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Court : Mumbai Nagpur

Decided On : Aug-14-2012

Judge : A.P. Bhangale

Appeal No. : Criminal Appeal No. 372 of 2005

Appellant : Ashwin

Respondent : The State of Maharashtra, Through Anti Corruption Bureau, Nagpur

Judgement :

1. This Appeal is directed against the Judgment and Order dated 12/07/2005 passed by the learned Special Judge, Nagpur in Special Case No. 18 of 1997, whereby the accused was convicted for an offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the Act) and sentenced to suffer rigorous imprisonment for one year and to pay a fine in the sum of Rs.1000/and in default to suffer rigorous imprisonment for six months. The accused was also convicted for an offence punishable under Section 13(1) (d) read with Section 13(2) of the Act and was sentenced to suffer rigorous imprisonment for two years and to pay a fine in the sum of Rs 2000/and in default of payment of fine, to suffer further rigorous imprisonment for nine months.

2. Heard the submissions at the bar.

3. The facts, in nutshell, are as under:

The accused was working as a District Manager, Vasantrao Naik Vimukta Jatis and Nomadic Tribes development Corporation Ltd., Nagpur. On 22/06/1995, the Complainant Ramesh Satibavane an unemployed youth belonging to Nomadic tribe, applied for loan of Rs. 25,000/to establish the business of clothes. On 11/12/1995, the Complainant deposited a sum of Rs.3750/(15 % Rs 25000/as required) as his contribution to establish the business of clothes. When the Complainant met the accused, he did not respond on the ground that the sanction of loan for the business in clothes would take time and advised the complainant to apply for the loan of Rs 20,000/for the business of Carpentry, wherein his contribution would be Rs 1000/only (5% of the loan amount) and after subtracting the sum of Rs 1000/from the sum of Rs. 3750/already deposited with the Corporation, Rs.2750/would be refunded to the Complainant. The Complainant would have to spend a sum of Rs 3000/for the work. On the same day i.e. on 16/05/1996, the Complainant applied for the loan in the sum of Rs. 20,000/for the business of Carpentry. On 23/05/1996, the Complainant met the accused at his residence in New Colony at Nagpur to request for sanction of the loan. The accused demanded the sum of Rs.3000/from the Complainant Satibavane. After the negotiations, the accused agreed to accept the sum of Rs 2000/from the encashment of the cheque in the sum of Rs. 2750/, issued to the Complainant on 24/05/1996. On that day, the accused told the Complainant that his application is misplaced and obtained fresh application from the Complainant for loan to establish the business of Carpentry and then issued the Cheque of Rs 2750/to the Complainant. On 25/05/1996, the accused repeated his demand of Rs 2000/and agreed to accept the sum at his residence at Nagpur. But the Complainant was not willing to pay bribe to the accused; therefore he approached the Anti Corruption Bureau, Nagpur Office and lodged oral Complaint. It was taken down by the Deputy Superintendent of Police Dr. Shri S. P. Kokate.

4. The Complainant was called to the Office of the A.C.B. on 25/05/1996 at 7.30 a.m. as pretrap Panchanama was to be drawn. The procedure as to Pretrap Panchanama was completed with necessary instructions to the Complainant and the Panchas summoned by Shri Kokate. Numbers of four currency notes in the

