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Court : Mumbai Aurangabad

Decided On : Mar-08-2016

Judge : N.W. Sambre

Appeal No. : Criminal Appeal No. 666 of 2008

Appellant : Rajesh

Respondent : State of Maharashtra

Judgement :

Oral Judgment:

1. Heard.

2. The present appeal is by accused against the judgment of conviction delivered by the Designated Court under the provisions of Prevention of Corruption Act, thereby convicting the present appellant, a public servant working as a Constable at the relevant time with the traffic department of State Police. The appellant is convicted under Section 235(2) of Cr.P.C., for the offences punishable under Sections 13(i)(d) read with Section 13(2) Prevention of Corruption Act of (hereinafter referred to as the 'Act') and was sentenced under Section 7 of the Act to suffer rigorous imprisonment for two years and to pay fine of Rs.5,000/- in default to suffer simple imprisonment for six months and for an offence punishable under Section 13(i)(d) read with Section 13(2) of the Act to suffer rigorous imprisonment for two years and to pay fine of Rs.5,000/-, in default to suffer simple

imprisonment for six months.

3. The few facts, as are necessary for deciding the present appeal against conviction are as under :

4. The appellant herein was working as a Traffic Constable with Hingoli Police and was posted at Hingoli Police Station (city).

5. Complainant Trimbak, having auto-rickshaw was operating the same on Hingoli-Aundha road and in the month of May 2005, the appellant challaned his vehicle for illegally operating and contravening the provisions of Motor Vehicles Act prior to the trap in question, the appellant obstructed his auto-rickshaw for about three times and thereafter asked the complainant that in case he wanted to operate his auto-rickshaw on Hingoli road, then he has to pay bribe of Rs.300/- per month and without payment the bribe, he would not be allowed to operate the auto-rickshaw on that road and he will be prosecuted. On 23rd May 2005 at about 2.00 p.m., the appellant stopped the complainant, when he was operating his auto-rickshaw and demanded the hafta of Rs.300/- and threatened him to detain his vehicle in police station, in case the hafta is not paid. As a consequence, the complainant Trimbak informed him that he will arrange the amount and pay hafta of Rs.300/- on 25th May 2005.

6. As he was not willing to pay the bribe amount, he lodged complaint against the appellant on 24th May 2005 with the Anti Corruption Bureau Office (hereafter referred to as 'A.C.B. Office' for brevity) with the above referred narrations. After the complaint was received by the office of A.C.B., the panch witnesses were called and given live demonstration as to the performance of trap, so as to catch him red-hand. Necessary instructions were given to the panch witnesses by the Investigating Officer, A.P.I. Jadhav.

7. It is claimed that the Investigating Officer and the panch witness No.1 boarded the auto-rickshaw of complainant, whereas the panch witness No.2 and other Officers followed in a departmental vehicle. As the accused was not found on the spot, i.e. near bus stand the rickshaw was taken to the Police Station and the accused came near the canteen in the Police Station premises, where the trap

was arranged. P.W.1, Complainant Trimbak and the members of trap party went inside the canteen attached to the Police Station and after the accused accepted the amount of bribe, upon receiving appropriate signal, the accused was apprehended along with the tainted currency notes.

8. As a consequence of successful trap, the accused was charge-sheeted after receiving the sanction order from the competent authority for prosecution of the appellant.

9. After the charge was presented, the charge was framed against the present appellant at Exh.1, to which the appellant pleaded not guilty and as such, the trial was conducted.

10. The prosecution examined in all four witnesses, i.e. P.W.1, complainant Trimbak, P.W.2 Shrikant Karbhajane, Panch witness, P.W.3 A.P.I. Jadhav, the Investigation Officer and P.W.4 D.C.P. Khandare, the competent authority who has awarded sanction for prosecution.

11. Based upon the evidence as was brought on record, learned Court of Sessions has convicted the appellant as stated herein above, as such present appeal.

12. Learned Counsel for the appellant Mr Paranjape would urge that the conviction of the appellant under the provisions of Prevention of Corruption Act is not sustainable, as the same is contrary to the law and the evidence that is brought on record. He claimed that the perverse findings are recorded by learned Sessions Judge. Amongst other, the grounds as are pressed into service seeking acquittal of the appellant are that, upon perusal of the complaint and the evidence that is brought on record, it would be noticed that there is change in spot of payment, date and day of raid. He would then submit that once the complainant, Trimbak was declared hostile, the chances of conviction of appellant are very brink and same should have been taken into account by learned Sessions Judge before delivering the verdict of conviction of appellant. According to him, the testimony of hostile witness can be relied upon and conviction based on evidence of P.W.1 Trimbak is also required to be appreciated by the Court. According to him, the demand of bribe amount as claimed against the appellant was not at all proved

and has invited attention of this Court to the evidence of P.W.1 complainant to that effect. He would then submit that the Sessions Court has observed that there was no previous animosity between the complainant and appellant and as such, the same cannot be reason for false implication, is also incorrect, as he has invited attention of this Court to the fact that the complainant was challaned by the appellant on earlier occasion. He would then submit that no pre-trap panchnama or verification was drawn in the other cases. According to him, the complaint contents lot of contradictions to that and the evidence that is brought on record, is also required to be considered, so as to order acquittal of the accused.

