

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 300 OF 2007

Ramesh s/o Bhagwantrao Sonawane, Aged 47 years, Occupation Service, Resident of Nath Nagar, B-27, Near Balaji Nagar, Aurangabad	Appellant
V E R S U S	
The State of Maharashtra	Respondent

Mr. Rajendra Deshmukh, Advocate for the
appellant
Mr. S.G. Nandedkar, APP for the respondent / State

CORAM : A.V. NIRGUDE, J.
DATED : 12th October, 2010

ORAL JUDGMENT

1. This appeal is challenging the Judgment and order passed by the learned Special Judge, Anti Corruption Bureau, Aurangabad, dated 25th July, 2007, in Special Case No. 07 of 2002, in which the appellant was the accused. The appellant was charged for the offences punishable under Sections 7, 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988 (hence be referred to as '**the Act**').

2. The appellant, at the relevant time, was working as Assistant Sub-Inspector at the Police Chowki of Government Medical College Hospital, Aurangabad, under City Chowk Police Station, Aurangabad.

The facts leading to the litigation, are as under :

3. Prior to 3rd December, 2001, an accident took place, in which the complainant's brothers sustained injuries. They

were treated at the Government Medical College Hospital, Aurangabad. After they were discharged, they and their family members thought of lodging a criminal case against the owner of the property where the accident had taken place. They tried to lodge such complaint at CIDCO Police Station, Aurangabad. But, the police asked them to get the Medico Legal Injury Certificates in respect of the injuries sustained by the brothers of the complainant. Accordingly, the complainant's mother and his friend one Ganesh went to the hospital and met the appellant, who was then attending the Police Chowki there. He asked them to pay him Rs.200/- as bribe and he would give the medical certificates. They came back and informed this fact to the complainant. The complainant there upon with his friend Ganesh went to the appellant and demanded the medical certificates. But, again, the appellant demanded Rs.200/- from them. The complainant did not have any money and did not want to pay the amount to the appellant, so he came back and lodged his complaint with Anti Corruption Bureau, Aurangabad. Accordingly, a trap was arranged on the same day. The complainant, his friend Ganesh and the shadow panch then approached the appellant on the same day, at about 05.00 p.m., and even at that time, in presence of the shadow panch, the appellant demanded amount of Rs.200/- for parting with the medical certificates and accepted it in his hand. The trap thus succeeded and the appellant was apprehended. Before sending the case to the Court, the Investigating Officer obtained sanction for prosecuting the appellant from the Deputy Commissioner of Police, Aurangabad.

4. At the trial, the prosecution examined six witnesses.

PW 1 was the Deputy Commissioner of Police, one Shri. Sanjiv, who deposed to prove the sanction order (Exh.14), whereas the prosecution witnesses No. 2, 3 and 5 deposed to prove the incidents that took place including the incident of trap dated 3rd December, 2001. The case of the prosecution thus depended on the successful proof in respect of demand and acceptance of the bribe amount and the lawful sanction order passed by the prosecution witness No. 1. On both the counts, the learned Judge of the lower Court accepted the prosecution case and held that the offence was proved against the appellant beyond reasonable doubt.

5. The learned Advocate Shri. Rajendra Deshmukh made two submissions; first, the prosecution could not prove the factum of demand and delivery of the amount of bribe. Let me now examine this aspect of the case first. Both the prosecution witnesses No. 2 and 5, the complainant and his friend Ganesh, deposed as to how they requested the appellant for the certificates and how he demanded the bribe of Rs.200/-.