denomination of Rs 500/each were noted. Demonstration of Phenolphthalein powder as also Sodium Carbonate was given. Instructions were given to Pancha no.1 to accompany with the Complainant throughout the trap, while Pancha no.2 was instructed to remain with the raiding Party. The Complainant was given instructions not to hand over the amount to the accused till he demands the amount, and after the accused accepts the amount, the Complainant was asked to take sitting position to be treated as preplanned signal for the raiding party to nab the accused. The Complainant and Pancha no.1 Shri Parve went by a Scooter followed by Pancha no.2 Pandit and the raiding party in a police jeep. Witness Parve parked his scooter on left side of the gate of Nikhara Apartment, New colony, Sadar where the accused resided on the first floor. As instructed by the ACBs Office, the Complainant started behaving dramatically with the help of Shri.Parve making a show as if the Complainant met with an accident and proceeded towards the flat, taking help of the Panch Shri.Parve. The Complainant gave a call by pushing the door bell of the flat of the accused. When the door was opened by the accused, he called the Complainant and Shri.Parve inside the house and asked them to occupy the Sofa. The accused inquired about identity of Shri Parve. The Complainant introduced him as his neighbor. The accused asked Shri.Parve to go outside the flat telling that he wanted to have some personal talk with the Complainant. When Shri.Parve went outside the flat, the accused asked the Complainant as to whether he has brought money. The Complainant replied affirmatively. Then, the accused told him to come in his Office to take the Cheque of loan and demanded the sum of Rs. 2000/. The Complainant took out the amount from his shirt pocket with right hand and handed it over to the accused. Thereafter, the accused opened the door of his flat and called Panch no.1 Shri.Parve inside the flat and asked him to take the Complainant with him out of the flat. When the Complainant came out of the flat, he took sitting position to give signal to the raiding Party who had followed them. They immediately rushed to the flat and knocked the door bell of the flat. The accused opened the door. Hands of the accused were held by the Police Officers. On inquiry, the Complainant told that the accused has accepted the bribe amount and the accused, in turn, told that he has kept the amount in the case of Spectacles. The Complainant was asked to go out of the flat for some time. The numbers of four currency notes each in the

denomination of Rs 500/totaling to Rs.2,000/were tallied with the numbers mentioned in Panchanama no.1. The solution of Sodium Carbonate was prepared to test the right hand fingers of the accused, which when dipped turned purple. Hence, that solution was collected in a bottle. The solution of Sodium Carbonate was also sprinkled inside the case of Spectacles in which the bribe amount was kept. Dots of purple colour were found inside the case of Spectacles. Fresh solution was prepared and sprinkled over the bribe amount and dots of purple colour were seen. The amount of bribe as also the case of Spectacles were seized under the Panchanama. The solution was sealed under the Panchanama. Then the complainant was called inside and his fingers were also tested with the help of freshly prepared Sodium Carbonate solution and then, with another fresh solution of Sodium Carbonate, the pocket wherein the Complainant had kept the bribe amount, was also tested. The solution collected in the bottle was sealed under the Panchanama. Investigation was done and Panchanama no.2 was drawn regarding measurements of the flat, the receipt books seized from the accused, the inward and the outward registers and 30 other documents relating to the loan transaction of the complainant. Deputy Superintendent of Police Shri.Kokate prepared the Complaint report and lodged Complaint to Police Station, Sadar as Crime No.138 of 1996. C. A. reports in respect of the sealed articles sent were received by Shri Kokate. Sanction order was granted to prosecute the accused. Charge sheet was submitted. Charge was framed. The accused pleaded not guilty and claimed trial. His defence is of denial of the liability.

5. The trial Court held that the accused was a Public Servant within the meaning of the Section 2 of the Act, who was working as a District Manager, Vasantrao Naik Vimukta Jatis and Nomadic tribes Development Corporation Limited, Nagpur. And, on 24/05/1996, he had demanded a sum of Rs.2000/for sanctioning the loan for the business of Carpentry and agreed to accept the bribe at his residence at Nagpur and in fact, accepted the Sum of Rs 2000/as gratification, other than legal remuneration as a motive or reward for showing favour in exercise of his Official function to sanction the loan of Rs. 2000/for himself and thereby obtained pecuniary advantage for himself and committed offences under Sections 7, 13(2) read with Section 13(1)(d) of the Act.

6. The fact that, in the month of May, 1996, the accused was working as a District Manager with Vasantrao Naik Vimukta Jatis and Nomadic Tribes Corporation Ltd. is not in dispute. The said Corporation is remunerated by the Government for performance of public duty to ensure development of Section of the Society belonging to the Vimukta Jatis and Nomadic Tribes and the accused was getting salary from the State government and he was discharging his duties as a a Public Servant. The further question raised is whether the Prosecution was successful in proving that the accused, while he was working as a District Manager of the said Corporation, had demanded the bribe of Rs 2000/from the Complainant Satibavane as illegal gratification, as a motive or reward for to Sanction the loan to be advanced by the Corporation to develop the business of Carpentry.

