

(2011) 03 BOM CK 0120
In the Bombay High Court
Case No : Criminal Appeal No. 254 of 2000

The State of Maharashtra

APPELLANT

Vs

Dnyanoba Jadhav

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 20, 4(1), 7

Citation : (2011) 2 Crimes 63

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : S.G. Nandedkar, app, for the Appellant; Jyodeep Chaterjee, h/f., S.S. Wagh, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—Heard learned Additional Public Prosecutor for the Appellant/ State and learned Counsel appearing for the Respondent. This appeal is filed challenging judgment and order dated 18.03.2000 passed by the Additional Sessions Court at Beed in Special Case No. 01/1990.

2. The facts of the case are extensively stated in the impugned judgment from paragraph No. 02 to 08, same are not necessary to be reproduced herein, because the very impugned judgment states the facts elaborately.

3. This is an appeal against the acquittal filed by the State. The learned A.P.P. invited my attention to the evidence of P.W. 1 and P.W. 2. Relying on the evidence of the complainant the learned A.P.P. would submit that, the prosecution has established beyond reasonable doubt that there was demand, acceptance and recovery of the amount of Rs. 800/from the Respondent. According to the learned A.P.P. so far demand is concerned on 09th August, 1989 there is evidence of P.W. 1/panch which corroborates the evidence of the complainant. The panch witness has specifically stated about the demand of amount by the Respondent herein. It is further stated that, when the evidence of

the complainant on demand, acceptance and recovery is corroborated in material particulars by the evidence of the panch witness Babu Gujar, in that case the Special Court was not correct in acquitting the Respondent. The learned A.P.P. also invited my attention to the arguments advanced before the learned Trial Court. Therefore, the learned A.P.P. would submit that, this appeal may be allowed.

4. On the other hand, the learned Counsel appearing for the Respondent has filed written notes of arguments and orally submitted that there is no evidence against the Respondent. The prosecution utterly failed to prove the case and the story put forth by the prosecution is doubtful. There are material contradictions, improvements and omissions in the evidence of the prosecution witnesses. The defence of the accused is that, two to three days prior to 09/08/1989, the complainant Ankush along with Baliram Banait came to the office of accused and asked the accused to mutate their names. The accused pointed out that, one month time would be required, since notices are to be served on the concerned parties. However, the complainant Ankush and his companion Baliram were insisting to carry mutation without issuing notices to the vendor. In spite of insistence of complainant, the accused refused to take immediate mutation without following the process of law. Hence the complainant was enraged and filed false report against him. It is further defence of the accused/Respondent that, on 09/08/1989 he has worked in the office till 12.30 p.m. and left to Tahsil Office. His office was open. He requested Shri Parad to keep watch on the office. When he returned back, Shri Parad told him that, somebody had been to his office. When he entered his office, the complainant Ankush, one Babu Gujar (panch witness) and Dy. S.P. Bhaurao Chavan arrived at his office. Dy. S. P. Bhaurao Chavan made enquiry about bribe money. Thereupon complainant disclosed that, money is kept in cup board. The Dy. S. P. Bhaurao Chavan threatened the accused/Respondent and compelled him to take out the money from the cup board. The amount was secretly planted by complainant in his cup board, while he was out of his office. As such, the accused/Respondent is falsely involved in the office.

The learned Counsel for the Respondent further submitted that, the Trial Court after appreciation of evidence concluded that, the prosecution has failed to prove the demand as well as acceptance of illegal gratification and pleased to acquit the accused. The counsel further submitted that, the Trial Court discarded the version of the prosecution witnesses i.e. P.W. 1, P.W. 2. There is material inconsistencies in the version of the prosecution witnesses. The complainant with an intention to harass the Respondent/accused has filed the false complaint, keeping in mind the grudge that the accused/Respondent denied to do the illegal acts as per the say of complainant. The talathi has to follow the proper procedure as per the law while effecting the mutation entry. The counsel further submitted that, the deposition of Ankush Atkare P.W. 2 do not show that, the accused made demand of money for entering mutation. On the other hand he stated that, the amount of Rs. 1500/ is required to be invested by the complainant in the small

