

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 779 OF 2003

State of Maharashtra
Through Police Station
Degloor, Tq. Degloor,
District Nanded

..APPELLANT
(Orig. Complainant)

VERSUS

Sarvattom Venkatesh Kulkarni
Age: 70 years, Occ: Village Development
Officer, Vazar at present Bhatgalli,
District Nanded

..RESPONDENT
(Orig. Accused)

....

Mr. P.N. Kutti, A.P.P. for appellant-State

Ms. Chinmayee Deshpande, Advocate holding for Mr. S.V. Natu,
Advocate for Respondent

....

CORAM : M.T. JOSHI, J.

DATED : 24th NOVEMBER, 2015

ORAL JUDGMENT :

Heard both sides.

2. The appellant-State, being aggrieved by the judgment and order dated 31st July 2003 passed by the learned Additional Sessions Judge – cum – Special Judge, Biloli in Special Case (ACB) No.2/2002, thereby acquitting the respondent from the offences punishable under Section 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, has preferred the present appeal.

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

During the relevant period i.e. 2001-02, the respondent was working as a Village Development Officer at village Vazar, Tq. Degloor, Dist. Nanded. An open plot bearing Survey No.170 in the village was owned by one Motiram Savle. On his death, his son i.e. the complainant-P.W.1 Sanjay Kumar moved the present respondent for mutation in the Gram Panchayat register for recroding the name of his mother-Kondabai in the said record. The said application was

filed on 5th November, 2001. The respondent assured to do the needful.

. After one month, the complainant again met respondent, at that time the respondent told that some villagers had raised objection in this regard and, therefore, it was not possible for him to get the mutation done. Thereafter again, the complainant filed application dated 27th December 2001 and sought the copy of the objection raised by the villagers.

. During this period, respondent ultimately asked the complainant to pay Rs. 2,500/- for getting the work done.

. On 6th January, 2002, complainant again met the respondent and bargained about the quantum of the amount. It was settled to Rs.1,500/-. Again on 13th January, 2002, complainant met the respondent and told him that he could not manage for Rs.1,500/-, but was prepared to pay Rs.500/- next day i.e. on 14th January, 2002 in the evening, either at the house or office of the

respondent. The respondent accepted the proposal and asked him to pay Rs.500/- on the next day and remaining amount later on at the time of supplying the copy of the mutation.

. Accordingly, complainant filed his complaint with the Anti Corruption Bureau, Nanded on 14th January, 2002. Police Inspector-Kendre has carried the investigation. He collected two panch witnesses, including shadow panch witness Mr. Pandit Deshmukh. Decoy money was brought by the complainant. Demonstration of application of anthracene powder was shown. Anthracene powder was applied to the decoy money. It was kept in the pocket of the complainant and the raiding party proceeded to the house of the respondent.

. The complainant and the shadow panch witness went to the house of the respondent. The complainant, during the talk raised issue of payment of money and respondent asked to pay the same. Thereupon, complainant handed over the decoy money and respondent accepted the same by his right hand and then shifted the

same to his left hand. Thereupon, complainant gave the predetermined signal to raiding party. Thereafter, the raiding party arrived at the spot. The respondent was apprehended and upon examination of the relevant parts of the body as well as cloths of the respondent and, thereafter, of the complainant under the ultra violet light proved transfer of the tainted money.

. The defence of the respondent was that, he told complainant that in absence of any issuance of proclamation or resolution by the Village Panchayat, mutation cannot be carried but, the complainant was insisting for non issuance of proclamation. He wanted that mutation be carried out against the rules. In the circumstances, the complainant wanted to get the work done and, therefore, he filed a false complaint and attempted to thrust the tainted money in his hand at the time of trap. In the circumstances he claimed acquittal.

4. Before the learned Special Judge in all the five witnesses were examined including complainant, both panch witnesses,

sanctioning authority-P.W.3-the then Chief Executive Officer, Zilla Parishad, Nanded, who accorded sanction to the prosecutor i.e. the Investigating Officer.

5. The objection of the present respondent that the Police Inspector is not competent to investigate the case was rejected in view of the ratio of *State of Haryana Vs. Bhajanlal* reported in *AIR. 1992 SC 606*. The objection of the respondent that the sanctioning authority has not applied its mind, however, was accepted by the learned Special Judge for two reasons, firstly, that P.W.3-sanctioning authority has merely deposed that all the papers pertaining to the case were submitted without specifying as to which papers were given to him and secondly though draft of the sanction order was supplied to him by the Investigating Officer, the said draft order is not placed on record to find out as to whether draft sanction order has been mechanically accepted by the sanctioning authority.

6. On merit, the learned Special Judge did not believe the prosecution case for the reasons forwarded by him, and in the

circumstances, the respondent is acquitted.

