

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.425 OF 2002

The State of Maharashtra,
Through Public Prosecutor,
High Court at Bombay,
Aurangabad

..Appellant

Versus

Nemichand s/o. Jindasrao Mahajan,
Age 51 years, occ. Senior Clerk,
Public Works Department,
Sub Division, Parli Vaijinath,
Tq. Parli, Dist.Beed

..Respondent

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Mrs.R.K.Ladda, APP for appellant

Mr.M.K.Deshpande, advocate for respondent

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CORAM : M.T. JOSHI, J.
JUDGMENT RESERVED ON : AUGUST 27, 2015
JUDGMENT PRONOUNCED ON : SEPTEMBER 15, 2015

JUDGMENT :

Heard both sides.

2] Aggrieved by acquittal of present respondent
from the offences punishable under Section 7 and
13(1)(d) read with Section 13(2) of the Prevention

of Corruption Act, 1988 in Special Case No.1 of 2000, present appeal is preferred by the State.

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

. That complainant PW 2 - Murlidhar Ramkishan Sangle, was working as a Junior Clerk in Public Works Department at Parli Vaijnath. He was to get arrears of his pay as per the recommendations of Fifth Pay Commission in June, 1999. The respondent was working as a Senior Clerk in the said office. He used to distribute pay to the staff member in said office.

. On 2nd June, 1999, when the complainant had been to the respondent for getting arrears of pay, the respondent made a demand of Rs.200/- as an illegal gratification. The complainant told him that upon getting the arrears, he would immediately pay Rs.200/-. The respondent, however, told that

unless the amount of Rs.200/- is paid first, the arrears would not be paid to the complainant. He unwillingly, agreed to pay the same. However, on the next date i.e. on 3rd June, 1999, he went to the office of Anti Corruption Bureau and filed the complaint (Exhibit 29).

. PW 3 — Bhokare, Deputy Superintendent, conducted investigation. He collected two panch witnesses i.e. government employees. Thereafter, demonstration of application of anthracene powder was given to all of them. Anthracene powder was applied to the decoy money brought by the complainant. PW 1 — Sk. Ibrahim Sk. Abdul, shadow panch witness, was kept in the company of the complainant while, rest of the members of the raiding party remained in the background.

. The complainant and PW 1 — Sk. Ibrahim, shadow panch witness, went in the said office and met the

respondent. The complainant, by pointing towards the shadow panch witness, told the respondent that his father was ill and therefore, he has even brought his brother-in-law with him. When the complainant asked for pay, the respondent made demand of Rs.200/- for tea (Chai-Pani). The respondent also told the complainant that unless amount Rs.200/- are given to him, he would not pay the salary. As the complainant showed readiness to pay the amount, the respondent paid the salary to the complainant. Upon counting, however, the salary amount was found less by Rs.200/-. The complainant insisted for payment of full salary and told that he would therefore pay Rs.200/- to the respondent. Thereupon, the respondent paid the remaining salary amount of Rs.200/- to the complainant and asked him to give Rs.200/- towards tea. Thereupon, the complainant took out the decoy money from his shirt pocket and handed over it to the respondent. The respondent accepted the same; unfolded the notes by

his both hands and kept them on the bundle, which was on the table. The respondent thereafter kept the bundle in the cupboard. Thereafter, the complainant gave the predetermined signal to the raiding party and the respondent was caught by his both hands.

4] Thereafter, examination of hands of the respondent in ultra violet lamp was carried. The decoy money was recovered from the cupboard, which was kept in the bundle of currency notes. The two currency notes (decoy money) as well as one currency note from the bundle below the decoy money, were found tainted by anthracene powder which was applied to the decoy money. The complainant's hand and pocket was also examined. Necessary panchnamas were prepared. Statements of the witnesses were recorded. Sanction to prosecute the respondent from PW 4 – Nagesh Mendhekar, Superintending Engineer, Public Works Department,

was obtained at Exhibit 39 and the charge sheet came to be filed.

5] Before learned Special Judge, four witnesses were examined. Learned Special Judge, however, acquitted the respondent by extending benefit of doubt. Hence, present appeal.