7. On the point of sanction to prosecute the accused, the Prosecution has examined Dr.Gangadhar Vithobaji Kaiande (PW1), who was working as a Managing Director in the year 1997 in Vasantrao Naik, Vimukta Jatis and Nomadic Tribes Corporation, Mumbai. Dr. Gangadhar deposed that he was appointing and removal authority for the accused. Dr.Gangadhar deposed of having received the papers A, B, C and E files with the covering letter (Ex.7) on 21/02/1997 from Director General, ACB, Mumbai in connection with the raid effected to trap the accused. A file consisted of the statements of witnesses recorded during the investigation. In B file, there were 29 documents and complaint. File E was consisting of Official documents of Corporation. Dr.Gangadhar (PW1) also deposed about the meeting of the Board of Directors of Vimukta Jatis and Nomadic Tribes Corporation on 13/03/1997 for discussion on the subject of grant of Sanction to prosecute the accused and Resolution no.13.8 (Ex.8) was passed unanimously. Dr.Gangadhar (PW 1) has granted the Sanction Order (Ex.8) after application of mind. Dr.Gangadhar also deposed that he had carefully gone through the entire papers, studied the same and applied his mind and came to the conclusion that it was a fit case for grant of sanction. Permission was granted to prosecute the accused as per Sanction Order dated 5/7/1997 (Ex.9). Shri. Wahane, Adv. for the appellant criticized the Sanction Order on the ground that assistance of the Advocate (Legal Advisor) of the Corporation was taken by Dr.Gangadhar (PW1) to prepare the sanction order. But, this argument cannot affect validity and legality of the Sanction Order because Dr.Gangadhar had

studied the Papers received from the ACBs Office and he came to the independent conclusion that it was a fit case for grant of Sanction. Merely taking assistance of a legal Advisor cannot invalidate the Sanction Order which was granted and properly issued upon application of mind. The argument advanced by Shri.Wahane, Adv. that the Sanction Order is bad does not hold water. Only because the format in a book is given by a lawyer to the Sanctioning Authority, it cannot be made a ground to assail the Sanction Order, which was given after application of mind by a responsible Sanctioning Authority.

8. Shri Wahane, Adv. has placed reliance upon the following rulings

a) (2011) 12 SCC 294, P. Parasurami Reddy .vs. State of Andhra Pradesh:

It was a case where benefit of doubt was given to the accused therein since the prosecution was unable to prove that the accused had at fixed time and place received the bribe amount. Except evidence of fingers being soiled in Sodium Carbonate turning pink, there was no evidence against the accused as to recovery of money.

But, in the present case, evidence is led about the trap which was wellplanned and recovery of amount of Rs.2000/was also proved beyond all reasonable doubts. Hence, the ratio of the said ruling is not attracted in the instant case.

b) 2000 Cri.L.J. 4400, Khanju Prasad Ladiya .vs. State of M.P.:

In this case, the Complainant therein had alleged demand of illegal gratification from him for conferral of Bhumiswami rights. However, it was noticed by the High Court that the Bhumiswami rights were already conferred and there was no need for the Complainant to file fresh case for grant of Bhumiswami rights. The Court was of the opinion that since money was not recovered from the person of accused, but was recovered from a bag in the house of accused, possibility of the complainant planting money in bag cannot be ruled out. The entire conduct of the complainant was doubtful and hence, the accused was acquitted.

In the case in hand, however, though the amount was recovered from the case of Spectacles, the number of currency notes each in the denomination of Rs.500/got

tallied with the numbers mentioned in Panchanama no.1; the right hand fingers of the appellant herein when dipped in the Sodium Carbonate solution, they turned purple; moreover, when the Sodium Carbonate solution was sprinkled inside the case of Spectacles in which the bribe amount was kept, dots of purple colour were found inside the case of Spectacles. In the circumstances, when prosecution has brought strong evidence against the appellant as aforementioned in the case in hand, the ruling in this case is of no help to the appellant.

c) 2010 ALL MR (Cri) 2366, Suresh s/o. Ramaji Pandav .vs. State of Maharashtra :

In this case, Complainant turned hostile; panch witness deposed that he was not present when demand was made by the accused and thus, demand of amount of bribe by accused is not proved. Consequently, holding that recovery of amount of bribe from the accused becomes insignificant, the conviction of accused was set aside.

