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Court : Mumbai Aurangabad

Decided On : Jun-17-2016

Judge : A.I.S. Cheema

Appeal No. : Criminal Appeal No. 579 of 2005

Appellant : Ravindra

Respondent : State of Maharashtra through Anti Corruption Bureau, Latur

Judgement :

1. The appellant - original accused (hereafter referred as accused) has been convicted by 2nd Additional Sessions Judge and Special Judge, Latur in Special Case No.4/1997 under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act 1988 (Act in brief). Being aggrieved by the conviction as well as sentence passed, the present appeal has been filed.

2. The case of prosecution in brief is as follows :

(a) P.W.2 Angad Vishwanath Jadhav - complainant (hereafter referred as complainant) approached Anti Corruption Bureau at Latur on 22.4.1997. He filed complaint (Exh.65), interalia mentioning that from agricultural field Gat No.148, part of the field standing on the name of his father had been acquired in Manjra Project and he wanted certificate of being project affected. Accordingly, he had gone to the office of Manjra Administration, Irrigation Department, Sub-Division, Latur, where the accused was working. Complainant filed application and time to

time went to the concerned office and asked for the certificate. He was asked to bring copy of notice, award, C.C. form etc. He procured the said copies and submitted the same to the concerned office on 21.4.1997. Thereafter the accused told complainant to give Rs.150/- if he wanted the project affected certificate. Complainant told the accused that he is poor student and from where he will bring the money. However, the accused told that without paying Rs.150/- complainant would not get the said certificate. Finding no way out, complainant agreed to bring and pay Rs.150/- on next day. As the complainant did not want to give bribe of Rs.150/-, he was filing the complaint.

(b) The then Dy. S.P. Bhaurao Chavan (P.W.5) received the complaint of the complainant. Dy. S.P. sent letter to I.T.I., which was nearby and presence of two panchas -P.W.1 Jayant Bagare and Sudhakar Vaijawade was obtained. The complainant was introduced to the panchas and complainant informed his grievances to the panchas also and the complaint was seen by the panchas. Signatures of the panchas were also obtained on the complaint (Exh.65).

(c) It appears that, the Dy. S.P. decided to get verified if there was really demand of bribe and the complainant along with P.W.1 Jayant Bagire were sent to the office of the accused. In presence of panch P.W.1 Jayant also the accused made the concerned demand and Dy. S.P. recorded panchanama Exh.24 regarding verification of the demand. It was decided to lay a trap on the next day of 23.4.1997. Accordingly, on 23.4.1997 the panchas and the complainant and Dy. S.P. assembled at the A.C.B. office and earlier the Dy. S.P. and his staff explained the use of anthracine powder and ultra violet lamp for execution of such trap by A.C.B. Pre-trap panchanama (Exh.25) was prepared. Necessary instructions were give to the complainant and panchas and the raiding party proceeded for execution of the trap. While the complainant and panch P.W.1 proceeded to the office of the accused, the other raiding party lay in waiting. At the time of execution of the trap, the complainant P.W.2 and panch P.W.1 waited near the office of the accused and when he came out, a person was with him. Earlier, the accused asked the complainant and the panch to first come along for tea. They went and had tea, for which the complainant made the payment. When they came back to the office, the other unknown person left and when the complainant and panch

went inside, the accused demanded the amount. The same was paid. The complainant gave pre-decided signal to the rest of the raiding party when accused accepted Rs.150/- from the complainant. He was caught. Further procedure of examining hands and clothes in the light of ultra violet lamp was carried out and the necessary panchanama (Exh.61) was prepared.

(d) Dy. S.P. Bhaurao Chavan then filed complaint Exh.78 with Police Station, Shivaji Nagar, Latur and Crime No.22/1997 was registered. The necessary investigation was carried out. Matter was put up to P.W.3 Ajinath Londhe the Superintending Engineer who was the appointing authority of the accused and sanction Exh.68 was obtained. Charge sheet came to be filed.

3. Charge was explained to the accused vide Exh.3 by the trial Court under Section 13(2)(d) read with Section 13(2) of the Prevention of Corruption Act. After recording some evidence, the same came to be amended vide Exh.3(A) so as to add charge under Section 7 also of the Act. The witnesses were recalled and further examined.

