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Court : Mumbai Aurangabad

Decided On : Apr-20-2016

Judge : The Honourable Mrs. Justice Indira K. Jain

Appeal No. : Criminal Appeal No. 507 of 2001

Appellant : Dadaji

Respondent : The State of Maharashtra. Copy to be served through Public Prosecutor

Judgement :

Oral Judgment:

1. This appeal takes an exception to the judgment and order dated 6th November, 2001 passed by the learned Additional Sessions Judge, Biloli in Special Case (ACB) No.3 of 1999. By the said judgment and order, Appellant was convicted of the offences punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 and sentenced as under

Conviction under Section	Sentence

7	Rigorous Imprisonment for six months and fine of Rs.2,500/- in default Rigorous Imprisonment for two months.
13(2)	Rigorous Imprisonment for one year and fine of Rs.5,000/- in default Rigorous Imprisonment for four months.

2. For the sake of convenience Appellant shall be referred in his original status as Accused as he was referred before the Special Court.

3. Prosecution case in nutshell is as under:

In the year 1999 Accused was working as Assistant Grader in Cotton Federation Centre, Jarikot, Taluka Biloli. He was assigned with a duty to examine quality of cotton and give gradation for the purpose of assured price.

4. Digamber Gopalrao Solunke was a cotton grower. On 8th March, 1999 he placed his bullock cart containing eight quintal of cotton at Saikhed Centre. He was allotted Cart No.204 for the purpose of grading and weighing the cotton. There was rush of bullock carts and so on 15th March, 1999 Complainant requested Accused to weigh and give proper grading to cotton in his bullock cart. It is alleged that Accused demanded Rs.500/- towards bribe for giving him priority. Complainant was not willing to give bribe. On 15th March, 1999 he approached Anti Corruption Bureau and lodged complaint.

5. A trap was arranged on 16th March, 1999. It was successful. Pre-trap and post-trap Panchanamas were drawn. Tainted money was seized from Accused. Statements of witnesses were recorded. After completing investigation papers

were submitted to Sanctioning Authority. PW-4 Rameshwar Parate, General Manager of Federation accorded sanction. Then chargesheet was submitted before the Special Court.

6. Charge was framed against Accused vide Exhibit 14. He pleaded not guilty and claimed to be tried. Defence of Accused was of denial and false implication. Accused submitted that he was not a public servant and so provisions of the Prevention of Corruption Act would not be attracted against him.

7. Prosecution examined in all 6 witnesses. Considering evidence of prosecution witnesses and defence raised by Accused Trial Court came to the conclusion that Accused was a public servant within the meaning of public servant under the provisions of the Prevention of Corruption Act and further prosecution succeeded in proving the guilt of Accused beyond reasonable doubt. In consequence thereof Appellant was convicted as stated in para 1 above.

8. Heard the learned counsel for parties. On going through the evidence of prosecution witnesses and defence raised by Accused for the below mentioned reasons this Court is of the view that Accused is a public servant within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988 and prosecution could succeed in bringing home the guilt of Accused beyond reasonable doubt.

9. As indicated above Accused was serving as Assistant Grader in Cotton Federation Centre, Jarikot, Taluka Biloli at the relevant time. It was his duty to examine quality of cotton and give gradation for the purpose of assured price. Since Accused has raised a defence that he was not a public servant it would be essential here to refer relevant clause of Section 2(c) and sub-clauses (ii), (iii) and (viii) of the Prevention of Corruption Act, 1988

2. (c) public servant means,

(ii) any person in the service or pay of a local authority;

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or any authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of

the Companies Act, 1956 (1 of 1956);

. . .

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

10. From the above referred clauses of Section 2(c) of the Act of 1988 it is evident that any person in the service or pay of a local authority or any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or any authority or a body owned or controlled or aided by the Government or a Government company is included in the definition of public servant. Sub-clause (viii) of definition is still wider. Under this clause any person who holds an office by virtue of which he is authorised or required to perform any public duty is a public servant.

11. Section 2(b) of 1988 Act defines public duty . It means a duty in the discharge of which the State, public or community at large has an interest. Explanation to Section 2(b) further clarifies that State includes a Corporation established by or under Central, Provincial or State Act or an authority or a body owned or controlled or aided by the Government or a Government company.

12. From the definition of public servant under 1988 Act it can be gathered that it contains very wide definition of public servant. Under the repealed Act of 1947 definition of public servant was restricted to public servant as defined under Section 21 of the Indian Penal Code. With a view to effectively curb bribery and corruption not only under Government establishments and departments but also in semi-Government authorities, bodies and their departments where the employees are entrusted with public duty, a comprehensive definition of public servant has been given in clause (c) of Section 2 of 1988 Act.

