

Vinayak and Another Vs. State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Jul-24-2014

Judge : M.L. Tahaliyani

Appeal No. : Criminal Appeal No. 443 of 1998

Appellant : Vinayak and Another

Respondent : State of Maharashtra

Judgement :

Oral Judgment:

1. Appellant No.1 Vinayak Mahadeorao Bhoyar has been convicted for the offence punishable under Section 7 and appellant No.2 Chirkut Chaituji Dhurve has been convicted for the offence punishable under Section 12 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act' for brevity).

2. Appellant No.1 Vinayak Bhoyar was working as Forest Guard and appellant No.2 is his friend. Complainant Ishwar Pawar was resident of village Takali. He was allegedly involved in storing teak wood logs. It is alleged that appellant No.1 had demanded Rs.100/- from said Ishwar Pawar for not prosecuting him. It is alleged that the said amount of Rs.100/- was demanded on 20th March, 1991. After 2-3 days, the complainant was called by appellant No.1 at the house of Sudhakar Bandbail and had again demanded the amount in presence of Sudhakar Bandbail. The complainant did not want to pay the amount and therefore, he

lodged report with Anti Corruption Bureau. The trap was laid to apprehend appellant No.1. However, appellant No.1 at the time of alleged acceptance of bribe amount had directed the complainant to hand over the said amount to appellant No.2 which was accepted by the appellant No.2. Immediately thereafter officers of Anti Corruption Bureau apprehended appellant No.2, seized the bribe amount and prepared panchnama in presence of two panchas.

3. It is the case of prosecution that one of the panch witnesses viz. Santosh Deshmukh was with the complainant at the time of demand and acceptance of amount by appellant No.2.

4. The learned trial Court framed charge under Section 7 and 13(1)(2) r/w 13(1)(d) of the Prevention of Corruption Act against appellant No.1 and under Section 12 of the said Act against appellant No.2. However, at the end of trial appellant No.1 was convicted for the offence punishable under Section 7 only, as the acceptance of bribe amount by appellant No.1 could not be established. Appellant No.2 was convicted for the offence punishable under Section 12 of the Act. It is this judgment and order of the trial Court which is challenged in the present appeal.

5. At the outset, it may be mentioned here that appellant No.2 is reportedly dead and therefore, his appeal will have to be abated.

6. As far as appellant No.1 is concerned, it is submitted by learned counsel Mr. Gupta that factum of demand could not be proved by the prosecution by satisfactory evidence. It is submitted that complainant-P.W. 1 was a kind of accomplice and therefore, his evidence needed corroboration. It is further submitted that P.W. 3, in fact, could not have heard anything when the alleged demand was made by the appellant on the date of apprehension of appellant No.2 by officers of Anti Corruption Bureau. Mr.Gupta has submitted that witness Sudhakar Bandbail has not been examined to establish that there was demand earlier to acceptance.

7. The contention of learned counsel Mr. Gupta that the demand is required to be proved beyond all reasonable doubts is acceptable. In this case, it may be noted here that appellant No.1 has been convicted only for the offence punishable under

Section 7 and not for the offence punishable under Section 13(2) r/w 13(1)(d) of the Act. The judgment of the learned trial Court is not very clear as to whether the appellant was found not guilty for the offence punishable under Section 13(1)(2) r/w 13(1)(d) of the Act. However, final order makes it absolutely clear that there is no conviction for the said offence. It, therefore, can safely be presumed that appellant No.1 has been convicted for the alleged demand only.

8. Let us, therefore, examine the evidence with regard to the alleged demand. Demand at the first instance was made to the complainant in his agricultural field. Second demand was made at the house of Sudhakar Bandbail and demand for third time was made in presence of P.W.3. The contention of the learned counsel Mr. Gupta that the evidence of P.W. 1 will have to be evaluated with great care and caution has substance inasmuch as he himself was the bribe giver. The prosecution has sought corroboration to the evidence of P.W. 1 by the evidence of P.W. 3. Though P.W. 3 has stated in his evidence that demand was made by appellant No.1 in his presence when he along with P.W. 1 had gone to appellant No.1 to hand over the money as demanded by him, P.W. 3 has also admitted in his cross-examination that the incident had happened on the Western side of the road and that appellant No.1 and P.W. 3 were going by the side of the road and were at a long distance from P.W. 3. It is admitted by P.W. 3 that appellant No.1 and P.W. No.1 were discussing something. In view of this part of cross-examination of P.W. 3 it is very difficult to accept that P.W. 3 has seen appellant No.1 demanding bribe money from P.W. 1. Admittedly, the prosecution had not made any attempt to examine Sudhakar Bandbail in whose presence the demand for second time was made by appellant No.1. As such, the respondents are left with the evidence of P.W. 1 only. Since corroboration was available and it could have been adduced and since the same has not been adduced for the reasons best known to the prosecuting agency, it was highly risky on the part of the trial Judge to accept the evidence of P.W. 1. In view of what has been stated by me, herein-above, I pass the following order.

The appeal filed by appellant No.2 Chikut S/o. Chaituji Dhurve stands abated.

The appeal filed by appellant No.1 Vinayak S/o. Mahadeorao Bhoyar is allowed.

The judgment and order passed by the learned Special Judge, Wardha in Special Case No.1/1992 on 04.12.1998 is set aside.

Appellant No.1 Vinayak S/o. Mahadeorao Bhoyar is acquitted of the offence punishable under Section 7 of the Prevention of Corruption Act, 1988.

The bail bonds of appellant No.1 shall stand cancelled. Fine, if any, paid by appellant No.1 shall be refunded to him.

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