

(2016) 01 BOM CK 0199

BOMBAY HIGH COURT

Case No: Criminal Appeal Nos. 604, 608 of 1998

Govind Anand Karvande

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision: Jan. 22, 2016

Acts Referred:

- Prevention of Corruption Act, 1988 - Section 13(l)(d), Section 7

Citation: (2016) ALLMRCri 5003 : (2017) 2 BomCR(Cri) 528 : (2017) 1 MhLJCrI 125

Hon'ble Judges: Smt. Sadhana S. Jadhav, J.

Bench: Single Bench

Advocate: Mrs. A.A. Mane, APP, for the State; Mr. V.S. Tadke i/b Mr. Avinash Kamkhedkar Advocates, for the Appellant in Cri. Appeal No. 608 of 1998; Ms. Monali Patil i/b Mr. Ashok B. Tajane Advocates, for the Appellant in Cri. Appeal No. 604 of 1998

Final Decision: Allowed

Judgement

Smt. Sadhana S. Jadhav, J. - Appellants herein are convicted for offence punishable under section 7, 13 (1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 and offence punishable under section 120 of Indian Penal Code. Appellants are sentenced to suffer rigorous imprisonment of 2 years and fine of Rs. 1000/- each in default to suffer further rigorous imprisonment for 3 months for offence punishable under section 7 of Prevention of Corruption Act, 1988. Appellants are sentenced to undergo rigorous imprisonment for 2 years and to pay fine of Rs. 1000/- each for offence punishable under section 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988. Appellants are sentenced to pay fine of Rs. 1000/- each in default to undergo rigorous imprisonment for 3 months for offence punishable under section 120 of Indian Penal Code in Special Case No. 21 of 1993 by Special Judge, Pune vide Judgment and Order dated 18/06/1998. Hence, this appeal.

2. Such of the facts necessary for the decision of this appeal are as follows.

3. It is the case of prosecution that P.W. 1 Manik Walekar approached office of Anti Corruption Bureau, Pune on 27/10/1989 and have formally lodged a report alleging therein that he is the owner of hotel Shivshakti. He had applied for the telephone connection in the year 1984 and the application was filed to telephonic office at Pune. He had made enquiry with the lineman (Accused no. 1) on several occasions, however, the work was not being proceeded with. He had also been to the office at Otur and had ventilated his grievance that the other persons who had applied for the connection had already received the telephonic connection. According to P.W. 1 he was informed by the original accused no. 1 that in the event he wanted the connection, he would have to incur certain expenses. On 25/10/1989, original accused no. 1 had informed the complainant that in order to give sanction of the telephonic connection he would have to incur certain expenses. P.W. 1 had accompanied accused no. 1 to Junnar on his motorcycle. There they had met accused no. 2. It is also alleged that original accused no. 2 had also informed the complainant i.e. P.W. 1 to incur certain expenses and amount of Rs. 1500/- was demanded. Complainant had expressed his inability to pay the said amount as it was exorbitant and therefore there was negotiation and the amount was settled at Rs. 1000/- . He was further informed that phone connection will be installed on 30/10/1989 and the amount will have to be paid on the same day. Complainant had expressed his inability to meet the accused persons on 30/10/1989 as it was Diwali Padva and therefore it was decided that the amount would be paid on 31/10/1989. On 27/10/1989, complainant had approached office of A.C.B. at Pune and lodged report. The Dy. S.P. A.C.B. had taken cognizance of his report. Officer had called two public servants to act as panchas to the trap which was to be laid on 31/10/1989. Complainant P.W. 1 had halted at Pune in the night of 30/10/1989. On that day, in fact the phone connection was installed. On 31/10/1989, he went to the office of A.C.B., Pune. Pre-trap panchanama was recorded. He was instructed to part with the tainted notes only upon a demand being made by the accused persons. P.W. 3 Bahiram Gadikar was directed to act as shadow witness. The raiding party had been to the hotel of the complainant. After accused no. 1 had accepted the tainted currency notes, complainant had given the pre-determined signal. The raiding party had caught hold of accused no. 1 along with the tainted currency notes which were found in his pocket. Thereafter P.W. 6 Dy. S.P. Kamble lodged a report at the police station against accused for offence punishable under section 7 & 13 of Prevention of Corruption Act, 1988. After obtaining sanction for prosecution, charge-sheet was filed and the case was registered as Special Case No. 21 of 1993. Prosecution examined 7 witnesses to bring home the guilt of the accused.

4. P.W. 1 Manik Walekar happens to be original complainant. Initially he has deposed in accordance with the report which he had lodged at the A.C.B. In the cross-examination, P.W. 1 has admitted that he was on waiting list and accused no. 1 was telling him that he will get the connection as per serial number. He had also informed that once he receives sanction order, he will install the connection

immediately. He has also admitted that when he had been to Junnar he was informed by the officer that he will get the phone connection on 30/10/1989. He was fully aware that he would get the connection on that day and it was actually connected on 30/10/1989. It is also elicited in the cross-examination that at the time of passing tainted currency notes, complainant as well as accused were sitting on the coach. He has further admitted that he had handed over the money to the accused and had given pre-determined signal. It is pertinent to note that there is a specific admission at the time of actual handing over the money, there was no conversation between the accused but the talk had taken place much prior to that. Accused had not reacted to the transactions after the trap. Material omissions are elicited. Omissions are to the effect:

- (i) He had not disclosed in his report that accused no. 2 had informed him that on 31/10/1989, accused no. 1 would come to the hotel to take the amount.
- (ii) "It is absent in my complaint that accused no. 2 said that my connection will be installed on 30/10/1989".
- (iii) "It is specifically absent in my complaint that I said to accused no. 2 that on that day it will be padva and I will be busy and amount will be given on next day".
- (iv) "It is specifically absent in my complaint that accused no. 2 said that accused no. 1 will come to my house and I will have to pay Rs. 1000/- to him".

