(2017) 04 BOM CK 0005

In the Bombay High Court

Case No : Criminal Appeal No. 19 of 2002

State of Maharashtra — APPELLANT

Vs

Ramlal Shriram Gajbhiye — RESPONDENT

Date of Decision : 05-04-2017

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

Citation : (2017) 2 BomCR(Cri) 559

Hon'ble Judges : Kum. Indira Jain, J.

Bench : Single Bench

Advocate : Shri R.S. Nayak, APP, for the Appellant-State; None, for the Respondent

Final Decision : Dismissed

Judgement

Kum. Indira Jain, J. (Oral)—This appeal takes an exception to the judgment and order dated 4.10.2001 passed by the learned Special Judge, Buldhana in Special (Anti-Corruption) Case No.6/1995 thereby acquitting the accused of the offences punishable under Sections 7 and 13 (1)(d) read with 13 (2) of the Prevention of Corruption Act, 1988.

2. Prosecution case, in brief, is as under :

(a) Complainant Chandu Harsing Chavan was working as Health Assistance in Primary Health Centre, Malkapur Pangra. Accused was Senior Health Inspector in Health Department of Zilla Parishad, Buldhana.

(b) On 15.4.1994, Assistant District Health Officer Dr. Natekar along with accused had been to Primary Health Centre, Malkapur Pangra. Accused asked for daily diary register of complainant for the year 1991 till 15.4.1994. It was the duty of complainant to implement the various national health programmes including eradication of malaria with the help of other officials of department. Accused also asked for Malaria Eradication Register for the year 1992-93 and 1993-94. He took away daily diary register and malaria eradication register with him to Buldhana.

(c) On 2.5.1994, when complainant had been to Zilla Parishad office, Buldhana for some official work, accused told him that daily diary maintained by him was wrong and he had drawn false T.A. Bills. He also told complainant that he had cheated the Government, amount paid to him will be recovered and file would be submitted to District Health Officer for taking action against him. It is alleged that accused demanded Rs.2,000/- to help complainant and for not disclosing wrong deeds of complainant to the Superior Officer.

(d) On 6.5.1994, complainant went to the office of Anti-Corruption Bureau and lodged report. Trap was arranged. It is the case of prosecution that accused asked complainant to put the notes in his shirt pocket and complainant put the notes in the left side pocket of the shirt of accused. The raid was successful and post trap panchanama was accordingly drawn in the presence of panch witnesses. On completing investigation, papers were sent to the sanctioning authority. On receiving sanction order, prosecution was launched against the accused.

3. Trial court framed charge against accused and he pleaded not guilty to the offences. His defence was of total denial and false implication. He raised specific defence that complainant is resident of village Asola (Bk). His parents reside in the said village. So, complainant was interested in getting his transfer near Primary Health Centre, Deulgaon Mahi or Antri Khedekar. He requested the accused to use his good offices and get him transferred near his village. On the day of incident also, complainant asked the accused to see that he is transferred near his village and put an application in his pocket. Accused pleaded innocence regarding notes and denied that he ever demanded money towards illegal gratification, as alleged by the complainant.

4. To substantiate the guilt of accused, prosecution examined in all eight witnesses. Considering the evidence of prosecution witnesses, sanctioning authority and submissions made on behalf of the parties, Trial court came to the conclusion that demand and acceptance of illegal gratification is not proved. Even sanctioning authority did not apply its mind while issuing sanction order and in consequence thereof accused was acquitted. Being aggrieved with the order of acquittal, State has come up in this appeal.

5. With the assistance of learned Additional Public Prosecutor, this court has gone through the evidence of complainant, panch witnesses and sanctioning authority. It can be seen from the evidence of complainant that accused demanded Rs.2,000/- to avoid departmental action against complainant on allegations of maintaining false diary and drawing false T.A. Bills. So far as demand is concerned, except bare version of complainant, nothing is on record. So far as trap is concerned, story is more interesting. In cross-examination, complainant admitted that application dated 30.4.1994 bears his signature. He had given this application to accused. This application was found and seized from the pocket of

accused when he was apprehended by ACB officials. This application relates to transfer of complainant to nearby place of his village. It is the defence of accused that complainant was interested in getting his transfer near his village, as his parents were residing there and he was insisting the accused to help him in his transfer. Accused submitted that complainant had put application in his pocket and he is not aware that he also planted Rs.2,000/- along with application in the pocket. The defence raised by accused appears to be probable for the simple reason that even prosecution does not come with a case that accused was caught red-handed accepting Rs.2,000/- in his hand from the complainant. The money was recovered from the pocket along with application of transfer signed by complainant.

6. In this background, the view taken by the Trial court is a reasonable and possible view. The possibility of planting money in the pocket along with application for transfer is not ruled out. Prosecution case also becomes weak and doubtful for want of corroboration to the testimony of complainant on initial demand.

7. Before considering the evidence of sanctioning authority, it is necessary to see the object of Section 19 of the Act. Under section 19, grant of sanction is a weapon to discourage vexatious prosecution and it is a safeguard for the innocent, though not a shield for the guilty. The essentials of a valid prosecution can be stated as under -

i. The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge-sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction;

ii. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction;

iii. The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought;

iv. The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

v. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

8. PW-1 Shrikrushna Vanpal was Chief Executive Officer, Zilla Parishad, Buldana

at the relevant time. He was a sanctioning authority. He stated that on receiving papers from Anti-Corruption Bureau office, he accorded sanction to prosecute the accused. He had gone through the papers and then sanction order was issued. The sanction order (Exh.15) if looked into minutely would indicate total non-application of mind on the part of sanctioning authority. From the papers of investigation, it could be revealed that accused did not touch the notes which were found from his pocket. Application for transfer signed by complainant was also found in the pocket of accused. Sanctioning Authority did not consider these material facts revealed in course of investigation and mechanically issued the sanction order. The trial court, therefore, rightly held that even sanction order was not in accordance with the law and it was issued without application of mind.

9. In the above premise and after considering the evidence adduced by prosecution, this court does not find any perversity in the judgment and order of acquittal. On the contrary, view taken by the Trial court is a reasonable and possible view. Hence, there is no scope to interfere in the appeal. Criminal Appeal No.19 of 2002 stands dismissed. No costs.

