

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.542 OF 2003

Madhukar s/o. Anandrao Pahurkar,
Age 35 years, Occ. Service,
Gajanan Colony, Garkheda,
Aurangabad ..Appellant

Versus

The State of Maharashtra ..Respondent

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Mr.Mukul Kulkarni, advocate i/b. Mr.N.P.Ghanwat,
advocate for appellant

Mr.V.S.Badakh, A.P.P. for respondent – State

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CORAM : M.T. JOSHI, J.
DATE : OCTOBER 23, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the conviction recorded by
learned Special Judge, Aurangabad in Special Case
No.7 of 1999 for the offences punishable under
Section 7, 13(1)(d) and 13(2) of the Prevention of
Corruption Act (for short "the Act"), present

appeal is preferred by the appellant/accused. Learned Special Judge has sentenced present appellant to suffer rigorous imprisonment for six months and to pay fine of Rs.100/- for the offence punishable under Section 7 of the Act and to suffer rigorous imprisonment for one year and to pay fine of Rs.100/- for the offences punishable under Section 13(1)(d) and 13(1)(d) of the Act.

3] The prosecution case, in short, is as under :-

. That, complainant PW 2 – Ramdas Shinde was an ex-serviceman residing at Aurangabad. As he was intending to secure a job after his retirement, he was in need of mark sheets and seat number of H.S.C. Examination, which took place about 18 years back i.e. in 1980. In the circumstances, on 3rd June, 1998, he approached the office of the Secondary School Certificate Board, Aurangabad. Present appellant was sitting in the said office.

. The complainant made inquiry at the Reception Counter with the appellant. At that time, the appellant told him that an amount of Rs.350/- would be required for getting information regarding the seat number as well as for getting duplicate copy of the mark sheet. The appellant also asked the complainant to fill up the necessary form and pay Rs.350/-. At that time, the complainant told that he did not have that much money and he had come from Sillod. The appellant told that unless the said amount is paid, the work would not be done. He told that the complainant should come on the next date with Rs.350/- and at that time, he would search the examination seat number of the complainant. In view of the demand, the complainant filed the complaint with the Anti Corruption Bureau, Aurangabad, on 4th June, 1998.

4] The Investigating Officer – PW 4, Police Inspector Subhash Joshi conducted investigation.

He collected two panch witnesses. Necessary demonstration of application of anthracene powder was shown to the panch witnesses and the complainant. The decoy money of Rs.350/- brought by the complainant was smeared with anthracene powder and thereafter, the raiding party proceeded to the office of the Secondary School Certificate Board, Aurangabad. PW 3 — Natha Chavan, shadow panch witness and the complainant went to the appellant.

5] At that time, one person was sitting on a chair besides the appellant. The appellant asked said person to go away and thereafter, asked the complainant to sit on the chair. As the complainant and the shadow panch witness went there at 4:30 p.m., the appellant asked the complainant as to why, he came late and also told that the time to deposit the money was already closed. Upon inquiry, the complainant told that he

has brought the amount of Rs.350/-. Thereafter, a form was filled in by the complainant and as per direction of the appellant, the complainant paid the decoy money of Rs.350/- to him. Upon that, the appellant asked for additional amount of Rs.2 as a change. The complainant told that he did not have any change and accordingly, gave additional Rs.20/-. The appellant pinned all the currency notes to the form filled in by the complainant and kept the same in his drawer. Upon giving predetermined signal by the complainant, rest of the raiding party members arrived at the spot and the appellant was apprehended.

6] Thereafter, exercise of examination of the relevant clothes and hands of the appellant and lateron of the complainant was carried. The Investigating Officer conducted further investigation and recorded statements of the relevant witnesses. He obtained sanction order to

prosecute the appellant, from PW 1 - Vijay Patil, the then Director of Education, Maharashtra State, Pune and filed the charge sheet.

7] The defence of the appellant was that in fact, the amount of Rs.302/- was required for urgent copies of the above documents. Since the complainant had paid amount of Rs.350/- instead of Rs.302/-, the appellant had asked him for Rs.2/- as a change. However, he gave Rs.20/- and therefore, while the appellant was in the process of making arrangement for the change, immediately the predetermined signal was given by the complainant and the appellant was apprehended. According to the appellant, the complainant has filed the complaint under misconception, that the amount of Rs.350/- was demanded by him was the bribe amount.

8] Learned Special Judge, upon appreciation of the evidence, came to the conclusion that while

the amount of Rs.202/- was required as necessary fees, the demand for Rs.350/- by the appellant and thereafter, acceptance of additional Rs.20/-, would show that the amount of Rs.168/- retained by the appellant, "can be termed as illegal gratification". In the circumstances, the conviction and sentence, as detailed supra, came to be recorded against the appellant.

9] Mr.Kulkarni, learned counsel for the appellant, submits that the sanctioning authority i.e. PW 1 - the then Director of Education, Maharashtra State, has clarified in his cross-examination that during the relevant period, usually, an amount of Rs.102/- was charged for issuing the mark memo in normal course. Rs.202/- was for the mark memo pertaining to 10 years old examination and additional Rs.100/- for supplying of the mark memo within 48 hours.

