

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 30 OF 2014

Raju s/o Narayan Bodhale,
 Age : 53 years, Occu. Service,
 R/o Majage Nagar, Kavha Road,
 Latur, Tq. & District Latur

APPELLANT

VERSUS

The State of Maharashtra

RESPONDENT

AND

CRIMINAL APPEAL NO. 38 OF 2014

Madan s/o Bappasaheb Shinde,
 Age : 30 years, Occu. Service as
 Caretaker, Observation Home,
 Latur, Tq. and District Latur

APPELLANT

VERSUS

The State of Maharashtra
 through S.H.O. Police Station,
 Gandhi Chowk, Latur, Taluka
 and District Latur

RESPONDENT

Mr. R.N. Dhorde, Senior Advocate instructed by and with
 Mr. V.R. Dhorde, Advocate for the appellant in Cri. Appeal
 No. 30/2014
 Mr. B.N. Patil, Advocate for the appellant in Cri. Appeal
 No. 38/2014
 Smt. M.S. Patni, A.P.P. for the respondent/State in both
 appeals.

[CORAM : M.T. JOSHI, J.]

RESERVED ON : 20th AUGUST, 2015
PRONOUNCED ON : 10th SEPTEMBER, 2015

JUDGEMENT :

1. The original accused No. 1 before the learned Special Judge, Latur in Special Case (A.C.B.) No. 3 of 2010 was convicted, vide judgement and order dated 3rd January, 2014, for the offence punishable under section 7 and for the offence punishable under section 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act. He was sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs. 500/- for his conviction for the offence punishable under section 7 of the Prevention of Corruption Act. He was sentenced to undergo imprisonment for one year and to pay fine of Rs. 500/- for the conviction for the offence punishable under section 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act.

. Aggrieved by the said order of conviction and sentence, the original accused No. 1 Raju Narayan Bodhale has filed Criminal Appeal No. 30 of 2014.

2. Besides the accused No. 1 Raju, the original accused No. 2 was convicted by the learned Special Judge, vide the above referred judgement and order, in Special Case No. 3 of 2010, for the offence punishable under section 12 of the Prevention of Corruption Act i.e. for abetting the commission of the offence of original accused No. 1 Raju. This accused No. 2 Madan was sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs. 500/-.

. Aggrieved by the said order of conviction and sentence, the original accused No. 2 Madan Bappasaheb Shinde has filed Criminal Appeal No. 38 of 2014.

3. The prosecution case, in short, is as under :-

. That, in the year 2009, the present appellant – Raju (in Cri. Appeal No. 30/2014) was serving as Superintendent of the Observation Home at Latur. The accused No. 2 Madan i.e. appellant in Criminal Appeal No. 38/2014 was the caretaker of the said Observation Home. The complainant – Prakash Rambhau Sonkamble,

resident of village Longaon was intending to admit his nieces, namely, Poonam and Vidya in Government Girls Hostel, Murud. Therefore, on 6th July, 2009, he met the present appellant – Raju. At that time, this appellant told that the girls first will have to be admitted to the hostel at Latur and thereafter, the procedure for transfer them to the hostel at Murud will have to be carried. At that time, appellant Raju demanded an amount of Rs. 2000/- from the complainant. The complainant accordingly paid an amount of Rs. 800/-. Thereafter, he paid an amount of Rs. 1200/- on 10th July, 2009 and the girls were admitted in the Girls Hostel at Latur.

. Next of the procedure was for transfer of the girls from hostel at Latur to hostel at Murud. In the circumstances, on 13th July, 2009, the complainant made a phone call to the appellant – Raju and requested him to do the needful. At that time, this appellant again made a demand of Rs. 2000/-. In the circumstances, the complainant met appellant Raju in person on 14th July, 2009 and 16th July, 2009. He requested appellant Raju to reduce the amount. However, appellant Raju refused for

the same. In the circumstances, the complainant lodged the complaint on 17th July, 2009 with Anti Corruption Bureau, Latur.

