

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 710 OF 2006

The State of Maharashtra
Through
Anti Corruption Bureau, Latur

.. Appellant
(Orig. Complainant)

Versus

1] Nijamoddin Fazakloddin Shaikh,
Age 52 years, Occu. Service,
R/o C-4, Yeshwant Nagar,
Govindpura, Ahmednagar

2] Suryabhan Sripati Vandekar,
Age-44 years, Occu. Service,
R/o Takali Kazi, Ta. & Dist.
Ahmednagar

.. Respondents
(Orig. Accused)

Mr. P.N. Muley, A.P.P. for the appellant/State
Mr. Satej S. Jadhav, Advocate for the respondents

CORAM : M.T. JOSHI, J.
DATE : 05/10/2015

ORAL JUDGMENT :

. Heard both sides.

2. Aggrieved by the decision of the learned
Special Judge, Ahmednagar in acquitting the present
respondents from the offences punishable under section
7, 13(2) r/w. 13(1)(d) of the Prevention of Corruption
Act, 1988, the present appeal is preferred.

3. The prosecution case would reveal that respondent no.1 i.e. original accused no.1 was a Clerk while respondent no.2 i.e. original accused no.2 was a Peon working in the Office of Sub Divisional Magistrate at Ahmednagar.

. The issue of payment of compensation amount, upon acquisition of the land appears to be pending with the Office of the Sub Divisional Magistrate at the relevant time though in the complaint, complainant PW1 - Malhari Rambhau Jaybhay has wrongly described that he was to receive amount regarding the payment being a project affected person.

. According to the complainant, an amount of Rs.1,47,000/- was due to be paid by the State to him as well as other land owners including Vikram Ranga Bade, Yadu Lahanu Bargaje and others.

. On 16/7/2001, he met the concerned Sub Divisional Officer alongwith his Advocate Mr. Damale. At that time, the Sub Divisional Officer directed the present respondent no.1 to prepare the papers and to

draw the cheque. Therefore, the complainant met the respondent no.1. Respondent no.1 asked him to come on the next day i.e. on 17/7/2001. On that day, respondent no.1 made the demand of Rs.500/- for drawing the cheque. The complainant negotiated regarding the bribe amount, the respondent no.1, however, did not agree for negotiation. Ultimately, the complainant paid an amount of Rs.200/- and again met the respondent no.1 on 24/7/2001 at 11.00 am in the morning. At that time again, the respondent no.1 made the demand of Rs.300/- and told that he would not receive the cheque from the Treasury Office unless the said amount is paid. Respondent no.1 also directed the complainant to visit him in the noon on that day with Rs.300/-. Therefore, on the same day, the complainant approached the Anti Corruption Bureau, Ahmednagar and filed his complaint at Exhibit 27.

. PW4 - Manik Akolkar, P.I. conducted the investigation. He organized the trap with the aid of two panch witnesses including PW2 - Yogesh Kamble. Anthracene powder was applied to the decoy money.

. At the time of trap, respondent no.1 made enquiry regarding the arrangement of the bribe amount. The complainant told that he was ready with the amount. Thereupon, the respondent no.1 rang the bell and called respondent no.2 - the Peon. Thereupon, the complainant removed the decoy money from his shirt pocket and gave it to the respondent no.2, who accepted it and put it in his shirt pocket. After giving the pre-determined signal, the Investigating Officer and the other members of the raiding party arrived. Thereafter, the next of the exercise of examining the hands as well as the clothes of the respondent no.2 and, thereafter, of the complainant was started to confirm the transfer of the money and the panchanama of the same was recorded.

. Thereafter, the necessary documents were seized from the Office of the Sub Divisional Magistrate. The Investigating Officer, made requisition to PW3 - the Collector for according sanction. The same was accorded at Exhibit 39 and thereafter the chargesheet came to be filed.

4. The learned Special Judge came to the conclusion that the facts of demand and acceptance of the illegal remuneration is proved; however, according to the learned Special Judge, PW3 - the Collector has not applied his mind at the time of issuing the sanction and, therefore, the order of acquittal came to be recorded. Hence, the present appeal.

5. The learned A.P.P. took me through the evidence on record and the reasoning of the learned Special Judge. He submits that technical reasons are advanced by the learned Special Judge for coming to the conclusion that the Collector has not applied his mind at the time of issuing the sanction.

