

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 523 OF 2011

The State of Maharashtra

.. Appellant
(Orig. Complainant)

Vs.

Kundlik Kashinath Bhand,
Age 40 years, R/o. Dhotre Budruk,
Tq. Parner, Dist. Osmanabad

.. Respondent
(Orig. Accused)

Mr. V.P. Kadam, A.P.P. for the appellant/State
Mr. S.B. Bhapkar, Advocate i/b Mr. D.S. Manohar, Advocate for
the respondent

CORAM : M.T. JOSHI, J.

DATE : 07/07/2015

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by the recording of acquittal of the present respondent from the offences punishable under section 7, 13(1)(d) r/w section 13(2) of the Prevention of Corruption Act, 1988 by the learned Special Judge / Additional Sessions Judge, Ahmednagar vide judgment and order dated 20/12/2010 passed in Special Case No.5 of 2006, present appeal is preferred by the State.

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

. That the respondent was serving as a Clerk in Grade III category in Tehsil Office, Parner, District – Ahmednagar during the relevant period. At that time, a chapter case bearing No. 363 of 2005 was pending against the complainant – Balu Baber in the said Tehsil Office. The case was fixed on different dates. On 29/10/2005, the present respondent told the complainant that if the case is to be closed in order to avoid continuous visits to the Tehsil Office, he will have to pay an amount of Rs.250/- to him, however, if no amount is paid then the complainant would be required to attend on every date and the case would not be closed. When the complainant told that he did not have that much money, the respondent asked him to attend the Office on the next date i.e. on 10/11/2005 alongwith the amount. The complainant was not willing to pay the said amount. In the circumstances, he filed complaint with Anti Corruption Bureau, Ahmednagar on 9/11/2005. Accordingly, usual investigation was carried. Two panchas, namely, P.W. 1 – Ganesh Vidhye and one Ganesh Kyatam of two different departments were called.

As usual, the complaint was read over, demonstration of anthracene powder was given to all the concerned. Anthracene powder was applied to the decoy money brought by the complainant and the complainant as well P.W.1 were asked to go together to visit the respondent and to hand over the decoy money only when the respondent would make the demand. The pre-determined signal was agreed. All the raiding party went to the Tehsil Office.

. At about 11:50 hrs., the complainant as well as P.W. 1 went in the concerned Office. When the complainant asked the respondent for closing of the case, the respondent asked him as to whether he has brought the amount of Rs.250/-. Accordingly, the complainant affirmed the same. Thereupon, the respondent obtained the signature of the complainant on certain paper and asked him to pay the amount. Accordingly, the complainant handed over decoy money by his right hand from his shirt pocket, which was accepted by the respondent by his right hand and he kept the same in his left side shirt pocket. Thereafter, the complainant went outside and gave pre-determined signal. Thereupon, P.W. 2 and other Offices of raiding party

arrived. Thereafter, post trap activities were carried. Panchanama of the same was carried to show that the decoy money was found from the person of the respondent. After carrying further necessary investigation, collecting the sanction order from the Collector, Ahmednagar, the chargesheet came to be filed.

4. Before the trial could begin before the learned Special Judge, the complainant has died. In the circumstances, shadow panch P.W. 1 Ganesh Vidhye was examined to prove the demand and acceptance of the illegal gratification. P.W. 2 - Balasaheb Kopnar, Officer of the Anti Corruption Bureau was examined as the Investigating Officer. P.W. 3 Mr. Umakant Dangat, the then Collector of Ahmednagar was examined to prove the sanction order signed by him at Exhibit 36.

5. The learned Special Judge found that the prosecution evidence does not inspire any confidence. Therefore, on merit, he extended benefit of reasonable doubt to the respondent. As regards the sanction also, the learned Special Judge held that the sanctioning authority has not applied it's mind to the material of the case. Therefore, the sanction was held to be

invalid. Accordingly, respondent was acquitted. Therefore, the present appeal.

6. Learned A.P.P. submits that the reasoning of the learned Special Judge as regards sanction would show that the sanction was held vitiated because the defence was made probable. He further submits that though due to the death of the complainant preceding the trial, first of the demand could not be proved, second of the demand as well as the acceptance was proved by P.W. 1 Ganesh Vidhye. He further submits that the trial Court should not have disbelieved the prosecution case and in the circumstances, he submits that the respondent be convicted.

7. On the other hand, Mr. Bhapkar i/b Mr. Manohar, learned counsel for the respondent submits that since first of the alleged demand is not proved due to the death of the complainant and as there is no demand of illegal gratification at the time of trap, there was nothing further to find out as to whether certain doubt has arisen during the trial. He submits that the admission of the sanctioning authority coupled with the statement of the defence witness i.e. the then Tehsildar

would show that during the same period, drive for collection of funds for "National Flag Day" was going on, meetings were held, a quota was given to the Officials for collection of the funds and thus, defence of the respondent that the amount was accepted towards the collection of the official funds, has been correctly accepted by the learned Special Judge.

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

I) Whether the sanction to the prosecution granted by P.W. 3 is legal and valid ?

II) Whether the prosecution has proved that on the given date, time and place, the present respondent has made a demand of Rs.250/- as illegal gratification as reward or motive for carrying the official act and has further used corrupt means by abusing his position as a public servant, has committed misconduct ?

My finding to point no. (I) is in the affirmative, to point no. (II) is in the negative. The appeal is therefore dismissed for the reasons to follow.

R E A S O N S

9. The reasoning of the learned Special Judge that the sanctioning authority has not applied its mind, if read in entirety, would show that according to the learned Special Judge, the sanctioning authority ought to have taken into consideration the defence of the respondent that during the relevant period, drive for collection of funds for the 'National Flag Day' was going on. This itself is the reasoning that the probable defence ought to have been a cause for refusal to grant the sanction. Reading of the entire evidence of P.W.3 would show that he has perused the entire record. He found that the complainant has alleged in his complaint that for closure of the chapter case, the demand was made and, therefore, there was no reason for the sanctioning authority to find out as to whether the defence was probable at that stage. The reasoning of the learned Special Judge in this regard, therefore, cannot be accepted. The sanction accorded by P.W. 3 Mr. Dangat was therefore legal and valid.

10. On merit of the case, however, it is an admitted fact that first of the demand for closure of the chapter case was allegedly made by the respondent only in presence of the complainant. The complainant has unfortunately died before the trial could begin. According to the prosecution case, at the time of trap, the only dialogue that took place between the complainant and the respondent was, as to "*whether the amount is brought*" and the same was handed over. The prosecution case does not show that the amount was to be accepted by the respondent personally as an illegal gratification.

11. The evidence of P.W. 3 - the sanctioning authority coupled with the testimony of the defence witness i.e. the then Tahsildar during the relevant period, would prove that collection of funds for the National Flag Day was going on. In the circumstances, it would strengthen the defence case. In that view of the matter, the finding of the learned Special Judge in this regard in the present appeal against acquittal cannot be faulted with. In the result, the following

order:-

12. The appeal is hereby dismissed. Bail bonds, if any, of the present respondent shall stand cancelled.

[M.T. JOSHI]
JUDGE

arp/