

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 311 OF 2003

The State of Maharashtra,
through Dy. S.P. Anti.,
Corruption Bureau, Jalgaon

.. Appellant
(Ori. Complainant)

Vs.

1. Shri Shantaram Ambar Velis,
Age : 52 years, Occu. : Sr. Clerk,
in the office of M.S.E.B.,
Division Office, Chalisgaon,

2. Shri Ashok Lotan Velis,
Age : 40 years, Occu.: Barber,
R/o. Sainath Colony,
Chalisgaon, Dist. Jalgaon

.. Respondents
(Ori. Accused)

Mr. S.R. Palnitkar, A.P.P. for the appellant-State
Mr. B.P. Suryawanshi, Advocate for the respondent no. 1
Mr. B.P. Suryawanshi, Advocate i/b. Mr. N.B. Suryawanshi,
Advocate for the respondent no. 2

CORAM : M.T. JOSHI, J.

DATE : 09/04/2015

ORAL JUDGMENT :

1. Heard both sides.

2. Aggrieved by the acquittal of both the respondents by the learned Additional Sessions Judge, Jalgaon vide judgment and order dated 5/12/2002 passed in Special Case No. 1/1999 from the offences punishable

under section 7,8,12,13(1)(d) and 13(2) of the Prevention of Corruption Act, the present appeal is preferred by the State.

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

. That complainant P.W.2 - Bhila Sonawane is having his ancestral land at village Rajmane. About 10 years prior to the present complaint, his father had availed electricity connection for agricultural purposes. At that time, as per the regulation of the Maharashtra State Electricity Board (for short "**the M.S.E.B.**"), a definite quota of electricity supply was required and though father of the complainant and other land owners were in requirement of the electricity supply for the electric pump of 3 horse powers, they were required to accept the electricity supply for a motor pump of 5 horse powers. In the situation, they were required to pay Rs.1200/- per month as against Rs.750/- that is required to be paid for electric connection with a motor pump having capacity of 3 horse powers. After lapse of time, however, various electric connections were increased in the vicinity and,

therefore, the quota, as per the M.S.E.B. regulations had also exceeded. In the circumstances, the complainant and four other agriculturists wanted that payment for electricity supply for a motor pump of 3 horse powers be reduced. Therefore, they started the process of the same.

. On 13/1/1998, they had therefore deposited an amount of Rs.500/- in the Bank for the Maharashtra State Electricity Board as per the requirements. Thereafter, the authorities directed the complainant to approach the concerned Regional Office at Chalisgaon. There, he met one Clerk Mr. Patwe. He eventually directed the complainant to the present respondent no.1-Shantaram, who was the Clerk. During conversation, the respondent no.1 told that in case some additional amount as illegal gratification is paid, then the work would be done immediately, otherwise it would take years together. During the talk, respondent no.1 made a demand of Rs.500/- each from the five agriculturists. Upon negotiation, it was settled at Rs.200/- each, i.e. total amount of Rs.1,000/-. Accordingly, the complainant informed the

rest of the agriculturists. They paid him the amount and even empowered him to take any action by making complaint with the Anti Corruption Bureau.

. In the situation, on 21/4/1998, the complainant again met the respondent no.1 on the road and enquired him about as to when the meeting should be held. Respondent no.1 directed that the complainant should meet him one day thereafter i.e. on 23/4/1998. In the circumstances, the complainant filed complaint with the Anti Corruption Bureau on 22/4/1998.

4. P.W. 4 Police Inspector Dhanraj Dayama has registered crime and conducted the further investigation as usual. He collected two panch witnesses including P.W. 3 - Dilip Pardeshi. Pre-trap panchanama was organized. Decoy money was put with complainant P.W. 2 after smearing it with anthracene powder and, thereafter, the raiding party reached to the Office of the respondent no.1. P.W. 3 Dilip Pardeshi thereafter accompanied the complainant to the respondent no.1. Respondent no.1 initially took them to a nearby tea stall. Thereat, all of them took tea and

during the talk, the respondent no.1 told that the work of the complainant was completed and after arrival of one Waje Saheb and after putting certain signatures, the work would be completed. Upon that, the complainant told that he has collected an amount of Rs.1000/- from the agriculturists and brought the amount. Thereafter, the respondent no.1 directed the complainant to hand over the amount to a person that is respondent no.2 who was sitting in a hair cutting saloon. Though the complainant was not ready to pay the amount, however, respondent no.1 told him that respondent no.2 is his cousin and eventually, the amount was handed over to the respondent no.2 who was sitting in the shop wearing only banian. Respondent no.2 accepted the amount and kept it in the rexin valet of his shirt which was hanged nearby. Thereafter, agreed signal was given. Further, action in the trap proceeded. Both the respondents were caught. The hands of the complainant as well as the respondent no.2 were positive of the anthracene powder so also the shirt pocket as containing the decoy money with the anthracene powder at the relevant places. The documents regarding

the work were collected. Sanction was obtained from P.W. 1 — Mr. Arun Borse, the then Superintending Engineer of the Maharashtra State Electricity Board and the chargesheet came to be filed.