6 PW 5 Ganesh said that a day prior to the incident, he along with his mother and complainant went to request to the appellant at his Police Chowki and requested for the medical certificates. He said, at that time, the appellant demanded Rs.200/-. He said, so they came back. On the next day, he said, he and the complainant again went to the appellant at the hospital and again demanded him the medical certificates. He said, even at that time, the appellant demanded Rs.200/-. He said, thereafter, he and the complainant went to the office of Anti Corruption Bureau and met the Police Inspector, ACB, there. He then said that

after the complaint was lodged, a trap was arranged and the complainant was given anthrasene powdered two currency notes of Rs.100/- to be given to the appellant if he demanded the bribe. Thereafter, he said that he, the complainant and the shadow panch went to the Police Chowki of the appellant. He said, the appellant was not present there. But, one Hawaldar informed them that the appellant would come within 5-10 minutes. He said, they therefore waited at Police Chowki for the appellant. The appellant then came there. He said, the complainant then requested the appellant for giving the MLC certificates. On this, he said, the appellant asked, as to whether the complainant had brought the money. He said, thereafter, the appellant led all three of them towards Post Mortem room of the hospital. He said, on reaching there, the appellant again demanded the amount. He said, thereafter, the complainant removed the tainted currency notes and handed them over to the appellant. The appellant received the amount in his hand. The prosecution witness No. 5, in cross-examination, admitted that the complainant had put the tainted notes in the hands of the appellant and the appellant had thrown them on the ground. The relevance of this admission would be discussed in the subsequent paragraphs of the Judgment.

7. The prosecution witness No.2 is the complainant, who narrated the prosecution case quite coherently. He stated, as to how, after the trap was laid, he, his friend and the shadow panch went to Police Chowki of the appellant. He said that after they entered the Police Chowki, he found the appellant present there. He said, thereafter, the appellant led them towards the post mortem room. He said, when

they reached the post mortem room, the appellant handed him the paper and asked him whether he had brought the money. He said, he admitted having brought the money. He said, he then took out the tainted currency notes and held before the appellant. He said, the appellant collected them in his right hand and then kept them in right fist. He then said that he transmitted signal while wiping his face with his scarf to the raiding party. He said, after getting the signal, the raiding party arrived. He said, then the appellant threw away the currency notes on the ground.

8. The prosecution witness No. 3 is the shadow panch, who also stated the narration quite consistently. He said, after the trap was laid, he, complainant and the complainant's friend Ganesh went to the hospital at the Police Chowki of the appellant. He said, the appellant was not present there, but he arrived there after few minutes. He said, the complainant then asked the appellant to give him the medical certificates. He said, thereafter, the appellant led them to the post mortem room. On reaching that spot, he said, the complainant again requested the appellant to give him the medico-legal certificates. He said, thereafter, the appellant took a paper in his hand and wrote something on the paper. He said, the appellant then handed over that writing to the complainant and directed him to go to CIDCO police station and get a report from that police station. He said, the appellant then demanded the amount to the complainant. He said, the appellant said to the complainant that he should give him the amount which was agreed earlier. He said, thereafter, the complainant handed over the tainted currency notes to the appellant. He said, the appellant took the currency notes in his right

hand and kept them there. He thereafter stated that then the raiding party came and held the hands of the appellant and asked him about the amount he had taken. He said, it was found that the appellant had allowed the currency notes to fall on the ground. He admitted in the cross-examination that the tainted currency notes were found lying on the ground when the raiding party arrived on the spot.

9. It has thus come consistently on record that when the raiding party arrived on the spot, the appellant was not found holding the currency notes in his hand, but they were found lying on the ground.

10. The appellant took up a defence since beginning that he did not demand any amount from the complainant, but the complainant insisted him that he should accept the amount. It is his case that when he was refusing to accept the amount in his hand, the complainant thrust the tainted currency notes in his hand, and without accepting them, allowed them to fall down on the ground. It is thus his case that he had no occasion to accept the amount.

11. The question is, whether the appellant had accepted the amount? There is no doubt in my mind that the prosecution has proved successfully that the appellant had demanded the money. On his demand, the appellant had taken out the tainted currency notes from his pocket and then held them before the appellant. What happened thereafter, is in little dispute. On one hand, the prosecution witnesses stated that the appellant accepted the amount in his right hand and kept them in his right fist, whereas, the appellant suggested that the tainted currency notes were thrust in his hand, and since he did not accept them, they

fell down on the ground. He thus also explained as to how the traces of anthracene powder was found on his hand also. From this discussion, it is clear that the tainted currency notes fell down on the ground from the hand of the appellant. The question is, at what point of time the currency notes fell from his hand on the ground. The defence is trying to take advantage of out of context admission of the prosecution witness No. 5, which is as under :

“It did happen that Kaduba has put the amount in the hands of accused and the accused has thrown that amount on the ground. Within a short period of giving the amount, members of ACB came there. They caught hold the hands of the accused.”

