(2015) 09 BOM CK 0174

In the Bombay High Court

Case No : Criminal Appeal No. 408 of 2001

The State of Maharashtra APPELLANT

Vs

Devidas Anandrao Baviskar and Others RESPONDENT

Date of Decision : 09-09-2015

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

Citation : (2015) 09 BOM CK 0174

Hon'ble Judges : M.T. Joshi, J.

Bench : Single Bench

Advocate : R.K. Ladda, A.P.P., for the Appellant; S.S. Jadhavar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.T. Joshi, J.—Aggrieved by the decision of the Special Judge, Aurangabad, dated 13th June, 2001 in Special Case No. 8 of 1996, acquitting the present respondent No. 1 of the offences punishable under section 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act and respondent No. 2 of the offence punishable under section 12 of the Prevention of Corruption Act, the present appeal is preferred by the State.

2. Respondent No. 1 Devidas was working as a Talathi at Sajja Asegaon, Taluka Gangapur, District Aurangabad during the relevant period. According to the prosecution, in April, 1996, he had received certain matter concerning the waiver of the loan for the people below poverty line under the scheme, named and styled "Integrated Rural Development Scheme". The respondent No. 1, therefore, approached complainant PW1 - Jagannath Laxman Hiwrale on 9th April, 1996. He told him that the said matter concerning him was received by him. During the talk, respondent No. 1 told the complainant that an amount of Rs. 25,000/- would be waived by the State out of the loan amount of Rs. 50,000/- availed by the complainant. In the circumstances, to do the needful i.e. preparation of 7/12 extract, etc., an amount of Rs. 6,000/- shall be paid by the complainant to the

respondent No. 1. When the complainant showed his inability, respondent No. 1 was annoyed. He tore the papers received by him from the Block Development Officer, Gangapur and went away. The complainant preserved those torn pieces.

On the next day i.e. on 10th April, 1996, respondent No. 1 again came to the complainant''s house. He took him outside his house and ultimately, told that the matter can be settled for an amount of Rs. 2,000/-. The complainant unwillingly agreed for the same. In the circumstances, respondent No. 1 asked him to come with the money at his house at Aurangabad on the next day. Accordingly, on 11th April, 1996, the complainant in the morning went to the house of respondent No. 1 at Aurangabad. At that time, he told respondent No. 1 that he could arrange only for Rs. 800/-. Accordingly, he paid Rs. 800/- and promised to pay the balance lateron. Respondent No. 1, however, told him that the necessary documents would be supplied only after the balance amount would be paid to him. Respondent No. 1 also told the complainant to again visit his house on 12th April, 1996 between 6 pm to 8 pm with the money and should receive the necessary documents. In the circumstances, the complainant filed his complaint with the Anti Corruption Bureau, Aurangabad on the very same day i.e. on 12th April, 1996.

3. PW3 Ambadas Kashinath Sawai, then attached to Anti Corruption Bureau, Aurangabad conducted the investigation in the case. He collected two panch witnesses, including PW2 Ashok Naik, the shadow panch witness. Anthracene powder was applied to the decoy money brought by the complainant, which was placed in the pocket of the shirt of the complainant. The shadow panch witness was directed to remain with the complainant. The panchanama of these activities was prepared. Thereafter, the raiding party proceeded to the house of respondent No. 1 at the given time. The complainant and the shadow panch witness went ahead. After about ten minutes, respondent No. 1 came to his house. He enquired with the complainant about the shadow panch witness. He introduced him as his relative. When the complainant enquired about his work, respondent No. 1 told him that the documents would be handed over to him on the next day. He, however, at that time, did not make any demand of money. In the circumstances, the raiding party returned to the office of the Anti Corruption Bureau.

4. On the next day i.e. 13th April, 1996, again trap was laid at the office of respondent No. 1 in the village. During the talk, the complainant told respondent No. 1 that he was very much troubled due to the continuous visits to respondent No. 1 and therefore, his work should be done at that time only. At that time, the complainant pressed respondent No. 1 for having the work done as he had some other agricultural operations to carry out. At that time, respondent No. 1 told the complainant that the work was yet to be completed and the complainant should again visit his house at Aurangabad and if, at that time, respondent No. 1 would not be present, he should handover the amount of Rs. 1200/- to the respondent No. 1''s son. Thereafter, respondent No. 1 made detailed enquiry regarding the

address, etc. of the shadow panch witness and tried to find out as to whether any person of common acquaintance of the shadow panch witness and respondent No. 1 can be found. Thereafter, respondent No. 1 took out certified copies of the 7/12 extract. The other documents regarding the matter were also shown and certain entry was made. Thereafter, respondent No. 1 told the complainant that he should come outside the office to have certain talks in confidence. Thereupon, the complainant, respondent No. 1 and the shadow panch witness went outside of the office. At that time, the complainant told him that the complainant would be unable to visit his house on the next Sunday.

During the talk, ultimately, respondent No. 1 asked one of the persons in the office i.e. present respondent No. 2 - Sk. Gaffar Sk. Ibrahim (since deceased) to collect certain amount of Rs. 1200/- from the complainant, go to the bank and get the money exchanged. Thereupon, the complainant, the panch witness and the respondent No. 2 proceeded. Near the bank, respondent No. 2 accepted the decoy money from the complainant. He kept it in his pant packet. Thereupon, the complainant gave the predetermined signal to the raiding party. Thereupon, the post-trap exercise was carried. All of them returned to the office of respondent No. 1. The hands of the complainant as well as respondent No. 2 were found positive to the application of the anthracene powder. The decoy money was found on the person of respondent No. 2. The necessary documents concerning the complainant were seized. The panchanama of all the activities was carried. Both the respondents were arrested.