4. During investigation, Mr. K.N. Supekar, Deputy Superintendent of Police attached to Anti Corruption Bureau, Latur requisitioned two panch witnesses from the office of P.W.D., Latur on 17th July, 2009. Out of them, panch witness No. 2 Walmik Upade and the complainant were sent to appellant Raju for verification of demand of money. At the time of verification, appellant Raju directed both of them to go to the accused No. 2 i.e. appellant Madan. Appellant Madan had also insisted the complainant to deposit Rs. 2000/-. The complainant and the panch witness Walmik thereafter went to the office of Anti Corruption Bureau. The demand verification panchanama was thereafter prepared. In the circumstances, it was decided to lay trap on 18th July, 2009.

. On 18th July, 2009, the panchas and the complainant had gathered in the office of Anti Corruption Bureau. The decoy money was produced by the

complainant. The usual pre-trap exercise was carried. The anthracene powder was applied to the decoy money. The decoy money was kept in the left pocket of the shirt of the complainant. The shadow panch witness PW2 Walmik was directed to accompany the complainant. Both of them were directed to hear the conversation. It was directed that if the appellant – Raju would make the demand, the decoy money should be handed over to him. Accordingly, the complainant and the shadow panch witness Walmik went to the office of the appellant – Raju. The rest of the members of the raiding party followed them. At about 11.15 a.m., the panch witness Walmik and the complainant returned back as the appellant – Raju was not present. Thereafter, a phone call was made to him and within fifteen minutes, he (appellant – Raju) appeared in the office.

. Appellant Raju found that the order regarding the transfer of the girls, though prepared, was not in his cupboard. Therefore, he made a phone call to co-accused i.e. accused No. 2/appellant Madan and got information that the said order was kept in some box. Accordingly, the order was obtained. At that time,

however, the transfer certificate and marks-memo of the girls were not with the appellant – Raju. He told that as the Juvenile Justice Board was functioning in his office and those documents were under the table, the said documents would be given lateron. In the said conversation, the appellant – Raju asked as to whether the money was brought and he made demand of the same. Accordingly, the complainant produced the decoy money which was accepted by appellant Raju. On receipt of pre-determined signal by panch witness Walmik, the raiding party entered in the office of appellant Raju. The hands of appellant Raju were caught. Thereafter, next of the exercise i.e. testing of appellant Raju's hands under ultraviolet light was undertaken and his hands were found positive due to the application of the anthracene powder. Upon enquiry with appellant Raju, the decoy money was found over a wooden cupboard. It was taken out by the second panch. The same also was found positive due to the application of the anthracene powder. Upon preparation of the necessary panchanamas, thereafter, the present appellant – Raju was arrested.

5. PW4 Kalyan Supekar thereafter recorded the statements of the witnesses, collected necessary papers from the office of appellant Raju. He moved for seeking sanction to prosecute appellant Raju. Accordingly, PW3 Bajirao Jadhav, the then Commissioner of Women and Child Development, Maharashtra State accorded the sanction at Exhibit-54 and thereafter, the chargesheet came to be filed.

6. Before the learned Special Judge, in all four witnesses, as detailed above, were examined. Appellant Raju did not deny that he had made a demand of an amount of Rs. 2000/- and had accepted the same during the trap. His defence, however, is that he was running a non-government organisation i.e. a society registered under the Societies Registration Act which had undertaken the work to run the girls hostel. Donations were accepted for running of the hostel. Even various Government circulars had allowed the non-government organisations to accept the donation. Therefore, in fact, he was trying to get donation from the complainant. The

complainant, however, was enraged and therefore, the demand of donation was converted by him into an illegal gratification. In fact, earlier to this, the complainant had tried to trap one Smt. Giri, the Superintendent of Observation Home, Beed on the allegations that she had made similar demand. The complaint in this regard was filed on 2nd July 2009. During the verification exercise itself, however, the said Smt. Giri did not make any demand of money at all and therefore, the said complaint was aborted. Under the Right to Information Act, he had secured verification panchanama in this regard and filed the same alongwith his written statement. He has also filed audited accounts of his Observation Home at Latur for three years, coupled with the photocopies of various receipts of donation, issued by his institution and therefore, he claimed that there was no illegal gratification demanded by him – appellant Raju. On these grounds, he sought acquittal.

