

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 237 OF 2004

Deepak S/o Madhukarrao Jakate,
Age : 52 years, Occu. Service,
Junior Engineer in MSEB CIDCO,
Nanded, R/o. Nanded

.. APPELLANT
(Ori. Accused)

VERSUS

The State of Maharashtra
Through Police Station,
Nanded

.. RESPONDENT

Mr. M.A. Tandale, Advocate for the appellant
Mr. K.D. Mundhe, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.
RESERVED ON : 27TH OCTOBER, 2015
PRONOUNCED ON : 9TH DECEMBER, 2015

JUDGEMENT :

1. Heard both sides.
2. The present appellant was convicted by the learned Additional Sessions Judge-cum-Special Judge, Nanded in Special Case No. 01 of 1995 for the offences

punishable under section 7 and 13 (2) of the Prevention of Corruption Act, 1988. He was sentenced to suffer simple imprisonment for six months and rigorous imprisonment for one year on the respective count and to pay fine of Rs. 500/- on each of the count. Hence, the present appeal.

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

. That, the complainant - PW1 Vijay Gabhane, a social worker had purchased a house in the CIDCO Area of Nanded. The electric supply connection, however, was already discontinued and therefore, the complainant had obtained electric connection from the neighbourhood. For reconnection of supply, he had approached the present appellant who was working as Sub-Engineer with the Maharashtra State Electricity Board (M.S.E.B.). At that time, the appellant asked him to bring fresh current bill. Therefore, the complainant went to the office of the M.S.E.B., Nanded on 10th September, 1994 and collected a bill of Rs. 713/-. He also got facility of paying the same in two instalments of Rs. 413/- and Rs. 300/-. Accordingly, he deposited the first of the

instalment and showed the bill as well as receipt of payment to the appellant.

. For taking the action of re-connection of the electric connection, the operator of the M.S.E.B. visited the house of the complainant. The operator Mr. Sawant, upon inspection, told the complainant that the electric meter was in fact burnt and therefore, the complainant would be required to meet the appellant. The complainant, therefore, again on 5th October, 1994, met the appellant in his office and requested for replacement of the meter upon filing a written application. The appellant, therefore, in writing directed his assistants, namely, Mr. Gabhane and Mr. Sawant to discontinue the supply and to take out the burnt meter. Accordingly, they took out the meter. Thereupon, the complainant met the appellant. At that time, the appellant prepared a bill of Rs. 405/- as charges for placing of new electric meter. The complainant requested the appellant to place the meter at the earliest. Upon that, the appellant made demand of Rs. 1000/- for earliest fixing of the meter. The bill prepared by the appellant was handed over to Mr. Boinwad. He directed the complainant to pay Rs. 1000/-

to Mr. Boinwad. The complainant questioned that why an amount of Rs. 1000/- should be deposited when the bill is only for Rs. 405/-. Upon that, the appellant told that an amount of Rs. 405/- would be paid out of the said amount of Rs. 1000/- and rest of the amount of Rs. 595/- would be appropriated.

. Accordingly, on 6th October, 1994, Mr. Boinwad visited the house of the complainant and made enquiry regarding the money. At that time, complainant told that he could arrange only for half of the amount. Upon that, Mr. Boinwad told that first the complainant should deposit an amount of Rs. 405/- and the balance of the amount can be paid on the next day to the appellant. Accordingly, the complainant deposited an amount of Rs. 405/- on 7th October, 1994 in the office. However, since the complainant had no wish to pay bribe amount of Rs. 595/-, he filed complaint with Anti Corruption Bureau, Nanded on 7th October, 1994.

4. PW6, Gopinath Patil - the then Police Inspector of Anti Corruption Bureau had conducted the investigation in the case. He collected two panch witnesses including the shadow panch witness PW2 Bhagoji

Hanvate. On 7th October, 1994 during verification of demand, the appellant again made demand of money to the complainant in presence of the shadow panch witness. The demonstration regarding application of the anthracene powder was given to them as well as the complainant. The complainant had brought the money with him. The anthracene powder was applied to the decoy money and the trap was laid on the same day at the office of the appellant. However, the appellant was not in his office as he was on tour. Therefore, the raiding party returned to the office of Anti Corruption Bureau and again on 10th October, 1994, the trap was laid at the office of the appellant.

