

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

CRIMINAL APPEAL NO. 720 OF 2003.

The State of Maharashtra.
Through :-
Police Station, Biloli,
District : Nanded.



Appellant.

Versus

Kishan Tulshiram Panchal.
Age : 46 Years., Occ.: Assistant
Accountant,
Panchayat Samiti, Biloli,
District : Nanded.



Respondent.

Appearance =>

Mrs. R.K. Laddha, Assistant Public Prosecutor for the State of Maharashtra.

Mr. A.N. Godhamgaonkar, Advocate for the Respondent.

CORAM : M.T. Joshi, J.

DATE : 1st September, 2015.

ORAL JUDGMENT :-

Being aggrieved by Judgment and Order dated 7th July, 2003 passed by the learned Additional Sessions Judge, Biloli, Dist. Nanded in Special Case (A.C.B.) No.3 Of 2002 thereby, acquitting the Respondent for the offence punishable under Section/s. 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, present Criminal Appeal is preferred by the Appellant – the State.

[2] Prosecution case, in short, is as under :-

During the relevant period, present Respondent was serving as Assistant Account Officer in Zilla Parishad, Nanded. In the month of May, 2002 he was posted in Panchayat Samiti, Biloli, District – Nanded. complainant Vijay Parashram Gadiwan's father was serving as Head Master in the Z.P. School at Jarikot, Taluka Dharmabad. Because of ill health, complainant's father had taken voluntary retirement from service on 21st August, 1997 and thereafter on 18th April, 2000 he expired.

Due to revision of pay on the recommendation of 5th Pay Commission, there were certain arrears and pension was due to the deceased and thereafter to the mother of complainant namely Hirabai. The Respondent had issued first installment of Rs.68,000/- in the name of Hiramabi (widow of Parashram Gadiwan). That time, he had demanded Rs.3000/- from the complainant. The complainant had paid the same. Thereafter next installment of Rs.66,000/- was paid under the cheque. At that time, the Respondent demanded gratification of Rs.4000/-. That time, the complainant paid only Rs.1000/- and assured to pay the balance of amount. At the time of payment of third installment, on 9th May, 2002 cheque was issued for Rs.36492/- though in fact, amount receivable was Rs.66158/-. Upon questioning by the complainant, the Respondent explained that, as per the directions issued from the Head Office i.e. Zilla Parishad, cheque was issued and, therefore, advised him to contact the higher Officer. Thereafter, modification order was issued. Copy of the said order was brought by the complainant to Panchayat Samiti and on 16th May, 2002 he again met the Respondent. When he requested the

Respondent to issue the cheque for remaining amount, at that time, the Respondent demanded amount of Rs.7000/- towards gratification i.e. Rs.3000/- which were demanded for earlier cheques and Rs.4000/- for issuing additional cheque. After negotiation, amount was settled at Rs.2000/-. The complainant helplessly agreed for payment of Rs.2000/- and thereafter he approached the Office of the Anti Corruption Bureau, Nanded on 18th May, 2002 and lodged the complaint in writing.

[3] The investigation was carried by PW No.5 Manik Shivram Perke, Dy.S.P., A.C.B., Nanded. He called two panch witnesses, organized the demonstration before them of application of anthracene powder and use of ultra violet lamp. He applied anthracene powder to the decoy money brought by the complainant. Thereafter, trap was laid.

[4] PW No.1 Digambar Daheridar Gabale is panch No.1 and PW No.2 Mohan Manikrao Shirame, who is panch No.2, was serving as Senior Supervisor in the office of Khadi Gram Udyog, Nashik. Panch No.1 was a shadow panch witness; while panch No.2 was remained to be with the raiding party.

[5] At about 4.00 in the noon, they reached to the Bus Stand at Biloli. In front of the office of the Panchayat Samiti, Respondent was seen coming from the opposite direction. After offering namaskar, the complainant asked the Respondent regarding the cheque. The Respondent proposed to have cold drink in a Hotel. All the three went in the Hotel named and styled as Sai Mess. Soft drink was ordered. The complainant inquired with the Respondent regarding the cheque.

The Respondent made enquiry regarding the panch witness, who was present there, upon which, he explained to be his maternal uncle. Again the Respondent asked as to whether money was brought by the complainant. When the reply was in the affirmative, then he asked to hand over the money. Thereafter, the decoy money was presented by the complainant by his right hand. The Respondent accepted the same by his right hand and kept it into his pocket. When the complainant questioned him regarding the cheque, that time Respondent told that cheque will be issued within 2 to 4 days. All of them, thereafter got up. The complainant gave pre-determination signal to the raiding party.