. The defence of accused No. 2/appellant Madan was that he had only asked to deposit the amount of donation. He was not present at the time of alleged

demand. He did not make any demand neither any amount was paid to him. In the circumstances, he pleaded that he has not abetted the commission of offence under section 7 of the Prevention of Corruption Act by the accused No.1, as alleged. He therefore prayed for his acquittal.

7. The learned Special Judge, however, came to the conclusion that extraction of the donation is an illegal gratification. Further, it was held that the accused No. 2/appellant Madan has abetted the commission of an offence punishable under section 7 of the Prevention of Corruption Act by the accused No. 1 and thereby, the accused No. 2 committed an offence punishable under section 12 of the Prevention of Corruption Act. In the circumstances, the conviction and sentence, as detailed supra, came to be recorded. Hence, the present appeals.

8. Mr. R.N. Dhorde, learned senior counsel in brief of Mr. V.R. Dhorde, learned counsel for the appellant in Criminal Appeal No. 30 of 2014, submits that the learned Special Judge failed to take into

consideration that the independent panch witness i.e. PW2 Walmik Upade has supported the appellant by making a statement on oath that the amount was demanded towards donation. The copies of the audited accounts of the institute for various years, coupled with the photocopies of the donation receipts, would show that the non-government organisation of the appellant was accepting donation for running of the hostel. Not only this, the present complainant had about two weeks prior to the present trap, had tried to trap one another Superintendent of the Observation Home of Beed had failed. The copy of verification panchanama of the said trap obtained by the appellant under the Right to Information Act from the office of Anti Corruption Bureau, Beed would clearly prove the said fact. Mr. Dhorde, therefore, submitted that the appellant – Raju be acquitted of all the offences.

9. Mr. B.N. Patil, learned counsel for the appellant in Criminal Appeal No. 38 of 2014, submitted that accused No. 2/appellant Madan did not make any demand, neither he was present at the time of alleged

demand. No amount was paid to him. As per the prosecution itself, the accused No. 2 was, in fact, ready to show to the complainant the list of persons from whom donation was accepted. Mr. Patil, therefore, submitted that the accused No.2/appellant Madan be acquitted of the offences.

10. Learned A.P.P., on the other hand, submitted that the verification panchanama as well as the conversation during the trap as recorded in the panchanama would clearly show that the appellant – Raju was not making demand of donation. It was, therefore, bribe for the present appellant. The accused No. 2/appellant Madan abetted the commission of offence by the appellant – Raju. In the circumstances, she submitted that both the appeals be dismissed.

11. On the basis of above material and the submissions advanced on behalf of both sides, following points arise for my determination:-

(I) Whether the prosecution has proved that appellant Raju (in Cri. Appeal No. 30 of 2014), being

the public servant, made demand of an amount of Rs. 2000/- from the complainant as an illegal gratification other than legal remuneration for transfer of the nieces of the complainant to the Government Girls Hostel at Murud ?

(II) Whether the prosecution has further proved that for above stated transfer, the present appellant Raju/accused No. 1 made demand of Rs. 2000/- and thereafter, accepted the said amount on 18th July, 2009 ?

(III) Whether the prosecution has proved that the present appellant – Raju/accused No. 1 has committed criminal misconduct by making demand and by accepting the pecuniary advantage by using corrupt or illegal means ?

(IV) Whether the prosecution has proved that the accused No. 2/ appellant – Madan has abetted the commission of the offence of demanding gratification other than legal remuneration by the accused No. 1 and has thus committed an offence punishable under section 12 of the Prevention of Corruption Act ?

My findings to all the above four points are in the negative. Both the appeals are, therefore, allowed and both the appellants are acquitted of all the offences, for the reasons to follow.

R E A S O N S

12. PW1 Prakash Sonkamble – the complainant, in examination-in-chief, did not depose about the pre-trap exercise, application of anthracene powder to the currency notes, etc. In the circumstances, the prosecution declared him as hostile and cross-examined him. During cross-examination, he denied the suggestion that he paid an amount of Rs. 2000/- insisted by him for the purpose of admission of the girls in the Government Hostel, Latur. He, however, admitted that the amount of Rs. 2000/- was demanded by the present appellant Raju. During cross-examination, however, he deposed that the amount was demanded by the appellant towards donation.

