

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 600 OF 2002

The State of Maharashtra
Through Anti Corruption Bureau,
Parbhani ..Appellant

Versus

Murlidhar Sitaram Datar,
Age : 51 years, Occu.: Service,
General Manager, District Industries
Centre, Parbhani, Tq. and
Dist. Parbhani ..Respondent

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Mr.V.P. Kadam, AGP for appellant

Mr.P.F. Patni, advocate for respondent - sole

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CORAM : M.T. JOSHI, J.

DATE : MARCH 23, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by recording acquittal in favour of
the respondent from the offences punishable under
Section 7 as well as Section 13(1)(d) read with

Section 13(2) of the Prevention of Atrocities Act, 1988, present appeal is preferred by the State.

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

. The respondent, during the relevant period, was working as General Manager, District Industries Centre, Parbhani. The complainant - Murlidhar Omprakash Mantri, resident of Manwat, Dist. Parbhani, during the relevant period, was an unemployed youth. He approached the District Industries Centre seeking loan under the Prime Minister Educated Unemployed Scheme. All the documents were submitted. When further inquiry was made in the said office, one Shri. Tandale, District Industries Inspector, told him that for sanction of loan of Rs.One Lakh, the complainant would have to pay illegal gratification of Rs.1,000/-. When the complainant questioned about the same, said Tandale told him that out of Rs.One

Thousand, he will have to give Rs.700/- to present respondent – Murlidhar Datar. Thereupon, the complainant approached the respondent and told him about the demand made by said Tandale. He even told that instead of paying Rs.1,000/- to said Tandale, he can arrange only for Rs.700/-, which he would pay to the respondent directly, which was agreed by the respondent. This talk took place in the cabin of the respondent on 20th June, 1997. At that time, the respondent told that the complainant may pay Rs.700/- as and when it would be available with him. In the circumstances, the complainant approached the Anti Corruption Bureau on 24th June, 1997.

4] Thereafter, necessary procedure was undertaken by the concerned Investigating Officer. The F.I.R. was registered. The decoy money was arranged as per the procedure by showing it's demonstration to the complainant and then applying

anthracene powder. Two panch witnesses, the complainant and other staff members from the office of Anti Corruption Bureau, were taken to the vicinity of the office of the respondent. One of the panch witnesses i.e. PW 2 – Dr.Vilas Aher was directed to accompany the complainant. When they met the respondent, the complainant asked the respondent about sanction of loan to which, the respondent told that on that day only, the meeting regarding the sanction would be held. He further questioned as to whether, the complainant has brought as told earlier. Upon that, the complainant told that he has come with the preparation settled earlier. The respondent told that on that day only, he would do work of the complainant. Thereafter, the complainant introduced the panch witness, PW 2 – Dr. Aher, to the respondent, as his friend and told that he also wanted to avail the loan. The respondent made some queries and miscellaneous talks took place between them. Thereafter, both of them came out of the cabin of the respondent.

5] Further, according to the complainant, when PW 2 - Dr.Aher went away out of the room of the respondent, the complainant handed over the decoy money to the respondent and thereafter, upon giving predetermined signal, the raiding party reached there. Respective fingers of the complainant as well as the respondent and shirt pocket of the respondent were detected with anthracene powder. The decoy money was also collected from the pocket of the respondent.

6] In the situation, after completion of the procedure, sanction from the appointing authority of the respondent was called. Ultimately, PW 3 - Vasant Wankhede, Deputy Secretary to the Government, Industries and Labour Department, accorded sanction at Exhibit 34 and thereafter, the charge sheet was filed.

7] Before the Special Judge, the complainant, panch witness i.e. PW 2 - Dr. Aher, PW 3 - Vasant Wankhede, sanctioning authority and PW 4 - Manik Perke, Deputy Superintendent of Police, Anti Corruption Bureau, Nanded were examined. Learned Special Judge, upon

appreciation of the evidence on record, held that the charges of making demand of illegal gratification by the respondent and its acceptance were not proved. Further, learned Special Judge found that the prosecution has failed to prove that PW 3 – Vasant Wankhede, Deputy Secretary, was the appointing authority and therefore, on all these counts, the respondent came to be acquitted. Hence, the present appeal.

8] Learned A.P.P. for the appellant - State submits that learned Special Judge has wrongly concluded that PW 3 – Vasant Wankhede, Deputy Secretary, was not the sanctioning authority. He further took me through the evidence on record and submits that learned Special Judge has wrongly appreciated the evidence on record.