5. During this next trap, while the complainant and the shadow panch witness approached the appellant who was sitting in his office, the rest of the members of the raiding party kept themselves away in the vicinity. The appellant was sitting on his chair. The complainant told the appellant that he had deposited an amount of Rs. 405/- and has also brought an amount of Rs. 500/- as demanded by him. At that time, the complainant tried to give the decoy money from under the

table which was in front of the appellant. The appellant, however, questioned as to why the amount was being paid from under the table and accordingly, by his right hand, he accepted the decoy money from above the table and kept the same on the table. At the same time, he made enquiry with the complainant about the shadow panch witness who told that he was his friend. Thereafter, the complainant gave predetermined signal upon which the raiding party arrived. The investigating officer carried further exercise of examination of the hands and clothes of the appellant and thereafter of the complainant under the ultraviolet lamp which confirmed the above activities.

6. The investigating officer thereupon collected the necessary documents from the office of M.S.E.B., recorded the statements of the witnesses including that of PW4 Prakash Boinwad and upon requisition, got the sanction order to prosecute the appellant from PW3 Prakash Kothare, the then Chief Engineer of M.S.E.B. Thereupon, the chargesheet came to be filed.

7. Before the learned Special Judge, in all six

witnesses were examined, which included the complainant, shadow panch witness, the sanctioning authority, the assistant of the appellant – Mr. Boinwad, the Executive Engineer from whose custody of the papers regarding the application of the complainant were seized and the investigating officer.

8. According to the defence of the appellant, when it was found that despite the burning of the meter, the electric supply was continued, he took the information regarding available load in the house and as per the average of preceding five months' electricity consumption, he had, in fact, handed over a bill assessed at Rs. 500/- of the period of consumption of five months to the complainant and asked him to first deposit that amount also, besides the amount of Rs. 405/- which was required for replacement of the meter. On the day of the trap, the complainant had come late by which time, acceptance of cash by the account office was closed. The complainant, however, requested the appellant to accept the said amount for depositing on the next day. He started to give the said amount (decoy money) from under the table. Therefore, the complainant

was enraged. He questioned as to why official amount was offered from under the table and directed the same to be given openly. Thereupon, he accepted the amount. However, as the complainant was enraged by the fact that the amount of Rs. 500/- was required to be paid for the consumption of electricity, he falsely implicated the appellant in a trap.

9. Before the learned Special Judge, the complainant though supported the prosecution case, during cross-examination has deposed that the appellant asked to pay the amount from above the table by saying that it was an official amount. Further, the shadow panch witness has deposed that he did not remember as to whether after the trap, under the ultraviolet examination, the hands of the appellant glittered or not. The learned Special Judge, however, came to the conclusion that the prosecution has proved its case beyond reasonable doubt. Hence, the conviction, as detailed above, came to be recorded.

10. Mr. M.A. Tandale, learned counsel for the appellant submitted that the very conduct of the

appellant at the time of raid, questioning the complainant as to why he was paying the amount from under the table and the fact that at the time of first raid, the appellant was not found in the office, would squarely go to show the defence that the appellant, in fact, had slapped additional bill of Rs. 500/- for the consumption of electricity during the period the meter was defective, ought to have been considered by the learned Special Judge. He further took me through the evidence on record and submitted that the learned Special Judge ought to have acquitted the appellant.