savings. There was no demand of bribe. The complainant has admitted in his cross examination that prior to 2 to 3 days of 09.08.1989 he visited office of accused/Respondent along with Form No. 4 and requested for mutation. At that time accused/Respondent told him that, one month time was required for service of notice on concerned parties. Therefore, the version of the complainant is doubtful. There is no evidence to show the demand of bribe by accused either on 07.08.1989 or 09.08.1989 for effecting the mutation entry. As such the prosecution failed to prove the demand. The counsel further submitted that, the taking into consideration the story of prosecution and the considering the cross examination of the witnesses the defence of the accused about planting of amount in his cup board by P.W. 2 appears to be probable. P.W. 1/Babu panch witness has admitted during the cross examination that, for about 45 minutes, they were waiting in the square for the accused. Meanwhile, the complainant had been to the office of accused to see as to whether accused has come back. It is further admitted by the panch witness that, from the place where he was waiting the office of accused/Respondent was not visible. It is further submitted that, the P.W. 2/Complainant admitted in his cross examination that, initially he had alone visited the office of accused/Respondent and at that time the office of the talathi was open. The counsel further submitted that, according to prosecution the amount kept in the self of cup board was taken out by another panch namely Kazi as per instruction of P.W. 5/Bhaurao Chavan, however the panch Shri Kazi is not examined. He further submitted that, the defence of the accused that, on insistence/threatening by P.W. 5/Dy. S. P. Bhaurao Chavan, he was compelled to take out the amount from cupboard and therefore, the powder was appearing on his right hand is probable defence.

The learned Counsel for the Respondent/accused further submitted that, the Trial Court has observed in para No. 52 of the judgment that, the defence story of the accused about plantation of bribe money by complainant Ankush Atkare in the cup board of his office appears to be probable. Therefore, it is sufficient to rebut the presumption u/s 4(1) of the Act. The counsel further submitted that, the Trial Court after due consideration of the evidence recorded elaborate findings of facts. The conclusions drawn by the Trial Court are based on evidence. The view taken by the Trial Court cannot be considered as perverse or improbable. Therefore, the counsel for the Respondent would submit that, the appeal is devoid of any merit and same deserves to be dismissed.

5. I have given due consideration to the submissions advanced by the learned A.P.P. and learned Counsel for the Respondent. Since this appeal is against the acquittal, at this juncture it is necessary to look into the evidence of the complainant and if it inspires confidence, then only there is question of examining other evidence brought on record by the prosecution.

The complainant is P.W. 2/Ankush Atkare, his evidence is at Exhibit 23. The complainant has stated in his examination in chief that application was submitted with the Respondent talathi on 09th August, 1990 for taking mutation entries in

the revenue record. The complainant has stated in his evidence that, after four to eight days after 09.08.1990 he went to the Talathi to see whether mutation in their name was taken or not. Talathi Jadhav told him that no mutation entry is taken. The Talathi Jadhav asked them that he should deposit amount of Rs. 1500/-. Thereupon he showed his inability to deposit the amount towards small savings. Though it is stated in the complaint that, there was demand on 21st July 1989 and same was repeated on 07th August, 1989. From perusal of the evidence of the complainant before the Court, nowhere he has stated that, there was initial demand by the Respondent on 21.07.1989 or same illegal demand was repeated on 07th August, 1989. Therefore, the entire case of the prosecution has to be examined in the light of contents of the complaint and the evidence of the complainant before the Court. The complainant in his complaint has stated that, there was initial demand on 21st July, 1989 and same was repeated on 07th August, 1989. In the complaint, the complainant has stated that, one Mr. Baliram was accompanying him when he visited the talati on 21st July, 1989. However, it is admitted position that, said Baliram is not examined by the prosecution. Therefore, at this juncture it is to be concluded that except bare words of complainant, there is no any corroboration to his evidence, so far initial demand on 21st July 1989 is concerned. So far assertion of the complainant in complaint about repetition of said demand on 07th August, 1989 is concerned, except bare words of the complainant, there is no corroboration to his version in the complaint. However, the assertion of the complainant in the complaint about the initial demand on 21st July 1989 and repetition of the same on 07th August, 1989 is not stated by him in his substantive evidence before the Court.

