
(2014) 07 BOM CK 0302
In the Bombay High Court
Case No : Criminal Appeal No. 51 of 2006

State of Maharashtra

APPELLANT

Vs

Suresh Gulabchand Agrawal

RESPONDENT

Date of Decision : 15-07-2014

Acts Referred:

Prevention of Corruption Act, 1988 — Section 12, 13(1)(d), 13(2), 20, 7

Citation : (2014) ALLMR(Cri) 4297

Hon'ble Judges : P.N. Deshmukh, J

Bench : Single Bench

Advocate : Trupti Udeshi, Addl. P.P, Advocates for the Appellant; N.R. Saboo, Advocates for the Respondent

Judgement

P.N. Deshmukh, J.—This appeal is preferred by prosecution against judgment dated 30th of November, 2005 passed by Additional Sessions Judge (Special Judge), Amravati in Special (ACB) Case No. 11 of 1991, thereby acquitting respondent No. 1/ori.accused No. 1 of the offence punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and respondent No. 2/org.accused No. 2 of the offence punishable under Section 12 of the Prevention of Corruption Act, 1988. Prosecution case can briefly be stated as follows:-

That on 9th of May, 1989 respondent No. 1 was working as a Live Stock Development Officer at Nandgaon Khandeshwar while respondent No. 2 was working as Live Stock Supervisor at the same place. It is the case of prosecution that the incident of death of cattle took place on 5th of May, 1989 wherein one cow and one calf owned by father of complainant Ramdas and one bullock owned by Devidas Khadse died on sustaining electric shock in the field, of which report was lodged by Devidas Khadse with the authorities of M.S.E.B. who, in turn, informed the matter to Police Station Nandgaon Khandeshwar. Police have visited to the spot and drew spot panchanama. It is further case of prosecution that on 7th of May, 1989 complainant Ramdas Tamaskar learnt from one Devidas that

respondent No. 1 who was working as doctor at Veterinary Hospital at Nandgaon Khandeshwar has demanded Rs. 200/- from each of them for issuing favourable Post-Mortem reports in respect of cattle, died of electric shock. Accordingly, complainant Ramdas and Devidas contacted respondent No. 1 at his residence when he reiterated demand of Rs. 200/- from each of them for the above purpose which was, however, negotiated to Rs. 200/- i.e. on payment of Rs. 100/- each by Ramdas and Devidas. It is the case of prosecution that as complainant Ramdas Tamaskar and Devidas Khadse were not interested to make payment of bribe, thus complainant visited office of Anti Corruption Bureau, Amravati and lodged his report (Exh. 45).

2. PW 8 Sudhir Ganpatrao Dabhade, Investigating Officer, on receiving report, arranged for two independent panchas from Irrigation Department. PW 2 Mukund Nagorao Wankhade was instructed to act as a First Panch and to remain with the complainant and to watch the transaction and conversation, whatsoever, may take place between the complainant and respondent No. 1. Demonstration of effect of phenolphthalein powder with sodium carbonate solution was given to the complainant and both the panchas and they were also given necessary instructions. Complainant was instructed to pay the bribe amount, only on demand and on acceptance of the same, to give signal by removing the scarf around his neck and to clean his face with it. Panchanama of these facts was drawn in the office of Anti Corruption Bureau vide Exh.47.

Thereafter, at around 3.30 p.m. members of the raiding team accompanied with complainant and PW 2 Mukund, visited the Veterinary Hospital where respondent No. 1 was found to have demanded and accepted bribe of Rs. 200/- and was thus apprehended by the members of the raiding team. The amount paid was recovered from the possession of respondent No. 2 and was seized under panchanama (Exh.48).

3. On the basis of report lodged by PW 8 Sudhir Ganpatrao Dabhade, Investigating Officer with Police Station Nandgaon Khandeshwar, offence is registered vide Crime No. 57 of 1989 against both the respondents and same was investigated. During the investigation, correspondence was made with PW 6 Ratnakant Baburao Naik and PW 7 Vasant Mahadeorao Pande, both Sanctioning Authorities, with reference to grant of sanction for prosecution of respondent Nos. 1 and 2, respectively. On receipt of sanction for prosecution and on completion of investigation, chargesheet came to be filed before the learned Special Court, Amravati.

4. Charges were framed against the respondents for the offences punishable under Sections 7, 12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 to which they denied in toto. It is the case of respondent No. 1 that he is falsely implicated by the complainant at the instigation of respondent No. 2 as they had strained relations with each other.