13. Learned Counsel for the appellant, so as to substantiate his case for acquittal has relied upon the judgment of this Court in the matter of Surender Kumar Vs. Central Bureau of Investigation, reported in 2013 (12) LJSOFT 453 = 2014 ALL MR (Cri) 129. As the trap was concluded at canteen, which is a public place, apart from P.W.2, Shrikant, no independent witness was examined, so as to corroborate the evidence. According to him, both the panch witnesses ought to have been examined so as to build a strong case and the non-examination of second panch witness is fatal for the case of the prosecution, so as to bring home the guilt of the accused. He has invited attention of this Court to paragraphs 12, 18 and 19 of the said judgment. He would then submit that the appellant is entitled for the acquittal, as the evidence as brought on record, if evaluated carefully, the victimisation of the appellant cannot be ruled out, particularly in the background of the fact that the complainant was prosecuted two months prior to the incident. He sought support from the judgment of this Court in the matter of Shridhar Chavan Vs. The State of Maharashtra, reported in 2015 (11) LJSOFT 2 = 2016 ALL MR (Cri) 88. He has also relied upon the judgment of Apex Court in the matter of M.R. Purushottam Vs. State of Karnataka, reported in 2015 (3) SCC 247, so as to substantiate his submission that the demand must be proved so do the recovery and in absence thereof, the appellant cannot be convicted for the offence. He has sought reliance upon paragraph 5 of the said judgment.

14. Leaned A.P.P., while supporting the judgment of conviction would urge that even if the complainant has turned hostile, the Sessions Court was right in considering the evidence of panch witnesses, particularly having regard to the fact

that the conviction could be based even on the testimony of panch witness. According to him, the judgment delivered by the learned Sessions Judge is just and proper and does not call for any interference. He has relied upon the judgment of Apex Court in the matter of Bhagwan Singh Vs. The State of Haryana, reported in (1976) (1) SCC 389, so as to submit that the evidence of a hostile witness does not completely efface his evidence and remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence.

15. Having considered the rival submissions, it is required to be noted that the learned Counsel for the appellant was right in pointing out that the complainant Trimbak who was examined at Exh.25/1 was declared to be hostile. The complainant, however, even if is declared as hostile, in my opinion, the evidence of a hostile witness can be taken into account for the purpose of corroboration, as is rightly pointed by the learned A.P.P., while relying upon the judgment of Apex Court in the matter of Bhagwan Vs. State of Haryana (cited supra). Paragraphs 8 and 9 of the said judgment are worth relying upon. In the present case, what is required to be noted is, the complainant, in his examination-in-chief has in clear terms stated about the demand of bribe by the present appellant and has named the present appellant as the person who has demanded the bribe. He has identified the accused. He has also identified the currency notes, which was muddemal in present case. In his cross-examination though he has stated that he was prosecuted two months prior, to the incident, however, the appellant, if intend to rely upon the said statement/admission given by the complainant, same will be of hardly any assistance, as the said fact is not substantiated by any documentary evidence by the appellant, though it was well within his knowledge. That the complainant was declared hostile was known to appellant. The appellant has failed to establish his case that he is falsely implicated in the present crime. Rather, the hostility of the complainant falsify the case of the appellant as regards false implication.

16. It is required to be noted that the Investigating Officer, A.P.P. Prakash Jadhav is examined at Exh.36/1. According to this witness, the complainant has visited the office and narrated the complaint which was reduced into writing by him and was

signed by the complainant at Exh.26. He has proved the complaint. He then stated that panch witnesses were deputed by the Office of the Collector pursuant to his request and the panch witnesses were introduced to the complainant who have agreed to act as panch witnesses. The next day morning, the complainant was called along with Rs.300/-. On 25th May 2005, the complainant and both the panch witnesses with the help of ultra violet lamp were shown the demo of use of anthracene powder. He then stated that he along with complainant, panch witness No.1 accompanied him in the auto-rickshaw so as to locate the appellant and after taking round near the bus stand, Hingoli, as the appellant was not found, they went near the police canteen in the premises of Police Station, Hingoli City. At the canteen in the police station premises, the complainant noticed the accused going inside the canteen after parking his motorcycle hence, they went inside following him. After the complainant gave signal, the trap party members reached the P.W.1 complainant, at that time the appellant having accepted the bribe was caught by the members of trap party and thereafter they introduced themselves. Upon inspection in dark since anthracene powder was noticed on the hands of the appellant and the crowed was gathered, the appellant was removed to the adjoining police station.

17. P.W.3 A.P.I. Jadhav has proved in his evidence, the panchnama after the trap at Exh.32 and the arrest panchnama at Exh.40.