While, in the case in hand, the panch witness has supported the prosecution case and demand of bribe by the accused is proved beyond all reasonable doubts by the prosecution. Hence, this ruling is not applicable to the facts of the present case.

d) 2009 ALL MR (Cri) 3127 (SC), State of Maharashtra vs. Dnyaneshwar Laxman Rao Wankhede :

It was held in this case by the Apex Court that prosecution must prove foundational facts and explanation offered, if any, by the accused must be considered by Court on the touchstone of probability while invoking provisions of Section 20 about presumptive evidence. It was further held that when two views are possible, one in favour of the accused should prevail.

In the instant case, the foundational facts are well established and proved by the prosecution and hence, this ruling is not of any help to the appellant.

e) (2011) 6 SCC 450, State of Kerala and anr. vs. C.P.Rao:

In this case, it was observed that mere recovery of tainted money, divorced from circumstances under which it is paid, is not sufficient to convict the accused. When there is no corroboration of testimony of complainant regarding demand of bribe by accused, it has to be accepted that complainant's version is not corroborated and therefore, evidence of complainant cannot be relied on.

However, in the instant case, the evidence of complainant herein is well corroborated by the circumstantial evidence and by the evidence of prosecution witnesses so also the documentary evidence. Hence, the ruling has no bearing in the facts and circumstances of the present case.

f) 2011 (1) AIR Bom R 479, Bhagwan Mahadeo Sathe .vs. State and anr. :

Tainted notes were found in the drawer of the accused in this case. Complainant clearly admitted that, on the first occasion when he went inside the cabin of accused, the accused was not there and after waiting for sometime, he again went inside the cabin. It was held that since the Complainant had ample opportunities of putting tainted notes in the drawer of the accused and there was vital discrepancy in the evidence of panch witness creating doubt about his presence at the time of incident, demand and acceptance is not proved. Ultimately, the accused was acquitted.

This ruling is not applicable as far as the facts in the present case are concerned because the case of spectacles which contained bribe amount when sprinkled with the solution of Sodium Carbonate solution, it showed dots of purple colour and the Complainant in the instant case had no occasion to insert the bribe amount in the case of spectacles in the absence of accused. Moreover, the demand and acceptance is well proved by the prosecution.

g) 2004 ALL MR (Cri) 1341, Bismillakha s/o. Salarkha Pathan .vs. State of Maharashtra :

It was held in this case that sole uncorroborated testimony of prosecution witness as to demand allegedly made by the accused cannot be relied upon.

Since testimony of Complainant in the case in hand is supported by the evidence of panch witness and other circumstantial evidence brought on record, this ruling does not assist the appellant herein.

h) 2012 (3) AIR Bom R 174, State of Maharashtra vs. Ramkrushna Punjabi Bobde :

In this case, this Court held that to attract penal liability, demand and acceptance of bribe is to be proved. Case of accused therein was that currency notes were put in his drawer without his knowledge. The Court was of the opinion that there must be clinching evidence to show that it was with the approval of the accused that the money was put in his drawer as illegal gratification.

In the present case, demand made by the appellant herein is apparent and the acceptance of amount is well established by the prosecution. Hence, the ratio of the instant ruling is not attracted in the present case.

I) 2012 (3) AIR Bom R 488, Vijaykumar Marotrao Daiwalkar .vs. State of Maharashtra:

In this case, it was found that the sanction to prosecute the appellant therein was granted without application of mind and without perusing relevant papers and hence, it was observed that prosecution would be bad for want of valid sanction and hence, accused is entitled to acquittal.

