

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 330 OF 2003

The State of Maharashtra,
through Police Station,
Mukramabad, at the instance
of Ramrao s/o Ramchandra Balegave,
R/o Kolnoor, Tq. Mukhed

APPELLANT

VERSUS

1. Subhas s/o Ganpatrao Kabade,
Age : 38 years, Occu. Medical
Officer, P.H.C., Mukramabad,
Tq. Mukhed, District Nanded
2. Manik Vithalrao Gaikwad,
Age : 28 years, occu. Social
Worker, R.P.I. Mukramabad Circle,
R/o Ravi, Tq. Mukhed,
District Nanded

RESPONDENTS

Mr. V.S. Badakh, A.P.P. for the appellant/State
Mr. S.V. Chillarge, Advocate for the respondents

CORAM : M.T. JOSHI, J.
DATE : 14/10/2015

ORAL JUDGEMENT :

1. Aggrieved by the recording of acquittal of respondent No. 1 from the offence punishable under section 7 read with section 13 (2) of the Prevention of Corruption Act and under section 12 of the Prevention of

Corruption Act as regards respondent No.2, by the Additional Sessions Judge-cum-Special Judge, Biloli, vide judgment and order dated 23rd January, 2003 passed in Special (A.C.B.) Case No. 3 of 2001, the present appeal is preferred by the State.

2. The prosecution case, in short, is as under:-

. That, respondent No. 1 Subhash was the Medical Officer at Primary Health Centre, Barahali, while respondent no. 2 was his domestic servant. A quarrel arose between complainant PW1 - Ramrao and his neighbour on 3rd January, 1998 wherein the complainant as well as his father were severely assaulted by the neighbour. Therefore, he has filed F.I.R. with the concerned police station. The neighbour Hanmant has also filed a counter complaint against present complainant PW1 - Ramrao. A crime for an offence punishable under section 324 of I.P. Code was registered against Hanmant. He was absconding for a period of about one month. Thereafter, after about a week, he was arrested. The complainant came to know that said Hanmant was attempting to obtain injury certificate from the present respondent no. 1 to show that grievous injuries were caused to him in the

said incident and an amount of Rs.6000/- was already settled between the respondent no. 1 and said Hanmant. Therefore, on 4th January, 1998 he along with his brother-in-law - Ashok met the respondent no. 1/accused no. 1. At that time, respondent no. 2/accused no. 2 himself told that said Hanmant had already agreed to pay Rs.6000/- to the respondent no. 1 for passing the injury certificate. The complainant told the respondent no. 1 that the false complaint is filed and therefore, he should not give any certificate showing that grievous injury was caused. Upon that, the respondent no.1 told that Hanmant had already agreed to pay him Rs.6000/- and in case the complainant would pay him Rs.6000/- and settle the matter between the complainant and Hanmant, he would do the needful. When the complainant showed his inability, the respondent no. 1 told that he should pay atleast Rs.3000/- in immediate future and the rest of amount can be paid after the settlement. Upon that, the complainant agreed to pay Rs.3000/- within 2/3 days. At that time, the respondent no. 1 wrote a chit addressed to the respondent no. 2 thereby communicating that he should not handover any certificate to the police station till he would reach the Government Hospital.

The complainant took out a photocopy of the same and handed over the chit to the respondent no. 2 at the Government Hospital.

. On 6th March, 1998 both of them again met respondent no. 1 and told that he could not arrange for money. Upon that, respondent no. 1 said that he required the money on that day only, else he would send the injury certificate to the police station. Ultimately, the complainant paid an amount of Rs.500/- to the respondent no. 1 in presence of PW4 – Ashok and told that the remaining amount of Rs.2500/- would be paid on the very same day at the house of respondent no. 1 at Mukramabad. In the meantime, he filed complaint with Anti Corruption Bureau, Nanded at Exhibit 32, on the basis of which the investigation was started by PW7 – Deputy Superintendent of Police – Shankarrao Sangu.

. As usual two panch witnesses were collected by the investigation officer including PW2 – Sopan. The decoy money brought by the complainant was smeared with anthracene powder and thereafter the trap was organized at the house of respondent no. 1 at Mukramabad. The respondent no. 1 was not at home. He reached there at about 7.30 pm. He was talking with various persons and

ultimately at about 8.30 p.m., he was available for the transaction. Respondent no. 1 thereafter asked the complainant to enter his house. The shadow panch witness also accompanied him. At that time, respondent no. 1 made an inquiry as to whether the amount was brought. The complainant answered in the affirmative. The respondent no. 1 directed respondent no. 2., who was sitting in the room, to go away with the complainant and take the amount of Rs.2500/- from him and thereafter, pay the money to him. Accordingly, the complainant handed over the decoy money to the respondent no. 2. At that time, the complainant gave predetermined signal whereupon the raiding party arrived.

