

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.30 OF 2013

The State of Maharashtra
through Police Inspector,
Anti Corruption Bureau, Ahmednagar ... APPELLANT

VERSUS

Rajesh Ganeshrao Giri,
Age 29 years, Occu. Service,
Jr. Engineer, M.S.E.D.C.L.,
R/o Plot No.56, Arunodaya Colony,
Satara Parisar, Near Datta Mandir,
Beed by-pass Road, Aurangabad ... RESPONDENT

.....
Mrs. R.K.Ladda, A.P.P. for applicant/ State
Shri N.S. Ghanekar, Advocate for respondent
.....

CORAM: M.T. JOSHI, J.

DATED: 13th October, 2015.

ORAL JUDGMENT :

1. Heard both sides. Aggrieved by the acquittal of the respondent from the offences punishable under Sections 13(1)(d) read with 13(2) of the Prevention of Corruption Act, the State has preferred the present appeal.

2. The prosecution case in short is as under :

That, the respondent Rajesh, during the relevant period, was working as a Branch Engineer with M.S.E.B. at Newasa. The complainant P.W.1 Balasaheb Kedare wanted a fresh electricity connection for his house at Newasa Phata. Therefore, he approached the present respondent and made an application in a form. The present respondent, however, did not give him the estimate and quotation as is required and made a demand of Rs.10,000/- for the same. Therefore, the complainant approached the Deputy Engineer Mr. Kshirsagar on 14.11.2008 and made a complaint against the respondent orally. After about 8 to 10 days, the said Deputy Engineer Mr. Kshirsagar gave him an estimate of Rs.10,500/- to be presented in the office of the Executive Engineer, at Ahmednagar. Accordingly, the complainant filed the same in the said office on 18.12.2008. However, as the quotation was not given, he again made an application to the Deputy Engineer on 7.3.2009 and brought to the notice that the quotation was given to the consumer, who has filed the application later on. He also brought to the notice of Deputy Engineer Mr. Kshirsagar that the complainant belongs to the Hindu Mahar caste. Accordingly, Mr. Kshirsagar told the respondent to reduce the amount in the quotation as the complainant was from Scheduled Caste category. Accordingly, the respondent gave the quotation of Rs.1500/- and told that as

an amount of Rs.9000/- of the complainant was saved, he should pay an amount of Rs.10,000/- to him as a bribe. The complainant, however, told that he was not able to arrange that much amount and that he would get electric pole, wires from the Zilla Parishad free of costs. The respondent, however, told that unless the bribe is paid to him, he would not give any electric connection. Later on, the respondent made a demand of Rs.5000/- and after negotiations, he agreed to accept the amount of Rs.2000/-. All this talk took place over a mobile phone. On the date of filing of the complaint i.e. 29.4.2009, the complainant sent his nephew Sakharam to Newasa to deposit the amount of Rs.1550/- under the quotation and filed the complaint with Anti Corruption Bureau, Ahmednagar.

3. The investigating officer P.W.4 P.I. Ramrao Somwanshi conducted the investigation. He collected two panchas including P.W.2 Gopinath Borde. After the pre-trap exercise, anthracene powder was applied to the money brought by the complainant. Thereafter the raid was organized. During the said trap, the respondent asked the complainant as to whether he would comply with the requirement as per the talk that has taken place, the complainant told that he has brought the amount of Rs.2000/- as per the talk. Thereupon he produced the decoy money which was accepted by the accused. Upon

successful trap, further exercise of examination of the hands and clothes of the respondent by the investigating officer was carried out, which confirmed the fact of transfer of the decoy money. Thereafter, the investigating officer carried further investigation. He obtained sanction at Exh.37 from P.W.13 Shashikant Puranik, the Chief General Manager of Maharashtra State Electricity Distribution Company Ltd. and thereafter filed the charge sheet.

4. Before the learned Special Judge, four witnesses as detailed above were examined. The learned Special Judge, however, found that the prosecution case is not proved beyond reasonable doubt and hence, the respondent was acquitted.