4. Prosecution brought on record evidence of 5 witnesses and proved the concerned documents. The accused pleaded not guilty to the charge and the cross-examination of witnesses shows that the defence is of denial. With statement under Section 313 of the Code of Criminal Procedure, accused filed his written say or statement explaining his stand to claim that he was knowing panch P.W.1 Jayant Bagare since before as the panch was Member of one Association of Instructors and he was also such member. The complainant misunderstood that the accused delayed giving of certificate. The application given by complainant was incomplete till 21.4.1997. The certificate was ready and even outward number had been put on 21.4.1997 and there was no reason for the accused to demand money. The complainant tried to forcibly put the money in pocket of the accused, which he resisted with both hands. At such time, the accused was arrested.

5. I have heard learned counsel for the appellant -accused. He referred to the defence statement by the accused in his written say filed along with statement under Section 313, and referring to the defence as taken therein, it is argued that the case of illegal gratification was not made out. According to the counsel, the

accused has not committed any offence. The sanction given by P.W.3 was without application of mind. P.W.3 was not even able to tell the description of papers which he had received. The trial Court has resorted to wrong reasonings to accept the evidence.

6. Against this, the learned A.P.P. stated that, although it is claimed in defence that panch P.W.1 Jayant was known to the accused since before, there is no material to support such evidence as the witness denied any such acquaintance. The A.P.P. referred to the evidence to show that, there were repeated demands by the accused and he ultimately accepted the amount of gratification. According to A.P.P., there is nothing to show that complainant had any enmity with the accused so as to forcibly thrust amount in the pocket of the accused and to unnecessarily trap him. The defence claimed in the written submission was not claimed at the time of execution of the raid. The evidence of P.W.3 shows that, he had applied his mind to the material which was put up to him as well as considered rules and granted sanction. The witness was unnecessarily put to memory test to tell the description of papers he had received which the person not regularly accustomed with police papers or court papers may not be able to tell. The A.P.P. supported the reasonings of the trial Court and sought dismissal of the appeal.

7. I have gone through the material which was brought before the trial Court as well as the judgment of the trial Court. I have considered the arguments and submissions raised. Going through the judgment and reasons recorded by the trial Court, I find that the trial Court has exhaustively referred to the evidence of witnesses on the various aspects of initial demand; demand at the time of verification; demand at the time of execution of the trap and subsequent recovery of the tainted currency from the pocket of the accused. The various arguments being now raised appear to have been raised in the trial Court also and the same have been dealt with and answered by the trial Court. I now proceed to see if the prosecution has duly established the offence against the accused.

8. There is no dispute regarding the fact that the complainant had in fact filed an application to the concerned office where accused was working as Tracer. The complainant had filed application for certificate referred to by the complainant in

evidence as "Shifaras Patra". What appears is that the complainant was seeking certificate that he was project affected person. Exh. 38 shows that the application was filed on 1.4.1997. The evidence of the complainant Angad is that he completed the formalities regarding all the documents which were required to be filed, on 21.4.1997. The evidence of complainant shows that, after he submitted all the necessary documents on 21.4.1997, the accused demanded Rs.150/- for the Shifaras Patra. The complainant deposed that, he told the accused that he will make the payment on the next day. The evidence is that, the accused told the complainant that he will be able to obtain the certificate on payment of the amount. Thus, this is the evidence regarding the initial demand.

9. The evidence of P.W.2 Angad read with the evidence of Dy. S.P. Bhaurao Chavan (P.W.5) shows that the complainant went to the A.C.B. on 22.4.1997 and reported his grievance relating to the demand made. The evidence of Dy. S.P. shows that he got the oral complaint made by the complainant typed and the complainant signed the same. The document has been proved as Exh.65. The evidence of complainant as well as Dy. S.P. shows that the presence of two panchas was then made available. The evidence of P.W.1 panch Jayant, P.W.2 complainant Angad and P.W.5 Dy. S.P. shows that after the panchas were called, the complainant informed the panchas regarding the demand which had been made and the complaint was shown to the panchas. Thereafter, as per the instructions of Dy. S.P., the panch Jayant and complainant Angad proceeded to the office of the accused to verify the demand. The evidence is that, the panch and complainant went to the concerned office. Initially the accused was not present and both of them came back to the A.C.B. Office. They again went at about 1.00 - 1.30 p.m. At that time, the accused was seen in the office and the complainant requested for the concerned certificate. Evidence is that, the accused told that the work is not yet complete. The evidence shows that, at such time, the complainant expressed to the accused that he is a poor student and certificate may be given to him. Accused told the complainant to pay the amount and thereafter the work would be done. The panch appears to have asked the accused as to how much amount is to be paid and the accused told that the amount has already been stated to the complainant. In presence of the accused, panch asked the complainant as to what is the amount and the complainant said that Rs.150/- has

been settled. The accused told the complainant to bring the amount on next day and he will get the certificate. Both these witnesses then returned to the A.C.B. Office and panchanama regarding the developments was recorded vide Exh.24. Thus, this is the evidence regarding accused making demand again when the Dy. S.P. sent forward the complainant and panch to get verified if really demand was there for illegal gratification.

