

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 352 OF 2003

The State of Maharashtra
Through Dy. S.P.
Anti Corruption Bureau
Beed.

. APPELLANT.

VERSUS

Rohidas s/o. Bhausing Chavan
As Talathi Sajja, Deo Dahiphal
Age 40 years, Occ. Service
Tq. Dharur, Dist. Beed
At present r/o. Shahunagar,
Majalgaon, Tq. Majalgaon, Dist. Beed.

.. RESPONDENT

Mr. V.P. Kadam, APP for the appellant.
Mr. A.R. Rathod, Advocate for respondent sole.

CORAM : M.T. JOSHI, J.
DATE : 30TH MARCH, 2015.

PER COURT:

1] Heard both sides. Aggrieved by the order of acquittal passed by the Additional Sessions Judge/Special Judge, Beed thereby acquitting the respondent from the offence punishable under Sections 7, 13(1)(d) r/w. Section 13(2) of the Prevention of Corruption Act, 1998, the present appeal is preferred by the State.

2] The respondent was a public servant i.e. Talathi of village Deo-Dahiphal Sajja in Revenue Department under the State of Maharashtra during the relevant period. It is alleged that on 22.3.1997 and 29.6.1997, the accused demanded Rs. 100/- as gratification other than legal remuneration for filling up the Ekrar and for issuing certified copy of the 7 x 12 extract which was required by the complainant for the purpose of loan from a cooperative society. In the circumstances, the complainant filed a complaint with the Anti Corruption Bureau, on the basis of which, a regular trap was laid and on 6th July, 1997, wherein the respondent accepted the amount in presence of the Panch Witnesses. Thereafter, the investigation was carried. PW-1 Dnyanoba Fulari, SDO, Ambejogai has granted sanction for the prosecution, which is at Exhibit 13.

3] Prior to the beginning of the trial, however, the complainant died.

4] During trial, the prosecution has examined in all 6 witnesses, however, the learned Special Judge disbelieved the version of the Panch witnesses and other witnesses regard demand and acceptance and, therefore, acquitted the accused. Hence, the present appeal.

5] Learned APP submits that it was wrongly held that sanction granted by PW-1 was without application of mind, therefore, same was also held to be invalid. Learned APP submits that, in fact, for a minor defect in the sanction order that date of demand is not mentioned, the sanction was

found to be invalid. Further, though some of the witnesses had turned hostile, evidence of the prosecution would show that the prosecution has proved the case beyond reasonable doubt and hence, this appeal deserves to be allowed.

6] On the other hand, Shri Rathod, learned counsel for the respondent submits that the evidence on record would clearly show that amount of Rs. 100 was demanded by the Talathi for the purpose of Small Savings National Programme and the amount was required to be invested in the National Savings Certificate. However, as on the date of acceptance, as there was Sunday, the National Savings Certificate was to be given to the deceased complainant lateron. However, as the complainant was enraged by the fact of demand of amount towards Small Savings National Programme, he lodged the complaint.

In fact, according to him, the respondent demanded amount in view of persuasion by his superior in this regard, which has been proved by him by placing certified copy of the minutes of the meeting dated 19/6/1997 and 20/3/1997.

He further took me through the evidence and submitted that as the Special Judge has taken a reasonable and probable view on the basis of the material placed on record, there is no need for interference.

7] On the basis of this material, the following points arise for my

determination :-

[a] Whether the prosecution has proved that the sanction dated 2.11.1997 (Exhibit 13) granted by PW-1 Dnyanoba Fulari for prosecution of the present respondent is valid ?

[b] Whether the present respondent has made demand of gratification of Rs. 100/- from the deceased complainant on 22.6.1997, 29.6.1997 and 6.7.1997, as illegal gratification other than legal remuneration, as a motive or reward to fill up Ekar Form and to issue 7 x 12 extract for the purpose of loan from society and ultimately accepted the same on 6.7.1997, and thereby committed criminal misconduct, being a public servant.

My findings to the point No.1 is in the affirmative, whereas, my finding to the point No.2 is in the negative. The appeal is therefore dismissed for the following reasons.

REASONS

8] With regard to sanction, it is to be noted that PW-1 Dnyanoba Fulari, SDO, deposed that with application of mind, he has passed the sanction order at Exhibit 13. The only defect in the sanction order was that, it was silent in respect of first demand dated 22.6.1997. This, however, is a minor defect. Therefore, according to me, the sanction granted is valid one. Therefore, the answer to the point No.1 is in the affirmative.

9] As regards the allegation of first demand, the prosecution has examined PW-3 Murlidhar Kekan and PW-4 Baliram Kekan. According to prosecution, in presence of these witnesses the first demand was made. Both these witnesses, however, have turned hostile to the prosecution and did not support the prosecution case though searching cross-examination was made.

10] As regards the second demand dated 29.6.1997, no evidence was placed on record as the prosecution has filed a pursis at Exhibit 41 communicating the Special Judge that concerned witness to the second demand was not supporting the prosecution and, therefore, the prosecution does not want to examine him.

11] This takes us to the last of the demands said to have been made by the respondent accused on 6.7.1997 at the time of trap i.e. prior to accepting the amount as alleged. In this regard, we have evidence of PW-2 - Pandit who is Panch witness to the trap. He has admitted that the trap took place near the weekly Bazar of village Dindrud, wherein noise of the various tape recorders was so much that he could not completely hear the talk between PW-2 Pandit and PW-6 Shri Bhokre.

As regards acceptance of the amount, the accused has admitted that he has accepted the amount from the complainant, but according to him, it was regarding investment in the National Savings Certificate under

the Small Savings National Programme. As already discussed earlier, the certified copy of the minutes of the meeting in that regard is already placed on record by the respondent.

12] Taking into consideration all these facts, the learned Special Judge has acquitted the present respondent by extending reasonable benefit of doubt. In the present appeal against acquittal, since no perversity is found in the reasoning adopted by the learned Special Judge, no interference is warranted. Hence, the following order :

The appeal is hereby dismissed.

Bail bonds of the respondent stand cancelled.

[M.T. JOSHI]
JUDGE.

grt/-