7. The learned A.P.P. submits that when the Chief Executive Officer - the Sanctioning Authority has deposed that all the papers concerning the present offence were submitted to him, there was no reason for the learned Special Judge to find fault with the same. Further, use of the draft order is required to be made since legal and technical words are required to be used in sanction order and, therefore, merely because a draft is sent to the sanctioning authority would not mean that there is no application of mind.

. On merit, he submitted that not only the complainant, but even the independent panch Mr. Pandit Deshmukh has deposed regarding demand of money and acceptance of the same and, therefore, there was no reason for the learned Special Judge to doubt the prosecution case.

8. On the other hand, Ms. Chinmayee Deshpande, learned

Counsel holding for Mr. S.V. Natu, learned Counsel for respondent submits that the reasons forwarded by learned Special Judge are based on material on record and, therefore, in the present appeal against acquittal, no interference is warranted.

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

(I) Whether the sanction to prosecute the respondent by P.W.3-Vijay Nahata is valid and legal ?

(II) Whether the prosecution has proved that the present respondent has made a demand of Rs.500/- and agreed to accept the same, as other than the legal remuneration for effecting the mutation in the Gram Panchayat record in favour of Kondabai, mother of the complainant regarding the plot ?

(III) Whether the prosecution has proved that the

present respondent has, on 14th January, 2002 again made demand and accepted the said amount of Rs.500/- other than legal remuneration and also by corrupt or illegal means, abusing his position as a Village Development Officer ?

My findings to the Point No.(I) is in affirmative and to Point Nos.(II) and (III) are in negative. The appeal is dismissed for following reasons.

R E A S O N S

10. As regard sanction, it is to be noted that P.W.3 - Mr. Vijay Nahata has deposed that he has perused all the papers submitted to him concerning the offence. Since Mr. Nahata has not deposed, as to which specific papers were perused by him, the Trial Court doubted his version. It is to be noted that no specific question was put regarding specification of papers and in such circumstances jumping to the conclusion that it amounted to the non application of mind, was not proper.

11. Similar is the case regarding the draft sanction order. It is a common knowledge that legal and technical words are required in sanction order and, therefore, merely because as a guidance, if a draft sanction order is supplied to the sanctioning authority, one cannot directly jump to the conclusion that there is non-application of mind.

. In the circumstances, findings of the learned Special Judge are not proper. In my view, the sanction order is legal.

12. However, on merit, the reasoning of the learned Special Judge cannot be faulted. The evidence on record, as recorded by him would show that on 27th December, 2001, the villagers have raised objection regarding the mutation. It is an admitted fact that record was kept blank as certain persons from muslim community were claiming that it was a muslim religious site and much before filing of the present application, the dispute has reached at the level of the Zilla Parishad, Nanded. Admittedly, even the Sarpanch of the village who was very much concerned with the entries, had told the

complainant that objection had already been raised on the application of complainant by the muslim community persons. Even one document at Article C amply proved the same. The Sarpanch has specifically endorsed on the application that the Gram Sevak should keep the issue of mutation pending till the dispute is resolved. The case of the respondent therefore, that he could not have at all carried the mutation, appears to be probable.

13. The learned Special Judge has taken into consideration the fact that on two or three occasions, the respondent told the complainant that since the villagers have raised objection, the needful cannot be done. Suddenly thereafter, he demanded an amount of Rs.2,500/- and even settled to accept Rs.500/- as initial payment.

14. The learned Special Judge has taken into consideration the fact in Article C, and has concluded that this document is prepared by the complainant except the portion marked as 'A' to the effect that the said plot has not been recorded in the village

panchayat. The learned Special Judge has therefore observed that mischief can be attributed to the complainant himself, as admittedly, other portion in the certificate is entirely in his handwriting except the disputed portion.

15. As regard the actual trap, though the complainant and the shadow panch witness deposed on the lines of the prosecution, suddenly the second panch witness P.W.4 – Jabbar Khan deposed that the raiding party had also heard the conversation between the complainant and the respondent. He gave all the details that when the party reached the house of the respondent, one women came out, to whom both of them questioned, as to whether the respondent is in house. Thereafter, they entered in the house and the talk as narrated by shadow panch witness took place. How the raiding party including the second panch witness within the said vicinity could hear the conversation and how still the respondent made the demand, is an enigma as observed by the learned Special Judge.

16. Further, a contradiction is noted between the statements of P.W.2-Pandit Deshmukh and P.W.4-Jabbar Khan on the fact, as to whether the P.W.4 Jabbar Khan took the decoy money in his hand in the house of respondent. According to P.W.2-Pandit Deshmukh, the decoy money was taken by P.W.4-Jabbar Khan, while Jabbar Khan refused to accept the same.

17. In all these circumstances, the learned Special Judge, Biloli extended benefit of reasonable doubt in the present case and acquitted the respondent. Therefore, no interference is possible.

18. Accordingly, appeal is dismissed. Bail bonds, if any, in favour of the respondent, shall stand cancelled.

(M.T. JOSHI, J.)