5. Heard Ms. T.H. Udeshi, learned Additional Public Prosecutor for the appellant/

State, Shri N.R. Saboo, learned counsel for respondent No. 1 and Mr. Sumit Joshi, learned counsel for respondent No. 2.

6. To effectively evaluate the submissions advanced by learned Advocates for both the sides, with their assistance, I have scrutinized the evidence on record.

7. By now, it is settled law that mere proof of receipt of money by accused, in absence of proof of demand and acceptance of money as illegal gratification, is not sufficient to establish guilt of accused. Moreover, If accused offers reasonable and proper explanation based on evidence that the money was accepted by him, other than as an illegal gratification, accused would be entitled to acquittal. It is also by now well established that while considering appeal against acquittal, where two views are reasonably possible, prosecution cannot be said to have proved its case beyond reasonable doubt. Keeping above settled principles in mind, I have scrutinized the evidence of PW 1 complainant Ramdas on the point of demand. He has stated that cattle owned by his father and one bullock owned by Devidas Khadse had died due to electric shock of which information was given by Devidas Khadse to M.S.E.B. On the following day, Police officials of Nandgaon Khandeshwar Police Station arrived on the spot for performing post mortem of the dead cattle. Complainant Ramdas stated that he learnt from Devidas Khadse that he was called by respondent No. 1 Dr. Agrawal at Nandgaon Khandeshwar along with Rs. 200/- each to be paid by them towards post mortem of cattle. PW 1 Ramdas further stated that he accordingly met respondent No. 1. At that time, respondent No. 1 informed that by issuing favourable post mortem report, complainant and Devidas would get substantial amount and therefore, they should pay him Rs. 200/- each for issuing favourable post mortem reports upon which complainant informed that as his father was not in the village he would consult him and return back.

PW 1 Ramdas further stated that on 9th of May, 1989 he along with Devidas visited the house of respondent No. 1 at about 8 a.m. when said respondent enquired whether they have brought the amount, on which they said that amount is on higher side and thus agreed to pay Rs. 100/- each and the same was agreed to be paid on the same day in the noon hours at the residence of respondent No. 1 or at the hospital. Complainant further stated that Devidas informed complainant that they should not pay the bribe and told complainant that he should approach the Office of the Anti Corruption Bureau to lodge a report. Complainant accordingly took Rs. 100/- from Devidas, of his share and visited the office of A.C.B. on 9th of May, 1989 at around 11 a.m. and lodged his report (Exh.45). Rest of the evidence of complainant is with reference to the A.C.B. Officers' arranging for panch witnesses and about giving demonstration of effect of chemical reaction of phenolphthalein powder with sodium carbonate and about instructions to the complainant and the panchas.

8. On the point of alleged demand and acceptance, complainant Ramdas stated that as instructed by the Investigating Officer, he along with PW 2 Mukund, First Panch, visited the Veterinary Hospital where respondent No. 1 was present, who

asked complainant if he has brought the amount to which complainant replied in the affirmative upon which respondent No. 1 gave a call to respondent No. 2 and in the meantime enquired about Mukund from the complainant, who was introduced to him as cousin of Devidas. Complainant further stated that after arrival of respondent No. 2, respondent No. 1 by shacking his neck directed complainant to pay the amount to respondent No. 2 and accordingly complainant took out the tainted notes by his left hand and paid it to respondent No. 2 who counted the same by his both hands and kept in his shirt pocket and left from the spot. According to complainant, on his giving proposed signal, raiding team officials arrived on the spot and apprehended respondent No. 1 on the spot and respondent No. 2 by calling him who was by then in the adjacent room and had recovered tainted amount of Rs. 200/- from his possession which came to be seized under panchanama.

