
(2012) 07 BOM CK 0127
In the Bombay High Court
Case No : Criminal Appeal No. 313 of 2000

The State of Maharashtra	Vs	APPELLANT
Suresh Nandanwar		RESPONDENT

Date of Decision : 11-07-2012

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 5(1)(d), 5(2), 7

Citation : (2012) BomCR(Cri) 114

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : K.L. Dharmadhikar, APP for State, for the Appellant; M. Faiyazkhan, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—The appeal is filed against the Judgment and order dated 10/08/2000 passed by the learned Special Judge, Nagpur in Special Case No. 31 of 1989 whereby the respondent/accused was acquitted of the offences punishable u/s 7 and Section 5(1) (d) read with Sections 5(2) and 13(1)(d) read further with Section 13(2) of the Prevention of Corruption Act, 1988. Heard the submissions by the respective counsel. Perused the evidence on record and the impugned Judgment and order.

2. The facts, briefly stated, are as under :

One Abdul Azim lodged a report (Ex.114) on 19/08/1988 at about 11.30 a.m. with Anti Corruption Bureau at Nagpur informing that his father is a Tenant at monthly rent of Rs. 25/- in the house of Shaikh Usman. The house has become dilapidated and the landlord was not repairing the house deliberately. Therefore, the Nagpur Municipal Corporation had issued a notice to the landlord for effecting the repairs, but the landlord has not carried out the necessary repairs, despite request made by the Complainant. Therefore, two months earlier, the tenant had approached the Nagpur Municipal Corporation for permission to carry out repairs.

The Complainant got permission for repairs from the Municipal Commissioner, Municipal Corporation, Nagpur. The Complainant took the permission from the Building department at about 3 p.m. on 18/08/1988 and requested the Engineer concerned to issue a notice to the tenant as was issued to the landlord; but, the Engineer said that the date is over and demanded a sum of Rs. 500/-to issue notice to the tenant as desired. The demanded sum was reduced to Rs. 300/-after the negotiations with the Engineer, but he told that, if amount is not paid, then he will not be able to carry out the repairs. The complainant agreed to pay the sum reluctantly. The complainant was called on the next day, but as the complainant was not willing to pay the amount, he made a complaint to the ACB, Nagpur.

3. P.I. Rahane received the report and requisitioned the panchas. In the office of the ACB, they were introduced to the Complainant. The panchas verified the complaint lodged by the complainant and satisfied themselves about the complaint lodged by the complainant. P.I. Rahane explained the use of phenolphthalein powder and Sodium Carbonate solution. The complainant was asked to produce the sum of Rs. 300/-which he had offered to bribe the accused. Serial numbers of the notes were noted down. Complainant was asked to produce the articles and list of those articles was prepared vide Ex.15. P.I. Rahane instructed Head constable Lalji to give demonstration of phenolphthalein powder bottle and Sodium Carbonate solution which were kept in sealed almirah and were taken out on the table. Solution of the Sodium Carbonate was prepared. H.C. Lalji dipped his fingers in the solution, but the colour did not change. Seal of the phenolphthalein powder was broken. H.C. Lalji dusted his fingers with phenolphthalein powder, but the powder was not visible on his fingers. When H.C. Lalji dipped his finger in the fresh Sodium Carbonate solution, it's colour changed to purple. Thus, the panchas and the complainant came to know that the phenolphthalein powder if comes in contact with the solution of Sodium Carbonate, it's color turns purple. Phenolphthalein powder was dusted on the currency notes of Rs. 300/-from both sides with the help of a brush. Those folded currency notes were kept in the hip pocket of the Complainant and he was instructed not to touch the currency notes unless demanded by the Official concerned and that the money should not be given forcibly to the Official. The complainant was also instructed that pancha No. 1 will be with him and that he should open talk of his work with the Official concerned and when money is demanded, he should give money to the Official and after acceptance of the amount, he should come out at a conspicuous place and give signal with the help of a handkerchief by cleaning his mouth by putting the handkerchief on his shoulder or head. The complainant was also instructed that he shall introduce pancha No. 1 as his servant if inquiry is made by someone. Pancha No. 1 was instructed that he should keep watch as to what transpires between the complainant and the accused. H.C. Lalji, after the demonstration, destroyed the previous seal of phenolphthalein powder which was dusted on the currency note by burning it. Thus, necessary precautions were taken at the time of pre-trap

Panchnama before the raiding party proceeded towards the Corporation Office.