5. Before the learned Judicial Magistrate First Class, four witnesses those were examined were : P.W. 1-Arun Borse, the Superintending Engineer, M.S.E.B., P.W. 2 / Complainant-Bhila Sonawnae, P.W. 3 -Dilip Pardeshi and P.W. 4 — P.I. Mr. Dhanraj Dayama. The defence of the respondents was that the complainant was enraged by the fact of making a deposit for reduction of the electricity supply. In-fact, the said reduction was also approved by the Executive Engineer, however, enraged by the said fact, false complaint came to be filed. The learned Additional Sessions Judge found that the prosecution failed to prove its case beyond reasonable doubt. Therefore, both the respondents were acquitted. Hence, the present appeal.

6. Mr. Palnitkar, learned A.P.P. submits that the evidence on record clearly show that the prosecution has proved its case beyond reasonable doubt. The

complainant, panch witnesses coupled with the Investigating Officer has clearly proved and testified regarding the involvement of both the respondents. He therefore submits that the reasoning of the learned Additional Sessions Judge are not borne out by record and he, therefore submits that both the respondents be convicted.

7. On the other hand, Mr. B.P. Suryawanshi, learned counsel for both the respondents submits that appreciation of the evidence made by the learned Additional Sessions Judge is correct. The learned Additional Sessions Judge has occasion to watch the demeanor of the witnesses in the witness box. The evidence clearly show that the proposal was already accepted by the Executive Engineer. There were material contradictions between statements of the witnesses. In the circumstances, he submits that when a reasonable and probable view of the material on record has been taken by the learned Additional Sessions Judge, there is no reason to interfere in the same in the present appeal against acquittal.

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

I) Whether the prosecution has proved that the respondent no.1 – Shantaram Ambar Velis, being a public servant, agreed to accept for himself, an amount of Rs.1000/-, as gratification other than the legal remuneration as motive for reducing the load of electricity connection and, has, thereafter accepted the said illegal gratification through the respondent no.2 – Ashok Lotan Velis ?

II) Whether the prosecution has further proved that the respondent no.1 – Shantaram Ambar Velis, being a public servant, has misconducted himself by adopting illegal means?

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. The prosecution case, as detailed supra was that twice the amount was demanded by the respondent

no.1 prior to the trap and at the time of trap, the demand was repeated, however, when the complainant offered the decoy money to the respondent no.1, he directed him to the respondent no.2, who was sitting in one hair cutting saloon. Thereat, respondent no.2 accepted the decoy money and put the same in the valet of his shirt pocket, which was hanged to a nearby hanger. The alleged panchanama after the acceptance of the decoy money as well as the statements of the panch witnesses would show that no anthracene powder was detected on the person or on the clothes of the respondent no.1. It is also the prosecution case that the respondent no.1 has not accepted the said money.

10. However, as against this evidence, the complainant — P.W. 2 repeatedly deposed in his examination-in-chief as well as in his cross-examination that the respondent no.1 himself has accepted the decoy money and handed over the same to the respondent no.2. He specifically denied that the respondent no.1 did not accept the decoy money and the panchanama in that regard was also executed. The complainant was not declared as hostile and no cross-

examination was carried by the prosecution even though the complainant deposed against the prosecution case.

11. It is also further found that the proposal for load reduction was already submitted to the Executive Engineer and the same was even approved long back by the Executive Engineer on 16/4/1998. In all this situation, the learned lower Court inferred that the complainant may have certain grudge against the respondent no.1 as the complainant and other agriculturists were required to deposit money for their legitimate demand of reduction of load and consequent reduction in the bill. As the learned Additional Sessions Judge has taken a reasonable and probable view on the basis of the material on record, no interference in the present appeal is warranted. In the result, the following order:-

12. The appeal is hereby dismissed. Bail bonds of the respondents shall stand cancelled.

[M.T. JOSHI]
JUDGE

arp/