

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 608 OF 2004

The State of Maharashtra
Through Police Inspector,
Anti Corruption Bureau,
Jalna, Tq. Jalna Dist. Jalna

.. Appellant
(Orig. Complainant)

Vs.

Manyu S/o Thawra Chavan,
Age : 45 years, Occu.: Govt. Service,
As Police Head Constable, B.No. 371,
Police Station, Gondhi,
Tq. Ambad, Dist. Jalna

.. Respondent
(Orig. Accused)

Mr. V.P. Kadam, A.P.P. for the appellant/State
Mr. Joydeep Chatterji, Advocate for the respondent

CORAM : M.T. JOSHI, J.

DATE : 10/07/2015

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by the acquittal of the present respondent by the learned Special Judge, Jalna in Special Case (PCA) No. 6 of 2000 vide judgment and order dated 17/6/2004 from the offences punishable under section 7, 13(2) r/w. 13(1)(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:-

. That P.W. 1 – complainant was working as a Driver with Maharashtra State Road Transport Corporation (M.S.R.T.C.) Ambad Depot, Dist. Jalna. On 17/12/1999, the bus driven by him suffered an accident. Therefore, a crime was registered with Gondi Police Station. The investigation of the same was entrusted to the present respondent – Manyu, who was working as a Police Head Constable in the said Police Station. The complainant was released on bail in the said offence, however, the respondent had retained the driving license of the complainant with him. When after eight days, the complainant made enquiry with the respondent about the license, at that time, the respondent assured him that he would take certain photocopy of the same, the original driving license would be handed over to him, however, at that time, he made a demand of Rs.500/- for return of the driving license. Therefore, the complainant filed his complaint with the Anti Corruption Bureau at Jalna. The investigation was taken over by P.W. 4. Two panch witnesses from two different departments including P.W. 2 Vasant were collected.

Demonstration of anthracene powder was given. The decoy money was brought by the complainant. Decoy money was applied with anthracene powder and was put in the pocket of the complainant and the trap was arranged. On the very same day i.e. on 18/1/2000 at about 6:40 am., the complainant and the panch witness Vasant approached the respondent. All of them went together to a hotel for taking tea in the vicinity. The complainant enquired about the license to the respondent. Thereupon, the respondent stated that the license was in his bag and the complainant should pay the money. Accordingly, the complainant took out the decoy money from his left side pocket of his shirt and the respondent accepted the same by his right hand and put it in the left side pocket of his shirt. Thereupon, the predetermined signal was given by the complainant and the respondent was apprehended.

. Thereupon, the post-trap exercise i.e. examining the material portion of the persons of the complainant and the respondent, their shirts was carried. Those were found positive for application of anthracene powder. Further investigation was carried,

sanction was secured from P.W. 3 – Mr. Dhananjay Tayde being the appointing authority and the chargesheet was filed.

4. Before the learned Special Judge, in all four witnesses were examined. The defence is of total denial. It was claimed that the panch witness has deposed due to the pressure of the Police and, therefore, the respondent sought acquittal.

5. The complainant, on vital parts, has turned hostile to the prosecution case.

6. Learned A.P.P. submits that though the complainant has partly turned hostile, his part of the evidence coupled with the evidence of P.W. 2 – panch witness and the Investigating Officer would show that the prosecution case has been fully proved. Further, the learned Special Judge has wrongly held that the sanctioning authority has not applied it's mind merely because some portion of the incident had been omitted from the sanction order at Exhibit 11. In the circumstances, he submits that the appeal be allowed and the respondent be convicted.

7. On the other hand, Mr. Joydeep Chatterji, learned counsel for the respondent submits that not only the complainant turned hostile to the prosecution case but on material aspect the evidence of other prosecution witnesses is also not trustworthy. In the circumstances, he submits that in the present appeal against acquittal, no interference is warranted.

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

I) Whether the sanction for prosecution granted by P.W. 4 is legal and valid ?

II) Whether the prosecution has proved that after about 8 days from 17/12/1999, the respondent made demand of an amount of Rs.500/- as an illegal remuneration for return of the license of the complainant ?

III) Whether the prosecution has proved that on 18/1/2000 at Gondi, present respondent again made a demand of Rs.500/- as illegal gratification and accepted the same and thus abused his position as a public servant ?

My finding to point no. (I) is in the affirmative, to point nos.(II) and (III) are in the negative. The appeal is therefore dismissed for the reasons to follow.

R E A S O N S

As to Point No. (I):-

9. The prosecution allegations are that the accident has occurred on 17/12/1999. After about 8 days of the said accident, the respondent had made a demand for return of the license to the complainant and at that time, he made a demand of Rs.500/-. Sanction given by P.W. 4 does not refer to this demand i.e. after one week from 17/12/1999 but directly to next of the demand i.e. on 18/1/2000 during trap. The learned Special Judge has therefore observed that the sanctioning authority has not applied it's mind.

10. It should however be noted that in the points framed by the learned Special Judge also, no reference to the earlier demand is made by him. Since no definite date of the demand was given by the prosecution, it

appears that not only the sanctioning authority failed to notice it but even the learned Special Judge has also failed to frame the point for determination in this respect. In the circumstances, the issue would not really be, as to whether, both the demands are required to be referred in the sanction but as to whether any prejudice is caused to the respondent due to the defective sanction order. No prejudice is shown by the respondent in this regard hence it will have to be held that the sanction was valid.

As to Point Nos. II and III:-

11. On facts however, the record would reveal that the complainant has not supported the prosecution on material aspect. He deposed that in-fact, the initial demand i.e. after eight days of the accident, was not made directly to him but through one Mr. U.D. Sontakke, another driver and, therefore, he filed the complaint. He further did not support the prosecution case that during the trap, he handed over the decoy money of Rs.500/-. Complainant has denied that anthracene powder was applied to the decoy money. He was therefore cross-examined by the prosecution in this regard, however, in

cross-examination, nothing material has come up.

. Panch witness i.e. P.W. 2 deposed on the prosecution line, however, there were certain omissions and contradictions from him regarding the prosecution case.

12. The panch witness has not deposed anywhere that the shirt of the respondent accused was tested under ultra violet lamp during the post-trap exercise.

13. If all these facts are taken into consideration, it would be clear that the learned Special Judge has taken a reasonable and probable view of the material before him.

14. In the circumstances, in the present appeal against acquittal, no interference is warranted. Hence, the following order:-

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

[M.T. JOSHI]
JUDGE

arp/