

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 83 OF 2002

Walmik Limbaji Kande,
Age 47 years,
Occu.: Police Head Constable,
Shirsala, Grade – III, Shirsala,
Tq. Parali, Dist. Beed .. Appellant

Vs.

The State of Maharashtra .. Respondent

Mr. R.N. Dhorde, Sr. Advocate i/b. Mr. V.R. Dhorde, Advocate
with Mr. Vasant N. Shelke, Advocate and Mr. S.G. Munde,
Advocate for the appellant
Mrs. B.B. Gunjal, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.

DATE : 05/08/2015

ORAL JUDGMENT :

. Heard both sides.

2. Aggrieved by the recording of conviction by the learned Additional Sessions Judge / Special Judge, Ambajogai, Dist. Beed vide judgment and order dated 31/1/2002 passed in Special Case No. 2 of 2000 for the offences punishable under section 7, 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988, the present appeal is preferred.

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

. That present appellant was serving as a Police Head Constable at Shirsala Police Station, Tq. Parali, Dist. Beed during the relevant period. Complainant P.W. 1 - Brahmanad Kirwale had certain dispute with his neighbouring land owner namely, Datta Kirwale. Both of them had filed complaints against each other in the Police Station on 8/10/1999. Upon filing of the complaint, the appellant released the complainant on bail on the condition that the complainant would pay him Rs.2000/- on 10/10/1999, however, on 10/10/1999, the amount was not paid.

. Therefore, on 11/10/1999, at about 9.00 am in the morning, the appellant came to the village of the complainant on his motorcycle. He questioned as to why the amount was not paid. When the complainant told that he was not able to arrange for the money, the appellant threatened that if he could not arrange for money, he would be put in jail. Upon that, the complainant promised to pay an amount of Rs.1000/- by the noon of

12/10/1999. The appellant agreed with the same and went away. At that time, he also threatened that in case the amount of Rs.1000/- is not paid, the complainant would be paraded in the village by putting handcuffs. In the circumstances, the complaint at Exhibit 11 came to be filed on 11/10/1999.

. Deputy Superintendent of Police, Anti Corruption Bureau, Beed took over the investigation. He collected two panchas i.e. P.W. 2 – Bhausahab Ghule and P.W. 4 – Sitaram Jagtap. Details of the complaint were given to them. Usual demonstration regarding the application of anthracene powder was given. Anthracene powder was applied to the two currency notes in the denomination of Rs.500/- each, brought by the complainant. Those were kept in his pocket. Shadow Panch witness P.W. 2 – Bhausahab asked to accompany the complainant at the time of handing over of the decoy money. It was given to understand that the money should be paid only upon demand. Thereafter, the party reached Shirsalea Police Station.

. Complainant and P.W. 2 - Bhausahab went to meet the appellant. The meeting took place in front of the Police Station. At that time, the appellant again made enquiry regarding the money and further told that the money should be paid in the shop styled as 'Ajay Radio Service', as the appellant was proceeding there. Therefore, the party went to the said shop. In the shop, the appellant accepted the decoy money by his right hand and kept it in his shirt's chest pocket. Thereafter, the complainant started giving pre-determined signal to the raiding party. The appellant noticed the same and, threw the decoy money by taking it out from his pocket. Rest of the party came at the spot. The hands of the appellant were apprehended.

. Thereafter, usual activity started, wherein the clothes as well as the hands of the appellant and, thereafter, of the complainant were found positive to the application of anthracene powder under the ultra-violet lamp. Further, usual investigation was carried. The necessary documents were seized and the sanction order from the Superintendent of Police was obtained and

the chargesheet was filed.

4. Before the learned Special Judge, Ambajogai, in all five witnesses were examined. As against this, the appellant has examined Rajabhau Kirwale, the proprietor of Ajay Radio Service, who is the cousin of the complainant.

5. Before the learned Special Judge, though the complainant has corroborated the contents of the F.I.R. regarding the earlier demands, in the examination-in-chief, itself he resiled from the prosecution case regarding the activities that took place at the time of trap. Similar is the case regarding both the panch witnesses i.e. P.W. 2 – Bhausaheb and P.W. 4 – Sitaram.

6. The learned Special Judge however relied over the testimony of the Investigating Officer i.e. P.W. 5 – Dy. S.P. Mr. Mahendra Bhokare and the conviction and the sentence, as detailed supra came to be recorded against the appellant.