6. It is not necessary to go into the details of the evidence of the complainant. Suffice it to say that, so far actual demand by the Respondent is concerned, the complainant in his examination in chief has stated thus:

After four to eight days after 9.8.1990, I went to the talathi to see whether mutation in our name was taken or not. Talathi Jadhav told me that no mutation entry was taken place in our names. Talathi Jadhav asked us that I should deposit amount of Rs. 1500/towards small savings. Thereupon I showed my inability to deposit the amount towards small saving. Then accused told me that without depositing amount in small saving, my work would not be done. I again showed my inability to deposit the amount in small saving. However, accused insisted me for depositing the amount in small saving at least Rs. 800/-. Thereupon I and the brother of Laxmibai viz. Balirm decided not to deposit the amount in small saving and to take action against Talathi by approaching Anti Corruption Bureau.

The relevant portion from the statement of the complainant in vernacular about demand, reads thus:

rykBh tk/ko ;kauh eyk lkafxrys dh QsjQkjph uksan rgeps ukos >kyh ukgh- rykBh tk/ko vkEgkyk Eg.kkys dh rqEgkyk vYi cpr Hkj koh ykxsy- rs #- 1500 @ & Hkj vls Eg.kkys- eh R;kauk Eg.kkys dh eh #- 1500 @ & Hk# "kdr ukgh-

7. Therefore, on reading statement of the complainant in marathi, it clearly shows that the demand of amount of Rs. 1500/by the Respondent was for depositing the same in small savings. In short, the amount which was asked by the Respondent/original accused of Rs. 1500/was for the purpose of keeping it in small savings. Therefore, the complainant has rightly stated in his examination in chief that said amount of Rs. 1500/was asked by the Respondent for investing the same in the small savings. However, when he went to the Anti Corruption Bureau, Beed office, he stated, "I narrated my report to the panchas in short disclosing that talathi made demand of money of Rs. 800/to him and it was to be given." This statement of the complainant again in the examination in chief itself contradicts with his own statement about actual amount demanded by the Respondent and also the purpose for which same was demanded.

8. At the cost of repetition it is to be stated that, this is an appeal against acquittal by the State and unless this Court is satisfied that the evidence of complainant inspires full confidence, order of acquittal cannot be interfered with.

It has further come in the examination in chief of the complainant that, "on reaching at Georai, we went to room of Talathi. However, Talathi was not present at his room. Another Talathi were present there. We made enquiry with another Talathi about the whereabouts of Talathi Jadhav. Then that Talathi disclosed us that Talathi Jadhav might have gone for taking tea. Thereafter, we went to tea stall and drank tea. After some time, Talathi Jadhav was seen. Talathi Jadhav also saw us while going towards his room and on seeing us, he also came towards his room. After opening the lock of his room cum office, Shri Jadhav Talathi entered inside the room cum office. We wished the Talathi Jadhav and entered inside his room. Accused also wished me. There I asked the accused as to what happened to my work. Then accused asked me whether I brought money. I disclosed to the accused that I brought money.

(Emphasis supplied)

However, in his cross examination the complainant has stated that, "I do not see whether talathi Jadhav was present in his room cum office or not and we had made an enquiry with another talathi and from that Talathi I had learnt that Talathi Jadhav was not present at his room cum office. That another talathi was not acquainted to me. The room of talathi was not acquainted to me. The room of Talathi Jadhav was open. I did not go inside the room of talathi Jadhav and I waited outside the room at door, for about five to ten minutes. As Talathi Jadhav did not return towards his room cum office, hence I also went for taking tea. Therefore, on perusal of the statement of the complainant, so far whether the room of the Respondent was open or it was closed before his arrival to his room is contradicted by the complainant himself in his cross examination. In his examination in chief, he says that when they went there room of the Respondent was closed. He came and opened the door of the said room. However, in his cross examination he has stated that the room of the Respondent Talathi was open. Therefore, the evidence of the complainant is not consistent.