10. The evidence of P.Ws.1, 2 and 5 then shows that, it was decided to execute the trap on next day of 23.4.1997 and these people assembled in the A.C.B. Office in the early morning. The evidence shows that, the complainant was asked to take out his pocket contents and he produced Rs.172/-, as well as one key of cycle lock and handkerchief etc. The Dy. S.P. separated Rs.150/- and asked the complainant to keep Rs.22/- and other articles with him. The complainant was asked to keep the amount of Rs.22/- in his hip pocket. The handkerchief was asked to be kept in left pocket of the pant. The cycle key was asked to be kept in right pocket. The Dy. S.P. thereafter disclosed the characteristic of anthracine powder and use of ultra violet lamp to the panchas and complainant. Demonstration was carried out as to how articles react to anthracine powder when seen in ultra violet lamp. Head Constable Hajgude applied anthracine powder to the amount of Rs.150/- (which were 3 currency notes of Rs.50/- each). The numbers of the currency notes had already been noted. After applying the powder, the notes were kept in the left pocket of shirt of the complainant. The Dy. S.P. gave necessary instructions to the panchas as to how the raid would be executed. P.W.1 Jayant was to act as the shadow panch with complainant while the other panch was to remain with remaining raiding party. Pre-decided signal was fixed which the complainant was to give if the amount is demanded and accepted. After completing the necessary procedure regarding administration of the anthracine powder, the panchanama Exh.25 had been prepared. This is clear from the evidence of the above three witnesses. The raiding party had then proceeded to the office of the accused at about 11.45 a.m. It appears, panch P.W.1 and complainant P.W.2 proceeded further while the remaining raiding party stayed back at some distance in waiting.

11. The evidence of P.Ws.1 and 2 shows that they had gone to the office of the Manjra project, which was on the first floor. The room was closed. They came

down and waited. They had learnt that the accused had gone for tea. The evidence shows that, after about 1-1/4 hour the accused along with one unknown person got down from the first floor. The complainant wished the accused and asked for the certificate. The accused told the complainant and the panch to first come for a cup of tea. The evidence shows that, the complainant, the panch, the accused and the other unknown person then proceeded to one Hotel Nayan, where they had tea. The complainant paid the bill of the tea. Thereafter they returned to the office of the accused. Then the said unknown person left. The evidence shows that, thereafter the complainant demanded the certificate from the accused and accused asked for Rs.200/-, saying that he will do the work of the complainant for present as well as future also. Complainant told the accused that, as per settlement, he had brought Rs.150/-. The accused demanded the same. The evidence shows that, the complainant took out the amount by right hand from his pocket and gave it to the accused. The accused accepted the amount by his right hand and counted the same with both hands and then kept the same in left pocket of his shirt. The complainant told the accused that he has to watch his vehicle which is outside and so saying, he came out and gave the necessary signal.

The evidence of P.Ws.1, 2 and 5 shows that, on receiving signal, rest of the raiding party entered the office of the accused and the hands of the accused were held. When P.W.5 gave his identification to the accused, the accused was frightened. When accused was asked if he has accepted any amount of gratification, the accused could not speak. On repeated asking, the accused accepted that he has received the amount of gratification. When asked as to where he has kept the amount, the accused gave indication with his eye and pointed towards left pocket of his shirt. The complainant was then asked to wait outside. The Dy. S.P. with the remaining raiding party then carried out further procedure.

12. Thus, the above is the evidence regarding the demand and acceptance of gratification by the accused at the time of execution of trap.

