

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 163 OF 2002

The State of Maharashtra
Through Public Prosecutor
High Court Bench at Aurangabad

.. Appellant
(Orig. Complainant)

Vs.

Hirasing Dalluchand Sable
Age : 41 years, Occu.: Service,
Office Asstt. Vasantrao Nayak
Vimukta Jati & Bhatkya Jamati
Vikas Mahamandal, Jalna,
Dist. Jalna

.. Respondent
(Orig. Accused)

Mr. S.R. Palnitkar, A.P.P. for the appellant/State
Mr. M.K. Deshpande, Advocate for the respondent

CORAM : M.T. JOSHI, J.

DATE : 20/04/2015

ORAL JUDGMENT :

1. Heard both sides.
2. Aggrieved by the acquittal of the respondent from the offences punishable under section 7, 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988, recorded vide judgment dated 27/12/2001 by the learned Special Judge, Jalna in Special Case No. 13 of 1997, the State has preferred the present appeal.
3. The prosecution case in nutshell is as under:-

. That P.W. 1 - Arjun - the complainant is a labour. He wanted to obtain loan for a sewing machine from the Corporation i.e. Vasantao Nayak Vimukta Jati & Bhatkya Jamati Vikas Mahamandal, Jalna. Therefore, he approached the said Office and more particularly the present respondent, who is working as Assistant in that Office. Initially, the form was given to him and, thereafter, when the complainant went with the filled form and approached the respondent on 19/8/1996, at that time, the respondent scrutinized his papers and told him that if the sewing machine will be available with the Corporation, the same would be given to him else the proposal would be sent to the State Bank of Hyderabad for having loan proposal. Thereafter, the complainant returned back and again approached the respondent on 30/8/1996. At that time, the respondent told that no machine is available with the Corporation and, therefore, the proposal would be sent to the Bank. Complainant requested for forwarding the proposal. At that time, the respondent made a demand of Rs.200/- as illegal gratification for sending the proposal. At that time, the complainant told that he had no money and as and when the money would be raised, he would pay the

same. However, as he was not willing to pay the said amount to the respondent, therefore on 2/9/1996, he approached the Office of the Anti Corruption Bureau, Jalna and filed his complaint at Exhibit 32.

. P.W. 4 - Khushalchand Baheti, the Police Inspector of Anti Corruption Bureau, Jalna has recorded the complaint and conducted the further investigation. As usual, he collected two witnesses from the Office of the State Government including P.W. 2 - Narayan Kulkarni, Junior Clerk working in the Office of Agriculture Training and Visit Scheme, Jalna. Thereafter, pre-trap panchanama was prepared, wherein demonstration of anthracene powder was given. An amount of Rs.200/- was brought by the complainant. The same was smeared with anthracene powder in the Office. It was put in the shirt pocket of the complainant and, thereafter, all the raiding party went near the Office of the respondent. Thereat, P.W. 1 - complainant and P.W. 2 - Narayan Kulkarni went towards the respondent. Thereat, during the conversation, the respondent made the demand of money. He handed over the envelope addressed to the bank. When the complainant told that he has brought the money, the respondent handed over one envelope to the

complainant and asked him to put the money in the said envelope. After putting the money in the envelope, respondent asked the complainant to put the said envelope on the file which was on kitchen oata. Accordingly, the complainant complied and, thereafter, the necessary signal to the raiding party was given.

. Later-on, the exercise of post-trap panchanama, recording of the statements of the witnesses was carried by the Investigating Officer. Necessary sanction to prosecute the respondent was obtained from P.W. 5 – Dr. Gangadhar Kayande, who is the Managing Director of the Corporation at Exhibit no.46. Necessary documents were also collected from the Office of the Corporation and to prove these facts, P.W. 3 – Shrimant Bansod, the then Incharge Additional District Manager of the Vasantrya Nayak Vimukta Jati & Bhatkya Jamati Vikas Mahamandal, Jalna was examined.

4. Before the learned Special Judge, all these five witnesses were examined. The learned Special Judge however found the prosecution case as unreliable and, therefore, by extending the benefit of doubt, the respondent was acquitted. Hence, the present appeal.

