IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 291 OF 2002

The State of Maharashtra
Through P.P.H.C. Aurangabad .. Appellant
(Orig. Complainant)

Vs.

Maruti Kishanrao Gaikwad,
Age 45 years, Occu. Service
as Circle Revenue Officer,
Dhoki Division, Osmanabad .. Respondent
(Orig. Accused)

Smt. B.B. Gunjal, A.P.P. for the appellant/State
Mr. Prashant Deshmukh, Advocate for the respondent

CORAM : M.T. JOSHI, J.
DATE : 26/06/2015

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by recording of acquittal of the present respondent by the learned Special Judge, Osmanabad vide Judgment dated 26/2/2002 passed in Special Case No. 7 of 1999 from the offences punishable under section 7, 13(1)(d) r/w. 13(2) of Prevention of Corruption Act, 1988, the present appeal is preferred by the complainant-State.

3. The prosecution case in brief is as under :-

. PW 1 - Sahebrao Vithalrao Lakal owns land at village Bhikar Sarola in his name as well as in the name of his wife. He was also working as Special Executive Magistrate w.e.f. 25.06.1997. He has certain dispute with neighboring land owners regarding the cart road to approach his land. According to him, the cart road was in existence but it was being obstructed, therefore, he made various applications to the Tahsildar. The Tahsildar promised him that the work would be done after the election process would be over. Ultimately, on 14.01.1999 he met Naib Tahsildar Shri Wagh and again gave one application. Shri Wagh told him that the Circle Inspector of the area would visit the land and would remove the obstruction.

. In the circumstances, the complainant met the present respondent, who was the Circle Inspector of the area. While the Naib Tahsildar has stated to the complainant that he has forwarded the application to the respondent, the respondent stated that he has not received the same. Therefore, after some period, the complainant again met the Naib Tahsildar and Naib

Tahsildar told him that the application was already sent to the present respondent. Ultimately, on 29/1/1999, the complainant again met the respondent in Tehsil Office of Osmanabad. At that time, the respondent made a demand of Rs.500/- for doing the said official work as his private fees. The complainant asked for reduction in the same, upon that the respondent told that it would be the minimum amount. Ultimately, at that time, the complainant handed over an amount of Rs.50/- to the respondent and told him that the remaining amount would be paid after the work is done. However, the work was not done. Therefore, on 2/2/1999, the complainant again approached the respondent. At that time, he clarified that unless the balance amount is paid, the work would not be done. Therefore, the complainant promised that balance amount of Rs.450/- would be paid on 4/2/1999. Upon that, the respondent asked him to visit him at the Tehsil Office, Osmanabad to pay the remaining amount.

. The complainant however was not willing to give any bribe, therefore, he got typed the written complaint on 3/2/1999 and placed it with the Anti Corruption Bureau. P.W. 6 - Venkat Dabkekar, the Anti Corruption

Bureau Officer conducted the investigation. As usual, on 4-2-1999 he called two panch witnesses from different departments i.e. P.W. 2 - Shivshankar Kore and P.W. 4 Fulsing Rathod. The contents of the complaint were read over to them. The demonstration of anthracene powder was given. The complainant had brought the decoy money. In presence of the panch witnesses, anthracene powder was applied to the said decoy money and the same was kept in the shirt pocket of the complainant. Instructions regarding the trap was given. The complainant and P.W. 2 - Shivshankar proceeded ahead to the Tehsil Office. Rest of the raiding party followed them from some distance.

. At the Tehsil Office, the complainant and P.W. 2 searched for the respondent but he was not found there. Therefore, the complainant – P.W. 2 went to the S.T. stand and looked for the respondent. He was however not seen there. Therefore, they again returned back to the Tehsil Office. At about 2:00 pm, the respondent was seen in the Tehsil Office. When the complainant enquired with the respondent, he promised that he would come outside after finishing his work in the office. The complainant and panch witness therefore went to the hotel in the campus of the Tehsil office. There, the respondent came and demanded the balance amount of Rs.450/-. They had taken tea and all of them went near a well in the said campus and sat down near the well. There, the respondent again demanded the money. The complainant took out the tainted amount and handed over the same to the respondent, who kept it in his chest pocket. Thereafter, he noted the name of the complainant and his work in his diary. Thereafter, the complainant gave the pre-determined signal to the members of the raiding party, whereupon, the respondent was apprehended.

. The respondent was thereafter taken to the nearby office in the same campus. During search, the tainted amount was found in the chest pocket of the respondent alongwith one more currency note. The diary in which the notings were taken was also seized. Post-trap panchanama was prepared. Thereafter, after usual investigation, the Investigating Officer lodged his formal F.I.R. on the basis of which crime was registered. File regarding the case and relevant documents from Tehsil office were collected and statements of witnesses were recorded. Sanction to prosecute the respondent was obtained from the Collector - P.W. 3 Shri Bagde and the chargesheet was filed.

4. Before the learned Special Judge, in all seven witnesses were examined. Those were the complainant, two panch witnesses, the sanctioning authority and the Investigating Officer, who has filed the chargesheet.

5. The defence of the respondent was that the report was already sent to the Naib Tahsildar, however, the complainant was aggrieved due to inaction from the Tehsil office. He thought that the present respondent is instrumental to the same. Therefore, at the given date and time, he thrust the decoy money in his hand and falsely framed him in the offence.

6. The learned Special Judge scrutinized the evidence on record. He found certain anomalies regarding the date of applications made by the complainant in the Tehsil office. He also took into consideration that the report was already sent by the respondent to the Naib Tahsildar much before the present episode. The learned

Special Judge however kept all this evidence aside for certain reasons and independently scrutinized other material on record regarding the demand and acceptance. It was found that there is vast contradiction between the prosecution case and the statements of the relevant witnesses like complainant and shadow panch and, therefore, benefit of doubt was extended and the respondent was acquitted.