13. The evidence of the panch as well as the Dy. S.P. shows that, the further procedure of verifying both the hands of the accused in ultra violet lamp was carried out and it was seen that there was blue shine. The same was the condition with regard to the pocket of the shirt of the accused. The Dy. S.P. verified the numbers of the currency notes also which had been noted. In the search of the accused, in addition to the marked currency notes of Rs.150/-, further note of Rs.50/- and two currency notes of Rs.10/- each were also found. The additional currency note of Rs.50/- which was found had shine of anthracine powder from one side. Consequently, the Dy. S.P. seized that note also. The complainant was thereafter called and his hands and shirt was also checked and fingers of his right hand and left pocket of his shirt showed the concerned sign of anthracine powder. In the pocket of the complainant, Rs.11.50 were also found which were the balance after his making payment for tea. The concerned procedure appears to have been completed and detailed panchanama Exh.61 came to be drawn. The prosecution has proved the verification panchanama Exh.24, pre-trap panchanama Exh.25 as well as trap panchanama Exh.61.

14. In the cross-examination of panch Jayant, it was suggested to him and he accepted that he had stated in his police statement that during the visit of 22.4.1997, accused told that complainant had not paid the amount and so his work remained to be done. It was suggested to P.W.1 that this did not reflect in the panchanama Exh.24. I do not find any substance in this. It does not make any difference. Although the cross-examiner led P.W.1 to depose that on 22.4.1997 they had gone to the accused and accused had stated that his officer has gone on visit and after his return, he will obtain signature and asked the panch and complainant to come on next day to receive the certificate, still the witness denied that the accused did not tell the complainant to bring the amount to take the certificate. It was suggested to P.W.1 that after the accused said that he will take signature of the officer and they should come tomorrow, thereafter there was no reason for them to enquire about the amount. The witness accepted that this was true, but denied that the accused did not tell them to bring the amount. It was suggested to P.W.1 that he was office bearer of the Association of Instructors. He accepted that he was only member of the said association. P.W.1 denied the suggestion that the accused was also member of the said association of State

level. P.W.1 denied that he was knowing the accused since before. Thus, although a defence has been taken that the accused and the panch P.W.1 both were members of such association, there is no admission by P.W.1 and accused has not brought any other material to show that there was any such earlier acquaintance.

15. It has been argued that, P.W.1 panch was under pressure to depose for the A.C.B., being employee working at I.T.I. Suggestion in this regard was denied by P.W.1. The suggestion put to P.W.1 that as the certificate was already prepared with Outward Number, there was no reason for the accused to claim the amount. The suggestion was accepted by the witness. This, however, is argumentative. The substantive evidence of the witness still remains that, although the certificate had been kept ready and had been kept in Outward Register, still the accused demanded the money and accepted the same. In fact, the evidence shows that, after the accused was caught, and the Dy. S.P. asked, the accused himself produced the Outward Register with the certificate. There is nothing surprising if the certificate is kept ready, but not delivered till the demand is met.

16. I have gone through the cross-examination of the complainant also and although detailed cross-examination was conducted, it does not appear that the complainant has been shattered in any manner.

17. If the judgment of the trial Court is perused, it can be seen that the trial Court initially discussed the evidence of the complainant with reference to the initial demand made by the accused on 22.4.1997. Trial Court referred to the evidence of P.Ws.1, 2 and 5 with reference to the evidence relating to demand made at the time of verification and concluded (in para 17) that considering the evidence, prosecution proved the fact that there was verification of the demand and in presence of P.W.1 accused had demanded the amount of Rs.150/- from the complainant to issue the certificate. Trial Court observed that, there was same inconsistency among the evidence of P.Ws.1 and 2 in this regard, however, the evidence of P.Ws.1 and 2 when read minutely, it did show that, at the time of verification, the accused made demand of Rs.150/- to issue the certificate. The trial Court, then discussed the evidence of witnesses with reference to pre-trap

preparations and found (in para 19) that the panchanama Exh.25 has been duly proved by the prosecution. Trial Court then discussed the evidence relating to demand made and acceptance of the amount at the time of execution of the trap. Trial Court compared the evidence of P.Ws.1 and 2 and found that both the witnesses corroborated each other with reference to the details at the time of execution of the trap panchanama. Trial Court discussed the evidence to find that the evidence of these witnesses regarding the demand and acceptance remained unshattered.