4. Complainant and pancha No. 1 went on the first floor as planned to meet the Official concerned, while P.I Rahane and other members of the raiding party waited near the Office for the signal. The Official was not present at his sitting place. The complainant was asked to wait for him near the Cycle stand. After sometime, one person came on Luna and parked it in the Cycle stand and was proceeding to the Office. At that time, the complainant saluted him with folded hands. The accused, in response, said Namaskar and inquired whether he had brought money or not. Complainant replied "yes Sir" informing him that he has brought Rs 300/-as per demand. The accused said "all right, give money". Notice is in my pocket and I will give it just now. " The complainant asked for the notice first. Then the accused took out four notices and one copy was given to the complainant and on one carbon copy, the accused obtained signature of the complainant. The complainant put the notice in his pant pocket and gave the currency notes from his shirt pocket to the accused. Accused Suresh Nandanwar had accepted the currency notes by his right hand and after counting the same, put those in his hip pocket. The complainant saluted the accused. The accused said all right and was proceeding towards the building section. In the mean time, the complainant gave signal as preplanned to the raiding party, who rushed towards the accused and H. C. Tanaji caught hands of the accused near wrist. P.I. Rahane was introduced to the accused by showing his identity card. The accused, who appeared frightened, gave his name as Suresh Krishnarao Nandanwar, Technical Assistant, Building Section, Nagpur Corporation, Nagpur. P.C. Prabhakar prepared fresh solution of Sodium Carbonate. All raiding party members except the complainant dipped their fingers in the solution but the color did not change. That solution was shown to the complainant and destroyed. Again fresh solution of Sodium Carbonate was prepared and right hand fingers of the accused were dipped in the solution and it's color turned purple. That solution was collected in the already tested bottle and it was sealed in the presence of the panchas. Left hand fingers of the accused were dipped in the solution freshly prepared. It's colour turned purple. That solution was collected in the already tested bottle. It was sealed under his signature and the signature of the panchas. Pancha No. 2 took out the three currency notes from the hip pocket of the accused and those were three currency notes of Rs 100/-denomination. Fresh Sodium Carbonate solution was sprinkled on those currency notes. Purple colour dots were found thereon. Serial numbers of the currency notes were also tallied with the numbers already noted in Panchnama No. 1 and were found the same. Those currency notes were put in one envelope and it was sealed under the signature of accused, P. I. Rahane and panchas under Seizure Panchnama (Ex.26). Copy of the same was delivered to the accused. Notices (Ex.43, 33 and 45) were also produced by the accused from his bag which were also seized under the Panchnama (Ex 28). Remaining papers were also seized from the almirah of the accused under the Panchnama (Ex 31). Alternative arrangement was made for the pant of the accused. Sodium carbonate solution was sprinkled on the hip

pocket of the pant of the accused and purple colour dots were found thereon. The pant was seized under the Panchnama (Ex.30). List of articles found with the accused was prepared (Ex.29). Right hand fingers of the complainant were also dipped in the fresh solution of Sodium Carbonate. It's colour turned purple. That solution was collected in already tested bottle and seized under the Panchnama (Ex.17). Fresh Sodium Carbonate solution was sprinkled on the shirt pocket of the complainant and purple colour dots were found thereon. Complainant produced notice which was seized under the Panchnama (Ex.16). List of articles found from the complainant under the Panchnama was prepared as per Ex.18. No other article was found during the personal search of the complainant. Pancha No. 1 had narrated the incident to Pancha No. 2 which was noted under the Panchnama (Ex.32) by P. I. Rahane. Rough sketch of the spot was also prepared as per Ex 46. P.I. Rahane prepared his report (Ex.47) and forwarded it to Sadar Police Station along with the covering letter to register the offence. The offence was registered vide Crime No. 643 of 1988.