13. PW2 Walmik Upade, in examination-in-chief, deposed that accused No. 1 told the complainant to deposit the money with accused No. 2. During cross-examination, however, he deposed that the amount was demanded towards donation.

14. The learned Special Judge has taken into consideration the conduct of appellant Raju/accused No. 1 that during the conversation, he had told the complainant whether the money was paid to the appellant – Raju or to accused No. 2 Madan, it would not make any difference. The co-accused/appellant Madan had even, during the verification exercise, had told that each and every guardian of the respective girls had paid the money towards donation and he was ready to show the list of such students. In the circumstances, the learned Special Judge has observed that the money was towards the donation.

15. The learned Special Judge, however, found that this demand of donation was nothing but extracting the

same from the beneficiaries of the Government scheme. The appellant/accused No. 1 being an authority has pressurized the complainant to pay the donation and thus collected the same from the poor people. This extraction of the donation, in the view of learned Special Judge, was a motive for doing the official work and therefore, the same would be a gratification other than the legal remuneration. Therefore, the conviction against accused No. 1/ appellant Raju came to be recorded.

. As regards accused No. 2/appellant Madan, the learned Special Judge has observed that the complainant is not cross-examined by the accused No. 2 and the statements made by the complainant in respect of accused No. 2 have remained unchallenged. The learned Special Judge, therefore held that the accused No. 2 has abetted the act of accused No. 1 and convicted him as detailed supra.

16. The audited accounts of the society, the various receipts pressed into service by appellant Raju would clearly show that the non-government organisation

had accepted the donation from various persons. The Government circular as well as Government resolution pressed into service by the appellant point towards the same thing. The issue would be as to whether the appellants have committed any offence ?

17. It is to be noted that the prosecution case is not at all that the appellant/accused No. 1 Raju has pressurized the complainant for giving donation but for the remuneration other than the legal remuneration for which he is not entitled to. In the circumstances, suddenly during the judgement, without any charge being framed in this regard, it cannot be held that certain insistence towards payment of donation should be termed as bribe. No doubt, the learned Special Judge was indignant finding that the donation was sought from the needy people. This exercise of appellant Raju may be found highly objectionable. However, the issue would be as to whether it would be an offence punishable under section 7 or under section 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act. The necessary answer to this question would be in the

negative.

. As regards accused No. 2, he was not a public servant. He was merely a caretaker of the Observation Home. On the direction of accused No.1, he used to accept the donations. He can not be thus said to have abetted the offence of demand of money by the accused No. 1.

18. In the result, the following order:-

(I) Both the appeals are allowed.

(II) The impugned judgement and order dated 3rd January, 2014, passed by the Special Judge, Latur in Special Case (ACB) No. 3/2010, convicting and sentencing the appellant/accused No. 1 – Raju Narayan Bodhale, for the offences punishable under section 7 and 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, is hereby quashed and set aside.

. Instead, the appellant/original accused No. 1 – Raju Narayan Bodhale is hereby acquitted of the offences punishable under section 7 and 13 (1) (d) read with

section 13 (2) of the Prevention of Corruption Act.

(III) The impugned judgement and order dated 3rd January, 2014, passed by the Special Judge, Latur in Special Case (ACB) No. 3/2010, convicting and sentencing the appellant/accused No. 2 – Madan Bappasaheb Shinde, for the offence punishable under section 12 of the Prevention of Corruption Act, is hereby quashed and set aside.

. Instead, the appellant/original accused No. 2 – Madan Bappasaheb Shinde is hereby acquitted of the offence punishable under section 12 of the Prevention of Corruption Act.

(IV) The bail bonds of both the appellants shall stand cancelled. The fine amount deposited by the appellants be refunded to them after a period of sixty (60) days from the date of this judgment.

(V) The disposal of the muddemal property be carried on the line of the directions issued by the learned Special Judge vide the impugned order.

19. Both the criminal appeals accordingly stand disposed of.

[M.T. JOSHI]
JUDGE

npj/criapl30-38-2014