Trial Court also discussed the evidence relating to procedure followed after the accused was caught, and concluded that the evidence of Dy. S.P. Bhaurao Chavan was consistent with P.W.1 and there was full corroboration with reference to the particulars recorded in the trap panchanama Exh.61. It was argued before the trial Court that the accused resisted the thrusting of currency notes and in that process his hands may have come in contact with the currency notes. Trial Court recorded that, it was not convinced. Trial Court discussed the evidence to show that all fingers of both the hands of the accused had the shine of anthracine powder and had it been a fact that the accused resisted thrusting of the currency, it would not be possible that all the fingers of both the hands would come in contact. Trial Court did not find the defence on this count to be probable and satisfactory. Trial Court concluded that, it did not find any material inconsistency in evidence. Trial Court discussed the evidence of Dy. S.P. P.W.5 Bhaurao Chavan that although the certificate was made ready, it was kept by the accused with himself. The evidence of P.W.4 Bhanudas, the Sub-Divisional Engineer from the office of accused was discussed by trial Court to find that the accused was the person who was responsible for dealing with the concerned file and application dated 1.4.1997 which had been filed by the complainant. Trial Court concluded in para 22 of its judgment that the prosecution proved beyond reasonable doubt that the accused had demanded and accepted Rs.150/- for issuing the certificate Exh.35.

18. I have gone through the defence statement which was filed by the accused in the trial Court with his statement under Section 313 of the Code of Criminal Procedure and which has been referred to by the learned counsel for the appellant

-accused as his argument. I have already discussed that there is no material to show acquaintance since before claimed by the accused with P.W.1 Jayant. The defence taken in this written statement that for two hours when they were together and gone for tea on 23.4.1997, the accused had not made any demand, has no substance. The evidence shows that, when P.Ws.1 and 2 had gone with the accused for tea as asked by the accused, there was another unknown person with the accused and only after that person left the accused made the demand. May be the accused did not want to ask before that unknown person. Thus, only because for the period they went for tea the accused did not ask for money does not mean that the accused was not making any demand. He appears to have been waiting for that other person to leave. The other defence taken in the written statement that the amount was thrust in the pocket of the accused also deserves to be ignored looking to the reasoning already recorded by the trial Court on this count which I have referred above. The defence that as the certificate was already ready and even Outward Number had been put and so there was no reason for the accused to make the demand on 23.4.1997 has no substance. It happens that at times the documents are prepared and still release is withheld till the demand is met. In the cross-examination of Dy. S.P. P.W.5 Bhaurao, in para 10, he accepted that, when the raiding party reached the office on 23.4.1997, the certificate was already having Outward Number. The Dy. S.P. volunteered that the accused himself put the Outward Number on the certificate and that it was kept in the custody and the Outward Number was also in the handwriting of the accused himself. Thus, it is clear that, the document though was ready, was withheld as the demand was yet not met.

19. There is evidence of P.W.3 Ajinath Londhe, which shows that, he is appointing authority of the accused. There is no dispute regarding this. The evidence of P.W.4 Bhanudas, Sub-Divisional Engineer shows that the accused was the person who was concerned with the handling of the application which complainant had filed for project affected certificate and actually the accused had handled and even prepared the certificate. The evidence shows that, even the Outward number on certificate had been given by the accused himself. The evidence of P.W.3 Ajinath shows that he had received file from the A.C.B. with regard to the accused. The evidence is that, the witness found that the file disclosed that the accused had

been caught red-handed in the trap. There was request to the witness to give permission under Prevention of Corruption Act. The witness deposed that he went through all the papers and accorded permission to prosecute the accused. He proved the sanction which is at Exh.68. His evidence is that, he accorded the sanction after going through the rules. He deposed that, after perusing the papers he did feel that the papers prepared by the A.C.B. were proper.

I have gone through the cross-examination of this witness also. This witness was deposing in 2004, for an incident of 1997. In the memory test in cross-examination he stated that he did not remember from which office he had received the papers. He deposed that, on that day he could not say what was the description of the papers which he received from A.C.B. Office. Although the accused is trying to argue that the witness did not even remember the description of the papers which he received, I find substance in the arguments of A.P.P. that an unaccustomed Government servant working in the office of Superintending Engineer may not be familiar with the terms like the "complaint", "pre-trap panchanama", "trap panchanama" etc. and only because he could not give the description, would not mean that the witness is not reliable or that he has not examined the papers which were put up to him or that he did not apply mind. The trial Court has discussed the evidence of this witness also and found that the sanction accorded was legal and valid one. It rejected the arguments that the witness has not applied his mind to the documents. I also do not find that it could be held that the witness has given the sanction without examining the documents. The sanction Exh.68 records the necessary concerned details and it appears to have been duly given.

20. For reasons mentioned above, I do not find any substance in the appeal. The evidence on record does establish the offence of the accused and the trial Court has rightly convicted and sentenced the accused.

21. The appeal is dismissed. The accused shall surrender to his bail bonds. Trial Court shall ensure execution of the sentence.

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