The defence is trying to suggest that in view of this admission, they would be able to prove that the complainant had thrust the currency notes in the hands of the appellant, and, the appellant, while refusing to accept the same, threw them on the ground. This is a rather far fetched hypothesis. In view of the deposition of this witness in the examination-in-chief, one may accept that this very witness would admit that as soon as the amount was given in the hand of the appellant, he threw it on the ground. In the chief-examination, he stated that when the bribe amount was held in front of appellant, he took it in his hand. This clearly indicates that the appellant willingly accepted the amount in his hand and kept it there. It appears that thereafter subsequent events took place very quickly. The members of the raiding party were lurking very close and they rushed to the spot no sooner they saw the signal given

by the complainant. It clearly indicates that sensing the danger, the appellant allowed the tainted currency notes to fall down on the ground. Thus, they were found on the ground by the raiding party. I have no doubt in my mind that the bribe amount was willingly accepted by the appellant. The prosecution thus fully proved the demand and acceptance of bribe by the appellant.

12. Shri. Rajendra Deshmukh, the learned Advocate appearing for the appellant then contended that the prosecution witness No.1 had no authority to issue the sanction order (Exh.14). The prosecution witness No.1 Sanjiv said that he was working as Deputy Commissioner of Police at the relevant time at Aurangabad and that when he received the papers of this case, he studied them, and when he was satisfied, he granted sanction to prosecute the appellant. He also asserted that he had authority to grant such sanction.

13. The question is, whether this prosecution witness No.1 had authority to sanction the prosecution of the appellant. Firstly, this witness stated that he had authority to appoint and remove an Assistant Police Inspector. Mr. Deshmukh, learned Advocate for the appellant challenged this power of this witness. He said, a Deputy Commissioner of Police, unless he is authorized by special or general order passed by the Commissioner, cannot appoint or remove the Assistant Police Inspector. The importance of authority competent to remove a Government employee is found in clause (c) of sub-section (1) of Section 19 of the Act. Section 19 reads as under :

19. Previous sanction necessary for prosecution . -

(1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the code of Criminal Procedure, 1973,-

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no Court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

14. In order to examine as to whether this particular Deputy Commissioner was or was not the authority competent to remove the appellant from his office one has to go through the provisions of Bombay Police Act. Section

56 of the Bombay Police Act authorized the Commissioner of Police, appointed under Section 7 of the Act, to exercise the powers enumerated therein. Section 10 of the Act authorizes the State Government to appoint one or more Deputy Commissioners of Police. Sub-section (2) of Section 10 of the Bombay Police Act reads as under :

(2)Every such Deputy or Assistant Commissioner shall, **under the orders of the Commissioner**, exercise and perform any of the powers, functions and duties of the Commissioner to be exercised or performed by him under the provision of this Act”.

These provisions thus enable the Commissioner of Police to delegate his powers to a Deputy Commissioner. Unless such delegation is proved by the prosecution the mere assertion of this witness that he had authority to issue sanction is of no use. Even the sanction order does not make any mention of any order passed by the Commissioner to delegate his powers to this witness. The prosecution witness No.1 in the cross examination was asked specifically as to what gave him powers to issue the sanction order. To this, he admitted that he had not mentioned in the sanction order about his powers to accord sanction. But he added that as per the provisions of Police manual, I was authorized to exercise the powers of the Commissioner. He also referred to Section 20 of Bombay Police Act, for having such authorization. On the fact of it, the prosecution witness No.1 did not understand the intention of the cross examiner when he asked him as to what gave him powers to issue the sanction order? The prosecution witness No.1 should have realized that he ought to have while answering the question referred to a specific order passed by the Commissioner authorizing him

to exercise and perform the Commissioner's powers in this regard. The cross examiner of the appellant thus offered an opportunity to this witness and for that matter even to the prosecution to show that the prosecution witness No.1 vide an appropriate order was given authorization to exercise and perform the Commissioner's power.