7. Mr. Dhorde, learned Senior Counsel instructed by Mr. V.R. Dhorde submits that the learned Special

Judge has committed a serious mistake in relying over the sole testimony of the Investigating Officer. In this respect, he submits that the examination of the complainant itself would show that his brother Parmeshwar, who was a teacher and was appearing for LL.B. examination, was instrumental in filing of the complaint. He further submits that the record would show that the complainant was enraged by the fact that no action against Dattu was taken and, therefore, false implication of the appellant is clear from the record.

8. On the other hand, learned A.P.P. submits that the complainant has supported the case of the earlier demands. The complainant however conveniently resiled from the next of the episode and, therefore, she submits that the learned Special Judge has rightly relied on the testimony of the Investigating Officer to convict the appellant.

9. On the basis of this material, following points arise for my determination:-

I) Whether the prosecution has proved that the present appellant being a public

servant has made demand of Rs.2000/- and settled for Rs.1000/-, as a gratification other than the legal remuneration from complainant / P.W. 1 – Brahmanand Kirwale between 10/10/1999 and 12/10/1999 ?

II) Whether the prosecution has further proved that on 12/10/1999, the appellant again made the demand of the said gratification and accepted the same from the complainant for forbearing or doing the official act of releasing the complainant on bail ?

III) Whether the prosecution has further proved that the appellant being a public servant has abused his position as a Police Head Constable and obtained an amount of Rs.1000/- from the complainant by way of illegal gratification ?

My findings to all the above points are in the negative. The appeal is therefore allowed and the appellant is acquitted of all the offences for the reasons to follow.

R E A S O N S

10. The statement of the complainant would show that initially, the demand was made by the appellant to him and, therefore, the complaint came to be filed. His examination-in-chief itself would show that his brother Parmeshwar had accompanied him at the time of filing of the complaint and the contents of the same were narrated by the brother.

. As regards the actual trap, the complainant as well as both the panch witnesses have resiled from the prosecution case. The complainant stated that at the Police Station, the appellant did not make any demand. He was however busy in recording of the panchanama in the radio shop, as one theft had occurred there. Therefore, the panch witnesses as well as the raiding party went to the shop. There was crowd. The appellant was busy in recording of the panchanama etc. and while the appellant was engaged in his work, the complainant suddenly gave the money to the appellant. The appellant kept the money in his shirt pocket, however, suddenly

realizing that money was paid, he threw it away.

11. The panch witnesses also turned hostile to the prosecution regarding this crucial aspect.

12. In the circumstances, reliance of the learned Special Judge on the statement of the Investigating Officer to come to the conclusion that the prosecution has proved beyond reasonable doubt the case, was not proper. There was no material except the statement of the Investigating Officer regarding the fact, as to what has been stated by the complainant before him at the time of recording of the F.I.R. and as to what the panch witnesses has stated to him. It cannot be said to be a direct evidence. He can be a direct witness as regards the investigation carried by him. In that view of the matter, the impugned judgment and order of the learned Special Judge cannot be sustained.

13. Though, we are not aware of the truth of the matter, the very fact that the complainant did not support the prosecution in the examination-in-chief itself even by saying that his brother was instrumental

in filing the complaint and he himself thrust the decoy money into the hand of the appellant finding him engrossed in his other work, would show that the complainant was not ready to support the prosecution during trial. In that view of the matter, though this cannot be called as a honourable acquittal, benefit of reasonable doubt however must be extended to the appellant. In the result, the following order:-

14. The Appeal is hereby allowed.

15. The impugned judgment and order of the learned Additional Sessions Judge / Special Judge, Ambajogai, Dist. Beed dated 31/1/2002 passed in Special Case No. 2 of 2000, convicting and sentencing the present appellant for the offences punishable under section 7, 13(1) (d) r/w. 13(2) of the Prevention of Corruption Act, 1988, is hereby set aside.

. Instead, the appellant is acquitted of all the offences.

16. Bail bonds of the appellant shall stand cancelled.

17. Disposal of the property be carried as per the directions issued by the learned Special Judge, Ambajogai.

18. Fine amount deposited by the appellant, be refunded to him after a period of sixty (60) days from the date of this judgment.

19. Criminal Appeal stands disposed of accordingly.

[M.T. JOSHI]
JUDGE

arp/