10] Mr.Kulkarni points towards the Annexure to the application form filled in by the complainant and seized by the Investigating Officer at Exhibit 17. It would show the charges required for grant of various copies. Said table would show that an amount of Rs.100/- was required for S.S.C. mark memo; Rs.100/- for H.S.C. mark memo; and additional amount of Rs.100/- was required, if the applicant require those documents on urgent basis i.e. within 48 hours. Additionally, a non-judicial stamp of Rs.2/- was required to be affixed with the application. He also pointed towards the form at Exhibit 17 filled in by the complainant, which would show that the regular charges of Rs.202/- were to be paid.

11] Mr.Kulkarni submits that while the evidence of the sanctioning authority would show that an amount of Rs.302/- was the normal required fee, the prosecution case is that the amount of

Rs.350/- were demanded as a bribe by the appellant. While the appellant, for want of change, had demanded Rs.2/-, the complainant gave Rs.20/-. The learned Special Judge has, according to Mr.Kulkarni, therefore, wrongly added this much amount and came to the conclusion that amount of Rs.168/- *"can be termed as illegal gratification"*.

12] He further submitted that the deposition of the Investigating Officer as well as the record would show that without sending any requisition to the office of Municipal Corporation, PW 3 – Natha Chavan, the employee of the Corporation, had appeared before the Investigating Officer and he became ready to be a panch witness. Even, PW 3 – Natha Chavan has admitted in the cross-examination that he signed the necessary documents like panchnama on the next day of the trap.

13] Mr.Kulkarni further points towards the fact that according to the prosecution, DW 1 – Uttam Kamble was the person, who was sitting near the appellant when the complainant and the shadow panch witness had arrived thereat. It is the prosecution case that the appellant asked DW 1 – Uttam Kamble to vacate the chair for the complainant, who was the ex-serviceman. Said Uttam Kamble, however, was not examined by the prosecution though he was cited as one of the prosecution witnesses. In the circumstances and more particularly, in the facts, as detailed supra, Mr.Kulkarni submits that the statement of DW 1 – Uttam Kamble would be very significant.

. DW 1 – Uttam Kamble deposed that he had vacated the chair on the direction of the appellant and made a room for the complainant. Thereafter, the appellant asked for Rs.302/- to the complainant as required fees. The complainant,

however, paid Rs.350/-. The appellant, therefore, told the complainant to give Rs.2/- and get back Rs.50/- from him, but the complainant gave him a note of Rs.20/- and left.

14] Learned A.P.P. for the respondent – State submits that the evidence of the complainant would show that amount of Rs.350/- was asked by the appellant while the required charges were only Rs.202/- and therefore, the learned Special Judge has rightly concluded that the amount of Rs.168/-, ultimately kept by the appellant with him, can be termed as an illegal gratification.

15] On the basis of this material, following points arise for my determination :-

(I) Whether the prosecution has proved that on 3rd June, 1998, present appellant made a demand of Rs.350/- as a

gratification other than legal remuneration from the complainant ?

(II) Whether the prosecution has proved that on 4th June, 1998, the appellant has again made a demand and accepted Rs.350/- as a gratification other than legal remuneration ?

(III) Whether the prosecution has further proved that present appellant has obtained a pecuniary advantage by corrupt means and thereby committed criminal misconduct ?

. My findings to the above points are in the negative. The appeal is, therefore, allowed and the appellant is acquitted from the offences, for the reasons to follow.

R E A S O N S

16] The above points are formulated on the line of the charges framed by the learned Special Judge. The appellant was charged for making a demand of Rs.350/- as a remuneration other than legal remuneration, which, in view of the prosecution evidence, as detailed supra, itself has failed.

. The learned Special Judge termed the amount of Rs.168/- as a illegal gratification by making calculation, as detailed supra. While the learned Special Judge came to the conclusion that Rs.202/- was the regular charges from Rs.350/- paid by the complainant, the evidence of the sanctioning authority i.e. PW 1 – the then Director of Education, couple with the table annexed to the form, would show that the required amount was Rs.302/-.

. DW 1 – Uttam, who was cited by the prosecution as a witness was, however, dropped by the prosecution and thereafter, the appellant examined him as a defence witness. Neither the recitals of the complaint nor the conversation that took place between the complainant and the appellant during trap, would throw light as to whether all the money was demanded by the appellant towards any bribe. In that view of the matter, the learned Special Judge ought to have extended benefit of reasonable doubt to the appellant in the present case. Learned Special Judge, however, made certain calculations beyond the prosecution case and termed the amount of Rs.168/- as an illegal gratification.

17] In that view of the matter, present appeal deserves to be allowed and the appellant/accused deserves to be acquitted.

18] Hence, the following order :-

A] The appeal is allowed.

B] The impugned judgment and order dated 19th July, 2003 passed by learned Special Judge, Aurangabad in Special Case No.7 of 1999, thereby convicting and sentencing the appellant for the offences punishable under Section 7, 13(1)(d) and 13(2) of the Act, is hereby set aside.

. Instead the appellant is acquitted of all the offences.

C] Fine amount, if any, deposited by the appellant, be refunded to him.

D] Bail bonds of the appellant shall stand cancelled.

[M.T. JOSHI, J.]