

(2011) 02 BOM CK 0080
In the Bombay High Court
Case No : Criminal Appeal No. 11 of 2000

The State of Maharashtra	Vs	APPELLANT
Shivram Pawar and Sudam Bhalerao		RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

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

Citation : (2011) 2 Crimes 89

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

Bench : Single Bench

Advocate : S.G. Nandedkar, app, for the Appellant; S.J. Salgare holding for S.S. Jadhav, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This is an appeal filed by the State, challenging the judgment and order dated 10051999 passed by the Special Judge, Jalna in Special Case No. 25 of 1993, by which Respondent Nos. 1 and 2 are acquitted for the offence punishable under Sections 7, 13(2), read with Section 13(1), 12 read with Section 7 and u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and u/s 109 of the Indian Penal Code.

2. The charge against accused Nos. 1 and 2 Respondents herein was that on 04-03-1993, accused No. 1 attempted to obtain Rs. 1000/- for himself as a gratification from Shobhabai Nandkishore Mittal resident of Jalna to show her favour while doing official duty to prosecute her application in her favour against Rickshaw driver. Accused Nos. 1 and 2 accepted the amount and committed the said offence.

The allegations against the accused were that the accused were attached to Sadar Bazar Police Station and accused No. 2 was working as Police Head Constable at the relevant time. At the relevant time, complainant Shobhabai was running grocery shop under the name and styled as "Mittal Provisions near

Mission Hospital, Jalna". When One Ricksha driver asked her to sell 5 liters kerosene, to which she refused, therefore, she was threatened by the said Auto Rickshaw driver and he had scuffle with her in her shop.

It is undisputed position that the kerosene licence was in the name of husband of Shobhabai i.e. P.W. 4 Nandkishore Sitaram Mittal. According to the prosecution, on 04/04/1993 at 430 p.m. said Rickshaw driver had conversation in respect of sale of kerosene and threatened the complainant and therefore, complainant Shobhabai went to Sadar Bazar Police Station and lodged report with Officer In charge of Police Station. She narrated the whole incident of threat by Rickshaw driver to In charge of Police Station and copy was given to Mr. Joshi after lodging the complaint. After lodging complaint, Shobhabai was just coming from police station and near gate of the said police station, she met accused Nos. 1 and 2 Mr. Pawar and Mr. Bhalerao, respectively. Both the accused asked her to give them Rs. 1000/- in order to prosecute Rickshaw driver. She replied that she is unable to pay the amount Rs. 1000/- immediately and asked them to wait for some day. The accused told her that they will not take cognizance of her complaint unless the amount is paid. If the amount is not paid, complainant Shobhabai would be prosecuted for lodging false complaint against Rickshaw driver. After this conversation between the accused and complainant, the complainant left the said place.

3. On 06-04-1993 husband of the complainant arrived at 930 p.m. The complainant told her husband that, both the accused told that if the amount of Rs. 1000/- is paid then they will prosecute Rickshaw driver. Else, if the amount is not paid, in that case, they will take action against the complainant for filing false complaint. The complainant told the accused that she will pay the said amount on next day after withdrawing the same from the bank and the accused persons asked the complainant to give on next day.

4. It was further case of the prosecution that telegram was sent to Anti Corruption Bureau, Jalna that the accused are asking Rs. 1000/- from the complainant. Her complaint was reduced into writing by Mr. Paliwal, Deputy Superintendent of Police, Jalna. The concerned Deputy Superintendent of Police called two panchas, one of which Smt. Gandhe, was a lady panch. On 07/04/1993 after calling panchas and after collecting Staff to effect raid, Deputy Superintendent of Police took further steps. The complainant was introduced with panchas. The complainant narrated origin of the case i.e. demand of Rs. 1000/- by both the accused to prosecute against Rickshaw driver. The Deputy Superintendent of Police made necessary arrangement for trap. Necessary procedure was told to the prosecution witnesses. Anthracene powder was applied to the notes of Rs. 1000/- which consists of Rs. 100/- x 8 and of Rs. 50/- x 4. The Deputy Superintendent of Police successively carried out trap panchnama.

5. It was further case of the prosecution that the complainant was told to keep Rs. 1000/- in her purse and purse should be kept in Blouse and only after demand of Rs. 1000/-, the said amount should be passed on, as bribe. Accordingly, trap

was arranged by the prosecution.

