

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.226 OF 2003

The State of Maharashtra,
Through Police Station,
Limbgaon, Tq. and Dist.Nanded ..Appellant

Versus

Rajeshwar Raghunath Bijamwar,
Age 42, Occu. Govt. Service,
r/o. Hudco, Nanded,
No-116, Near Shivaji Udyan,
HUDCO, Nanded ..Respondent

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Mrs.R.K.Ladda, A.P.P. for appellant – State

Mr.K.C.Sant, advocate for respondent

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CORAM : M.T. JOSHI, J.
DATE : AUGUST 31, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the judgment and order dated 14th November, 2002 passed in Special Case No.4 of 1991 by learned Special Judge, Nanded, thereby acquitting the respondent/accused of the offences

punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, present appeal is preferred by the State.

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

. That present respondent was working as a Live Stock Supervisor in Veterinary Aid Centre at Limbgaon, during the relevant period. The complainant PW 1 – Satyabhan Wagar was a labourer belonging to backward community. He had purchased a she-buffalo by obtaining loan from Mahatma Phule Magasvargiya Vikas Mandal and State Bank of Hyderabad, Nanded. He was below poverty line. During the relevant period, there was a scheme to provide free cattle feed to the cattle belonging to the persons of backward community, who were below poverty line. Therefore, the complainant was entitled to get free cattle feed.

. In the circumstances, a peon of Veterinary Aid Centre, on one day, contacted the complainant and told him to meet present respondent for collection of free cattle feed. A week thereafter, the complainant went to meet the respondent. The respondent told him that the cattle feed is already received in his name in Panchayat Samiti Office and he should go to Panchayat Samiti Office to get the same. At that time, the respondent, however, told him that he should bring an amount of Rs.100/- in order to get three bags of cattle feed, otherwise, he would give him only two bags of cattle feed. The respondent also warned that in case, the money is not paid, the cattle feed bags would not be supplied to him.

. Accordingly, when the complainant went to Panchayat Samiti Office, at that time, the respondent asked him about the money. He asked the complainant to keep the amount ready on the next

Wednesday on which date, the respondent would come to Limbgaon i.e. village of the complainant.

. However, as the complainant was not willing to pay said bribe amount to the respondent, he filed a complainant with Anti Corruption Bureau, Nanded on 6th March, 1991. On the same day, trap was laid by the Investigating Officer. Necessary panch witnesses were collected. Demonstration regarding application of anthracene powder was given to the complainant and the panch witnesses. The decoy money was kept with the complainant. Instructions about signal, after acceptance of the money by respondent, was also given to the complainant. Panch no.1 – Mukund Rathod was sent with the complainant to the Veterinary Aid Centre.

4] At at about 11:00 a.m., the respondent reached Veterinary Aid Centre at Limbgaon. In presence of the panch witness, the respondent again made

demand of Rs.100/- to the complainant, upon which, the complainant passed the decoy money and the respondent accepted the same and kept in the pocket of his pant.

. Upon giving the pre-determined signal, the raiding party arrived. The respondent and the complainant were examined under the ultra violet lamp. Panchnama was accordingly prepared. Necessary sanction from the Chief Executive Officer i.e. PW 3 – Satbir, was obtained and thereafter, charge sheet was filed.

5] Before learned Special Judge, the complainant was examined as PW 1. PW 2 – Mukund Rathod was the shadow witness. PW 3 – Satbir is the Sanctioning Authority and PW 4 – Prakash Deshmane is the Investigating Officer.

6] Learned Special Judge has acquitted the respondent/accused from the offences principally for the reasons that the complainant was having knowledge that the cattle feed was already sanctioned in his name and the list was prepared at Nagpur. He was to get the cattle feed from Panchayat Samiti Office, Nanded.

7] According to the defence, the complainant wanted that the respondent should visit his house to treat his she-buffalo. The respondent/accused, however, asked him to bring she-buffalo at Veterinary Aid Centre and this had enraged the complainant. This defence was found to be probable by learned Special Judge.

8] It was also noted by learned Special Judge that no witness was examined to show that the Peon of Veterinary Aid Centre had gone to the

complainant to give a message for meeting the respondent. The complaint would not show that the respondent had directed the complainant to bring Rs.100/- on Wednesday and even the complainant did not assure that he would bring that amount on that day at Limbgaon. It was also found by learned Special Judge that the respondent was not on regular duty at Veterinary Aid Centre. The muster roll was also not seized. The complainant further admitted that the Live Stock Supervisor was Dr. Shaikh and he was required to give certificate that the she-buffalo was not a milching animal.

9] As regards the actual post-trap exercise, the complainant has deposed that nothing was done. Thereafter, he deposed that panchnama was prepared, but he does not remember any date. There was inconsistency regarding the time factor also and therefore, benefit of doubt was given and the respondent came to be acquitted.

10] Learned Special Judge has also relied upon the ration laid down in the case of ***Vishwanath Mahadev Karkhanis Vs. State of Maharashtra, 1991 Cri. L.J. 3146*** wherein, it was held that when the act involves small amount of misappropriation, proper course is to take disciplinary action and impose minor penalty. Resort to machinery of C.B.I. and Special Court though may not be invalid, is inadvisable.

11] Learned A.P.P. for the appellant - State submitted that learned Special Judge has failed to note that there was direct evidence regarding the demand and acceptance of money. Merely because, meager amount of Rs.100/- was demanded, it would not be a cause for acquittal of the respondent.

12] On the other hand, Mr.Sant, learned counsel for the respondent - accused, submitted that the

prosecution could not show direct nexus between supply of cattle feed and official duty of the respondent/accused i.e. what was the role of present respondent in supply of the cattle feed. He further submitted that learned Special Judge has taken into consideration all the facts, as detailed supra, and acquitted the respondent. He therefore submitted that the appeal may be dismissed.

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

I. Whether the prosecution has proved that on 6th March, 1991, present respondent being Live Stock Supervisor at Limbgaon, had made a demand of Rs.100/- as a gratification other than legal remuneration for carrying official duties of the complainant ?

II. Whether the prosecution has proved that on 6th March, 1991, the respondent has again made demand and obtained Rs.100/- by using corrupt motive and thereby committed misconduct ?

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

R E A S O N S

14] The Investigating Officer has admitted in his examination-in-chief that no nexus between supply of cattle feed and any official duty of present respondent, was established. Learned Special Judge highlighted knowledge of the complainant, that the list of the beneficiaries was prepared at Nagpur and he was listed as one of the beneficiaries to

get the cattle feed. Learned Special Judge has taken into consideration the lacunae in the evidence, as detailed supra, and taken a reasonable and probable view of the material on record. In the circumstances, in an appeal against the the order of acquittal, no interference is warranted.

15] In the result, the following order :-

a] The appeal is hereby dismissed.

B] Bail bonds of the respondent stands cancelled.

C] Muddemal properties be disposed of as per the directions issued by learned Special Judge, Nanded.

[M.T. JOSHI, J.]

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