
(2012) 10 BOM CK 0163
In the Bombay High Court
Case No : Criminal Appeal No. 225 of 1999

State of Maharashtra	Vs	APPELLANT
Nagorao Vithobaji Motghare		RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Companies Act, 1956 — Section 617
Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 2(c), 2(c)(iii), 7

Citation : (2013) BomCR(Cri) 159

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

Bench : Single Bench

Advocate : M.J. Khan, app, for the Appellant; N.S. Khandewale, for the Respondent

Final Decision : Allowed

Judgement

Joshi A.R., J.—Heard rival submissions on this appeal preferred by the State challenging the judgment and order of acquittal of the respondent-accused for the offences punishable under sections 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988. The only question, that arose in the present appeal, is whether the finding arrived at by the trial Court on Point No. 3 is correct or not and whether it is required to be altered. Said point No. 3 raised by the trial Court is as under:

Whether prosecution has proved that the accused is public servant?

Answer No.

2. In fact, the first point in controversy decided by the trial Court was in the affirmative, inasmuch as the trial Court had held that the prosecution has proved that the accused had accepted Rs. 100/- as illegal gratification, otherwise than the legal remuneration and he was public servant and thereby he committed offence punishable u/s 7 of the Prevention of Corruption Act, 1988. As mentioned

above, the answer to this first point is in the affirmative, still answer to point No. 3, as mentioned above, was given in the negative and only on that count the trial Court held that the charges of demand and acceptance of bribe amount of Rs. 100/- have not been established inasmuch as the respondent-accused was not public servant. So far as the acceptance of the amount is concerned, there is clear finding of the trial Court and thus appearing in para 23 of the impugned judgment and order which reads as under:

Any way, the prosecution has proved that the accused accepted Rs. 100/- from, the complainant, but it not proved that the accused is a public servant, and thereby I answer the point No. 2 in the affirmative.

3. Said Point No. 2 is with respect to acceptance of Rs. 100/- by the accused towards illegal gratification by corrupt or illegal means and thereby committed offence punishable u/s 13(1)(d) read with section 13(2) of the Prevention of Corruption Act 1988.

4. During the course of arguments, learned A.P.P. for the State pointed out the reasoning given by the trial Court as appearing in paragraph 24 of the impugned judgment, when point No. 3 is answered by the trial Court. While answering said point No. 3 i.e. to determine whether the respondent-accused was public servant or not, the trial Court took shelter of the contents of letter dated 13/4/1992 which is at Exhibit 32 in the record. However, strangely enough, only part of the letter was taken help of to come to the conclusion and not the entirety of the contents of the said letter and this approach of the trial Court is definitely erroneous and the finding arrived at the basis of the reasoning given in paragraph 24 is definitely required to be interfered with.

5. In order to appreciate the arguments, the learned A.P.P. on this point, the reasoning given by the trial Court is reproduced hereunder, which is appearing in paragraph 24 of the impugned judgment and order:

Point No. 3:- The last question remained is really the accused is public servant and my answer is in the negative. Because the accused was working as Helper. Moreover, in the letter dated 13.4.1992 it is shown that

Shri Nagorao Motghare, Line Helper was appointed as daily wage labour in M.S.E.B. Office on 20.4.1979 and he was working there from 20.4.1979 to 31.8.1988.

The word daily wage is used in this letter. The prosecution has argued before me that though the accused was working on daily wages, but he was public servant and thereby he committed offence. I am not inclined to accept the argument. Because daily wages means the worker who works for 8 hours in day time and for the next day his appointment is fresh and his past appointment cannot be considered at all. Defence Counsel argued before me that if the worker works on daily wages it means he is not Govt. Servant. There is some force in the argument. No doubt, the accused was working as Labourer and his work was to

help the lineman. Moreover, he was appointed as daily wages labourer and thereby he is not entitled to get benefit of his past services. Any way, I found that the person appointed on daily wages cannot be a public servant. In this case though the accused was appointed as daily wages but he is not entitled to get any other benefit. Therefore, I come to the conclusion that he being daily wages servant, he cannot be deemed to be a public servant I, thereby, answer the point No. 3 in the negative

6. It must be said that while arriving at the conclusion as mentioned above, the trial Court had ignored the effect of Exhibit 32, which clearly shows that though the accused was Line-Helper appointed in M.S.E.B. as worker in daily wages on 20th April 1979, from 1st September 1988, he was working as "line-Helper".

7. On the above aspect, much is argued on behalf of the respondent-accused that as on the date of trap, which was conducted on 20th March 1992, the accused was working as daily wages worker and it is further argued that thus he was not a public servant. In fact, by the contents of the letter (Ex. 32) this aspect as to whether the accused was "line-Helper" or Worker on daily wages" has been amply cleared, but unfortunately, this aspect has been overlooked by the trial Court by accepting the contention on behalf of the accused that on the relevant date the respondent/accused was daily wages worker. Otherwise also for the sake of argument if it is considered that on the date of trap he was still a daily wages worker, there is nothing on record to show that even daily worker cannot be termed as "public servant". On this aspect, attention of this Court is drawn towards the definition of "public servant" as appearing in section 2(c) of the Prevention of Corruption Act, 1988 read with Explanation-1 of the said section. In fact, what is relevant for the present matter is the definition of section 2(c) (iii) read with Explanation-1. Said definition reads as under:

Section 2(c) "public servant" means,

(i).....

(ii).....

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956(1 of 1956).

Explanation 1 - Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

8. As such, considering the substantive evidence of PW 6 Sanctioning Authority and effect of the letter (Exh. 32) and also considering the answer given by the accused while recording his statement u/s 313 of the Cri.P.C. i.e. answer to question No. 77, now it cannot lie in the mouth of the respondent/accused that he was not public servant as on the date of trap and as such the provisions of Prevention of Corruption Act, 1988 would not be applicable against him. In that

view of the matter, it must be said that the trial Court had fallen in an error in accepting the defence and answering point No. 3 in the negative and thus acquitted the accused of the offences charged.

9. Apart from the above sole point in controversy, there is nothing in the present appeal so far as the challenge to the finding by the trial Court as to acceptance of amount of Rs. 100/- by the complainant during the trap and regarding entire procedure of the trap. Thus, in view of explanation mentioned above and considering the documentary evidence at Exhibit 32 and substantive evidence of the Sanctioning Authority, it must be said that the finding arrived at by the trial Court as to the accused was not public servant, is required to be altered. Consequently, the present appeal is required to be allowed and the same is allowed with the following order when the Court has come to the conclusion as to establishment of guilt of the respondent-accused for the offence punishable under sections 7 and 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988.

10. At this stage, after holding the accused guilty of the offences punishable u/s 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, it is argued on behalf of the respondent/accused that the leniency may be shown and minimum sentence be awarded, as prescribed in law. For the offence punishable u/s 7 of the Prevention of Corruption Act, 1988, the substantive sentence shall not be less than six months and for the offence punishable u/s 13(2) which is not less than one year. In the result, the respondent/accused is convicted for the offence punishable u/s 7 of the Prevention of Corruption Act, 1988 and sentenced to suffer R.I. for a period of six months and to pay a fine of Rs. 100/- in default to suffer simple imprisonment for one month. The respondent-accused is also convicted for the offence punishable u/s 13(1)(d) read with section 13(2) of the Prevention of the Corruption Act, 1988 and sentenced to suffer R.I. for a period of one year and to pay fine of Rs. 1000/- in default of payment of fine to suffer imprisonment for the period of one month. Both substantive sentences shall run concurrently. Appropriate action be taken against the respondent/accused.