

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 327 OF 2002

The State of Maharashtra,
Through P.P.H.C. Aurangabad

.. Appellant
(Orig. Complainant)

Versus

Chand Beg S/o Sharfu Beg
Aged 36 years, Occu.: Service,
Bari Colony, Galli No.9,
Kiradpura, Aurangabad,
Dist. Aurangabad

.. Respondent
(Orig. Accused)

Mr. V.P. Kadam, A.P.P. for the appellant/State
Mr. Joydeep Chatterji, Advocate for the respondent

CORAM : M.T. JOSHI, J.

DATE : 27/04/2015

ORAL JUDGMENT :

1. Heard both sides.
2. Aggrieved by the acquittal of the present respondent by the learned Special Judge, Jalna vide judgment and order dated 12/03/2002 from the offences punishable under section 7(1)(c) and under section 13(2)(d) read with section 13(1)(d) of the Prevention of Corruption Act, 1988, the present appeal is preferred by the State.

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

. That present respondent — Chand Beg S/o Sharfu Beg during the relevant period was appointed as Sub Auditor in the Office of District Special Auditor, Jalna. During the relevant period, he was assigned to audit the accounts of one Golapangri Multipurpose Credit Co-operative Society being within his jurisdiction.

. At that time, complainant — P.W.3 — Sahebrao Anna Kawale was Chairman, P.W. 4 — Vijay Kulkarni was the Secretary and P.W.2 — Parmeshwar More was the Peon of the said Society. The accounts were audited of the year 1997 - 1998. This work was carried between 22/4/1998 and 23/4/1998. At that time, the respondent made a remark that there were many irregularities in the account. He also expressed that fraud and misappropriation is seen. Certain balance sheet did not tally and he therefore expressed that Police complaint against the Chairman and Secretary for misappropriation of money may be filed. During talk, the respondent offered that if the amount of Rs.5,000/- as illegal gratification is paid to him, then no such

complaint would be filed. After negotiation, it was reduced to Rs.4000/-. The respondent warned that the said amount should be paid on 25/4/1998.

. In the circumstances, the complaint came to be filed with the Anti Corruption Bureau, Jalna on 24/4/1998. On the same day, trap was laid with demonstration of application of anthracene powder to the decoy money was given to the complainant in presence of two panch witnesses including P.W. 1 — Vasant Pattebhadur. Thereafter, the trap was laid, wherein the complainant and P.W. 1 went to the village from the office of Anti Corruption Bureau. They waited for some period for the respondent, who arrived at the Office at about 2:30 pm. During talk, the complainant introduced the panch witness as his brother-in-law. During the conversation, the respondent asked as to whether the complainant had brought the amount as per the instructions and thereupon, the complainant handed over the decoy money to the respondent. The respondent accepted it by his left hand and put it in his left side pant pocket. Thereafter, a predetermined signal was given and the respondent was caught and thereafter the

post-trap exercise of examining the persons of the concerned, finding of the decoy money on the person of the respondent was undertaken. Spot panchanama was prepared.

. After completing the necessary investigation, the papers were transmitted to the competent authority for according sanction. Accordingly, competent authority i.e. P.W. 8 — Babarao Bihade, the then Divisional Registrar of the Co-operative Societies, Aurnagabad had accorded sanction at Exhibit 33 to prosecute the present respondent. In the circumstances, the chargesheet came to be filed.

4. Before the learned Special Judge, in all nine witnesses were examined. Those included the complainant, panch witnesses, the sanctioning authority and the Investigating Officer.

5. The learned Special Judge on merit came to the conclusion that the present respondent had attempted to obtain and agreed to accept the illegal gratification and in-fact on 25/4/1998, obtained the said gratification from the complainant. However, finding

that the sanction accorded by the sanctioning authority is not legal and valid, the respondent came to be acquitted. Hence, the present appeal.