5. On 20/08/1988, Panchnama No. 3 was drawn regarding seal of the phenolphthalein powder which was intact. Statement of the complainant was recorded on 20/08/1988. Statements of panchas were also recorded on 22/08/1988. The property was referred for the expert opinion with Ex.49, invoice challan (Ex 50). P.C Prabhakar deposited the property with Chemical Analyser and submitted his report (Ex 51). P. I. Rahane called information about the accused from the Corporation under the letter (Ex.52). C.A. report was received (vide Ex.53) on 5/12/1988. Sanction for the prosecution of the accused was granted (Ex.70). The accused was charge sheeted. Charge was framed (Ex.9). The accused pleaded not guilty and claimed trial. Eight witnesses were examined in support of the prosecution case. The accused defended the case adopting the defence of total denial and false implication.

6. The trial Court noted that the accused was working as a Technical Assistant and not as an Engineer. Tenant Abdul Aziz had preferred an appeal before the Commissioner Shri Vighne (PW-3) on 21/07/1988 (Ex.22) and was represented by Advocate Shri Madnani. Order was passed on 21/07/1988 (Ex.62). PW-3 admitted that the said order was communicated to the Tenant-Appellant therein and his Advocate. Person concerned can start the work once order is passed and communicated, pursuant to the permission granted on 21/07/1988. Whereas the complainant had approached the ACB's Office on 19/08/1988 for the first time and gave false information that he had not received the permission from the Municipal Corporation for carrying out repairs and it is awaited from the concerned Engineer. Complainant had not reported the name of the Engineer concerned. According to learned trial Judge, since the visit of the complainant to the Corporation and talk between the complainant and the accused which took place on 18/08/1988 was not proved for want of evidence of any staff member of the corporation i.e. Abdul Kadir and Taksale, the genesis of the story was not proved and the story of the prosecution that the complainant went to the accused to obtain permission to carry out the repair work is unbelievable. The

trial Judge noted that the accused was a Technical Assistant and not an Engineer and it was not his job to grant permission for repairs of the house and it was job of the Engineer concerned or the Commissioner. The Complainant had grudge against the Engineer and reported with reference to the Engineer. The learned trial Judge observed that the complainant had not referred to the name of the accused or his designation in the complaint. The complainant had not reported the incident of demand from the accused in the sum of Rs. 500/-to 600/-and according to the complainant, he gave Rs 500/- to the accused, but this incident was not reported by the complainant to the ACB which indicates that the Complainant is really an accomplice or not telling the truth before the Court. Therefore, the Court has to scrutinize his evidence cautiously as accomplice is equated to a partisan witness interested in success of the prosecution. Complainant in his evidence claimed that he went to Commissioner and the Commissioner had directed the accused to issue order to the Complainant. But this version of the Complainant is not supported by the Commissioner, though examined as a witness for the Prosecution, and is silent on this material point. The trial Court noted the complaining conduct of the complainant that he can go to the Commissioner and give him threat that if order is not passed in his favour, he will start with the work and it will be responsibility of the Commissioner. Taking into consideration the mentality of such person, it would be difficult to believe that such person would keep mum about the incident that the accused had allegedly demanded the sum of Rs 500/-as bribe, but not done his work and is still demanding more bribe of Rs. 500/-. Under these circumstances, the trial Court observed that, on the touchstone of the probability, the complainant's version do not seem to be natural and probable. Hence, defence of the accused that he never demanded Rs. 500/-or Rs 300/-from the complainant and he never visited the Office of the accused on 18/08/1988 becomes probable due to the evidence of the complainant himself. The visit of the complainant to the Office of the accused is improbability by the evidence of the complainant himself. The record (Exh.21) shows that the complainant was informed on 13/07/1988 that the Court case is pending, therefore, permission can not be granted to the tenant. According to the complainant, he met the accused after 8 days thereof, but he deposed that he had been to the Office of the accused on 18/08/1988 (gap of 22 days), which appears improbable. There is no evidence of any Municipal staff to prove visit of the complainant to the accused on 18/08/1988. Genesis of the prosecution story itself becomes untrustworthy on the point of alleged demand and negotiation between the accused and the complainant, which affected the outcome of the prosecution case. Furthermore, pancha witness Arvind Medhe (PW-2) did not corroborate the evidence of the complainant as to actual dialogues between him and the accused and counting of the notes at the time when he allegedly gave Rs. 300/-. It was found that the complainant was not coming with clean hands while deposing in the Court. The record indicated that the order was passed on 21/07/1988 in favour of the complainant. But, according to the defence, he wanted order against the Landlord requiring him to carry out repairs as the complainant was not ready to