6. It was further case of the prosecution that both the accused persons came at the place where it was agreed to pass on an amount of Rs. 1000/by the complainant to the accused. The accused persons came there and asked the complainant whether she has brought the amount. The complainant replied that the amount is brought and the said amount was handed over to accused No. 2 who accepted the same. After acceptance of the amount, signal was given to raiding party by the complainant. panchnama was carried out before and after trap. It was the case of the prosecution that the trap was successful. Thereafter, necessary investigation was carried. All the formalities were completed. Necessary sanction was obtained and the charge sheet was filed before the Special Court, Jalna.

7. After full-fledged trial, the Special Judge, Jalna acquitted the Respondents herein from the charges levelled against them. Therefore, this appeal is filed by the State challenging the said judgment and order of the Special Court in Special Case No. 25 of 1993.

8. Learned A.P.P. appearing for the State submitted that at the relevant time, the complainant Shobhabai Nandkishore Mittal was running grocery shop. On 04041993 at about 430 p.m. one Rickshaw driver had been to grocery shop of the complainant and asked her for five liters kerosene for the purpose of Rickshaw. The complainant refused to give kerosene to Rickshaw driver and due to refusal, Rickshaw driver threatened the complainant. There was scuffle between the complainant and the Rickshaw driver. It is further submitted that on the very day, the complainant went to the police station Sadar Bazar, Jalna for the purpose of filing complaint against Rickshaw driver. At that time, accused No. 1 Shivram Bhikaji, A.S.I. and accused No. 2 Sudam Ashru Bhaleao, Police Constable, working in the police station, were present in the police station and they demanded Rs. 1000/from the complainant for the purpose of taking action against Rickshaw driver. The complainant showed her inability to pay Rs. 1000/.The accused asked her to pay Rs. 1000/and unless that amount is paid, they told that they will not take any action against Rickshaw driver. They further threatened that if the amount is not paid, they will file complaint against the complainant for filing false complaint against Rickshaw driver.

9. Learned A.P.P. further submitted that again on 06041993 when the complainant had been to police station for filing complaint, on that day also, accused persons demanded the said amount for the purpose of taking action against Rickshaw driver. On 07041993 at about 1730 hours, the complainant went to the office of Anti Corruption Bureau, Jalna for filing complaint against both the accused. According to her complaint, preparation was made for trap by the Deputy Superintendent of Police, A.C.B. Jalna. On the same day, pre trap panchnama was prepared. Witnesses were called. Learned A.P.P. submitted that accused No. 2 accepted the bribe amount at the instance of accused No. 1 from the complainant and to that effect, necessary evidence was brought on record by

the prosecution. In all seven prosecution witnesses were examined. Out of which, P.W. No. 1 is the complainant, P.W. No. 2 is Nalini Gandhe i.e. panch witness (shadow witness), P.W. No. 3 is Nandkishor Mittal, husband of the complainant, P.W. No. 4 is Kailas Kadam, P.W. No. 5 is Baban Joshi, Police Head Constable, P.W. No. 6 is Lalsing Paliwal, Deputy Superintendent of Police, A.C.B. Jalna, and P.W.No. 7 is Udhav Kamble, A.I.G. of police station. Statement of all these witnesses were recorded, except P.W. No. 3 husband of complainant. According to A.P.P. the statements of these prosecution witnesses corroborates with each other.

10. Learned A.P.P. further argued that P.W. No. 2 Nalini Gandhe who was shadow witness has specifically narrated the facts of the case, about demand and acceptance of the amount by the accused persons and there is corroboration between the statement of the complainant and statement of P.W.No. 2. It is further submitted that there was recovery of tainted notes from the possession of the accused persons and when these currency notes were recovered from the accused persons and when they were examined in ultra violet lamp, bluish shining was found seen in the dark. According to learned A.P.P. the observations of the Special Court, there is variance between the statements of P.W. No. 1 and P.W. No. 2 are not correct. The Special Court failed to appreciate that the accused had accepted bribe amount from the complainant, which was recovered from them. There is ample evidence on record about demand, acceptance and recovery of the amount. Accused No. 2 has accepted bribe amount at the instance of accused No. 1 from the complainant and the said facts are not properly considered by the Special Court. The accused persons have not given satisfactory explanation about the amount recovered from them. There was strong motive for demanding bribe amount from the complainant and it has been supported by cogent evidence. There was proper sanction to prosecute the accused. Therefore, taking into consideration the evidence brought on record by the prosecution, the accused Respondents are guilty of the offence and they may be convicted for the offence alleged against them.

