



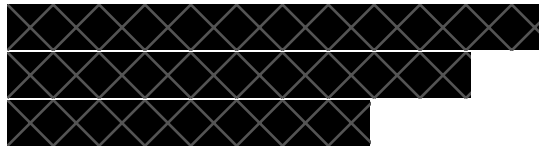
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1301 OF 2012

The State of Maharashtra,
Through Paud Police Station ...Appellant

Versus

Dr. Anil Kacharu Shinde,



...Respondent

Mr. S. H. Yadav, APP for the Appellant.

Mr. Sandeep S. Salunkhe for the Respondent.

CORAM : JITENDRA JAIN, J.

RESERVED ON : 15th SEPTEMBER, 2023.

PRONOUNCED ON : 03rd OCTOBER, 2023.

P.C.

1. This appeal is filed by the appellant/original complainant against the judgment dated 31st January 2012, delivered by the Special Judge (under the Prevention of Corruption Act, 1988), Pune, acquitting the respondent-original accused from charges under Sections 7, 13(1) (d) and 13(2) of the Prevention of Corruption Act, 1988 (for short "P. C. Act").

2. Brief facts relevant for the present appeal are as under:-

- (i) On 27th September 1995, the respondent/accused was appointed for the post of medical officer under the orders of the Governor of State of Maharashtra by the Principal Secretary. At the relevant time, the accused was posted as medical officer at Rural Hospital, Paud, District Pune.
- (ii) It is the claim of the complainant-Laxman Tukaram Pingale that the respondent/accused sought a bribe of Rs.100/- for the purpose of issuing a medical certificate to certify his injuries. Mr. Pingale stated that he was assaulted by his nephew on 12th February 2007 and due to inflictment of the injury lodged a complaint to Paud Police Station against his nephew. The Police officer Shri. Shaikh of Paud Police Station gave him a requisition letter to go to Gramin Rugnalaya Paud and to get himself medically checked. The respondent/accused-Dr. Anil Shinde treated him and when Mr. Pingale sought medical certificate to submit it to the Police Station, it is alleged that the respondent/accused demanded Rs.100/- for the purpose of issuing a certificate. Mr. Pingale, thereafter, made a complaint to the Anti-Corruption Bureau (ACB) and a trap was laid on 15th February 2007 by ACB. However, it is stated that on 15th February 2007 when the team of ACB visited the hospital, they were informed that the respondent/accused was on leave and, therefore, the trap was called off.

- (iii) On 20th February 2007, Mr. Pingale and the officers of the ACB laid a second trap and the respondent/accused fell into the trap and, thereafter, the proceedings were initiated to prosecute the respondent/accused under the Prevention of Corruption Act (P. C. Act). The sanction for prosecuting the respondent/accused was granted on 6th December 2008, by Shri. S. B. Bhoir, Under Secretary to the Government of Maharashtra.
- (iv) On 16th June 2011, the Special Judge, Pune explained the charge to the respondent/accused that he is being charged for an offence punishable under sections 7, 13(1)(d) and 13(2) of the P. C. Act. The respondent/accused pleaded not guilty and, therefore, the case was tried by the Special Judge.
- (v) The prosecution led evidence of Shri. Laxman Pingale-PW1, complainant, Shri. Govind Nipunge-PW2, one of the Panch, Ms. Radhika Phadake-PW3 Inspector ACB, Pune and Shri. Sharad Bhoir-PW4, Under Secretary, Public Health Department. The statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 was also recorded. The learned Special Judge after perusing the evidence and hearing the Public Prosecutor for the State and Advocate for the accused delivered the

judgment acquitting the accused.

- (vi) Briefly, the Special Judge observed that sanction for prosecuting the respondent/accused was granted by the Under Secretary, who was not the competent authority to grant the sanction as per Section 19(1)(b) of the P. C. Act. Further, the sanction was granted without application of mind. The learned Special Judge also observed that the respondent/accused was present on 15th February 2007, when the first trap was laid and, therefore, the case of the prosecution that on 15th February 2007, the respondent/accused was on leave was found to be false. The learned Special Judge also observed that the respondent/accused had sent the medical certificate to the Police Station on 13th February 2007 and, therefore, the charge levied by the complainant against the respondent/accused that he demanded bribe for issue of certificate was not correct. The Special Judge also stated that tape recorded conversation was not produced. In the light of these observations and reasoning, the Special Judge held that the prosecution has failed to establish that the respondent/accused demanded illegal gratification by misusing his position as public servant and, therefore, the order of acquittal.