(Emphasis supplied)

Apart from his aforesaid statement, in his cross examination the complainant has admitted that, there was one wooden cupboard inside the room. That cupboard was kept facing towards east side. It has planks. One of the plank was open. I have carefully perused the evidence of panch witness. P.W. 1 in his statement before the Court has asserted that at the relevant time on the date of trap the room of Respondent Jadhav was closed, when they went to the room cum office of the Respondent. He came at the spot and then he opened the room. This version of the panch witness runs contrary to the statement of the complainant in his cross examination in which the complainant has specifically stated that, when they went there the room of the Respondent/talathi Jadhav was open. That apart, the evidence of P.W. 1 and P.W. 2 has been discussed by the Trial Court in various paragraphs of the judgment. However, in para 38 the Trial Court on appreciation of the evidence of P.W. 1 and P.W. 2 found that there are material contradictions and improvements in the evidence of both the witnesses. It is not necessary to reproduce the same discussion, since the Trial Court has elaborately dealt with evidence of P.W. 1 and P.W. 2. Suffice it to say that, on independent scrutiny of the evidence, I find that the findings recorded by the Trial Court in para 38 are in consonance with the evidence brought on record by the prosecution.

9. The relevant portion from the statement of the complainant in his cross examination reads thus,:

It is true to say that, two to three days prior to 09.08.1989, I and Baliram had gone to accused Talathi Jadhav with applications and certified copies of sale deeds and village form No. 4. It is true to say that at that time i.e. 2 to 3 days prior to 09.08.1989 Talathi had told us that one month would be required for taking mutations in our names as notices were to be issued, to the concerned parties. It is true to say that Talathi had also told us that he would not accept the village form No. 4 on which the thumb impressions were brought by us. It is true to say that we had apprehension that the vendor and sons of vendor would object to mutation and hence we had insisted talathi Jadhav that he should rely on village form No. 4 and he should not issue fresh notices to the concerned persons. It is true to say that we had insisted Talathi Jadhav to mutate our names to revenue record on the notices produced by us, and we will mention the Anti dates on those notices. It is true to say that despite of our advice, Talathi was not prepared to take mutation entries in our names and hence I and Balirm had realized that the matter of mutating our names to revenue record would be prolonged.

(Emphasis supplied)

Therefore, the quoted statement of the complainant will have to read along with defence taken by the Respondent.

10. Turning to the defence taken by the Respondent, while replying question No.

47 in a statement recorded u/s 313 of Code of Criminal Procedure, the Respondent/original accused stated thus:

On the day of incident, I worked at my office upto 12.30 p.m. Thereafter I went to Tahsil Office for submitting some documents. While going, my office was open and my another colleague viz. Shri Parad was sitting near my office and I had asked him to keep watch on my office. After some time, after finishing the work from the office of Tahsil, when I had returned to my office, then Shri Parad told me that somebody had been to me and after some time Ankush Atkare, Babu Gujar came to my office. Thereafter, within a short period, Bhaurao Chavan and others entered inside my office and made an enquiry with me about bribe money and due to that, I got frightened because I was knowing nothing. When Bhaurao Chavan asked me about the whereabouts of money, then the complainant disclosed that money was in the cupboard. Thereafter Shri Bhaurao Chavan threatened me and compelled me to take out the money from the cupboard and hence I had taken out the money from the cupboard with left hand. Thereafter, they prepared a false panchanama at my office and involved me in a false case as I had refused to do illegal work of Atkare. I never made demand of money to Atkare.

(Emphasis supplied)

The Respondent has taken specific defence that at the time, when the amount was kept in the cupboard of his room that time he was not present. From reading cross examination of the complainant it is clear that, the Respondent was not present in his room. At the relevant time the door of the room was open. Therefore, the defence taken by the Respondent that, when he was not present and when room was open, that time an amount of Rs. 800/has been kept in the cup board inside the room cannot be ruled out. The Trial Court has discussed in detail about said aspect and recorded the finding to that effect, that such possibility cannot be ruled out. In para 36 of the judgment the Trial Court has discussed the above evidence. Therefore, it is not necessary to go into the details of that part of evidence.