18. In his cross-examination, nothing could be elicited in favour of appellant so as to demolish the prosecution story.

19. So far as P.W.2 - Shrikant Karbhajane is concerned, he was examined at Exh.29/1. In his examination-in-chief he has claimed that he is working in the office of Collector as a Clerk and was present with the trap party having received order from the Collector Office, to attend the A.C.B. Office. He then claimed that along with him, another panch witness Mr Meetkar was present. On 25th May 2005, they attended the office of A.C.B. at 7.30 a.m. and they were introduced to complainant. He has also stated that he has verified the contents of the written complaint and he signed the said complaint, which is at Exh.26. He then narrated the entire trap preparation and thereafter claimed that they started at 9.00 a.m.

and reached Hingoli. After confirming the vehicle number they boarded auto-rickshaw of the complainant along with A.P.I. Jadhav and other staff members and went to the bus stand, Hingoli where they have not noticed the appellant, as such they stopped near the canteen of Police Station. He then along with complainant went inside the canteen, where the accused demanded him bribe of Rs.300/-, which was paid by the complainant and accepted by the accused. He then narrated that the bribe amount of Rs.300/- was identified by him and the trap panchnama that was drawn at Exh.32 was also admitted to have been signed by him. He has also identified the notes, pant and shirt of the accused. In his cross-examination, nothing could be elicited so as to support the case of the appellant. He stood by the prosecution story in its entirety including that of the demand and the acceptance of bribe.

20. In the above referred background of the evidence, as brought on record, if the submissions of learned Counsel for the appellant are tested, the claim of the appellant that the complainant was declared hostile and as such, he ought to have been acquitted is required to be rejected for the reason that the independent testimony of panch witness is corroborated with the complaint and nothing could be elicited so as to demonstrate his false implication. It is required to be noted that though the appellant has come out with a case of false implication, however, there is hardly any material on record to prove the same by the appellant, but for the statement of the complainant that two months prior to the trap. Complainant was challenged for violation of the Motor Vehicles Act. Apart from above, it is also required to be noted that the testimony of panch witnesses is in corroboration with the prosecution story, as brought on record, through the evidence of Investigating Officer. The evidence of panch witness is no way contrary to the prosecution story and the said witness, in clear terms, stood by the prosecution story. The demand of bribe and the acceptance is very much proved, particularly when the bribe amount along with anthracene powder was recovered from the pant of the accused, whose hands and the pant were stained with the anthracene powder.

21. It is required to be noted that the claim as sought to be put forth that the testimony of complainant who was declared as hostile should have been analysed carefully so as to read for the benefit of the appellant for his acquittal, is also

required to be rejected, as the conviction could be based on the testimony of panch witness, who has stood by the prosecution story as is accepted in the present case.

22. The next contention of leaned Counsel for the appellant that no pre-trap confirmation/verification of complaint panchnama was drawn and as such, the same does call for interference resulting in an acquittal of the present appellant. It is required to be noted that upon reading of evidence of P.W.1 Trimbak, he has in clear terms admitted that the complainant has disclosed about his intention of not interested in paying bribe to the appellant, the verification of complaint by him in presence of complainant and the successful trap as was laid down against the appellant speak of the reposing of confidence in the evidence of P.W.1., Trimbak. The hostility of the complainant will be of hardly any assistance. The non-preparation of pre-trap panchnama is not a legal impediment and is not fatal to the prosecution case once the pre-trap preparations were very much brought on record in the testimony of P.W.2 Shrikant Karbhajane, who has in clear terms narrated about the complainant's self-introduction in the office of A.C.B., the verification of the complaint and such other events which were necessary for successful trap.

23. The omissions and contradictions as are sought to be placed on record, particularly in the light of the evidence of complainant who was declared hostile will be of hardly any assistance to the appellant, particularly in the light of the evidence of panch witnesses. The change of place of the incident including the date is of hardly any assistance to the appellant, particularly having regard to the fact that trap was successful. There is hardly any material on record to infer that the appellant was victimised. No material whatsoever is brought on record to support the said contention though reliance is placed upon the judgment of this Court. It is required to be noted that in the judgment of this Court in the matter of Surender Kumar Vs. C.B.I. (cited supra), the facts of the said case were altogether different, as in the said case, the money was not found in the hands of public servant, however, it was found in a newspaper laying in a room. Apart from above, the other judgments, as relied upon i.e. in the matter of Shridhar Chavan Vs. State of Maharashtra, M.R. Purushottam Vs. State of Karnataka (cited supra) will be of

hardly any assistance to the appellant.

24. The case against the appellant was proved by the prosecution beyond reasonable doubt in clear terms bringing on record that there was demand and acceptance of bribe.

25. In this background, in my opinion, no case for interference is made out. The appeal fails, stands rejected.

26. The bail bonds of the appellant stand cancelled. The trial Court to secure his presence in the light of judgment of conviction delivered against him.

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