3. Heard Mr. Yadav, learned APP for the appellant/original complainant and Mr. Salunkhe, learned Advocate for the respondent/accused and with their assistance have perused the records of the lower authorities.

4. **Analysis and reasoning:-** It is important to reproduce relevant sections of the P. C. Act before I propose to give my reasoning. Section 7 of the P. C. Act as it stood at the relevant time reads as under:-

“7. Public servant taking gratification other than legal remuneration in respect of an official act. - Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than [three years] but which may extend to [seven years] and shall also be liable to fine.”

Section 13(1)(d) as it stood at the relevant time, reads thus :-

“13. Criminal misconduct by a public servant:-

.....

(1) A public servant is said to commit the offence of criminal misconduct,

.....

(d) if he, -

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or”

Section 13(2) reads as under:-

“(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than [one year] but which may extend to [seven years] and shall also be liable to fine.”

Section 19 reads as under:-

“(1) No Court shall take cognizance of an offence punishable under [sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]-

(a) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence 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, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of a State and is not removable from his office save by or with 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:”

5. The respondent/accused was appointed by the Secretary to the Government of Maharashtra vide appointment letter dated 27th September 1995. The sanction for prosecution has been granted by PW4, Under Secretary to the State of Maharashtra. PW4 in his cross-examination has admitted that he was 5th in the hierarchy after Principal Secretary, Secretary, Joint Secretary and Deputy Secretary. He also admitted that as per the Government Rules, only the appointing authority is empowered to remove the Government Servant. He admitted that he has not seen the appointment letter by which the

respondent/accused was appointed by the Secretary to the State of Maharashtra. He in his cross-examination also admitted that in case of minor offences, sanction of prosecution should not be granted and departmental inquiry should be ordered. He admitted that he did not call for any papers relating to the matter nor did he put the note to the superior officer before granting the sanction to prosecute the respondent/accused. Let me now examine based on these facts, whether sanction was obtained from competent authority under Section 19 of the P. C. Act. Section 19(1)(b) of the P. C. Act provides that in the case of a person who is employed in connection with the affairs of the State and is not removable from his office save by or with the sanction of the State Government, the sanction for prosecution should be granted by the State Government and Section 19(1)(c) provides that in the case of any other person, the sanctioning authority would be the authority competent to remove the accused from his office. In the instant case, PW4-Under Secretary has admitted that the appointing authority of the respondent/accused is the Principal Secretary. If that be so, then under Section 19, the power to remove the respondent/accused would be with the Principal Secretary and, therefore, it is the Principal Secretary, who was supposed to sanction the prosecution under Section 19 and not the Under Secretary and, therefore, on this count, the prosecution should not have been initiated

under the P. C. Act without obtaining the sanction of the appropriate authority. Therefore, the sanction having not been obtained by the competent authority, the impugned judgment acquitting respondent/accused does not call for any interference. The view taken by me is supported by a decision of the Co-ordinate Bench of this Court in the case of **State of Maharashtra Vs. Ramchandra Sudam Ingale¹** and **Gopal Vs. State of Maharashtra²**.

6. PW4 in his cross-examination has also admitted that he did not call for any papers relating to the matter nor had he discussed this issue with his superior before granting the sanction. PW4 has thereby admitted that he has not applied his mind to the facts of the case before granting the sanction. Therefore, even on this count, the sanction granted by the Under Secretary (assuming he is empowered) is without application of mind and, therefore, such a mechanical sanction does not pass the test of Section 19 of the P. C. Act for launching the prosecution.