. During the next of the exercise, the fact of above transaction was confirmed by use of ultra violate lamp at the relevant place. The investigation officer conducted the further investigation. He obtained the sanction from PW6 – Anuradha Bharati, the then Under Secretary of the Government of Maharashtra to prosecute the respondent no. 1 and the chargesheet came to be filed in the Court.

3. Before the learned Judge, in all seven

witnesses were examined. The learned Sessions Judge came to the conclusion that the Under Secretary is not empowered to grant sanction to prosecute respondent no. 1 and therefore, sanction was invalid. On merit of the case, the learned Sessions Judge came to the conclusion that there is vast variance between the statements of the witnesses and, therefore, by extending reasonable benefit of doubt, the respondents were acquitted. Hence, the present appeal by the State.

4. The learned A.P.P. submitted that the fact of scribing of the chit by respondent no. 1 has been sufficiently proved in view of photocopy of the said chit at exhibit - 41, as proved by PW1- Ramrao - the complainant. He further submitted that learned Sessions Judge has not taken into consideration the rules of business of the Government while holding that Under Secretary has no power to grant sanction. On merit also he submitted that the learned Sessions Judge has amplified the minor variations. The learned A.P.P. therefore, submitted that appeal be allowed and respondents be convicted.

5. On the other hand, Mr. S.V. Chillarge, learned counsel for the respondents, submitted that the learned Special Judge has taken reasonable and probable view of the matter before him and hence in the present appeal against acquittal, no interference is warranted. He, therefore, prayed that the appeal be dismissed.

6. On the basis of above material on record and the submissions advanced on behalf of both sides, the following points arise for my determination:

I) Whether the sanction to prosecute respondent no. 1 is valid?

II) Whether the prosecution has proved that the present respondent no. 1 being a public servant had made demand of gratification other than legal remuneration as motive for restraining himself from passing the injury certificate regarding Hanmant?

III) Whether the prosecution has further proved that respondent no. 1 has accepted an amount of Rs.500/- on 4th March, 1998 towards gratification other than legal

remuneration?

IV) Whether the prosecution has further proved that respondent no. 1 again made a demand of Rs.2500/- on 6th March, 1998 and the accepted same through respondent no. 2 – Manik Gaikwad ?

V) Whether the respondent no. 1 has committed any criminal misconduct, punishable under section 13 (2) of Prevention of Corruption Act?

My finding to above point no. (I) is in the affirmative and to above points no. (II) to (V) in the negative. The appeal is, therefore, dismissed for the reasons to follow:

R E A S O N S

7. As regards sanction to prosecute respondent no.1, it is to be noted that the Under Secretary of the Government of Maharashtra has accorded the sanction. The learned Special Judge has found that the Under Secretary is not an appointing authority. It should be however

noted that under the rules of business, the authority can be delegated and therefore the learned Judge ought not to have made any comment on the authority to grant sanction.

8. On merit however, the learned Judge has rightly taken into consideration each and every aspect of the evidence on record and appreciated the same.

. To repeat, as per the prosecution case, on 4th March, 1998, respondent no. 1 in presence of PW4- Ashok made demand of Rs.6000/- to complainant PW1- Ramrao. Thereafter, on 6th March, 1998, in presence of very same PW4 - Ashok, he accepted an amount of Rs.500/-. PW4 Ashok - brother-in-law of the complainant Pw1 - Ramrao, however, did not depose regarding demand of Rs.6000/- from the complainant. Similarly, as regards the payment or acceptance of Rs.500/-, this witness again did not depose anything. Further, though the complainant deposed that a letter was given by respondent / accused no. 1 to him to place it to PW3 - Vinod, PW4 - Ashok remained silent regarding the photocopy of the same.

. Thus, as regards the earlier demand though the prosecution claims that there was corroboration to the testimony of PW1 – Ramrao the complainant, the same has failed.

9. As regards the demand during the trap, there is vast contradiction between the statements of the complainant and the shadow panch witness as has been highlighted by the learned Judge. The complainant – PW1 – Ramrao has deposed that respondent no. 1 reached his house at 8.30 p.m. as against the prosecution case, as detailed supra. Further, there is also variance as to in what manner, the demand was made. PW 1 – Ramrao, the complainant has deposed that when respondent no. 2 – Manik noticed the arrival of raiding party, he attempted to run away from the spot and in that course, the currency notes fell down and therefore, the officer of the raiding party directed the accused persons to pickup the said notes from the ground.

10. The learned Judge considered all the above facts, appreciated the evidence on record and extended reasonable benefit of doubt to the respondent and

acquitted them of the offences.

11. In the present appeal against acquittal, since reasonable and probable view has been taken by the learned Special Judge, no interference in the reasoning is warranted. Hence the following order:

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

[M.T. JOSHI]
JUDGE

npj/criapl330-2003