6. Learned A.P.P. submitted before me that the deposition of P.W. 8 – Babarao Bihade, the Divisional Registrar of Co-operative Societies, Aurangabad would show that he has applied his mind while according the sanction at Exhibit 33. The learned Special Judge however relied over the far fetched circumstances as argued from the side of the defence and has unnecessarily came to the conclusion that the sanction accorded was not legal and valid. He further took me through the merit of the case and submitted that the prosecution has proved beyond reasonable doubt the offences against the present respondent.

7. On the other hand, Mr. Joydeep Chatterji, learned counsel for the respondent took me through the deposition of P.W. 8 – Babarao Bihade and submits that the deposition itself would show that the sanctioning authority has not applied its mind and mechanically signed over the draft sanction order, which was sent by the Anti Corruption Bureau Officials to him. In the

circumstances, he submits that no interference in the reasoning of the learned Special Judge is warranted.

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

i) Whether the prosecution has proved that on 23/4/1998, the respondent has agreed to accept an amount of Rs.4,000/- for himself from the complainant as gratification other than the legal remuneration, as motive for doing the official work ?

ii) Whether the prosecution has further proved that on 25/4/1998, the respondent again made demand of the illegal gratification and accepted the same ?

iii) Whether the prosecution has proved that on the aforesaid date, time and place, the respondent, being a public servant, obtained the advantage for himself from the complainant by corrupt and/or illegal means, by abusing his position as a public servant ?

iv) Whether the sanction is legal and valid ?

My finding to point nos.(i) to (iii) is in the affirmative and to point no.(iv) is in the negative. The appeal is therefore dismissed for the reasons to

follow.

R E A S O N S

9. The evidence on record clearly show that during the relevant period, being the audit of the Co-operative Society, the present respondent has made demand of Rs.4,000/- for not recommending to file complaint with the Police against the Society officials. He has then accepted the amount during the trap, as has been proved and as has been held by the learned Special Judge. The main issue, however, is regarding the legality of the sanction.

10. P.W. 8 — Babarao Bihade deposed that he received the papers from Anti Corruption Bureau, Aurangabad. Thereafter, he went through those papers in entirety and applied his mind and after satisfaction, he accorded the sanction to prosecute the respondent. He proved the sanction order at Exhibit 33.

11. During cross-examination, it was pointed out that Exhibit 33 in-fact is not the sanction order but merely draft sanction. It was further pointed out that

the entire body of Exhibit 33 is typed and only the name of the sanctioning authority was kept blank. Further, Exhibit 33 even does not bear the date of issuing the same. The sanctioning authority tried to explain all these lacunae by saying that while typing, it was incorrectly typed as 'draft sanction', however, lacunae regarding the absence of date and provision of law, under which the sanction is to be accorded, are not properly explained.

12. Admittedly Investigating Officer had forwarded draft of the order with papers. It is to be found that Exhibit 33 is entitled as 'Sanction Draft'. No date of the sanction is found on the same. Further, this document would show that the sanction is granted under section 9(1)(c) of the Prevention of Corruption Act, 1988 and not under section 19(1)(c) of the said Act. The learned Special Judge has observed that the heading 'Sanction Draft' cannot be a typing mistake. Further, all the lacunae were taken into consideration and, therefore, it was inferred that the sanctioning authority has not applied its mind.

13. The learned Special Judge relied on the ratio in the case of **"Mohd. Iqbal Ahmed v. State of A.P."** AIR 1979 S.C. 677.

. Besides this, Mr. Chatterji, additionally relied on the ratio in the case of **"C.B.I. V. Ashok Kumar Aggarwal"** AIR 2014 S.C. 827.

14. Here in the present case, the sanction at Exhibit 33 does not satisfy that the sanctioning authority had applied its mind while putting signature below the said order. In clear terms, it is titled as 'Sanction Draft' in capital letters with underline. Further, it does not bear any date. Even the provision of law is quoted incorrectly. In that view of the matter, the deposition of the sanctioning authority that it has applied its mind, cannot be accepted.

15. On the basis of the material before him, the learned Special Judge has taken a plausible view regarding the sanction. In the circumstances, the following order:-

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

[M.T. JOSHI]
JUDGE

arp/