11. Learned Counsl appearing on behalf of the Respondents accused submitted that P.W. No. 1 Shobhabai has lodged the complaint to the office of A.C.B. Jalna against the Respondents on 07041993. She has stated in her examination in chief that " Both the accused come on my counter near staircase of my shop. Both the accused made demand of amount. I told I will give, let us sit, and have a tea. Pawar ask me to handover the notes to Bhalerao, accused No. 2 with my right hand, I took out the amount from my purse and gave to accused No. 2, who accepted the amount and he kept the amount in his right pocket". However, P.W. No. 2 Nalini has stated in her examination in chief that "After half an hour both the accused return. Accused No. 2 is sitting in dock, I know him. I was in the shop along with prosecution witness No. 1. PW1 said that she had only Rs.100000, whether to be handed over to both the accused. Both the accused said give them".

According to the learned Counsel for the Respondents, if the evidence of the complainant and evidence of P.W. No. 2 is carefully perused, it shows that there is inconsistency in their evidence about demand of money. P.W. No. 2 has not deposed before the Court that the accused had demanded money to P.W. No. 1. Therefore, P.W. No. 1's statement that both the accused demanded money, is falsified, as there is no corroboration by P.W. No. 2.

12. Learned Counsel appearing on behalf of the Respondents accused in support of his contention relied on the judgment of the Hon"ble Supreme Court in the case of Ram Prakash Arora Vs. State of Punjab, wherein in Para8, it is held that the evidence of interested and partisan witnesses who are concerned in the success of the trap, 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 persons. Learned Counsel further submitted that in the present case, the prosecution has failed to prove the very foundation of the trap case i.e. the demand. Therefore, the learned Counsel would submit that learned Special Judge has rightly considered in Para17 onwards that the prosecution has not proved the demand of gratification. Learned Counsel in support of his contention relied upon the judgment of the Hon"ble Supreme Court in the case of Arjun Bajirao Kalke v. State of Maharashtra, reported in 2009 All. M.R. 85 wherein in Para8, it is held that "demand of bribe is a foundation in case under Prevention of Corruption Act, mere acceptance of money by itself would not be sufficient for convicting the accused

Learned Counsel for the Respondents accused further invited my attention to the evidence of P.W. No. 7 Udhav Kamble, who is sanctioning authority, in this case. In cross examination, he has given evasive answers and therefore, the Special Judge has rightly discarded his evidence. Learned Counsel invited my attention to the observations in the judgment of the Special Judge. Learned Counsel further submitted that the appeal filed by the State is against the acquittal and therefore, if two views are possible, one is in favour of the prosecution and another is in favour of the accused, latter should prevail. In support of his contention, learned Counsel relied on the judgment in the case of N.B.C.C. Ltd. Vs. J.G. Engineering Pvt. Ltd., wherein Hon"ble Apex Court has dismissed the appeal filed by the State against the order of acquittal of the Respondent. Therefore, learned Counsel for the Respondents relying on the reasons recorded by the Special Judge and arguments advanced herein above, would submit that the appeal is devoid of merits and the same deserves to be dismissed.

13. I have given due consideration to the rival submissions. perused the judgment and order passed by the Special Judge and also evidence brought on record by the prosecution. From the perusal of the impugned judgment, it appears that, the Special Court acquitted the Respondents on the ground that, the prosecution failed to prove the initial demand and also subsequent demand of amount on the date of alleged trap. The Special Court also found that the

sanctioning authority who had given sanction to prosecute the Respondents, did not apply its mind before giving sanction. Further, Special Court found that, in 1991 there was raid in the shop of the complainant, in which, accused No. 1 was member of raiding party on behalf of the Police Department. Therefore, Special Court found that evidence brought on record by the prosecution does not inspire confidence and not sufficient to convict the Respondents accused. Therefore, Special Court acquitted the Respondents. In order to find out correctness of the impugned judgment and order passed by the Special Court, it would be appropriate to refer to evidence of P.W. No. 1 and P.W. No. 2, on the aspect of demand. P.W. No. 1 Shobhabai Mittal i.e. complainant lodged complaint to the office of A.C.B. Jalna against Respondents on 07041993. She has stated in her examination thus:

Both the accused come on my counter near staircase of my shop. Both the accused made demand of amount. I told I will give, let us sit, and have a tea. Pawar ask me to handover the notes to Bhalerao, accused No. 2 with my right hand, I took out the amount from my purse and gave to accused No. 2, who accepted the amount and he kept the amount in his right pocket". However, P.W. No. 2 Nalini has stated in her examination in chief thus:

After half an hour both the accused return. Accused No. 2 is sitting in dock, I know him. I was in the shop along with prosecution witness No. 1. PW1 said that she had only Rs. 100000, whether to be handed over to both the accused. Both the accused said give them.