The important aspect is that the I. O. in his evidence has stated that, he told Mr. Kazi another panch witness to take amount from the cupboard. However, said Kazi is not examined. It appears that, the prosecution has conveniently not examined said Kazi and therefore, benefit of doubt should go to the Respondent/accused. As stated earlier, since this is an appeal against acquittal it is not necessary to again reexamine the matter in its entirety, unless case is made out by the prosecution. However, suffice it to say that, in the light of aforesaid discussion from the evidence of P.W. 1, P.W. 2, investigating officer and from other evidence brought on record, the evidence of the complainant does not inspire confidence. What he has stated in his examination in chief has been contradicted in the cross examination. So far initial demand on 21st July 1989 is concerned except bare words of complainant in the complaint, there is no any corroboration to his evidence. The initial demand assumes importance. In this

view of the matter, since the complainant himself has stated in his examination in chief that on 09th August, 1989, the Respondent asked Rs. 1500/to invest the same in the small savings. On careful perusal of the evidence of the complainant and also evidence of P.W. 2 it clearly emerges that on the date of trap and at the relevant time also the Respondent asked whether amount is brought, that does not necessarily mean that the amount was demanded as bribe amount other than legal remuneration. In the facts of this case and in the light of what is stated by the complainant in his examination in chief that amount of Rs. 1500/ was asked by the Respondent for investing the same in the small savings and, therefore, the initial demand on 21st July 1989 and its repetition on 07th August, 1989 assumes importance. However, there is no corroboration to such assertion of the complainant for demand of Rs. 1500/either on 21st April, 1989 or on 07th August, 1989, or on 09th August, 1989. Even complainant has not stated about demand on 21.07.1989 or 07.08.1989 in his substantive evidence before the Court.

11. At this juncture, it would be appropriate to refer to some of the judgments of this Court as well as Hon'ble Supreme Court, in case of *Ajrun Bajirao Kale v. State of Maharashtra* reported in 2009 ALL MR (Cri) 85, this Court held that demand of bribe is a foundation in a case under Prevention of Corruption Act. Mere acceptance of money, by itself, would not be sufficient for the purpose of convicting the accused who is charged with an offence punishable under Sections 7, 13(1)(d), 13(2) of the said Act. On perusal of the said judgment it further appears that this Court has placed reliance on the judgment of the Apex Court in case of *Sat Paul Vs. Delhi Administration*, and *Pandharinath Shelke v. State of Maharashtra* 2005 (2) Bom. C.R. (Cri) 940.

In case of *Avinash Sitaram Garware v. State of Maharashtra* 2008 ALL MR 15, this Court held that if prior demand of money by accused is not proved, rest of the prosecution case will have to be read with great caution and circumspection. In cases where a person is charged with offences under the P.C. Act, he is required to refute the presumption of guilt contained in the said Act but the burden on him is not heavy. He has not to establish his defence beyond reasonable doubt. He may rebut the presumption by showing a mere preponderance of probability in his favour.

Yet, in case of *V. Venkata Subbarao Vs. State*, represented by Inspector of Police, A.P., , the Honourable Supreme Court held in para 24 that In the absence of a proof of demand, the question of raising the presumption would not arise. Section 20 of the Prevention of Corruption Act, 1988 provides for raising of a presumption only if a demand is proved.

In case of *State of Maharashtra v. Dnyaneshwar* 2010 (1) Bom.C.R. (Cri) 247, the Honourable Supreme Court held that the demand of illegal gratification is sine qua non for constitution of an offence under the provisions of Prevention of Corruption Act. For arriving at conclusion as to whether all ingredients of illegal gratification viz. demand, acceptance and recovery have been satisfied or not,

facts and circumstances brought on record must be considered in their entirety. Presumptive evidence as laid down u/s 20 must also be considered, but, in respect thereof, it is trite law that, standard of burden of proof on accused vis-a-vis standard of burden of proof on prosecution would differ. Even in a case where burden is on accused, prosecution must prove foundational facts.

12. Therefore, viewed from any angle, the prosecution utterly failed to prove its case beyond reasonable doubt. The initial demand or previous demand or any demand has not been convincingly proved by the prosecution, even on the date of trap i.e. on 09th August, 1989. The statement of the complainant about actual demand, acceptance is concerned, there is variance between the statement of P.W. 1 and P.W. 2. P.W. 2 has stated that, the Respondent has accepted the amount by right hand and by his left hand he kept in the cup board. However, the complainant has not stated so. Therefore, there are material contradictions, omissions, improvements in the version of prosecution witnesses. It would not be safe to reverse the order of acquittal and convict the Respondent. The benefit of doubt should go to the Respondent. For all these reasons, I do not find any substance in the appeal and the appeal is devoid of any merit and same stands dismissed.