

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 509 OF 2002

The State of Maharashtra

.. Appellant
(Orig. Complainant)

VERSUS

Anant Devidas Pathak,
Age : 40 years,
Occu.: Senior Clerk,
Office of the Assistant Director
of Animal Husbandry, Poultry Project,
Osmanabad

.. Respondent
(Orig. Accused)

Mr. S.R. Palnitkar, A.P.P. for the appellant/State
Mr. S.P. Chapalgaonkar, Advocate for the respondent

CORAM : M.T. JOSHI, J.

DATE : 24/03/2015

ORAL JUDGMENT :

1. Heard both sides.
2. Aggrieved by the acquittal of the respondent from the offences punishable under section 7, 13(1)(d), 13(2)(d) of the Prevention of Corruption Act, 1988, the present appeal is preferred by the State.
3. The prosecution case in nutshell is as under:-

The complainant - Gopinath Akoskar during the relevant period was working as a Driver in the Office of

the Assistant Director, Poultry Project, Osmanabad (Animal Husbandry Department of Government of Maharashtra). The respondent / accused was serving as a Senior Clerk in the said Office. He was entrusted with the work of processing bills and payment of the bill amount to the staff members including the complainant. Overtime bill of the present complainant amounting to Rs.744/- was presented to the Treasury. At the time of preparation of the bill on 10/1/1998, the respondent made a demand of Rs.100/-, as illegal gratification for getting the bill passed. Thereafter, again on 23/1/1998 and 27/1/1998 i.e. when the bill amount reached from the Office of the Treasury, the demand was made by the respondent. In the circumstances, on 28/1/1998, the complaint came to be filed and on the very same day, the trap was led by the Anti Corruption Bureau after registration of the F.I.R. as per the routine procedure. The panch witnesses were called at the Office of the Anti Corruption Bureau. Thereat, demonstration regarding the anthracene powder was given. Thereafter, decoy money of Rs.100/- smeared with anthracene powder was kept in the pocket of the complainant in the office of the respondent. The complainant as well as P.W. 2 -

Mahadeo Pandurang Haral went to the Office of the respondent. At that time, the respondent again made demand of Rs.100/-. Decoy money was accordingly handed over by the complainant to the respondent. He accepted the same and kept the same in his left hand side chest pocket of his shirt. Accordingly, the complainant went outside and gave predetermined signal and, thereafter, the respondent was searched. Not only the decoy money was found in the pocket, the anthracene powder at the relevant part of the body and the cloth were found during the ultraviolet examination. Statement of the present respondent was also immediately recorded on the same day. His statement under section 313 of the Code of Criminal Procedure is also recorded by the Special Judge.

4. The defence version is that on 20/1/1998 itself in the morning, the complainant met the respondent on road. At that time, the respondent told the complainant that cash regarding the bill is received and, therefore, he may come to the Office to collect the same. The complainant told him that he was sick and, therefore, could not attend the Office. He demanded an amount of

Rs.100/- as a hand-loan for purchasing the medicine and told that he would come in the Office in the noon and thereat only upon receipt of the amount under the bill, the amount of Rs.100/- would be repaid to him. The amount that was received by the respondent in the Office in presence of the panch witness, was, in-fact the repayment of the hand-loan, which he accepted and thus he sought acquittal.

5. During trial, the complainant deposed on the line of the prosecution case. During cross-examination, on the first day, it was suggested to him that he had animus against the respondent and other Officials as there was certain problem regarding the repair of the vehicle of the Office. He denied that he had obtained any bill from a private automobile i.e. Lomte Automobile in this regard. In the circumstances, the cross-examination was deferred in order to facilitate calling of the necessary documents from the Office in this regard. Thereafter, on the next date, during cross-examination, he admitted all these facts. It was further admitted that he had also filed a complaint with the Collector against his Superior Officers that they

were not allowing him to sign the muster roll. Admittedly, departmental enquiry was also held against him and he was even called by his Superior Officer at Aurangabad in that connection. Ultimately, he was transferred from Osmanabad to Jalna as a result of such enquiry.

6. While P.W. 1 complainant deposed that at the time of trap, the present respondent made a demand of Rs.100/-, panch witness - PW 2 who had accompanied him, however, specifically denied the same. According to him, during the handing over amount of Rs.100/-, no talk took place between the complainant and the respondent. The complainant merely forwarded the currency note towards the respondent and the respondent accepted the same. The witness was therefore declared hostile. However, during cross-examination also he stuck to the said case.

7. The defence has examined Dr. Anant Tarkhedkar, who was the Live Stock Development Officer during the relevant period. He corroborated the defence version, that in his presence, in the morning, in-fact, the respondent has paid amount of Rs.100/- as hand-loan to

the complainant who promised to return the amount in the office upon receipt of the amount under the bill.

8. The learned Special Judge took into consideration certain defects in the sanction order, held it invalid and by extending benefit of doubt on merit also, the respondent was acquitted. Hence, the present appeal.

9. Mr. Palnitkar, learned A.P.P. submits that the panchanama would clearly show that the respondent has in-fact made a demand of Rs.100/- and, therefore, the statement of P.W.2-Mahadeo against the said panchanama, to which he subscribed earlier, should have been disbelieved. He further submits that merely because the complainant had earlier filed complaint against the staff members and certain dispute regarding collection of bill from Lomte Automobile was there, it would not make any effect on the prosecution case. He further submits that by finding fault with the sanction order, the learned Special Judge unnecessarily observed that the sanction is invalid.

10. On the other hand, Mr. Chapalgaonkar took me through the statement of the respondent recorded on the date of trap and the doubts those are raised in the prosecution case, as detailed supra. He further submits that when the learned Special Judge has taken a reasonable and probable view and extended the benefit of doubt, in the present appeal against acquittal, no interference is warranted.

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

I) Whether the prosecution has proved that on the given date, time and place, the present respondent had made a demand of illegal gratification and accepted the same?

II) Whether the respondent has committed misconduct by abusing his position as a public servant?

III) Whether the sanction is valid?

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

R E A S O N S

12. The facts on record, as highlighted by the learned Special Judge, would show that the complainant had animus against his superiors. Time and again, complaints were that since he was irregular, he was not allowed to sign the muster roll. He made complaint to the Collector in this regard. Thereafter, departmental enquiry was made against him and he was transferred. The issue regarding collection of bill of one private automobile was denied by the complainant initially. However, when documents were called and he was cross-examined, he admitted the same. Admission of P.W.2 - the panch witness would show that the respondent never made a demand of Rs.100/- during the trap, as against the statement of the complainant that the respondent has specifically again repeated the demand of Rs.100/- for payment of amount under the bill. The immediate statement of the accused recorded by the Investigating Officer alongwith the deposition of D.W.1 Dr. Anant Terkhadker, as detailed supra would fortify the case that in-fact the amount of Rs.100/- was accepted by the respondent as the repayment of the hand-loan.

. Taking into consideration all these facts, in my view, the learned Special Judge has rightly extended benefit of doubt and in the present appeal against acquittal, there is no need to interfere in the said findings, so far as the facts are concerned.

13. As regards the sanction, the learned Special Judge has taken into consideration the various omissions in respect of the purpose, place and time of demand, the offences in respect of which prosecution was to be launched and the provisions under which those are to be launched, were conspicuous by absence in the sanction order. The learned Special Judge has therefore observed that there was non-application of mind at the time of grant of sanction. The learned Special Judge, therefore, has rightly held that the sanction granted was invalid. In that view of the matter, the appeal deserves to be dismissed. Hence, the following order:-

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

[M.T. JOSHI]
JUDGE

arp/