9] On the other hand, Mr.Patni, learned counsel for the respondent, submits that the learned Special Judge has rightly acquitted the respondent.

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

1) Whether the prosecution has proved that on 21st June, 1997, present respondent made a demand of illegal gratification for sanction of loan proposal of the complainant ?

2) Whether the prosecution has further proved that on 21st June, 1997, the present respondent has accepted the illegal gratification from the complainant ?

3) Whether the prosecution has further proved that present respondent, being a public servant i.e. General Manager, District Industries Centre, by abusing his position as public servant, has obtained pecuniary advantage by demanding and receiving the same, as detailed above, and thus, committed criminal misconduct ?

4) Whether the sanction for the prosecution was accorded by a competent authority ?

. My findings to the above points are in the negative and the appeal is, therefore, dismissed for the reasons to follow.

R E A S O N S

11] The complaint would show that at the time of filing of the proposal for loan, the complainant has contacted Shri. Tandale, District Industries Inspector. At that time, he narrated about Rs.1,000/- which, according to the complainant, came down to Rs.700/- when he directly contacted present respondent who was the General manager of the District Industries Centre. The F.I.R. would show that on 3rd June, 1997 the complainant went to the District Industries Centre and obtained acknowledgement of submission of the file for

loan. Further, it is alleged that on 20th June, 1997, he again visited said centre to get information regarding the progress and on that day, when he personally met the respondent, the respondent made the demand of Rs.700/-. As against this, in his deposition, he specifically deposed that the demand was made on 21st of June, 1997. Thus, there is contradiction as to on which date, the demand of illegal gratification was made by the respondent. Besides this, the respondent had filed on record the verified true copies of the log book of the vehicles maintained in the office of the District Industries Centre, which would show that on both these dates, the respondent was out of station on visit to some other place. Learned Special Judge, therefore, found that reasonable doubt has arisen as to whether, any such demand was made by the respondent.

12] As regards the raid and acceptance of money, material variance was found in the statement of PW 1 – complainant and PW 2 – Dr.Aher. While the complainant deposed that when both of them entered the cabin of the respondent, at that time, besides other talks, the complainant told the respondent that he had come prepared with the amount as per the direction of the respondent. Thereafter, the respondent asked the panch witness i.e. PW 2 – Dr.Aher, to go away and lateron, he had accepted the decoy money.

13] PW 2 – Dr. Aher, the panch witness, deposed that the complainant told the respondent that he has come with preparation and thereupon, the respondent asked him i.e. the witness, to go out. In the circumstances, whether any talk concerning the money was held in the presence of the panch witness, is also doubtful.

14] Further, according to the complainant, when PW 2 - panch witness went away, he handed over the decoy money to the respondent and thereafter, gave predetermined signal and the raid was held and in the raid, fingers of the respondent and his shirt pocket were found with anthracene powder and the decoy money was found in his pocket. The panchnama regarding all these activities Exhibit 26, however, depicts otherwise. As per the panchnama, after the talks, the respondent told the complainant that as he was required to go out of the office at 2:00 pm., they should come back before that time i.e. between 1:30 pm. and 1:45 pm. Thereafter, however, suddenly, the complainant made the predetermined signal upon coming out of the cabin of the respondent, along with the panch witness, and thereafter, the raid was effected and the decoy money was found with the respondent.

15] Thus, the panchnama would show that the complainant as well as the panch witness came together out of the cabin of the respondent. There is no recital in the panchnama that as to whether, the decoy money was handed over by the complainant to the respondent in the presence of the panch witness or for some time, the panch witness came out of the cabin and thereafter, having opportunity, the complainant gave the amount to the respondent.

16] If all these circumstances on record are taken into consideration, it cannot be said that learned Special Judge has indulged into perversity in acquitting the respondent. A reasonable and probable view of the material on record has been taken by learned Special Judge. Therefore, on merit, I do not find any reason to interfere with the judgment of the learned Special Judge.

17] As regards the competency of PW 3 – Vasant Wankhede in granting sanction, admittedly, he was working as Deputy Secretary in the concerned department. The copy of the appointment order of the respondent at Exhibit 42 shows the name of a lady Mrs.Talashikar, however, the designation below her name is cut, probably, due the defect in photocopying the document. Therefore, learned Special Judge, upon considering the material concluded that it was not proved that PW 3 – Vasant Wankhede, Deputy Secretary, was the sanctioning authority. In view of the clear findings as above, there is no need to dilate on this aspect also.

18] In the result, the appeal is dismissed. P.R. Bond as well as surety bond of the respondent stand cancelled.

[M.T. JOSHI, J.]