11. On the other hand, learned A.P.P. submitted that the appellant has admitted that he had received the decoy money. The presumption, therefore, has arisen that the said amount was accepted towards the gratification other than the legal remuneration. His case that he had issued a bill to the complainant has been belied by his superior i.e. PW5 Mr. Chaburao Deshmukh, the then Deputy Executive Engineer. He has clearly deposed that the format of the bill at Exhibit-25 filed by the defence was old format which was already discontinued by the M.S.E.B. in the year 1985. He

further submitted that the explanation regarding the supply of bill was an afterthought defence. Hence, he submitted that no interference in the reasoning forwarded by the learned Special Judge is warranted.

12. On the basis of above material and the submissions advanced on behalf of both sides, the following points arise for my determination.

- (I) Whether the prosecution has proved that the present appellant had made demand of Rs. 500/- as gratification other than the legal remuneration for earliest re-connection of the electric supply to the complainant ?
- (II) Whether the prosecution has further proved that on 10th October, 1994, the present appellant again made demand of Rs. 500/- and accepted the same as gratification, as detailed supra, and as also pecuniary advantage, obtained by illegal and corrupt mode ?

My findings to the above both points is in the negative. The appeal is, therefore, allowed and the appellant is acquitted of all the offences, for the reasons to follow:-

R E A S O N S

13. The prosecution has examined in all six witnesses. PW` Vijay is the complainant. The complaint filed by him is at Exhibit-22. PW2 Bhagoji s/o Narayan Hanvate is the shadow panch witness who, according to the prosecution, was present at the time of verification of demand and also at the time of actual trap. PW3 Prakash Madhavrao Kothare, retired Chief Engineer had proved sanction order passed by him at Exhibit-34 whereunder he authorized prosecution against the appellant. PW4 Prakash Boinwad is the assistant lineman involved in the activities as detailed above. PW5 Chaburao Deshmukh is the then Deputy Executive Engineer with whom the investigating officer has corresponded and collected certain documents, including letter (Exhibit-39) and during cross-examination proved the bone of contention i.e. Exhibit-25, the alleged bill of Rs.

500/-, which, according to the defence, was slapped by the appellant. PW6 Gopinath Patil, the then Police Inspector of Anti Corruption Bureau is the investigating officer.

14. The complainant though partly supported the prosecution case, did not depose about the verification exercise. Further, during cross-examination, he deposed that the appellant had asked to pay the amount from above the table "as he told that it was official amount". He also accepted that there was a separate counter for depositing amount and at the time of trap, the said counter was closed.

15. PW2 Bhagoji – the shadow panch witness did not support the prosecution case. He denied that during the verification exercise, the appellant had made any demand. Further, as regards the dialogue during the trap, he deposed that he did not recollect whether an amount of Rs. 500/- was demanded by the appellant as bribe. During cross-examination, however, agreed with the leading questions put by the public prosecutor. However, lastly, he deposed that he did not remember

whether the fingers of both hands of the appellant were found glittering during the post-trap exercise.

16. PW4 Prakash Boinwad also did not subscribe the prosecution case and on the other hand, made a statement in the examination-in-chief voluntarily that he was directed by the appellant to enquire as to whether the assessment bill of Rs. 500/- was deposited by the complainant. He denied the suggestion put by the learned public prosecutor in cross-examination that the appellant had made demand of Rs. 500/-.

17. PW5 Chaburao Deshmukh was examined by the prosecution to disprove the defence that the appellant had slapped the bill of electricity of the disputed period. He deposed that the format of the bill in which it is shown to have been issued, was discontinued in the year 1989 i.e. about five years preceding the present incident. During cross-examination, however, he was put the office copies of the letter purported to have been sent by the present appellant to the office of this witness regarding the bill which he accepted to be true. He also admitted that in many other cases, the old

format was also used not only by the appellant but by other similar officers of different units. The copies thereof were admitted by him.

18. The learned Special Judge, however, appreciated the evidence of hostile witnesses. It was found that these witnesses had admitted some of the prosecution case when leading questions were put to them in the cross-examination at the hands of the learned public prosecutor. It was observed that the defence was afterthought. Discontinuance of the format of the bill of Exhibit-25 long back was also taken into consideration. It was also found that it was not the duty of the appellant to accept the amount from any consumer since independent cash counter was also there. In the circumstances, as the decoy money was found with the appellant and he has admitted of the acceptance of the same, the presumption available under section 20 of the Prevention of Corruption Act was used and the appellant was convicted.