15. One must also peep into the provisions of the Bombay Police (Punishments and Appeals) Rules, 1956. These rules inter alia provide as to how a departmental inquiry is held for imposing punishment upon a police officer. Rule 3 says that a police officer can be dismissed from the Government service as one of the punishments. The Schedule - I annexed to the Rules mention that a Police Commissioner is empowered to award punishment of removal of service upon all police officers working under him below the rank of Inspector of Police. Thus, the power to remove the appellant from his office was certainly with the Police Commissioner and the prosecution witness No.1 merely asserted he too had such powers. But prosecution ought to have proved that the Commissioner had delegated such powers to the P.W.No.1. But this is not proved by them.

16. The learned A.P.P. asserted that apparently, the prosecution witness No.1 could have had ample authority to issue the sanction for prosecution of the appellant. He said, one must presume that the Deputy Commissioner who was at the relevant time at the Police Head Quarters in all probability ought to have delegated with adequate powers of the Commissioner. I am afraid this argument can not be accepted. As said above what is required to be proved must be proved.

17. The impugned Judgment clearly shows that the

learned advocate appearing for the appellant in the trial Court questioned the authority of the prosecution witness No.1 to issue the sanction order, but the learned Judge without referring to the provisions of Section 10 of the Bombay Police Act dealt with this issue and erred in relying on some extraneous provisions to come to a wrong conclusion that the prosecution witness No.1 had power to issue the sanction order.

18. It is thus clear that there is a clear omission on the part of the prosecution to establish link between the prosecution witness No. 1 Dy. Commissioner of Police and his authority to exercise the powers of Commissioner, as contemplated under Section 10 of the Bombay Police Act.

19. In order to over come this difficulty, the learned A.P.P. placed reliance on sub section (3) of Section 19 to assert that despite such omission, the Court in appeal should not reverse the finding recorded by the learned Judge of the trial Court. Indeed clause (a) of sub-section (3) prohibits the High Court while exercising the appellate powers in such a case from reversing or altering finding, sentence or order passed by the Special judge, on the ground of absence of error, omission, irregularity etc., in the sanction order, unless the Court opines that such omission, error etc. had caused failure of justice. In this case, the defence since beginning was asserting that the prosecution witness No.1 had no powers to issue the sanction order. As said above, this witness was asked as to the source of his authorization to exercise the powers of the Commissioner, the witness admitted that he had not mentioned in the sanction order the source of his authorization. In such situation, it was necessary for the prosecution to establish link between the

prosecution witness No.1 and him having authorization to exercise the Commissioner's powers in this regard. In absence of such link, the defence would certainly show that the prosecution witness No.1 had no authorization to exercise the Commissioner's powers. In absence of such authorization, the prosecution witness No.1 would not have authority to examine the case on merit and to issue the sanction order. In absence of such authorization, the sanction order is a nullity, and in absence of sanction order, the Court could not have taken cognizance of the offence alleged against the appellant. In other words, this is a case where the defence could show and establish that the prosecution witness No.1 had no powers to issue the sanction order. This would go to the root of the case resulting into acquittal of the appellant even at the trial stage. If the learned Judge of the lower Court did not realize this lapse in the prosecution case and if he still recorded his finding against the appellant, it is clear that a failure of justice has occasioned due to such finding. Thus, a case is made out to reverse the finding of the learned Judge of the trial Court. The appeal should therefore, succeed.

ORDER

- (1) The appeal is allowed.
- (2) The appellant is acquitted.
- (3) The fine amount deposited by the appellant in the lower Court shall be refunded to him.

(*A.V. NIRGUDE, J.*)