spend. The complainant got annoyed as the order was not against the landlord to carry out the repairs, but against the tenant. Name of the accused as mentioned in Ex.14 is as Engineer, while the accused was Technical Assistant and not an Engineer. Complainant also admitted that he had applied to the Corporation on 24/06/1988 vide Ex.20 and copy of the application was sent to the landlord, Guardian Minister, Building Engineer and Police department. The application mentioned that if permission is not granted within two days, the responsibility will be of the Municipal Commissioner. The complainant has tendency to lie as he deposed that his previous order was cancelled by the Municipal Commissioner on 13/07/1988, but Ex.21 indicates that it was informed that the permission cannot be granted to the tenant on the ground that the Court case is pending. The complainant further admits that his father had preferred an appeal (Ex.22) and he was represented by Advocate Madnani and permission was granted on 21/07/1988. Vighne (PW-3) deposed that the order was communicated on the same day. That being so, the complainant was at liberty to repair the tenement, but he admitted that he had not spent any amount for repairing. He had no real compelling reason to approach the accused and negotiate and attempt to bribe him as alleged. Despite such evidence on the record, the complainant has dared to deny the suggestion that the Deputy Municipal Commissioner ordered him to repair the house within 7 days. Thus, the complainant has no regard for truth. It is risky to base conviction in a serious criminal case on the basis of doubtful evidence of the main/material witness for the prosecution who has not observed sanctity of deposing truth on solemn affirmation in a Court of law. The learned trial Judge has considered the evidence in details as also the ruling cited on the subject and arrived at the logical conclusion, as alleged demand dated 18/08/1988 was not proved. Complainant's version as to acceptance dated 19/08/1988 was doubtful. Genesis of the story as to demand and acceptance itself appears untrustworthy. Evidence of witnesses - PW-1, PW-2 and PW-4 suffers from contradictions on material particulars. Material witnesses Abdul Kadir and Taksale and Municipal staff were not examined to prove visit of the complainant to the accused on 18/08/1988 in the Office. The prosecution has failed to establish it's case beyond all reasonable doubts. Even otherwise, the High Court in an appeal against acquittal has to be very slow to interfere with the acquittal order. The accused is presumed to be innocent and acquittal further strengthens the presumption of innocence. The High Court, therefore, does not ordinarily set aside the Judgment of acquittal when two views are possible unless the impugned Judgment and order is perverse or clearly unreasonable. The trial Court in the present case appears to have considered the relevant material and having regard to salutary principles in appreciation of evidence available with it, reached a just and proper conclusion of acquittal and there are no any compelling or substantial grounds to upset the impugned Judgment and order. That being so, the Appeal has to fail. It is accordingly dismissed. No order as to Costs.