

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 439 OF 2003

The State of Maharashtra
Through Police Station
Khultabad, Aurangabad

.. Appellant
(Orig. Complainant)

Versus

1] Sheshrao Shankarrao Raut,
Age 42 years, Talathi Yesgaon,
Tq. Khultabad, Dist. Aurangabad

2] Sudama Asaram Khirdekar,
Age 49 years, Peshkar,
Tahsil Office, Tq. Khultabad,
Dist. Aurangabad

.. Respondents
(Orig. Accused)

Mr. N.T. Bhagat, A.P.P. for the appellant/State
Mr. R.V. Gore, Advocate for respondent no.1
Mr. Vijay Sharma, Advocate for respondent no.2

CORAM : M.T. JOSHI, J.

DATE : 17/11/2015

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by the acquittal of the present respondents from the offences punishable under section 7, 13(1)(d) r/w. 13(2) and 12 of the Prevention of Corruption Act, 1988, the present appeal is preferred by the State.

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

. That PW2 – Sk. Sajjan S/o Sk Akbar had applied for grant of compensation due to the damage caused to his hut in a fire. He had accordingly made an application to the present respondent no.1, the then Talathi on 2/5/1996. Respondent no.1 did not give any acknowledgment of the same. Thereafter, on 5/5/1996, respondent no.1 carried the panchanama of the spot. He however did not provide any copy of the said panchanama to the complainant. In the circumstances, the complainant met the Tehsildar of Khultabad in his office on 6/5/1996 and filed his independent application. The acknowledgment of the same was not given. Thereafter, on many occasions, the complainant visited the Tehsil Office and made request to the Peshkar of the Tehsildar i.e. respondent no.2 to proceed with the matter. Respondent no.1 told him that when the complainant would receive notice through Talathi, at that time, he should visit the Tehsil office and take away the amount of compensation. However, no progress was made. Therefore, again the complainant made request to the respondent no.1 – Shri Raut, the Talathi.

At that time, respondent no.1 stated that 25% amount of the compensation is required to be paid as bribe and an amount of Rs.200/- to Rs.250/- is required to be given to the staff of Tehsil towards tea etc. He told that unless these demands are complied, no further progress would be made.

. In the meantime, respondent no.1 was transferred and in his place, one Mr. Dahihande was appointed as Talathi of the relevant village. In the circumstances, on 22/8/1996, complainant met Talathi Dahihande. At that time, said Mr. Dahihande told that the file was cancelled (proposal was rejected) and the compensation would not be paid. Therefore, on the next day, the complainant met respondent no.1 – the previous Talathi and asked as to why the file was cancelled. At that time, respondent no.1 told that the file was not cancelled and if the complainant would pay him Rs.200/- to Rs.250/-, he would visit the Tehsil Office and get the file sanctioned. Thereafter, the complainant would be required to pay 25% from the compensation amount.

. In the circumstances, the complainant met Tehsildar on 28/8/1996. The Tehsildar in turn directed

the complainant to meet the Peshkar i.e. respondent no.2 and went for his office tour. Respondent no.2 however replied that unless and until any amount is invested, no amount would be given. Respondent no.2 also stated that the complainant should pay the amount and then only the work would be done. Thereafter, respondent no.1 -Raut met him in front of the Tehsil office and after talks, respondent no.1 told that unless the amount is paid to the staff of the Tehsil Office, the matter would not be processed and he has already told him about the same. In the circumstances, the complaint came to be filed with the Anti Corruption Bureau at Aurangabad on 29/9/1996.

. PW4 – Mr. More carried the investigation in the case. He decided to have the verification of the payment in presence of independent panch witness i.e. PW3 – Mr. Pale. As during the verification, respondent no.1 again made the demand, the trap was laid at the Office of respondent no.1. During the said trap, respondent no.1 again made the demand of money and when the complainant offered the decoy money smeared with anthracene powder, respondent no.1 asked him to put it

on the table. After putting the decoy money on the table, the complainant gave the predetermined signal to the rest of the raiding party, upon which further exercise was carried. Sanction to prosecute both the respondents was obtained from PW1.

4. Before the learned Special Judge, Aurangabad, four witnesses were examined. The learned Special Judge however acquitted both the respondents by giving reasonable benefit of doubt. Hence the present appeal.

5. Learned A.P.P. submits that the evidence of PW2 and PW3 would show that the illegal remuneration was demanded by both the respondents. During verification exercise also, respondent no.1 had repeated the demand. At that time of trap also, the demand was repeated and, thereafter, the decoy money was kept on the table in the office of respondent no.2 as per his direction. In these circumstances, he submits that the learned Special Judge ought not have taken a view that reasonable doubt has arisen in the present case.

6. On the other hand, Mr. R.V. Gore, learned counsel for respondent no.1 and Mr. Vijay Sharma,

learned counsel for respondent no.2 submits that the evidence on record clearly justifies the reasons forwarded by the learned Special Judge. They therefore submit that in the present appeal against acquittal, no interference is warranted.

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

I) Whether the prosecution has proved that the present respondent no.1 has made a demand of Rs.250/- to the complainant towards the remuneration of processing the file other the legal remuneration ?

II) Whether the prosecution has further proved that respondent no.2 has abetted respondent no.1 in securing the said remuneration ?

III) Whether the prosecution has further proved that respondent no.1 has accepted the said amount as the pecuniary advantage by corrupt and illegal means ?

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 learned Special Judge has cataloged the contradictions and discrepancies in the material placed before him. There is vast variance regarding date of fire, as is mentioned in the FIR and in the application filed by the complainant before the Tehsildar i.e. 30/4/1996 or 01/05/1996 and 25/5/1996.

9. Further, there are discrepancies regarding date of recording of panchanama by respondent no.1. The complainant has put a grievance that neither respondent no.1 nor the Tehsildar has given the acknowledgment of the report. Further, respondent no.1 has not given him the copy of the panchanama. The panchanama however would show that the respondent no.1 - Raut, the then Talathi has estimated the damage at Rs. 39,650/- and at the time of recording of this panchanama, admittedly no amount was demanded by respondent no.1. At the time of verification exercise also, as per the prosecution case itself, when the complainant and the panch witness visited respondent no.1, he did not make any demand of

money but referred both of them to respondent no.2 – Mr. Khirdekar. Respondent no.1 – Raut was already transferred from the place and, therefore, he was not any way concerned with the official act. The complainant has already met the Tehsildar, who had directed the complainant to respondent no.2 – the Peshkar. The complainant in his evidence also did not state that during the verification exercise, respondent no.1 has made any demand of amount.

10. The learned Special Judge has therefore observed that respondent no.1 needs to be exonerated. The learned Special Judge has also found that admittedly, the decoy money was kept on the table instead of giving directly to respondent no.1. Further, during evidence, it was gathered that in the office of respondent no.1 at the time of the trap, one independent witness, namely, Tanaji Jadhav was present. This witness however was not examined.

. The panch witness has deposed that at the time of the trap, complainant did not speak anything and he merely put the decoy money on the table of the respondent no.1.

11. Taking into consideration all these facts, in my view, the learned Special Judge has taken a reasonable and probable view of the material before him. In the circumstances, in the present appeal against acquittal, no interference is warranted. In the result, the following order:-

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

[M.T. JOSHI]
JUDGE

arp/