5. During further investigation, the documents regarding the loan availed by the complainant from the Land Development Bank were collected from the said office. The sanction to prosecute respondent No. 1 was obtained from the Sub Divisional Officer at Exhibit-27 and the chargesheet came to be filed.

6. Before the learned Special Judge, all of these witnesses were examined. The defence of respondent No. 1 was that the present complainant was holding more than five acres of land. He wanted that the holding should be reduced below five acres by again showing partition between him and his brothers. The same was, however, not possible unless a registered documents from all the brothers were placed. Respondent No. 1, therefore, time and again told the complainant regarding the same. However, the complainant pestered for the same. Ultimately, annoyed by the refusal by respondent No. 1, the false complaint was filed. In fact, the complainant himself was forcing respondent No. 1 to accept the money and to carry the work. In the circumstances, on the day of last trap, the complainant handed over the amount to respondent No. 2 without the knowledge of respondent No. 1 to implicate him falsely.

7. The defence of respondent No. 2 was that he had no knowledge of any transaction between the parties and he simplicitor accepted the money on the advice of respondent No. 1.

8. The learned Special Judge, on the basis of the material before him, came to

the conclusion that the prosecution has failed to prove its case beyond reasonable doubt. The defence was found to be probable. Therefore, the learned Special Judge acquitted both the respondents. Hence, this appeal.

9. Mrs. R.K. Ladda, learned A.P.P. submitted before me that the independent panch witness has corroborated the prosecution case regarding the demand of the money at the time of last of the trap. He has also supported the prosecution case that respondent No. 1 had asked the complainant to pay the decoy money to the respondent No. 2. In the circumstances, Mrs. Ladda submitted, that the learned Special Judge was wrong in acquitting both the respondents.

10. On the other hand, Mr. S.S. Jadhavar, learned counsel for respondent No. 1, submitted that the documents seized by the Investigating Officer would show that division in the name of the complainant and his brother was already completed. Not only this, even the documents seized from the Land Development Bank would show that there was already partition between the complainant and his brothers regarding the lands inherited by them from their father. Therefore, no further sub-divisions were possible. Further, the complainant has admitted in his cross-examination that he was already holding a card issued to the persons who are below poverty line and had this card been pressed into service while applying for the loan with the Land Development Bank, he could have got subsidy. He further took me through the evidence and the conduct of the complainant in suppressing some material. He further points towards the fact that during the last of the trap, admittedly, according to the prosecution, respondent No. 1 had taken out the complainant away from everybody to have certain talks in confidence. In the circumstances, the deposition of the shadow panch witness that he also accompanied them, in the background of the case, that respondent No. 1 had tried to dig the information regarding the genuine identity of the shadow panch witness, the said panch witness could not have been permitted to accompany to have a talk in confidence between the complainant and respondent No. 1. In the circumstances, he submitted that the learned Special Judge has taken a reasonable and probable view of the material before him. In the circumstances, in the present appeal against acquittal, no interference in the impugned order is warranted. He, therefore, submitted that the appeal be dismissed.

11. On the basis of above material on record and considering the submissions advanced on behalf of both sides, the following points arise for my determination :--

"(I) Whether the prosecution has proved that the present respondent No. 1, being a public servant made a demand of Rs. 6,000/- and thereafter, settled for an amount of Rs. 2,000/- for the purpose of issuing the documents necessary for having certain beneficial scheme applicable to the complainant ?

(II) Whether the prosecution has further proved that respondent No. 1 had accepted the aforesaid gratification, other than legal remuneration, on 13th April, 1996 through respondent No. 2 ?

(III) Whether the prosecution has proved that respondent No. 1 has obtained the said pecuniary advantage by corrupt and illegal means ?

(IV) Whether prosecution has proved that the respondent No. 2 has abetted the commission of the offence by respondent No. 1 ?

My findings to all the above four points are in the negative. The appeal is, therefore, dismissed, for the reasons to follow :"

REASONS

12. The documents collected by the Investigating Officer from the office of respondent No. 1 as well as from the office of the Land Development Bank would show that the two lands were owned by the complainant and his brother. Upon death of their father, the land was already partitioned between them. The learned Special Judge has given the detailed description of those documents. It would show that on 6th April, 1996, during the period of present incident also, 7/12 extracts were issued by the respondent No. 1 in favour of complainant Jagannath. Further, the complainant, in his oral evidence, has denied that he had visited Aurangabad on 10th April, 1996. However, the very stamp papers found from the office of present respondent No. 1 were dated 10th April, 1996 and purchased by the present complainant. The complainant has admitted that he was already holding a card showing that he was below poverty line and that on the basis of that card, he could have got subsidy from the Land Development Bank. The record, however, shows that he wanted further reduction in the area of the land in his possession which was more than five acres as per the document. He wanted to reduce it to less than five acres to have additional benefit. The division, however, was already made between the brothers and therefore, the defence was found probable by the learned Special judge that in order to get the things done anyhow, he had pestered respondent No. 1 and for that purpose, even pressed him to take money from him.

13. The learned Special judge has taken into consideration all the facts on record and proper appreciation of the evidence on record is made. The reasoning forwarded by the learned Special Judge cannot be called as perverse. In the present appeal against acquittal, no interference is warranted. The appeal, therefore, fails. Hence, the following order.

14. In the result, the appeal is dismissed. The bail bonds of respondent No. 1 shall stand cancelled. The property involved in the offence be disposed of as per the orders issued by the learned Special Judge.