14. Upon perusal of the statements of P.W. No. 1 and P.W. No. 2, it clearly appears that so far demand of amount on the date of alleged trap is concerned, the evidence of P.W. No. 1 and P.W. No. 2 is not consistent. The evidence of P.W. No. 1 shows that both the accused demanded money. However, evidence of P.W. No. 2 does not disclose or support evidence of P.W. No. 1. On reading evidence of P.W. No. 2, it does not appear that there was demand on behalf of the accused. On the contrary, P.W. No. 1 told the accused that, she had only Rs. 1000/, whether to be handed over to both the accused. Both the accused stated to give them. However, this does not disclose that there was demand by the Respondents accused for Rs. 1000/. However, in the evidence of P.W. No. 1 complainant, it is stated that both the accused demanded money. Therefore, there is no corroboration to the evidence of P.W. No. 1 on the point of demand.

15. Therefore, the statement of the complainant that there was previous/initial demand on 04041993 is concerned, her husband P.W. No. 3 Nandkishore stated that he does not remember whether his wife told him anything about the said demand on 04041993. Therefore, so far initial/previous demand is concerned, the evidence of the complainant is not corroborated by any other witness.

16. The Special Court has discussed evidence of prosecution witnesses and reached to the correct conclusion in Para Nos. 17 and 18. The Special Court has considered evidence of P.W. No. 7, who was sanctioning authority and after

discussing his evidence at length, Special Court reached to the conclusion that the sanctioning authority has not applied its mind while granting sanction. The Special Court has recorded that sanctioning authority in cross stated that he does not remember how many papers were sent to him. Papers which used to give sanction are also in different colour. It has also observed in the judgment that in the cross examination of P.W. No. 7 he could not give proper answers to the questions which were in respect of documents on the basis of which sanction was granted.

17. Even upon independent scrutiny of evidence, I find that the view taken by the Special Court is a possible view. The Hon''ble Supreme Court in the case of N.B.C.C. Ltd. Vs. J.G. Engineering Pvt. Ltd., held that the demand of illegal gratification is a sine qua non for constitution of an offence u/s 7, 13(1)(d) and 20 of the Prevention of Corruption Act. The Hon''ble Supreme Court held that prosecution must prove the foundational facts and then only accused can rebut presumption u/s 20 of the Prevention of Corruption Act.

The Hon''ble Supreme Court has discussed the power and scope of the appellate Court in appeal against the acquittal and held that where there are two possible views, one in favour of the prosecution and another in favour of accused, latter would prevail. Therefore, in my opinion, the Special Court has taken possible view. The evidence recorded by the Special Court is in consonance with the evidence brought on record and reasons/findings recorded therein is not perverse. Therefore, there is no infirmity in the judgment and order of the Special Court, which is impugned in this appeal.

This Court in the case of Arjun Bajirao Kale v. State of Maharashtra, reported in 2009 ALL M.R.85 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 Act. In the said judgment, this Court has placed reliance on the reported judgment of the Hon''ble Supreme Court in the case of Sat Paul Vs. Delhi Administration, and also in the case of Pandharinath Shelke v. State of Maharashtra 2005(2) Bom.C.R.940. In another case, this Court in case Avinash Sitaram Garware v. State of Maharashtra 2008 ALL MR 15 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.

18. Therefore, taking into consideration the various pronouncements of the Hon''ble Supreme Court and this Court, and evidence brought on record by the prosecution, in my opinion, no case is made out for interfering in the impugned judgment and order of the acquittal, passed by the Special Court, in favour of the Respondents. Therefore ,the appeal filed by the State should fail and accordingly, the same stands dismissed. The impugned judgment and order of the Special Court is confirmed. Bail bonds, if any, stands cancelled.

19. Registry to send the original Record and Proceedings to the concerned Court, forthwith.