5. P.W. 3 Anil Bahiramadgikar has acted as shadow witness at the time of trap. He has stated in his examination-in-chief as follows:

"We went in the hotel of the complainant. We sat in the hotel for sometime. The person to whom the cash was given came there in the hotel. Cash was given to him. It was the amount which the complainant had kept in the pocket of Payjama in the A.C.B. office. The person who had come to take the money in the hotel is accused no. 1 before the court."

It is pertinent to note that this is all what is stated in the examination-in-chief by the shadow witness. P.W. 3 has further stated:

"On the arrival of the accused, keeping the notes in his hand and arrival of the raiding party took place within one minute. The raiding party had come at the time when the notes were kept in the hands of the accused no. 1 by the complainant."

6. Learned counsel for the appellant rightly submits that there was no demand made by the accused no. 1 at the time when the money entrusted to him. From the substantive evidence of the shadow witness, it cannot be inferred that the accused no. 1 had been to the hotel to receive the amount, the phone connection was already given on 30/10/1989. There was no conversation between the complainant and the accused no. 1. The amount was simply thrust into the possession of the accused no. 1 when the raiding party had come and therefore it can be safely

inferred that prosecution has miserably failed to prove that the amount was accepted or obtained by accused no. 1 pursuant to demand of illegal gratification made by him. At this juncture, learned counsel for the appellant has placed implicit reliance upon the Judgment of Hon"ble Apex Court in the case of **P. Satyanarayana Murthy v. Dist. Inspector of Police reported in A.I.R. 2015 S.C. page 3549**, wherein the Hon"ble Apex Court has held that:

"In the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand is an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act."

The Hon"ble Apex Court has further observed that:

"The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 & 13 of the Act."

The Hon"ble Apex Court has further held that:

"The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 & 13 (1) (d) (i) & (ii) of the Act and in absence thereof unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act".

7. Learned counsel for the appellants also placed reliance upon Hon"ble Apex Court in the case of **Panalal Damodar Rathi v. State of Maharashtra reported in 1979 (4) S.C.C. 526** wherein Hon"ble Apex Court has held that:

"There could be no doubt that the evidence of the complainant should be corroborated in material particulars After introduction of Section 165-A of the Indian Penal Code making the person who offers bribe guilty of abetment of bribery, the complainant cannot be placed on any better footing than that of an accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon."

8. Learned APP submits that case of Panalal Rathi [cited supra] was under the old act i.e. Prevention of Corruption Act, 1947 and the same parameters cannot be applied in the present case. However, in reply it is submitted that in fact it is incumbent upon the prosecution to establish that the amount was accepted pursuant to demand of illegal gratification and in the absence of any cogent and convincing evidence, presumption raised under section 20 of the Act would stand rebutted.

9. In the case of **K.S. Panduranga v. State of Karnataka (2013 (3) S.C.C. 721)** The Hon"ble Apex Court has held that:

"When some explanation is offered, the court is obliged to consider the explanation under Section 20 of the Act and the consideration of the explanation has to be on the touchstone of preponderance of probability."

10. P.W. 6 Shankar Kamble is Investigating Officer. He has admitted before the court in his deposition that soon after the raid, accused no. 1 was shown that this amount was not for him. He was also showing that he was not concerned with the amount and that the complainant had told P.W. 6 that accused no. 1 had told him that within one or two days he is going to Pune and he would bring a new telephone for the complainant. Learned counsel for the appellant submits that appellant has demonstrated preponderance of probabilities. Even if it is admitted that amount was accepted by original accused no. 1 it was not towards illegal gratification but it was for the purpose of purchasing a new telephone set. The suggestion in the cross-examination that the money was being given for purchasing a new set is admitted by the defence. In the statement under section 313 of Code of Criminal Procedure, 1973 accused no. 1 has demonstrated that when he was at the counter of the hotel, complainant Walekar thrusted the notes in his hands and before he could react, the raiding party had accosted him.

11. Learned APP submits that those aspects cannot be taken into consideration as there is nothing on record to show that the amount was thrusted and not accepted or obtained. The evidence on record is in fact otherwise and it is clear that the traces of anthracene powder were seen only on the hands of the accused person.

12. Learned counsel for the accused/appellant no. 2 further submits that as far as accused no. 2 is concerned, the prosecution has miserably failed to prove that accused no. 2 had demanded the amount or that accused no. 1 had accepted the amount on behalf of accused no. 2. It is submitted that on 31/10/1989, accused no. 2 was not even in remote proximity of the scene of the offence. There is nothing on record to remotely indicate that accused no. 1 had been deputed by accused no. 2 to accept illegal gratification on his behalf. That there is no iota of evidence to indicate the involvement of the original accused no. 2.

13. Taking into consideration the evidence adduced by the prosecution and the submissions advanced, it is amply clear that prosecution has failed to prove the guilt of the accused beyond reasonable doubt. The evidence on record would show that accused no. 1 had not accepted or obtained the pecuniary gratification but that the amount was thrusted into the hands of the accused no. 1. In fact, phone connection was given on 30/10/1989 and therefore on 31/10/1989, there was no occasion for accepting gratification from the complainant. There are inherent inconsistencies in the evidence of the witnesses which go to the root of the matter. Hence, appellants deserve to be acquitted of all the charges levelled against them.

ORDER

(i) Appeals are allowed.

(ii) The Judgment and Order dated 18/06/1998 passed by Special Judge, Pune in Special Case No. 21 of 1993 is hereby quashed and set aside.

(iii) Appellants are acquitted of all the charges levelled against them.

(iv) Bail bonds of the appellants stand cancelled.

(v) Appeals stand disposed of.