One of the raiding party members caught hold both the hands of the Respondent. Respondent however gave jerk to his hand and attempted to throw away decoy money from his pocket. Some of the currency notes fell down on the ground however, thereafter, the Respondent was thoroughly caught hold and necessary exercise of examination of the Respondent and the complainant under the ultra violet lamp was carried, which confirmed the incident, as cited supra.

[6] Investigating Officer thereafter prepared the panchnama, recorded the statements of the witnesses and caused to have sanction order from the sanctioning authority to prosecute the Respondent. Thereafter charge-sheet came to be filed in the court of law.

[7] Before the learned Special Judge all the above material witnesses including second panch were examined. The learned special Judge however found discrepancy in the evidence adduced before the court.

[8] It was found from the deposition of PW No.4 Mujeebpasha Pashamiya, Section Officer, Panchayat Samiti, Biloli that present Respondent had no concern with the sanction, preparation or handing over of the cheques. He deposed that, work of preparation of cheques and distribution of the cheques does not fall within the duties of the accused, as per his duty list. Further, the learned Special Judge refused to rely on the testimony of the complainant that any illegal demand was made by the Respondent.

[9] As regard the trap, certain variance were made by the complainant and panch witnesses regarding details of the incident. Defence of the Respondent that, money was thrust in his hand and he has therefore, immediately thrown away it on the ground, was found to be probable, therefore, Respondent was acquitted.

[10] The learned Assistant Public Prosecutor submitted that sanction order shows that, present Respondent was serving as Asstt. Account Officer, therefore, he had concern with passing of the cheques. She further submitted that, demand and acceptance of the gratification was proved not only from the mouth of the complainant but also independent shadow panch witness corroborated the same. The learned Special Judge however, according to her, had unnecessarily amplified the insignificant contradictions and acquitted the Respondent. Hence, she submitted that, Appeal be allowed.

On the contrary, Mr. A.N. Godhamgaonkar, learned counsel for the Respondent took me through the evidence and submitted that a reasonable and probable view is taken by the learned

Special Judge while acquitting the Respondent. Therefore, he submits that, the impugned judgment warrants no interference.

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

Points.

(1) Whether the prosecution has proved that the accused (present Respondent) being a public servant had made demand of Rs.7000/- and settled it for Rs.2000/- as gratification, other than legal remuneration for passing of the cheque to the complainant during the period upto 14th May, 2002.?

(2) Whether the prosecution has proved that on 14/05/2002 the accused had again made demand of Rs.2000/- and accepted the same, as gratification other than the legal remuneration at Biloli, District-Nanded.?

(3) Whether prosecution has proved that, accused has committed the criminal misconduct.?

(4) What Order.?

My findings to Point Nos.(1) to (3) are in the negative. In the result, Criminal Appeal is dismissed for the reasons to follow:-

REASONS

[12] Since for the reasons to follow, I have come to the conclusion that acceptance and demand is not proved, it would not be necessary to advert to the issues of illegality or validity of the sanction

to prosecute the present Respondent, accorded by PW No.6 Vijay Nahata.

[13] The learned Special Judge has underlined the improbability as in case of demand by the Respondent to the complainant, as according to the prosecution case itself, the earlier cheque was issued without any demur by the Respondent. According to the prosecution, only at the time of issuing the additional cheque, present Respondent has obstructed the complainant by first asking for the gratification. Besides this, as regards the actual occurrence of the trap also, there was great variance.

[14] While it is prosecution case that, only one person from the raiding party had caught hold the hands of the Respondent, thereby, he having tried to throw away the decoy money from his pocket. Second panch categorically deposed that, two members of the raiding party caught hold both the hands of the Respondent firmly, thereby, ruled out prosecution case of throwing decoy money from the pant pocket of the Respondent.

[15] Besides this though the sanction order would show that, Respondent was Assistant Account Officer, PW No.4 Mujeebpasha Pashamiya, Section Officer of Panchayat Samiti examined by the prosecution itself, had deposed that, duty of preparation of cheques, distribution of cheques does not fall within the duties of the accused, as per his duty list. He was even shown certified copies of the duty list/s Exhibit – 40 and Exhibit – 41 and he accepted the same to be correct thereby, ruling out role of the present Respondent in the matter of preparation or distribution of the relevant cheques.

[16] In the circumstances, the learned Special Judge has taken reasonable and probable view of the matter, I do not deem it fit to interfere with the same. Hence, following order is passed :-

ORDER

- (i) Criminal Appeal is dismissed.
- (ii) Bail bonds of the Respondent shall stand cancelled.

(M.T. JOSHI, J.)