5. The learned A.P.P. submits before me that the statements of complainant and witnesses are consistent with each other. The learned Special Judge has, however, found fault with the prosecution case in view of certain minor peripheral admissions given by the complainant and the witnesses. He, therefore, submits that, the order of the learned Special Judge be set aside and the respondent be convicted.

6. On the other hand, Mr. Ghanekar, learned counsel for the respondent submitted before me that the evidence on record would show that the respondent has applied under the Non

D.D.F. C.C. And R.F. scheme, which would show that the subscriber is required to deposit the amount for erection of new pole and electric wires in case the distance between the place where the connection is to be given is more than 180 ft. from the present pole. The amount of Rs.10500/- was in fact for supply of the electric pole and fixation of the electric pole as well as the wire through authorised contractor. The complainant has admitted that he was not knowing any authorised contractor and had, therefore, asked the respondent to arrange for the same. In fact the amount of Rs.2000/- was towards the same for the reason it is admitted by the complainant that the amount towards the new electric connection can be deposited in the office and the prosecution case itself is that on the date of filing the complaint the complainant had sent his nephew for depositing the quotation amount. He further points to the deposition of panch witness that from the dialogue between the complainant and the respondent at the time of trap, it cannot be gathered that the amount was towards any additional amount or bribe amount to be paid to the accused.

7. On the basis of this material, following points arise for my consideration:-

(1) Whether the prosecution proves that the present

respondent being public servant, has made a demand of Rs.10,000/- as a remuneration other than legal remuneration as a motive for doing his official act and thereafter agreed to accept the amount of Rs.2000/- ?

- (2) Whether the prosecution has further proved that on 29.4.2009 the present respondent has again made a demand of Rs.2000/- as the said remuneration and accepted the same ?
- (3) Whether the prosecution has further proved that the present respondent has committed any criminal misconduct ?

My answers to all the questions are in negative. The appeal is dismissed for the reasons to follow :

REASONS:

8. Admittedly, the application made by the present complainant did not show that he belongs to any Scheduled Caste. He further admitted that the distance between his house and the electric pole was more than 275 ft. and, therefore, the present respondent was not authorised to give any quotation and the same was required to be sanctioned from the Executive Engineer. The estimate given to him was of Rs.11,655/-. There is nothing on record to show that whether the complainant belongs to Hindu Mahar caste or any application in this regard

was filed by him nor there is anything on record to show that the material as claimed was provided or to be provided to him free of cost.

9. The sanctioning authority, during cross-examination has agreed that, as per the said scheme, the Junior Engineer or Assistant Engineer had no authority to make any changes. Even the L.T. line was not installed on the date of the trap and as per the prosecution case the amount under the quotation was deposited on the date of trap and, therefore, there was no issue of giving electric connection as alleged in the F.I.R.

10. The complainant further deposed that he did not remember whether the respondent had informed him that amount of Rs.10,000/- will be required as expenses for wire, electric pole and other ancillary material and the charges of the private contractor. Under the stress of cross-examination, he however, later on admitted that, such a statement was made by the respondent and at that time he felt that the respondent was telling him that the amount under the head was bribe. The learned Special Judge has, therefore, observed that this was the mere suspicion of the complainant.

11. The statement of the panch witnesses would show

that merely the respondent asked as to whether the complainant was making compliance as per the earlier talk and thereafter the respondent paid him the amount of Rs.2000/-. The material admission of the complainant, which has been highlighted by the learned Special Judge is that the complainant himself stated that though the distance between his house and the existing line was 275 ft., he was requesting the respondent to show the distance only as 180 ft. so that all his work would be done at Newasa itself without visiting Ahmednagar or carrying further activities.

12. The above material would show that the learned Special Judge has taken into consideration all the material before him and has taken the reasonable and probable view of the matter. In the present appeal against acquittal, therefore, no interference is warranted.

13. In the result, the following order :

The appeal is dismissed. Bail bonds, if any, of the respondent, shall stand cancelled.

(M.T. JOSHI, J.)