However, in the present case, though Dr.Gangadhar (PW1) had taken assistance of an Advocate, he had studied the papers received from the ACB's Office and by application of mind, came to the independent conclusion that this was a fit case for grant of sanction. Hence, the said ruling is of no help to the appellant herein.

j) 2012 (4) AIR Bom R 265, Pandit Shankar Chaudhari .vs. State of Maharashtra:

This was a case where the complainant was having inherent grudge against the accused. Tainted currency notes were recovered from the shirt pocket of the accused. The accused took a defence that the currency notes were forcibly thrust in his shirt pocket by the complainant. It was held that since the hands of the

accused were not tested under ultra violet rays before he was asked to take out money from his pocket, demand and acceptance of bribe was not proved beyond shadow of doubt and hence, the accused is entitled to be acquitted.

However, in the instant case, demand and acceptance of bribe was proved beyond any shadow of doubt and by cogent and convincing evidence. Moreover, the Complainant in the case in hand is not proved to have any grudge against the appellant herein. Hence, the aforesaid ruling is not applicable in the facts and circumstances of the present case.

9. Shri Wahane, Adv. argued with reference to the ruling in Surajmal vs. The State (Delhi Administration), AIR 1979 SC 1408 to argue that if there is any inconsistency in the evidence of the two witnesses, the benefit of the same must go to the defence as no conviction can be based upon the inconsistent, unreliable evidence, which is unworthy of credence. Shri Wahane, Adv. also referred to the ruling in Panalal Damodar Rathi vs. State of Maharashtra, AIR 1979 SC 1191 to argue that the evidence of the Complainant without any corroboration is equated to the evidence of an accomplice who is unworthy of credit.

10. Shri Wahane, Adv. then made a reference to the ruling in Tryambak Lilaji Binnar vs State of Maharashtra, 2002 (3) Mh.L.J. 293 to argue that the proof of prior demand is important and if it is trustworthy then trap is made legitimate to eradicate corruption; otherwise it would be illegitimate trap. Shri Wahane then relied upon the ruling in Ramesh Ramdas vs. State of Maharashtra, 2004 All MR (Cri) 611 to argue that if there is no evidence of prior demand from the accused, then for want of corroboration to complainant's evidence regarding earlier demand, conviction in such case would be unsustainable. Shri Wahane lastly relied upon the ruling in Ninaji Nivrutti Wagh vs. State of Maharashtra, 2005 ALL MR (Cri) 1157 to argue that the deposition of the Complainant is required to be supported in material particulars by a corroboration so as to connect the accused with the crime.

11. Mr.K.L.Dharmadhikari, learned A.P.P. for the respondent/State submitted that he has no quarrel with the settled propositions of law mentioned in the rulings cited , but the rulings aforementioned by the learned Advocate for the Appellant are to

be applied if relevant in the facts and circumstances of the case, but the same are not attracted in the facts and circumstance of the case in hand. The learned A.P.P. is right in making such a submission since the rulings aforementioned are not helpful to the appellant in the facts and circumstances of the case of the instant case so to substantiate the defence putforth by him.

12. According to the learned Advocate Shri.Wahane, there was no recovery of the sum from actual physical possession of the accused, but it was recovered from the case of Spectacles where it was likely to have been placed by the Complainant in the absence of the accused with an illmotive to implicate the accused. The money was recovered from the case of Spectacles lying on the table in the flat of the accused. According to Shri Wahane, the Complainant was annoyed as he believed that the accused is creating hurdle in getting the loan. Shri Wahane relied upon the admission given by Deputy Superintendent of Police Shri.Kokate that when he had inquired as to who accepted the bribe and where it was kept, the Complainant started to look upon the Case of Spectacles. According to Shri Wahane, the Complainant must have placed the amount inside the Case of Spectacles. Shri Wahane submitted that the evidence led by the prosecution was not trustworthy and ought not to have been accepted by the trial Court. The submission by Mr.Wahane cannot help the cause of appellant as the Complainant had bribed the accused and saw him accepting and keeping the bribe amount in a case of Spectacles. The fact that he started looking to a case of Spectacles would not help the accused to plead that the Complainant had an access to put bribe amount in a case of Spectacles.