13. Appellant has placed reliance on the decision of the Honourable Supreme Court in **State of Maharashtra Vs. Laljit Rajshi Shah and another** (AIR 2000 SUPREME COURT 937)to show that employees working with Maharashtra Cooperative Societies would not be covered within the ambit of public servant

under Section 21 of the Indian Penal Code though under the Cooperative Societies Act by legal fiction they become public servants only for the purpose of that Act.

14. The decision in Laljit Rajshi Shah's case is distinguishable as it was based on interpretation of definition of public servant contained in the repealed Act of 1947. As indicated above definition of public servant under the Act of 1947 was restricted and covered only such public servants as included under Section 21 of the Indian Penal Code. After 1988 Act, Court is required to adopt much wider definition of public servant brought into force to curb corruption even in the semi-Government departments, local bodies and authorities included in Section 2(c) of 1988 Act.

15. In the present case it is not in serious dispute that Accused was performing public duty. He was to examine quality of cotton and give proper gradation to the same. Sanctioning authority has also stated that Accused was performing public function at the relevant time. Thus keeping in view the definition of public servant under Section 2(c), sub-clauses (ii), (iii) and (viii), post held by Accused at the time of trap and the duty assigned to him it is clear that Appellant was a public servant at the time of incident. So the defence raised by Accused that he was not a public servant is contrary to law and cannot be accepted.

16. On merits, it is apparent from the evidence of Complainant PW-1 Digamber Solunke that on 8th March, 1999 he took eight quintal cotton in bullock cart for sale at Cotton Collection Centre Saikhed, Taluka Biloli. He stated that variety of cotton was NH-44. Card No.204 was allotted to him for the purpose of grading and weighing the cotton. On 8th March, 1999 work of grading was not done due to number of carts brought to the centre. It is further stated by Complainant Digamber Solunke that on 15th March, 1999 he alongwith his friend Ashok Wadje went to Cotton Collection Centre. They met Accused and requested him to examine the grade of cotton brought by Complainant. Complainant stated that, that time Accused demanded Rs.500/- and told him to come on the next day for grading alongwith Rs.500/-. Complainant asked Accused to bring down amount to Rs.400/- but he did not listen. He then went to Anti Corruption Bureau, Nanded and lodged report vide Exhibit 22. He further states that trap was arranged on 16th March,

1999. He attended the office of Anti Corruption Bureau on that day at 05:00 a.m. He stated that demand was verified before the Panch witnesses and thereafter alongwith raiding party members they went to Accused. In the presence of Panch witnesses, Accused accepted Rs.500/- and same was seized from him.

17. The testimony of Complainant is fully supported by PW-2 Ganesh Deshpande a Panch. Evidence of Panch Deshpande makes it clear that demand was verified in his presence. After following due procedure trap was arranged. Pre-trap Panchanama was drawn vide Exhibit 42. After pre-trap Panchanama Complainant, PSI Sangu, Head Constable Swami, Kadam, PW-2 Deshpande and another Panch went in Government jeep and reached Saikhed Phata at 09:30 a.m. He stated that then he and Complainant went inside Cotton Federation Centre. Other members were following them. Complainant was near his bullock cart. Accused came there. He demanded Rs.2,000/- from Complainant. Complainant told him that he had brought Rs.500/- as told earlier. Complainant then gave him Rs.500/- and Accused kept the same in backside pocket of his pant. Complainant gave signal to raiding party members. They immediately rushed. Accused was caught red handed. Ten currency notes of Rs.50/- denomination seized from Accused were found containing anthracene powder. In ultra-violate rays hands, tainted money and backside left pocket of pant of Accused were examined. They were found glittering in ultra-violate raise. After trap Exhibit 43 post trap Panchanama was recorded. Evidence of Complainant Solunke and Panch witness PW-2 Deshpande is further supported by PW-3 Ashok Wadje and PW-5 Dy.S.P. Shankarrao Sangu. Their evidence is on the same line and they have fully supported demand and acceptance of bribe by Accused. Nothing could be elicited in their piercing cross-examination to disbelieve their testimonies.

18. Further after going through the evidence of PW-4 Rameshwar Parate it appears that he was sanctioning authority and issued sanction to prosecute Accused vide Exhibit 63. Evidence of PW-4 Parate and sanction order Exhibit 63 clearly show that order was issued after due application of mind and sanction was legal and valid.

19. In the above premise this Court is of the view that prosecution could succeed in establishing the charge against Accused beyond reasonable doubt. No infirmity is noticed in the procedure followed by authority concerned. Nothing is brought on record to disbelieve the evidence of Complainant, Panch witness, persons who accompanied Complainant, Investigating Officer and sanctioning authority. Appeal is thus found without substance and merits. Hence the following order

ORDER

I. Criminal Appeal No.507 of 2001 is dismissed.

II. Bail bonds of Appellant stand cancelled.

III. Appellant shall surrender to bail bonds to serve out the remaining sentence.

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