9. In view of above stated evidence of complainant, when it is considered with reference to the demand, same appears to be totally silent with reference to date on which respondent No. 1 is alleged to have demanded bribe from the complainant as well as from Devidas Khadse, as from the evidence of complainant what has come on record is that on 9th of May, 1989, on his visiting respondent No. 1 at his house along with Devidas, amount of Rs. 200/- each was demanded from them which was negotiated to Rs. 100/- to be paid by complainant and Devidas, respectively. In the light of above evidence, when complaint (Exh.45) is perused, its contents do not find corroboration with oral version of complainant, particularly with reference to its contents to the effect that on 7th of May, 1989, in the afternoon, he learnt from Devidas Khadse that respondent No. 1 was demanding Rs. 200/- each from both of them for issuing favourable Post Mortem report in respect of death of cattle and accordingly on the same day at 7 p.m. both of them visited respondent No. 1 when he reiterated his demand. There is nothing on record to establish as to under what circumstances complainant along with Devidas visited respondent No. 1 again on 9th of May, 1989 as complainant's evidence is silent to the effect that after his meeting with respondent No. 1 on 7th of May, 1989 he was directed to come on 9th of May, 1989. It is material to note that prosecution has even failed to examine Devidas Khadse though, according to its case, it is Devidas Khadse to whom respondent No. 1 had first made alleged demand of money for issuing favourable Post Mortem report in respect of the death of cattle. Prosecution failed to put forth any satisfactory version for non-examination of said material witness. Had he been examined, he would have corroborated complainant on the material aspect of demand alleged to have been made by respondent No. 1. In that view of the matter, evidence of complainant Ramdas does not find to be convincing to be acted upon to establish that respondent No. 1 on 7th of May, 1989 had made any demand of bribe as stated in complaint (Exh.45) as said contents are not corroborated by the oral version of complainant while subsequent evidence of complainant about demand by respondent No. 1 on 9th of May, 1989 has no corroboration for want of examination of Devidas Khadse

though he had accompanied complainant on 9th of May, 1989 to visit respondent No. 1 on which day the amount was agreed to be paid and accepted in the noon hours.

10. Coming back to the evidence of complainant with reference to the incident, he has stated that he along with PW 2 Mukund visited the Veterinary Hospital where respondent No. 1 was present who asked him to sit. He has stated that respondent No. 1 enquired about PW 2 Mukund to whom he introduced as cousin of Devidas Khadse. This evidence also do not corroborate with the version of PW 2 Mukund when he has stated that respondent No. 1 had asked him as to who he was? Though this by itself cannot be said to be any material contradiction, evidence of complainant also do not find corroboration from the independent witness Mukund on the point of conversation whatsoever took place between them at the time of incident, as according to complainant, thereafter, respondent No. 1 asked him whether he had brought the amount to which he replied in the affirmative. Complainant further stated that respondent No. 1 thereafter gave a call to respondent No. 2 upon which he arrived and then by gesture asked complainant to make payment to respondent No. 2. Accordingly, complainant paid the amount to said respondent.

In the background of above evidence of complainant when same is considered with the evidence of PW 2 Mukund, he does not find to have corroborated the same, when it is stated by PW 2 Mukund that after respondent No. 1 enquired about him, he gave a call to one Bagde however, he was not available and thus respondent No. 2 arrived in response to call given by respondent No. 1. PW 2 Mukund further stated that before arrival of respondent No. 2, complainant informed respondent No. 1 that he had brought Rs. 200/-, and thereafter same was paid to respondent No. 2 who counted the notes and kept in his pocket. On bare perusal of above evidence, it reveals that evidence of PW 2 Mukund is silent on any demand by respondent No. 1 to complainant to make payment of bribe amount. His evidence is even silent on the alleged demand by gesture, as deposed by complainant. He also does not corroborate with the sequence of arrival of complainant with amount on the spot, as according to complainant, after respondent No. 1 enquired from the complainant about the money, he gave call to respondent No. 2 and after his arrival, by gesture demanded the bribe, while according to PW 2 Mukund respondent No. 1 gave call to one Bagde and since he was not available, respondent No. 2 arrived and complainant, on his own, informed respondent No. 1 that he has brought the amount and paid the same to respondent No. 2.

11. Having considering above uncorroborated versions of complainant and PW 2 Mukund same do not appear to be reliable to be acted upon. Even otherwise, it is material to note that, according to the case of prosecution respondent No. 1, on demanding the bribe, directed complainant to pay the same to respondent No. 2, however, according to evidence of PW 2 Mukund, respondent No. 1 gave call to one Bagde. No explanation is put forth by prosecution as to under what

circumstances respondent No. 1 called Shri Bagde, if according to the case of prosecution it was respondent No. 2 who was to accept bribe for respondent No. 1. Said aspect has also come in the cross-examination of Mukund when he has admitted that when he was along with complainant none was present with respondent No. 1, and therefore, he gave call to one Bagde who did not arrive but respondent No. 2 arrived. PW 2 Mukund even admitted to have not heard respondent No. 1 directing complainant to pay the amount to respondent No. 2. PW 2 Mukund in reply to the specific question put to him, if he heard any conversation between respondent Nos. 1 and 2, has replied in negative saying that he did not hear any voice. In view of above circumstances, case of prosecution does not appear to be convincing to be acted upon involving both the respondents for the charge framed against them.