13. It appears from the evidence of the Complainant that he was educated unemployed in the year 1996. In the year 1995, he had applied for grant of loan, initially for business of clothes (Ex16). But the accused told the Complainant that the said application was missing and he should apply afresh for the business of Carpentry. Thus, on 24/05/1996, another application was submitted for the business of Carpentry (Ex 17). An amount of Rs 2750/was deposited by the Complainant for earlier application, which he had withdrawn by Cheque. Loan in the sum of Rs 20000/was sanctioned, but the accused demanded the sum of Rs. 3000/from the Complainant and on 24/05/1996, it was finally settled at Rs. 2000/to

release the loan amount. The Complainant who was not willing to pay, approached the ACB Office on 24/05/1996 and lodged oral report (Ex.18). The Complainant was called on the next day on 25/05/1996 at 7.30 a.m. when the two Panchas Shri. Parve and Shri. Pandit were also called from the Government Press Office when pretrap Panchanama no.1 was drawn (Ex.20) at the Office of the ACB at Nagpur. Necessary instructions were given to the Complainant and the Panchas. Shri.Rajesh Parve deposed about his visit with another Panch witness Shri Pandit to ACBs Office at Nagpur on 25/05/1996 at 7.30 a.m. and also about presence of the Complainant Satibavane. Complaint (Ex.18) was read over to them and demonstration of phenolphthalein powder and Sodium Carbonate solution under the Panchanama and the instructions to the Complainant and the Panchas were given prior to raid (Ex.20). Shri Parve (PW4) deposed about his visit along with the Complainant to the house of the accused . The accused offered seat to him on Sofa and thereafter, he asked Shri.Parve to go outside the flat on the ground that the accused wanted to have a dialogue with the Complainant. The accused called him inside the flat again after sometime. Then the Complainant and Shri Parve came out of the flat and signaled to the raiding Party. The Complainant was asked as to who had accepted the bribe amount and the Complainant told about the bribe amount accepted by the accused and kept in the case of Spectacles. Deputy Superintendent of Police Shri.Suresh Kokate (PW5) deposed about recording of the Complaint of Shri Satibavane and Pretrap Panchanama. The evidence led was natural and cogent.

14. The trial Court, after perusal and careful scrutiny of the evidence reached to the conclusion on the basis of the evidence led that the prosecution has proved that the accused had demanded the amount of bribe in the sum of Rs 2000/from the Complainant on 25/05/1996. The trial Court believed that the evidence led about the demand and acceptance by the accused was proved and even if recovery made was not from the actual physical possession of the accused, the amount was kept in the case of Spectacles found in the flat of the accused. Shri Parve (PW1) is an independent witness and he has corroborated the evidence of the complainant Ramesh (PW3) and there was no any reason to disbelieve them in the facts and circumstances of the case. Suresh Kokate (PW5) also deposed that the accused, after he accepted the bribe amount, was asked to dip his fingers

in the solution of Sodium Carbonate and the colour turned purple, which also indicates that the amount of bribe was accepted by the accused. The trial Court has based its judgment of conviction of the accused on the basis of the evidence which was cogent, reliable, trustworthy and sufficient to establish the guilt of the accused. The demand made by the accused and voluntary payment of the bribe, acceptance thereof by the accused and keeping it inside the case of spectacles was held established beyond reasonable doubt. The sentence also seems to have been imposed by the trial Court leniently considering absence of any criminal record in the past against the appellant herein and also the claim of the appellant that he is a married person and the only earning member in the family. I do not find any ground being made out to interfere with the impugned judgment and order. Hence, the instant Criminal Appeal is dismissed.

15. Learned Counsel for the Appellant prays for grant of time of two months to surrender. He submits that the appellant wants to challenge the instant Judgment and Order of this Court before the Apex Court. Learned A.P.P. opposes the request. Since the Appellant wants to challenge the present Judgment and Order before the Apex Court, the operative portion of the Judgment shall remain suspended for a period of six weeks from today.

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