19. Mr. M.A. Tandale, learned counsel for the appellant took me through the evidence and certain

admitted facts.

20. PW1 Vijay, during the relevant period, was the full-time worker of Marxist Communist party. In his complaint at Exhibit-22, initially itself, without any need, he had explained that as the electric connection from his meter was discontinued at the time of purchase of the house, he had taken the connection from the neighbourhood. It is well known that obtaining connection from the neighbourhood is against the rules. Not only this, this witness has admitted in cross-examination that the appellant has sought the details of the electricity apparatus used in his house, meaning thereby that the case that the door of the house was locked for certain period and therefore, the minimum charges were levied, was not acceptable to the appellant and wanted to assess additional/extra bill than the bill prepared towards "door locked".

21. Further while the prosecution case itself is that during the trap, the appellant questioned the complainant as to why the complainant was handing over the amount from under the table and accepted the same

from above the table, the complainant in cross-examination admitted that the appellant told at that time that it was an official amount. Further, the trap was laid in the noon and the complainant also admitted that at that time, the cash counter was closed. PW2 Bhagoji, the shadow panch witness had clearly in the examination-in-chief deposed that the appellant had demanded the amount of Rs. 500/- for depositing the amount of the bill. It is the prosecution case that the said bill was not at all in existence and it was afterthought of the appellant after the trap activities were over. For that purpose, PW5 Chaburao Deshmukh, the then Deputy Executive Engineer was examined. He deposed that the format that was used for Exhibit-25 was discontinued in the year 1989. During cross-examination, however, various similar type of bills in similar format were confronted to him not only from the units of the present appellant but from other units which were of the year 1984.

22. Above all, the investigating officer – PW6 P.I. Gopinath Patil, during cross examination, admitted that at the time of panchanama No. 2 (post-trap exercise)

itself, the appellant explained to the investigating officer that he had already issued the bill at Exhibit-25 to the complainant making an additional demand of Rs. 500/- towards the electricity charges. He went one step further and deposed that even the appellant had produced the copy of the bill (Exhibit-25) alongwith the said statement.

23. If all these facts are taken into consideration, then it would be clear that despite burning of the electric meter, the electricity supply of the complainant's house was continued. According to the complainant himself, the appellant had sought the electricity load in the house by making enquiry regarding fans, lamps, etc. At the time of trap, the present appellant questioned the complainant as to why he was handing over the amount from under the table and directed him to give it to him from above the table. As per the investigating officer himself, the appellant instantly after the trap, told him that the amount accepted by him was towards the bill and has even produced the same alongwith the said statement.

24. The learned Special Judge, however, was carried away by the fact that the appellant being a Junior Engineer was not supposed to accept the cash as separate accounts section was there. This itself, however, was not sufficient to come to the conclusion that the prosecution proved beyond reasonable doubt that the appellant had made demand of Rs. 500/- as gratification other than legal remuneration and had accepted the same as such. In that view of the matter, in my view, the prosecution has failed to prove its case beyond reasonable doubt. Hence, the following order:-

25. The appeal is hereby allowed. The order of the learned Additional Sessions Judge-cum-Special Judge, Nanded, dated 5th April, 2004, passed in Special Case No. 1 of 1995, convicting the appellant for the offences punishable under section 7 and 13 (2) of the Prevention of Corruption Act, 1988, is hereby quashed and set aside.

. Instead, the appellant is acquitted of the offences punishable under section 7 and 13 (2) of the Prevention of Corruption Act, 1988. The bail bonds of the appellant, if any shall stand cancelled. The fine

amount, if any deposited by the appellant be refunded to him after a period of 90 days from the date of this order.

[M.T. JOSHI]
JUDGE

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