6. On the other hand, Mr. Jadhav took me through the entire evidence on record and submits that on merit also, the learned Special Judge faulted in coming to the conclusion that the case of demand and acceptance is the amount is also proved. He further supported the reasoning of the learned Special Judge as regards the issue of sanction.

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

I) Whether the prosecution has proved that the respondent no.1 for a period from 17/7/2001 till 24/7/2001 made the demand of Rs.500/-, as a gratification other than the legal remuneration as a motive for doing the official act of payment of the compensation amount ?

II) Whether the prosecution has further proved that on 17/7/2001 and 24/7/2001, the respondent no.1 has accepted the amount of Rs.200/- and Rs.300/-, respectively, by making the demand ?

III) Whether the prosecution has further proved that the respondent no.2 has abetted the commission of offence on 24/7/2001, by accepting the bribe amount of Rs.300/-, knowing the same to be gratification other than the legal remuneration of the respondent no.1 ?

IV) Whether the prosecution has further proved that both of the respondents have obtained pecuniary advantage by abusing their position as the public servants, by using illegal and corrupt means ?

V) Whether the sanction accorded by PW3 is legal and valid ?

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

R E A S O N S

8. The documents seized from the Sub Divisional Officer, the statements of the witnesses including that of the complainant would show that in-fact, an amount of Rs.1,47,000/- had remained to be paid to the respective land owners as their lands or the houses were acquired for Belpara project long ago.

. The documents would show that the dispute regarding the possession upon consolidation of the agricultural land was pending between the father of the complainant and one Yadu Lahanu Bargaje regarding some of the city survey plots. Further, the dispute regarding the legal representatives was not resolved between the present complainant - Malhari with his

brother Asaram and other certain legal representatives of Vitthal Jaibhyae and Vikram Ranga Bade regarding the other plots. The total amount of Rs.1,47,269/- was therefore due not alone to the present complainant but to all these land owners and the entire seized file showed that the present complainant was to receive an amount of Rs.25,923/- while rest of the claimants were to receive the balance of the amount.

9. Mr. Jadhav took me through the evidence of the complainant and the panch witnesses to show that there are material discrepancies. The record itself would show that the cheque of the complainant was already received from the Treasury Office as against his claim that respondent no.1 told him that unless the amount is paid, he would not move the Treasury in this regard. He further took me through the omissions in the evidence of the complainant and the panch, as to what has actually occurred at the time of the incident that is as to whether the respondent no.1 rang the bell and, thereafter, the respondent no.2 came and received the amount.

. He further submits that though the reasoning of the learned Special Judge that the grammatical mistakes in the sanction order are attributable to the draft sanction by the Investigating Officer as against the deposition of the Collector that he is well aware regarding English language and, therefore, the grammatical mistakes should not have occurred, may be called technical, but he points towards the fact that while the entire papers would show that Rs.25,923/- were only to be paid to the complainant, the Collector did not take any pain to go through the papers which showed that Rs.1,47,269/- was due to the other claimants, as detailed above including the present complainant.

. He further submits that non-application of mind in grant of sanction is explicit atleast for the above substantial reason.

10. Learned A.P.P. however submits that the entire amount due has been clearly narrated in the complaint. Further, as to whether the cheque is ready or not, would naturally be not known to the complainant and,

therefore, the fact that the cheque was already ready, would of little significance. He further submits that the discrepancy in the evidence is not material.

11. Upon hearing both sides, in my view, the learned Collector atleast ought to have adverted to the issue, as to how much amount was due to the complainant from the file sent to him. Further, the evidence on record would show that amount of Rs.1,47,000/- was not due to the complainant but he was only to receive an amount of Rs.25,923/-, as detailed supra. Therefore, as to whether the alleged demand of bribe was for Rs.25,923/- or for the entire amount, was required to be clarified.

12. The admissions of the witnesses would show that the compensation amount to other claimants, who were affected by the entire land acquisition were paid at the spot by the Tahsildar by visiting the village. However, the amount of compensation in the present episode was remitted to the Treasury Officer, as the disputes were pending.

. In the circumstances, the deposition of the complainant would show that he was agitated because of the delay in payment of the compensation amount. There are contradictions in the statements of the complainant and the panch witnesses as to actually in what manner the respondent no.2 was called and in what manner, he accepted the amount.

13. Taking into consideration all these facts, in my view, there is no need to interfere in the reasoning of the learned Special Judge. The Appeal is therefore dismissed. Bail bonds, if any of the respondents, shall stand cancelled.

[M.T. JOSHI]
JUDGE

arp/