

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.397 OF 2004

The State of Maharashtra,
Through ACB Jalgaon.

...Appellant

versus

Ulhas Dayaram Rane,
Age 45 years, Occ: Jr.Engineer,
M.S.E.B. Jalgaon.

...Respondent

.....
Mr. V.P. Kadam, Addl. Public Prosecutor for appellant
Mr. K.C. Sant, Advocate for respondent
.....

CORAM : M.T. JOSHI, J.

DATE : 7th OCTOBER, 2015

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by the recording of acquittal of the respondent from the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988, the present appeal is filed.

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

The respondent was serving as a Junior Engineer in the

office of M.S.E.B. Jalgaon. The complainant Hemkant Pardhe wanted electricity connection. Therefore, he complied all the formalities and thereafter approached the present respondent. The respondent told him that he would send one lineman for carrying survey. Thereafter, he again met the respondent and told that lineman has already carried survey. Ultimately, the respondent told that the amount of Rs.1000/- will have to be paid to him and then demand note would be issued. Thereafter, on 03/10/2001 the complainant met the respondent. At that time, again he made demand and upon negotiations, agreed to accept the amount of Rs.800/-. Accordingly, the complainant filed the complaint with Anti-Corruption Bureau, Jalgaon.

4. The investigation was carried by the Investigating Officer Mukund Mahajan. He collected two panch witnesses i.e. Chagan Khambayat and Gaffarkhan Pathan and trap was organized. The record would show that the trap was organized on 04/10/2001 in the noon for two times, however, the respondent was not found and therefore, ultimately last third trap was organized on 08/10/2001. During the last trap, the present respondent again made demand of money in presence of the shadow panch witness and accepted the decoy money.

5. Before learned Special Judge, five witnesses, including panch witnesses, were examined. Learned Special Judge, however, found certain contradictions and inconsistencies in the evidence and it was further found that the work that was entrusted to the present respondent by the concerned authority was completed much prior to filing of the complaint i.e. on 12/09/2001. In that view of the matter, the respondent was acquitted. Hence, the present appeal.

6. Learned A.P.P. submits that the Special Judge ought to have taken into consideration that while the incident had occurred in the year 2001, the evidence was recorded 3 years thereafter and therefore, certain inconsistencies in the prosecution evidence are but natural.

7. On the other hand, Mr. Sant, learned Counsel for the respondent submits that learned Special Judge has appreciated all the material on record and therefore, no interference is warranted in the order of acquitted.

8. On the basis of above material, the following points arise for my determination.

(1) Whether the prosecution has proved that present respondent,

being a public servant, has made demand of Rs.1000/- and thereafter agreed to accept Rs.800/- from the complainant as gratification other than legal remuneration for doing official act?

(2) Whether the prosecution has further proved that on 08/10/2001 the respondent again made demand of the said amount and accepted the same?

(3) Whether the prosecution has further proved that the present respondent has committed criminal misconduct by accepting gratification of Rs.800/- by using correct and illegal means?

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

REASONS

10. The prosecution case itself would show that on two occasions, the trap had failed as the respondent was not found in the office. The evidence on record would further show that proposal was already put by the respondent to his superior much before filing of the complaint alleging therein that the respondent was making demand of bribe for carrying his official duty. Learned Special Judge has taken into consideration the inconsistent statements of the

complainant and panch witnesses as regards actual occurrence. There is contradiction as to who has recovered the decoy money from the pocket of the respondent. Even the panch witness has deposed that the respondent has told the complainant to pay the money lateron but the complainant has paid the decoy money. The statement of panch witness further reveals that on 08/10/2001 i.e. during the trap, respondent did not make any demand of money.

11. Considering all these facts on record, in the present appeal against the acquittal, no interference in the reasoning of learned Special Judge is warranted.

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

[M.T. JOSHI, J.]