5. Mr. Palnitkar, learned A.P.P. submits that though the deposition of P.W. 1 – the complainant was somewhat defective as regards the incidents those had occurred at the time of acceptance of money and more particularly, conversation between him but the respondent, P.W. 2 – Narayan Kulkarni, the independent witness has specifically deposed about the dialogue that took place between the complainant and the respondent. He further submits that the learned Special Judge has unnecessarily amplified certain variances and certain improbabilities which are in-fact not on the record. He submits that as no reasonable and probable view has been taken by the learned Special Judge, the appeal be allowed.

6. On the other hand, Mr. Deshpande, learned counsel for the respondent submits that except the bare word of the complainant, there is no corroboration regarding the alleged demand said to have been made by the respondent. Further, the examination-in-chief itself of the complainant would show that there was no demand or fulfillment of the same at the time of actual trap in presence of the independent panch witness. Further, the prosecution case itself would reveal that no date or time

of the acceptance of the gratification was agreed between the complainant and the respondent. Still, on one fine day, the complaint is filed and, thereafter, trap was laid. In the circumstances, he submits that the reasons forwarded by the learned Special Judge are borne out of the record and, therefore, in the present appeal against acquittal, there is no need to interfere in the same.

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

i) Whether the prosecution has proved that the present respondent, being a public servant has made a demand of illegal gratification prior to 30/8/1996 and, thereafter, attempted to obtain sum of Rs.200/-, other than the legal remuneration as the motive or reward in the exercise of his official functions ?

ii) Whether the prosecution has proved that the respondent has obtained or attempted to obtain the pecuniary advantage of sum of Rs.200/- for himself from the P.W. 1 – complainant by corrupt or illegal means or by otherwise abusing his position as a public servant ?

My findings to both the points are in the negative. The appeal is therefore dismissed for the reasons to follow.

R E A S O N S

8. According to the prosecution, the demand was made on 30/8/1996, that in case the complainant wanted that the proposal be sent to the bank, he would be required to pay an amount of Rs.200/-. Therefore, according to the prosecution, the complainant filed his complaint on 2/9/1996 and on the very same day, the trap was laid. There is no prosecution case that any verification was done or any date or time of acceptance of money was agreed between the complainant and the respondent. The learned Special Judge, therefore, has raised suspicion regarding this very exercise on the basis of the authorities relied upon before him.

9. Thus, according to the prosecution, though the complainant has stated earlier that he did not have money and he would approach the respondent as and when he would have money, no sooner the complainant and the said witness sat before the respondent on the chairs, the respondent, without making any enquiry, as to whether any money is arranged for or not, complied with all the necessities, that is of putting the papers in the envelope and handing over the same to the complainant.

Thereafter, the respondent asked the complainant to put the money in a brown colour envelope which was complied by the complainant and, thereafter as per the direction of the respondent, the said envelope was kept on the kitchen oata.

. More particularly, as against the prosecution case, the complainant deposed that before they left the Office, the respondent told the complainant that money accepted was not only for him but for so many persons. As against this evidence, P.W. 2 - Narayan Kulkarni deposed that, in-fact the respondent himself made a demand to the complainant by making enquiry as to whether he has brought the amount. When the complainant replied in the affirmative then the respondent handed over the envelope in which the decoy money was kept by the complainant.

10. Taking into consideration all these facts, the learned Special Judge has held that time, date and place of making demand was not fixed between the complainant and the respondent. Suddenly, on 2/9/1996, the complaint came to be filed and trap also was laid. There is difference between the narration regarding the incident

that took place at the time of making the alleged payment. Further, as per the prosecution case itself, without making any demand, the respondent handed over the envelope to the complainant meant for the bank. According to the learned Special Judge, in normal course of conduct, the respondent would have first asked as to whether he (complainant) has brought the money and then the compliance of the work ought to have been done. It was also highlighted that according to the deposition of the complainant, the respondent did not make any demand during the trap also. Therefore, acquittal came to be recorded.

11. Taking into consideration the material as detailed supra, in my view, a reasonable and probable view has been taken by the learned Special Judge. Hence, the following order:-

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

[M.T. JOSHI]
JUDGE

arp/