7. Smt. Gunjal, learned A.P.P. submits that correspondence between the Tahsildar and the respondent is their internal affair. The dating over report etc. may have been made as suitable for them. The learned Special Judge therefore ought not to have given credence regarding the same. She further submits that the statement of the complainant as well as the shadow panch would show that the respondent has made demand and, thereafter accepted the amount. The learned Special Judge however unnecessarily amplified the minor contradictions and omissions. She therefore submits that the impugned judgment and order be set aside and conviction of the present respondent be recorded.

8. On the other hand, learned counsel for the respondent submits that not only the contradictions are material but the facts on record would clearly show that the investigation was not carried properly. The defence of the thrusting of the decoy money has been made probable and in the circumstances, he submits that in the present appeal against acquittal, when reasonable and probable appreciation of the material on record is made by the learned Special Judge, no interference is warranted in the same.

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

(I) Whether the prosecution has proved that on 29/1/1999, the respondent being a public servant made demand of Rs.500/- as illegal gratification from the complainant for removing the obstruction of the road ?

(II) Whether the prosecution has proved that on 29/1/1999 the present respondent has accepted an amount of Rs.50/- as part of the illegal gratification ?

(III) Whether the prosecution has proved that on 4/2/1999, the respondent at about 3:00 pm, at Tehsil office, Osmanabad, made the demand

and accepted the balance amount of Rs.450/- towards the illegal gratification ?

(IV) Whether the prosecution has proved that the present respondent being the public servant, obtained pecuniary advantage of Rs.500/- from the complainant by corrupt or illegal means, by abusing his position as Circle Inspector ?

(V) Whether the sanction granted by the competent authority is legal and valid ?

10. My findings to point nos. (I) to (IV) are in the negative and to point no. (V) is in the affirmative, however, on facts, the appeal is dismissed for the reasons to follow.

R E A S O N S

11. The learned Special Judge has taken into consideration the various dates of the applications and some of the dates of certain applications are found to be against the prosecution case. Further, during investigation, the Investigating Officer has inter-alia collected the relevant documents from the Tehsil office, which also included the report at Exhibit 27 which would

show that it was dated 30/1/1999. It was purportedly sent by the present respondent to the Tehsil office and it was inwarded as inward no. 887 by the Tehsil office. This exhibit 27 shows that the respondent has already sent his report to the concerned authority, meaning thereby that on the date of making complaint or thereafter, no work was pending with the respondent.

12. The learned Special Judge however did not give much weightage to this evidence and went on to scrutinize the evidence regarding the actual demand and acceptance.

13. The learned Special Judge has taken into consideration the contradictions in the version of the complainant and the panch witness regarding the details of the meeting that took place in the Tehsil office and as to whether the complainant and panch witness were together in the office. Further contradiction was regarding the details of the incident which occurred lateron. There is contradiction as to at which place the demand was made i.e. as to whether in the hotel while taking tea or at well after taking of tea. Further there is contradiction, as to whether all the three i.e.

complainant, panch and the respondent went together towards the well or whether the respondent alone went to the well and, thereafter the complainant and the panch witness followed him.

14. The most damaging circumstance that has erupted has been highlighted by the learned Special Judge, is regarding the entry made in the diary by the respondent which was lateron seized by the Investigating officer during post-trap panchanama. The said diary is placed at Exhibit 39.

15. It is the prosecution case that after accepting the decoy money, the respondent has made entry in the said diary. The prosecution evidence further would show that, thereafter the respondent put the said diary in the bag with him and he carried the bag towards the well. As the prosecution case is that after acceptance of the decoy money, the respondent had made entry in the diary at Exhibit 39, it was necessary for the Investigating Officer to examine this diary as well as other objects found on the person of the respondent under the ultra-violet lamp. Admittedly, however, neither the diary nor the bag was examined. The defence

is that the decoy money was merely thrust in the hands and nothing further. The investigation however would show that only the hands and some other objects were examined under the ultra-violet lamp. However, despite the fact of statement made by the complainant and the panch witness that after acceptance of the decoy money, the respondent made entry in the diary and the diary was kept in the bag, neither the bag was examined nor the diary was examined. Had the bag and diary would have been examined under the ultra-violet light, the remains of the anthracene powder would have been found then the defence would have been completely falsified. However, due to the non-examination of these articles, a reasonable doubt has arisen, as to whether it was a case of voluntary acceptance of the amount or as to whether it was the thrusting of the amount.

16. In that view of the matter and also upon taking stock of the contradictions in prosecution evidence, as detailed in the judgment of the learned Special Judge, in my view, a reasonable and probable view has been taken by the learned Special Judge in this regard.

17. As regards the sanction, however, it appears that the learned Special Judge has taken a microscopic view of the matter. The sanctioning authority Mr. Bagde has deposed that he has studied all the papers of investigation. The investigation papers included Exhibit 27 i.e. the report dated 30/1/1999, purportedly sent by respondent to his superior thereby making it improbable that the respondent would ask for illegal gratification later-on. According to the learned Special Judge, as the Sanctioning authority has not studied the documents well and more particularly the contents of Exhibit 27. According to him, there is non-application of mind.

. It should however be noted that grant of sanction is not a judicial work, that all the documents should be scrutinized very minutely and contradictions and omissions between the same shall be recorded and thereafter the decision regarding the sanction is granted. In that view of the matter, the reasoning of the learned Special Judge in this regard cannot be accepted.

18. However, since on merit, I have found that the learned Special Judge has taken a reasonable and probable view, the following order:-

19. The appeal is hereby dismissed. The bail bonds, if any, of the respondent shall stand cancelled.

[M.T. JOSHI]
JUDGE

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