(2017) 05 BOM CK 0063

In the Bombay High Court

Case No : 366 of 2006

State of Maharashtra — APPELLANT

Vs

Gajanan Shankarrao Phalke & anr — RESPONDENT

Date of Decision : 19-05-2017

Acts Referred:

Prevention of Corruption Act, 1988, Section 13, Section 7, Section 12 - Criminal misconduct by a public servant - Public servant taking gratification other than legal remunera

Citation : (2017) 05 BOM CK 0063

Hon'ble Judges : S. B. Shukre

Bench : SINGLE BENCH

Advocate : N. P. Mehta

Judgement

1. This is an appeal preferred against the judgment and order dated 2642006 delivered in Special Case No. 2/2002 by Special Judge and Additional Sessions Judge, Pusad, District Yavatmal thereby acquitting respondent no. 1 of the offences punishable under Sections 7 and 13(i)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and respondent no. 2 of the offences punishable under Sections 7 read with Section 12 as well as Section 13(i)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. Both the respondents were tried for the afore stated offences on the allegations that while working as Senior Clerk and Junior Clerk respectively in the Court of Civil Judge Senior Division, Pusad, District Yavatmal, respondent no. 1 demanded from the complainant Virendra s/o Krushnarao Mandavkar an amount of Rs. 500/for issuing succession certificate which was already directed to be issued by the Court and the respondent no. 2 abetted the commission of offence of bribery by respondent no. 1 by accepting from respondent no. 1 the tainted currency notes of Rs. 500/which were handed over to him as bribe by the complainant. Such demand and acceptance of bribe took place at the Court premises of Civil Judge Senior Division, Pusad on 2622001 though the demand of

bribe amount was actually made by respondent no. 1 fourfive days prior to it.

3. On merits of the case, learned Special Judge found that the prosecution failed to prove its case beyond reasonable doubt against the respondents and that the defence of respondent no. 1 that what was actually received by him, that is, amount of Rs. 500/was the money payable to him by the complainant on account of the complainant having taken the said amount from the respondent no. 1 as handloan was probabalized and thus, acquitted both the respondents of the offences with which they were charged in the present case.

4. I have heard Ms. Mehta, learned Additional Public Prosecutor for the State. None is present for the respondents. I have carefully gone through the record of the case including the impugned judgment and order. It is the contention of learned Additional Public Prosecutor that the learned Special Judge has given undue importance to what happened at the office of A.C.B., Yavatmal on 2322001 and scoring of dates in the complaint vide Exhibit 38. She submits that it was improbable for any court official to extend any amount as handloan to a litigant. Therefore, she submits that the impugned judgment and order are illegal and perverse.

5. Upon careful consideration of the record of the case, particularly, evidence of P.W. 1 Virendra, P.W. 3 and P.W. 4, panch witnesses and D.W. 1 Advocate Shri Malani, I find that the view taken by the learned Special Judge is possible and that it is not an impossible view. Therefore, I am of the opinion that this would be hardly a case wherein this Court can step forward and interfere with the impugned judgment and order as sought by the learned Additional Public Prosecutor.

6. Evidence of P.W. 1 Virendra indicates that the amount of Rs. 500/was demanded from him by respondent no. 1 on 2222001, but, I must state that he failed to specifically mention that it was demanded as a bribe or by way of illegal gratification and, therefore, it would be difficult to categorically hold that it was a demand made for seeking illegal gratification from the complainant. His evidence further shows that as he was unwilling to pay amount of Rs. 500/to the respondent no. 1 on 2322001 i.e. the next day, he went to A.C.B. office, Yavatmal carrying with him an amount of Rs. 500/. But, he further states that he was turned down by the officer there on the ground that his mother in whose name, the succession certificate was ordered to be granted, did not accompany him. It appears that although the respondent no. 1 had specifically told the complainant to come back to him along with his mother who was absent on 2222001 and also with amount of Rs. 500/on 2622001, this fact of the complainant being called once again on 2622001 to the Court appears to have not been disclosed to the Investigating Officer. But, P.W. 1 Virendra has stated that he was told by the officer present at the A.C.B. office to bring his mother also on 2622001 to the A.C.B. office. If the Investigating Officer did not know anything about the complainant being summoned to the Court along with his mother on 2622001 by respondent no. 1, one does not understand as to why the

