (PW1) personally decided to file a complaint with the Anti-Corruption Bureau. The prosecution does not claim that the injured Mahesh (PW4) or the police requested/authorised the complainant to obtain the certificate from the accused. The injured Mahesh Taware (PW4) did not visit the Civil Hospital to demand the certificate, nor did he make any complaint to the police or Anti-Corruption Bureau that the accused refused to provide him with the certificate. It was the complainant who filed the complaint against the accused.

23. Moreover, the prosecution does not claim that the police did not take cognizance of Mahesh Taware's complaint despite him being an injured party without a certificate. The prosecution also does not claim that Mahesh Taware (PW 4), an injured told the complainant (PW1) that the accused had demanded a bribe. In fact, the evidence of the injured Mahesh Taware (PW 4) suggests that the accused did not demand a bribe from him, nor did he make a complaint to the police. Moreover, the statement of the injured (PW4) was not recorded on the date of the complaint.

24. It is a settled principle in law that possessing and recovering currency notes from the accused without proof of demand does not constitute an offence under Sections 7 and 13(1)(d)(i) and (2) of the Act, as without proof of demand for illegal gratification, it cannot be established that the accused used corrupt or illegal means or abused his position as a public servant to obtain something valuable or a pecuniary advantage. In the present case, the prosecution was unable to prove beyond a reasonable doubt that the accused had demanded and accepted illegal gratification. The defence put forth on behalf of the accused is a probable defence.

25. In such circumstances, the trial Court, in my considered opinion, rightly found the respondent not guilty of the offence for which she was charged.

26. As a result, this appeal fails and is hereby dismissed.