

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.393 OF 2003

The State of Maharashtra,
Through Police Station,
Chikalthana, Aurangabad
For ACB Aurangabad.

...Appellant

versus

Ahmed Jamakhan s/o Badiyuj Jamakhan,
Aged 34 years, PHC B.No. 49,
P.S. Chikalthana, Aurangabad (R).

...Respondent

.....
Mrs. R.K. Ladda, Addl. Public Prosecutor for appellant
Mr. Umesh Shete, Advocate for respondent
.....

CORAM : M.T. JOSHI, J.

DATE : 7th OCTOBER, 2015

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by the recording of acquittal of the respondent from the offences punishable under Sections 7, 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988, the present appeal is filed.

3. The prosecution case, in short, is as under.

That the respondent was working as Police Head Constable at police station, Chikalthana, Aurangabad during relevant

time. Complainant Ramrao Korde was arrested by him in Crime No. 3 of 1997 for the offence punishable under Section 379 of the Indian Penal Code for causing theft of certain electric motor. Thereafter, he was produced before the Court of learned Judicial Magistrate, First Class. The order regarding his release on bail was passed by the J.M.F.C., however, for want of surety, the complainant could not be released. Therefore, he was escorted by the respondent to the Central Jail at Aurangabad. At that time, the respondent told the complainant that upon his release, he should visit police station and pay him Rs.1500/- to Rs.2000/-. Thereafter, he was handed over to jail authorities. Upon release on 13/01/1997 he went to police station and met the respondent. At that time, the respondent made inquiry as to whether the amount was brought. When the complainant answered in the negative, the respondent told that within three or four days, he should bring amount, otherwise he would be arrested in other crime. In the circumstances, the complaint was filed on 18/01/1997 with Anti-Corruption Bureau.

4. PW-4 Krishna Bankar, Police Inspector of the Anti-Corruption Bureau, conducted the investigation. He collected two panch witnesses namely Deshmukh and Paradkar. During the verification exercise, the respondent has made demand of Rs.1000/- and called the complainant to pay bribe at 5-30 p.m. on that day.

Therefore, trap was laid on that day. Anthracene powder was applied to the decoy money. The complainant and panch witnesses visited the respondent at the police station. During the said trap, the respondent made an inquiry as to whether the amount was brought, as was directed in the noon. Thereafter, the respondent took the complainant in one corner of the police station and then accepted the decoy money. The necessary investigation was carried further. Sanction to prosecute the respondent was obtained and thereafter, the charge sheet came to be filed.

5. The defence of respondent, in short, was that Police Constable Autade had, in fact, arranged for Advocate i.e. DW-1 Sukhlal Pasrate for representing the complainant in criminal case. On that day, the complainant had no money and therefore, he promised Advocate to pay fees later on through police constable Autade or present respondent. Thereafter, the application to release him on bail was allowed. Thereafter, police constable Autade sent one person as surety with a chit. Thereafter, the advocate completed the work, got release order and put the same in the letter box of the jail and thereafter, the complainant was released but he never paid fees and he learnt that the respondent was caught while accepting the said amount of fees. As the respondent/accused wanted to arrest the son of the complainant who was also accused in the crime but had

absconded, the complainant filed the false complaint.

6. Before the learned Special Judge, relevant witnesses were examined. The learned Special Judge came to the conclusion that in fact the amount was towards fees of the advocate i.e. the defense witness. Further certain infirmities from the prosecution evidence were taken into consideration and acquittal came to be recorded.

7. Learned A.P.P. submits that it is an admitted fact that decoy money is accepted by the respondent, therefore, presumption had arisen that the amount was accepted towards the illegal remuneration. She, therefore, submits that learned Special Judge ought not to have taken into consideration minor infirmities in the oral evidence as the evidence was recorded long after the incident.

8. On the other hand, learned Counsel for the respondent submits that the complainant himself has admitted that he had not paid any amount to defence witness Advocate Mr. Sukhlal Pasrate. He further submits that the complaint would not disclose as to for what purpose, bribe was demanded when already the order was passed by the learned Judicial Magistrate, First Class for release of the complainant on bail.

9. On the basis of above material on record, the following points arise for my determination.

(1) Whether the prosecution has proved that the respondent being a public servant has made demand of remuneration other than legal remuneration for carrying his official work of the complainant?

(2) Whether the prosecution has further proved that on 19/01/1997 the present respondent has again made a demand of said gratification and accepted the same?

(3) Whether the prosecution has further proved that present respondent has made a demand and accepted the amount by using illegal means?

10. My findings to all the above points No. (1) to (3) are in the negative. The appeal is therefore, dismissed for the following reasons.

REASONS

11. The complaint itself would show that the purpose for which the alleged bribe was demanded, is not specified. In the circumstances, the case would not fall within the ambit of Section 7

of the Prevention of Corruption Act. At the most, it can be the case of making demand by public servant by using correct and illegal means, an offence punishable under section 13(1) (d) read with section 13(2) of the Prevention of Corruption Act, 1988.

12. The statement of the complainant himself would show that he has not paid any fees to Advocate DW-1 Sukhlal Pasrate, who has entered into witness box to confirm the fact that he has not received any fees though he has represented the complainant in the case. Besides this, the complainant in examination in chief itself has deposed that police constable Autade has demanded money and not the present respondent. However, on that day, he had no money and therefore, DW-1 Advocate Pasrate was arranged by Police Constable Autade to represent the complainant before the J.M.F.C. This fact would clearly show that the prosecution failed to prove its case beyond reasonable doubt. The reasoning of learned Special Judge, therefore, cannot be interfered with. Hence, I pass the following order.

13. The appeal is dismissed. The bail bonds of the respondent shall stand cancelled.

Sd/-
[**M.T. JOSHI, J.**]