Investigating Officer told the complainant to come back with his mother also on 2622001 particularly and why not on 2422001 or 2522001. No explanation in this regard has been given by the prosecution witnesses. This creates a doubt about prosecution case and it is further deepened by one significant fact, the fact that on 2322001, when the complainant visited the A.C.B. office, no complaint was made by him against the respondent no. 1 regarding demand of bribe of Rs. 500/made by respondent no. 1 for issuance of succession certificate. All these facts have been considered by the learned Special Judge to find a doubt about the genuineness of the complaint made against the respondents by the complainant subsequently on 2622001. I find myself in agreement with the learned Special Judge, particularly, when one considers the way the events have been narrated by P.W. 1 Virendra discussed just now.

7. The complaint lodged by P.W.1 Virendra is at Exhibit 38. It is replete with instances of overwriting of the dates. The figure of "26" has been overwritten several times in order to change the date written at different places in the complaint and it has been done without any authentication or initials being made by the officer who reduced the complaint into writing or even by the complainant himself. No satisfactory explanation for this overwriting has come on record and, therefore, as rightly held by the learned Special Judge, a whole lot of doubt arises about the genuineness of the complaint made by P.W. 1 Virendra against the respondents.

8. Even, the panch witness or shadow witness P.W. 3 does not state that the respondent no. 1 made a demand of Rs. 500/from the complainant as a bribe. It is the case of prosecution that after accepting tainted currency notes from the complainant, respondent no. 1 handed them over to the respondent no. 2 on seeing the members of the raiding party entering the room. Respondent no. 2 then ran away from that room and entered some other room where Establishment Department of the Court was housed and from that room, the respondent no. 2 threw out from the window those tainted currency notes. The tainted currency notes were seized. However, the place where those tainted currency notes were lying scattered and the circumstances in which those currency notes were seized by the Investigating Officer have not been recorded in the form of panchanama. On the contrary, it appears that the respondent no. 2 was directed by the Investigating Officer to go down stairs along with panch no. 2 to the place where the currency notes were lying scattered and pick them up and bring them back to the Investigating Officer, which direction was followed by the respondent no. 2. Thereafter, it is further seen that a show was created that the tainted currency notes were recovered from the possession of the respondent no. 2. These facts further thicken the suspicion already expressed about the genuineness of prosecution case against the respondents.

9. In such a backdrop, the evidence of defence witness, D.W.1 Advocate Shri Malani is required to be seen. According to D.W. 1 Malani, P.W.1 Virendra and his mother were his clients and that he had obtained order of the learned Civil Judge

Senior Division regarding issuance of succession certificate in the name of mother of the complainant. He states that stamp duty of Rs. 7800/was leviable on the succession certificate and unless the stamp duty was paid, in no way, the succession certificate could have been issued by the court officials. He has further stated that he was told by the complainant and his mother about their poor financial condition to purchase the stamp papers and subsequently, he was also informed by them that the requisite funds were mobilized by them by obtaining a handloan of Rs. 7,000/from the friend of deceased Krushnarao, further handloan of Rs. 500/from respondent no. 1 and an amount of Rs. 300/ from the home savings. Of course, the story of handloan has not been accepted by the complainant. But, the standard of proof required for accepting or rejecting the defence of accused is different from the one applicable to the prosecution evidence. While the prosecution evidence is required to be tested on the anvil of the principle of ''beyond reasonable doubt'', the defence evidence has to be scrutinized by applying the principle of ''preponderance of probabilities''. D.W. 1 Advocate Malani was the advocate of the complainant and his mother. The poor financial condition of the complainant and his mother was also evident from their inability to purchase the stamp paper for a period of about one year after passing of the order of issuing succession certificate. This evidence when considered in the light of doubts expressed earlier about prosecution evidence would enable this Court to take a view that defence taken by the respondent no. 1 that what was returned to him was only the handloan obtained by the complainant from him is probabalized. If this is so, one would have to say that the prosecution has failed to prove it''s case beyond reasonable doubt against the respondent no. 1. Same conclusion would then be equally applicable also to prosecution case against the respondent no. 2.

10. In the circumstances, I am of the view that this is not a fit case to interfere with the judgment and order passed by the Court below. The view taken by the Court below is not such an impossible view as could be substituted by this Court just because another view is possible. In any case, if two views are reasonably possible, one which favours the accused must be adopted and that being so, I find no merit in the appeal. The appeal stands dismissed.