7. PW3-Inspector, ACB admitted after seeing attendance sheet that the respondent/accused was on duty on the day when first trap was arranged on 15th February 2007 and, therefore, the contention of the appellant/complainant that on 15th February 2007, the respondent/

1 2008 SCC Online Bom 1765

2 2010 SCC Online Bom 600

accused was absent was found to be false. PW3 also accepted in the cross-examination that as per rule, MLC Certificate is handed over to the Police. If that be so, then the case of Mr. Pingale-complainant appears to be not correct because according to Mr. Pingale, the respondent/accused refused to give him the certificate except on payment of Rs.100/-, whereas the certificate was already handed over to the police station on 13th February 2007. Therefore, even on this ground the impugned judgment does not call for any interference.

8. In the cross-examination of PW2, the panch, who was witness to the trap, has admitted that the respondent/accused did not demand money from the complainant-Mr. Pingale. He in his cross-examination has also admitted that he has signed the panchnama without being present at the time of laying the trap. In the light of this admission in the cross-examination, the veracity of such a witness is in doubt to be relied upon by the Court for implicating the respondent/accused.

9. Examination of the evidence recorded by the Special Judge, in my view cannot be said that the appellant/original complainant has proved the charges under the P. C. Act beyond doubt. As observed by me above, there are lot of inconsistencies in the evidence of the witnesses and, therefore, the order of acquittal does not require any

interference by this Court.

10. The Advocate for the respondent/accused brought to my attention the evidence of PW3, Inspector ACB, wherein, PW3 in her cross-examination has stated that she was aware that there is a Government G.R., which states that if the bribe amount is up to Rs.100/-, it is considered as trivial amount. On a query raised by me to produce such a G.R., neither the Advocate for the respondent/accused nor the Advocate for the appellant could produce the same. However, provisions of Section 20 of the P. C. Act gives an indication about dealing with trivial matters. Section 20(1) of the P. C. Act provides that if in trial punishable under Sections 7, 11, 13(1)(a) or 13(1)(b) the charges are proved then it shall be presumed that the accused with a motive or reward or for inadequate consideration has accepted gratification etc. Similar presumption appears in Section 20(2) with regard to trial of offence under Sections 12 or 14(b) of the P. C. Act. However, Section 20(3) of the P. C. Act provides that if gratification etc. is trivial then no inference of corruption may be drawn. Section 20(3) of the P. C. Act gives a clue that in case of trivial matter, the court may refuse to draw the presumption of corruption. Therefore, the issue to be examined is whether the offence in the facts of the present case is trivial. In the instant case, the allegation is acceptance of bribe of

Rs.100/- in the year 2007. The amount appears to be too small in the year 2007 and moreso, in the year 2023 when the appeal is being heard against the acquittal. Therefore, assuming that the appellant-complainant is able to prove the charges, (although, I have already held that they have failed to prove the charges), in my view after considering quantum at the relevant time this could be a fit case to be treated as a trivial matter to uphold the acquittal order. In this connection, it is relevant to note the decision of this High Court in **Bhagwan Jathya Bhoir Vs. State of Maharashtra**³. Wherein, the Court observed that in case of trivial matter, the provisions of the P. C. Act should not be invoked, but a departmental proceeding could have been initiated. In the said case before the Coordinate Bench, the amount involved was Rs.30/- and the appeal came to be decided in the year 1991. Applying the ratio of the said decision to the facts of the present appeal before me, the amount of Rs.100/- can be considered as a trivial amount, so as to not to call for any interference in the order of acquittal. I, further draw support from the decision of Coordinate Bench of this Court in **Hanmantappa Murtyappa Vijapure through L.R. Vs. State of Maharashtra**⁴, where the Court considered bribe of Rs.150/- as trivial for launching criminal prosecution and the appropriate action could have been departmental inquiry. The discussion made herein is only for

3 1992 (11) L.L.N 505 (Criminal Appeal No.253 of 1984)

4 2004 (3) M.L.J. 410

the purpose of non-interference in acquittal order and not to be construed that the charges have been proved against the respondent/accused.

11. The view taken by the trial court is a plausible view based on appreciation of evidence. Therefore, in view of the above discussion, the order of acquittal passed by the learned Special Judge would not require interference and the present appeal is to be dismissed.

[JITENDRA JAIN, J.]