

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 563 OF 2003

The State of Maharashtra
Through The Police Station Ardhapur,
Tq. Nanded, District : Nanded

.. Appellant
(Orig. Complainant)

VERSUS

Bapurao S/o Satwaji Dabhanwad,
Police Head Constable B.No.970
of Police Station, Ardhapur

.. Respondent
(Orig. Accused)

Mr. S.D. Ghaayal, A.P.P. for the appellant/State
Mr. G.R. Vaidya, Advocate (appointed) for the respondent

CORAM : M.T. JOSHI, J.

DATE : 08/12/2015

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by the acquittal of the respondent by the learned Additional Sessions Judge-cum-Special Judge, Nanded vide judgment and order dated 05/05/2003 passed in Special Case No. 3 of 1992 from the offences punishable under section 7, 13(1)(d) r/w. section 13(2) of the Prevention of Corruption Act, the appellant - State has filed the present appeal.

3. The respondent - Bapurao Satwaji Dabhanwad was a Police Head Constable at Police Station, Ardhapur. During the relevant period, complainant - Dhondiba Shejule as well as his companions had a physical fight with one Murlidhar and his companions over a certain matrimonial dispute of the niece of the complainant. Counter crimes for the offences punishable under section 324 r/w. section 34 of the Indian Penal Code came to be registered with Ardhapur Police Station and the present respondent was investigating the same.

4. It is the case of the complainant/prosecution that, to facilitate the release of the complainant and his three companions on bail, initially demand of Rs.8000/- was made by the respondent. It was reduced to Rs.4000/- and finally the complainant agreed to pay an amount of Rs.2000/-. Out of that, an amount of Rs.1500/- was to be paid immediately.

. In the circumstances, report came to be filed with Anti Corruption Bureau, Nanded on 21/03/1992. Accordingly, the trap was laid in presence of the panch

witness including shadow panch witness PW2 - Chandrashekhar Shinde. During the said trap, according to the prosecution case, the respondent, by gesture asked as to whether the money is brought. Accordingly, the complainant paid the decoy money of Rs.1500/-. The raiding party apprehended the respondent and the decoy money was found with him.

5. The respondent's case was that in-fact, the compromise was worked out between the rival parties in both the counter cases. Even the Police Sub Inspector had intervened in the same. Since Murlidhar and his companions comparatively had received serious injuries, they asked for an amount of Rs.8000/- towards the medical expenses. The same was reduced to Rs.2000/- and in-fact, the amount of Rs.1500/- was accepted by the respondent for onward payment of the same to said Murlidhar, in view of the settlement.

6. Before the learned Special Judge, in all four (4) witnesses, as detailed supra were examined. The complainant has admitted in his cross-examination

that in-fact the compromise was arrived at between the two groups before the Police Sub Inspector and the amount was paid for the medical expenses of the injured from the rival groups.

. The learned Special Judge found that the prosecution case is not proved beyond reasonable doubt and, therefore, the acquittal came to be recorded.

7. Learned A.P.P. submits that the present respondent - a Police Head Constable had no business to accept the cash. Further the evidence on record and the admitted facts would show that the present respondent has received the amount and, therefore, the presumption has arisen that the said amount was received towards the remuneration other than the legal remuneration.

8. On the other hand, Mr. G.R. Vaidya, learned counsel appointed for the respondent supports the reasoning forwarded by the learned Special Judge. He submits that the admitted facts would show that

Murlidhar and his companions had received serious injuries and, therefore, in compromise, naturally, medical expenses were claimed and the amount was towards the part payment of those expenses.

. Mr. G.R. Vaidya also relies on the ratio in the case of "**P. Satyanarayana Murthy Vs. Dist. Inspector of Police and anr.**" **2015 AIR SCW 5263.**

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

I) Whether the prosecution has proved that the present respondent, being a public servant has made a demand of Rs.8000/- and later on reduced the same to Rs.2000/- towards the remuneration other than the legal remuneration from the complainant during March - 1992 ?

II) Whether the prosecution has further proved that on 31/03/1992, he again made demand of the said remuneration and accepted an amount of Rs.1500/- towards the same and also by corrupt means ?

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

R E A S O N S

10. According to the prosecution itself, at the time of the trap before the independent shadow panch witness, neither the complainant started any dialogue to show that the amount was being paid towards the personal gain of the respondent nor the respondent had made any such statement. Merely the respondent by gesture queried, as to whether the amount was brought and the same was paid. Thus, there is no independent corroboration to the prosecution case that, the amount of Rs.1500/- was being paid towards any remuneration other than the legal remuneration.

11. Though in the complaint, the complainant did not state about the compromise, and even in the examination-in-chief, he remained silent on this issue only during the cross-examination, suddenly he deposed

that in-fact, there was a compromise between his group and the group of Murlidhar in view of the filing of the counter complaints and the amount that was paid, was towards the settlement. The learned A.P.P. at the trial Court failed to cross-examine the complainant on this aspect.

12. We have already found that there was no independent corroboration to the prosecution case that the amount was demanded towards any remuneration by the respondent.

13. Considering all these facts on record and the fact that the complainant in cross-examination has supported in entirety the defence version, in my view, though acquittal of the respondent recorded by the learned Additional Sessions Judge cum Special Judge, Nanded cannot be called as an honourable acquittal, this being a criminal case and not a departmental inquiry, in my view, since the prosecution has failed to prove beyond reasonable doubt the charges against the respondent, no interference in the impugned

judgment and order of the learned Special Judge is warranted.

14. In the result, the following order:-

15. Criminal Appeal is hereby dismissed.

16. Bail bonds, if any, of the respondent shall stand cancelled.

17. Fees of Mr. G.R. Vaidya, learned Advocate appointed by the High Court Legal Services Sub-Committee at Aurangabad, is quantified at Rs.10,000/- (Rs. Ten Thousand).

[M.T. JOSHI]
JUDGE

arp/