

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 753 OF 2003

The State of Maharashtra
Through Police Station
Dharmabad, Tq. Dharmabad
Dist. Nanded

.. Appellant
(Orig. Complainant)

Vs.

Khan Mahemoodkhan S/o Ismailkhan,
Age 45 years, Occu.: Service,
R/o Kandhar, Dist. Nanded

.. Respondent
(Orig. Accused)

Mr. S.D. Ghayal, A.P.P. for the appellant/State
Mr. H.I. Pathan, Advocate h/f Mr. V.D. Salunke, Advocate for
the respondent

CORAM : M.T. JOSHI, J.
DATE : 26/11/2015

ORAL JUDGMENT :

Heard both sides.

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

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

. That during the relevant period, the present respondent was working as Assistant Police Prosecutor and was attached to the Court of learned Judicial Magistrate First Class, Dharmabad, Dist. Nanded. PW1 - Digambar, the original complainant resident of Patoda Bk. Tq. Dharmabad so also his rivals were facing criminal cases, due to the filing of counter complaints against each other. In response to the issuance of the summons, the complainant and other witnesses namely Baliram and Hanmant went to the Court of Judicial Magistrate First Class, Dharmabad on 15/2/2000. At that time, present respondent made demand of Rs.3000/- in order to facilitate acquittal of Digambar from the criminal case. After negotiation, it was settled to Rs.2000/-.

. On the same day, complainant borrowed sum of Rs.200/- from his companion Baliram and paid the same to respondent in presence of said Baliram and Hanmant. Respondent asked him to pay balance of the amount on 22/02/2000. On that day, the complainant paid him Rs.1000/-. Thereupon, the respondent asked him to pay

Rs.1000/- on 25/2/2000 in the Court at 11.00 am. In the meantime, the complainant had been to the Court of Dharmabad on 13/03/2000 in connection with his civil case. At that time, the respondent called him and again demanded him to bring the amount of Rs.1000/- on 25/03/2000. At that time, the complainant assured him that Rs.500/- would be paid on 15/3/2000 and rest of the amount of Rs.500/- would be paid on 22/3/2000, however, as he was not willing to pay any bribe, he filed complaint with the Anti Corruption Bureau, Nanded on 14/3/2000.

. The then Deputy Superintendent of Police of Anti Corruption Bureau, Nanded Mr. S.L. Sangu conducted the investigation. He collected two panch witnesses i.e. PW2 - Jogdande and PW3 - Awasthi. After necessary demonstration of use of anthracene powder, the same was applied to the decoy money of Rs.500/- brought by the complainant. Thereafter, the raiding party proceeded to the Court of Judicial Magistrate First Class at Dharmabad. Complainant and the shadow panch witness went in the Court premises and met the respondent. At that time, Digambar told the respondent that the

amount has been brought. Upon that the respondent asked to keep the currency note on a file. The complainant obeyed the same. Thereafter, the respondent took up those currency note i.e. the decoy money by his right hand and placed the same in bundle of the document kept in the corner of the said room. In the meantime, the complainant gave the signal as determined earlier. Rest of the members of the raiding party including the Investigating Officer arrived at the spot. Thereafter, regular exercise of examining all the relevant parts of the body and clothes, firstly of the complainant and then of the respondent was carried, which confirmed the above activities. Thereafter, after usual investigation, sanction to prosecute the respondent was sought, which was granted by PW4 Mr. Satish Tripathi, the Principal Secretary to the Government of Maharashtra at Exhibit 32.

4. Before the learned Special Judge, all these four witnesses were examined. The learned Special Judge however found that the case has not been proved beyond reasonable doubt. Therefore, the respondent was acquitted.

5. Learned A.P.P. submits that the learned Special Judge has unnecessarily doubted the prosecution case. He submits that not only the complainant but the statement of both the independent panch witnesses would show that at the time of trap, not only again the demand of the money was made by the respondent but he had even accepted the same. In the circumstances, he submits that the appeal be allowed.

6. On the other hand, Mr. H.I. Pathan, learned Advocate h/f. Mr. V.D. Salunke, Advocate for the respondent submits that the material on record as appreciated by the learned Special Judge, would show that a reasonable and probable view is taken by the learned Special Judge and, therefore, in the present appeal against acquittal, no interference is warranted.

7. During the course of arguments, no serious objection was taken regarding the legitimacy or validity of the sanction.

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

I) Whether the prosecution has proved that during the relevant period of February and March, 2000, the present respondent has made the demand of Rs.3000/- and settled the same to Rs.2000/-, as the remuneration other than the legal remuneration, to facilitate acquittal of the complainant – Digambar in Sessions Case No. 140 of 1999 pending on the file of learned Judicial Magistrate First Class, Dharmabad ?

II) Whether the prosecution has further proved that the present respondent has again on 15/3/2000 made the demand and accepted an amount of Rs.500/- as illegal remuneration by corrupt or illegal means by abusing his position as Assistant Police Prosecutor ?

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

R E A S O N S

9. To recapitulate, it is the prosecution case

that on 15/2/2000, when the complainant and his companion visited the Court of learned Judicial Magistrate First Class Court, Dharmabad, the first of the demand of Rs.3000/- was made by the present respondent. However the certified copy of the relevant record of the criminal case, in which the complainant was accused, would show that in-fact, on that day, the present respondent had applied for issuance of bailable warrant against the complainant and his companion as they remained absent in the Court on that day. Thus the very version of the prosecution that on that day, the complainant and his companion attended the Court where the respondent made the demand is seriously in doubt.

10. The companions of the complainant were not examined by the prosecution though it was the prosecution case that not only the demand was made in their presence but even the complainant has borrowed an amount of Rs.200/- from one of the companion namely Baliram.

11. Further, the learned Special Judge has taken into account the anomalies regarding the total of the

amount agreed to be paid and the actual amount sought to be paid. It is the prosecution case that the amount was settled at Rs.2000/-. The total calculation of the the payment made or demanded, as per the prosecution case however would come to Rs.2200/-, which has been taken into consideration by the learned Special Judge. The belated explanation regarding this was not accepted.

12. The variance regarding the second payment i.e. at the time of trap and where the decoy money was found, over which suspicion has been highlighted by the learned Special Judge.

. The variance between the statements of the complainant and the shadow panch witness Mr. Jogdand on the question, as to whether respondent has made the demand or as to whether the complainant on his own stated that he has brought the money, was highlighted by the learned Special Judge. Most glaring fact is that though as per the prosecution, the decoy money was found in a big crack that was developed in the wall of the office of the respondent, according the complainant and PW2 – Jogdand, the decoy money was lifted by the

respondent from the file and kept the same in the gap of certain documents.

. Further, the panch witness has admitted that during the post trap exercise the respondent has taken the currency note. Thus, the defence of the respondent that he was compelled by the Investigating Officer to touch the currency note was probablized.

13. In that view of the matter, in the present appeal against acquittal, I do not find any reason to interfere in the reasoning and conclusion of the learned Special Judge.

14. In the result, the appeal is hereby dismissed. Bail bonds, if any, of the present respondent shall stand cancelled.

[M.T. JOSHI]
JUDGE

arp/