

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.662 OF 2004

The State of Maharashtra
Through A.C.B., Jalgaon ..Appellant

Versus

1. Dr. Satish Prempal Adchitre
Age 54 years, Occ. Medical,
Officer, Rural Hospital,
Dharangaon, Dist.Jalgaon
2. Kantilal Manga Bhavsar,
Age 52 years, Occ. Compounder,
Rural Hospital Dharangaon,
District Jalgaon ..Respondent

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Mr.V.P.Kadam, APP for appellant - State

Mr.K.C.Sant, Advocate for respondents

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CORAM : M.T. JOSHI, J.
DATE : SEPTEMBER 14, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the impugned judgment and order
passed by learned Special Judge, Jalgaon in

Special Case No.13 of 2001 dated 12th April, 2004 thereby acquitting the respondent no.1/accused no.1 from the offences punishable under Section 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act; and respondent no.2/accused no.1 from the offences punishable under Section 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act and Section 109 of Indian Penal Code, present appeal is preferred by the State.

3] The prosecution case, in nutshell, is that the complainant PW 1 – Shivdas Koli, who was injured in an attack by his rival group, was referred by the Police Station, Dharangaon for medical examination to the Medical Officer, Rural Hospital, Dharangaon, on 9th December, 2000. After examination, the complainant asked for the injury certificate. Present respondent no.1 was working as Medical Officer. He made a demand of bribe of Rs.400/- for passing of the certificate. On the

next date, father of the complainant also went to present respondent no.1. At that time also, respondent no.1 made demand of Rs.400/-. On third day i.e. on 12th December, 2000, the complainant along with his mother, again asked for the certificate, however, respondent no.1 made the similar demand. Even respondent no.1 refused to hand over the certificate unless said amount of bribe is paid.

. In the meantime, the complainant read in the newspaper that on two or three occasions, such Medical Officers were caught red-handed by the Anti Corruption. He, therefore, approached the Anti Corruption Bureau, Jalgaon on 12th December, 2000 and filed the complaint at Exhibit 21. PW 4 — Dhananjay Bhange, the then Police Inspector, Anti Corruption Bureau, Jalgaon, conducted investigation. He collected two panch witnesses including PW 2 — Sharadkumar. Demonstration of

anthracene powder was given to the complainant and the panch witnesses. Anthracene powder was applied to the decoy money and a trap was organized on 30th December, 2000. The trap was successful i.e. respondent no.1 accepted the decoy money through his Compounder i.e. respondent no.2, by again making demand for money.

. In the circumstances, the Investigating Officer, upon carrying further necessary investigation, collected sanction orders regarding both the respondents from the respective competent authorities i.e. PW 3 – Jaywant Kamble, Under Secretary, Public Health Department and PW 5 – Prabhakar Sonawane, then In-charge Chief Executive Officer, Municipal Council, Dharangaon and filed the charge sheet.

4] From the side of the respondents, three defence witnesses were examined to show that on

the day of the incident, the complainant had tried to pressurize respondent no.1 to pass the injury certificate to show that the injuries were grievous, for which respondent no.2 was not ready. In the circumstances, at the time of the trap, panch witnesses and the complainant went to respondent no.2. The complainant told respondent no.2 that he was instructed by respondent no.1 to pay the money. At that time, however, the raid was carried and in order to show that the trap was successful, it was shown that respondent no.2 has accepted the decoy money. Hence, both the respondents were charged for the offences, as detailed supra.

5] Upon appreciation of the evidence, learned Special Judge concluded that the prosecution has failed to prove the case beyond reasonable doubt. It was found that PW 3 – Jaywant Kamble was neither the competent authority to grant the

sanction nor he had applied his mind at the time of grant of sanction. As regards the sanction of respondent no.2, PW 5 – Prabhakar Sonawane, the then In-charge Chief Executive Officer, had also not applied his mind. Therefore, on all these counts, the respondents came to be acquitted. Hence, the appeal.

6] Learned A.P.P. for appellant – State submitted before me that learned Special Judge has given unnecessary weightage to the contradictions and omissions in the prosecution evidence. He further submitted that a technical view regarding the sanction, is taken by learned Special Judge.

7] On the other hand, learned counsel for the respondents, submitted that learned Special Judge has taken into consideration all the material on record and has taken a reasonable and probable of the matter. He further pointed that as per the

prosecution case itself, the complainant was referred by the police station for medical examination and therefore, the prosecution case that the complainant wanted that the injury certificate should be handed over to him, would cast a doubt on the conduct of the complainant. It can, thus be reasonably found that present respondent no.1 did not succumb to the pressure of the complainant to pass a suitable certificate to him, without sending it to the police station. He therefore submitted that no interference in the reasons of learned Special Judge is warranted.

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

(I) Whether the prosecution has proved that present respondent no.1 being Medical Officer, has made demands of remuneration otherwise than legal

remuneration of Rs.400/- for issuing injury certificate to the complainant – Shivdas between 10th December, 2012 and 12th December, 2012 ?

(II) Whether the prosecution has further proved that present respondent no.1 had again made a demand of Rs.400/- and accepted the same through respondent no.2 – Compounder of Primary Health Centre on 13th December, 2012 ?

(III) Whether the prosecution has further proved that both or any of the respondents, had attempted and obtained pecuniary advantage by corrupt means ?

(IV) Whether the prosecution has proved that respondent no.2 has abetted commission of the said offences ?

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

R E A S O N S

9] Learned Special Judge has taken into consideration the variance between the statements of complainant PW 1 – Shivdas and PW 2 – Sharadkumar, shadow panch witness. While the complainant has deposed that present respondent no.1, at the time of the trap, came to room no.7 in Rural Hospital and thereafter, respondent no.2 was asked to accept the amount, the panch witness has deposed that in the same room, respondent no.2 was present and respondent no.1 asked him to accept the amount.

10] Further, though the complainant did not depose as to whether, he had given any explanation

regarding presence of PW 2 – Sharadkumar, PW 2 – Sharadkumar has deposed that respondent no.1 had made inquiry about the panch witness and thereupon, he gave explanation. Further, there was variance that on which dates and to whom, earlier demands were made by respondent no.1. Taking into consideration all these facts and further finding that it was not necessary to issue injury certificate to a party-in-person in view of the reference by the police station, learned Special Judge found that there is substance in the case of the defence.

11] As regards the sanction to prosecute respondent no.1, the same was issued by PW 3 – Jaywant Kamble, Under Secretary. He stated that there was general delegation of powers to him. The sanction order does not bear his signature. He stated that the first signature was made on the stencil. Further, he did not make any inquiry as

to whether, legally it was permissible to hand over the medico-legal certificate to a party-in-person. Therefore, learned Special Judge has observed that said witness was neither competent to accord the sanction nor he had applied mind while granting sanction to prosecute respondent no.1

12] As regards PW 5 - Prabhakar Sonawane, the then In-charge Chief Executive Officer, Municipal Council, Dharangaon, it was observed that though it was recorded in Exhibit 39 - sanction order, that respondent no.2 was compelled to accept the bribe amount, there is no supporting document to that effect and therefore, it was found that said sanction order was also issued without application of mind.

13] Considering all these facts on record and salient feature that respondent no.1 could not

have handed over any injury certificate to the complainant, in my view, learned Special Judge has taken a reasonable and probable view of the material on record.

14] In the circumstances, in the present appeal against the order of acquittal, no interference is warranted. Hence, the appeal is hereby dismissed. Bail bonds of the appellants shall stand cancelled.

[M.T. JOSHI, J.]