12. At this juncture, it is material to refer to the evidence of PW 8, Investigating Officer, Sudhir Dabhade, Dy. S.P., Anti Corruption Bureau. In the cross-examination, he has admitted that from the contents of report he was aware that respondent No. 2 had no nexus with the present crime. He further admitted that though respondent No. 1 had initially gave call for one Bagde, since he did not come, it is respondent No. 2 who attended the call. He also admits to have revealed during the course of investigation from the statement of PW 5 Bhalchandra Kadu that as Bagde was not present it is this witness (PW 5) who had directed respondent No. 2 to attend respondent No. 1. The Investigating Officer even by going further admits that respondent No. 2 was not aware about any transaction between respondent No. 1 and the complainant. In that view of the matter, there appears no evidence even against respondent No. 2 establishing his involvement in the present crime.

13. In the light of above discussed evidence, I find it useful to refer to the decision in the case of Clarence Brandenburg Vs. State of Ohio, 395 U.S. 444 (1969) wherein in para 7 of the judgment, it is observed that:

"7. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act, 1988. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the Act 1988, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the Act 1988. While invoking the provisions of Section 20 of the Act, the Court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the

accused is called upon to explain, how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the Court may look for independent corroboration before convicting the accused person."

14. In view of above legal proposition, thus evidence of PW 1 complainant Ramdas, and PW 2 Mukund, an independent witness, needs to be discarded since it does not corroborate on the material aspect of demand and acceptance of bribe, as set out by the prosecution case.

15. Case of prosecution even otherwise fails on the ground of grant of Sanction as the evidence of PW 6 who, according to the prosecution, has accorded Sanction for prosecution of respondent No. 1, is totally silent if he is competent to remove said respondent from his service or was an Appointing Authority and has admitted that if respondent No. 1 was appointed by the Secretary, Animal Husbandry Department, Bombay, then said Authority alone is competent to grant Sanction for prosecution being an Appointing Authority. Even otherwise, according to this witness, who is working in his capacity as a Deputy Secretary in the Animal Husbandry Department Mantralaya Mumbai, has stated to have accorded Sanction (Exh.84) on obtaining approval for the same from the law and Judiciary Department.

Similarly, though prosecution has examined PW 7 Vasant Pande, who has accorded Sanction for prosecution of respondent No. 2 vide Exh.102, has stated that while he was working as Superintendent, Zilla Parishad, Amravati, respondent No. 2 was working as Live Stock Supervisor and Shri Pravin Pardeshi was the Chief Executive Officer, Zilla Parishad, Amravati. He stated that on receiving correspondence from the Anti Corruption Bureau for grant of Sanction, he had forwarded the File to said C.E.O. According to him, on going through said File, Mr. Padeshi accorded Sanction for prosecution. Thus, from his evidence it is crystal clear that Sanction (Exh.102) for prosecution of respondent No. 2 was not accorded by him, but that was issued by Shri Pardeshi who, admittedly, is not examined by the prosecution being abroad as reveals from evidence of PW 7 Vasant Pande. No efforts are taken by prosecution to secure presence of said Authority who admittedly had accorded Sanction for prosecution of respondent No. 2.

16. By now, it is well settled law that it is incumbent on the prosecution to prove that a valid Sanction has been granted by the Sanctioning Authority after it was satisfied that the case for Sanction has been made out constituting the offence. The Authority based on the facts placed before it has to be satisfied and then has to arrive to its conclusion whether case is made out for grant of sanction or not. In the instant case, it appears that the Sanctioning Authority presuming that respondents must have posed complainant to do his work, accorded sanction and therefore, the case since appears to have been instituted without proper

Sanction, it must fail as this is a manifest defect in the case of prosecution thereby rendering entire proceedings into void ab initio. It is to be noted that the court has to see whether or not the Sanctioning Authority was aware of the facts constituting the offence and applied its mind for the same. In that view of the matter, prosecution case fails on this count also.

17. In the light of above discussed evidence and for the reasons stated above, prosecution cannot be said to have established its case beyond reasonable doubt to establish the charge levelled against the respondents. In the circumstances, I find no reason to interfere with the order of acquittal passed by the learned Additional Sessions Judge (Special Judge), Amravati. Hence, the following order. The appeal is dismissed.

The judgment and order passed by the Additional Sessions Judge (Special Judge), Amravati in Special (ACB) Case No. 11 of 1991, acquitting the respondent No. 1 of the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and respondent No. 2 of the offence punishable under Section 12 of the Prevention of Corruption Act, 1988 is confirmed.

Their bail bonds stand cancelled.