6] Learned A.P.P. for the appellant – State submitted that the demand and acceptance of illegal gratification has been proved. The independent panch witness i.e. PW 1 – Sk. Ibrahim has deposed about all the facts. Learned Special Judge, however, on certain assumptions and presumptions acquitted the respondent. She submitted that since the reasoning of learned Special Judge are perverse, the appeal may be allowed.

7] On the other hand, Mr.Deshpande, learned counsel for the respondent, took me through the record. He pointed towards certain improbabilities in the prosecution case and submitted that since

the respondent, who used to be in-charge administrator, during absence of the Executive Engineer, in the said office, did not pay heed to the request of present complainant to depute him in the establishment section, out of anger, the complainant filed the complaint. Hence, he submitted that no interference in the reasonings of learned Special Judge is warranted and the appeal may be dismissed.

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

(I) Whether the prosecution has proved that present respondent being a public servant, on 2nd June, 1999, made a demand of Rs.200/- to the complainant as a gratification other than legal remuneration to pay arrears of salary to the complainant?

(II) Whether the prosecution has proved that on 3rd June, 1999, present respondent accepted said amount of Rs.200/- ?

(III) Whether the prosecution has further proved that present respondent being a public servant, on 3rd June, 1999, by abusing his position as a public servant, obtained Rs.200/- from the complainant as an illegal gratification ?

My findings to above point is in the negative. Appeal is therefore, dismissed for the reasons to follow:

R E A S O N S

9] The evidence on record as well as the cross-examination of the complainant and the panch witnesses would show that the respondent had made

demand of Rs.200/- at the time of the raid. Thereafter, he paid salary minus Rs.200/- to the complainant. The complainant, however, asked for said amount of Rs.200/- by promising that he would, lateron, pay the said amount. Thereafter, when the respondent had paid the balance amount of pay of Rs.200/-, the complainant took out the decoy money from his shirt pocket and offered it to the respondent. The respondent put the decoy money i.e. two currency notes in the denomination of Rs.200/-, On the bundle of currency notes lying on his table and then kept it in his cupboard. Thereafter, when the raiding party caught hold him, the Investigating Officer asked him to take out the bundle of notes along with the decoy money from the cupboard.

10] It is the defence of the respondent that when he had paid all the amount of arrears to the complainant and thereafter, went towards certain

steel rack which was adjoining to his table to take out certain documents, in the meantime, the complainant might have put the decoy money on the bundle of currency notes, which was lying on his table and thereafter, the respondent put the entire bundle including the decoy money in the cupboard. He had no occasion to accept the decoy money by his hands.

11] Learned Special Judge observed that the story put by the complainant, was improbable. A person would not, first, pay the money minus Rs.200/- and thereafter, accept the special money kept in the pocket of the complainant of Rs.200/- (decoy money). Further, the prosecution case that the complainant had made the respondent to pay the entire amount by specially asking for Rs.200/- and then managed to hand over the decoy money, is improbable.

12] Further, it is an admitted fact that only, the

first of the currency notes from the bundle of the notes kept in the cupboard of the respondent had anthracene powder. The Investigating Officer was specific in saying that neither the sides of the bundle nor lower note of the bundle, was found tainted with anthracene powder.

13] Learned Special Judge, therefore, observed that if a person would first accept the decoy money by both his hands and keep it over bundle of currency note on the table and thereafter, the decoy money with bundle is kept in the bundle, then the side as well as the last note of the bundle would also be tainted with the anthracene powder.

14] The issue as to whether, the money was demanded towards tea, is also surrounded by suspicion. In the panchnama at Exhibit 20 itself, the dialogue between the complainant and the respondent was recorded as *"first pay me my arrears and then I will pay amount of Rs.200/- due*

to you (towards tea etc.)". This bracketed portion as found in the panchnama, cannot be a verbal dialogue, but interpretation by the prosecution.

15] The above prosecution case shows that there was no acceptance of decoy money by the respondent, for the reasons forwarded by learned Special Judge, as detailed supra. In that view of the matter, the reasonings of learned Special Judge, cannot be called as perverse. In the present appeal against the order of acquittal, therefore, no interference in the reasonings of learned Special Judge, is warranted.

16] In the result, the appeal is hereby dismissed.

[M.T. JOSHI, J.]