

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 782 OF 2014

Atmaram S/o Parshuram Sherkar,
Age : 51 years, Occu.: Agriculture,
R/o : Village Kalewadi, Post : Sirasmarg,
Taluka : Georai, District : Beed .. APPELLANT
(Orig. Accused)

VS.

The State of Maharashtra,
Through the Police Inspector,
Anti Corruption Bureau, Beed,
Taluka and District : Beed .. RESPONDENT
(Orig. Complainant)

Mr. R.S. Deshmukh, Advocate for the appellant
Mr. P.N. Muley, A.P.P. for the respondent/State

CORAM : M.T. JOSHI, J.
DATE : 07/09/2015

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by the recording of conviction by the learned Additional Sessions Judge, Beed vide judgment and order dated 28/11/2014 passed in Special Case (ACB) No. 7 of 2010, of the present appellant for the offences punishable under section 7, 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act and the consequential

sentences awarded to the present appellant i.e. to suffer rigorous imprisonment for one year and rigorous imprisonment for two years respectively, with direction to pay fine, as detailed in the impugned judgment, the present appeal is preferred by the original accused.

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

. That complainant - Bibhishan S/o Vithalrao Karande is an agriculturist of village Kolgaon Tq. Georai, Dist. Beed. In the month of October, 2009, he has cultivated certain crops on irrigation. On 26/10/2009, it was found that the transformer, named as 'Bhosale Distribution Point' of the area had become defunct. In the circumstances, replacement of the same was required. Therefore, the complainant on mobile phone intimated the present appellant, who was the lineman posted by the MSEDCL (Maharashtra State Electricity Distribution Company Ltd.) in the area to do the needful.

. On the next day, the appellant came to the spot and inspected the said transformer. He told that the

report of the burning of the transformer will have to be given at three places i.e. at Madalmohi, Georai and Beed and, thereafter, the second transformer would be available. The appellant told the complainant that in case, the complainant would pay an amount of Rs.9000/-, there would be immediate replacement of the transformer. Upon questioning, the appellant told that unless and until the amount is paid, the transformer would not be replaced immediately. After negotiation, the appellant became ready to accept the amount of Rs.5,000/-. All these talks took place in presence of two witnesses i.e. Balasaheb Barhate and Ganesh Karande. Ultimately, the complainant agreed for payment of Rs.5000/- and paid an amount of Rs.500/- instant. At that time, it was agreed that balance amount of Rs.4,500/- would be paid on 29/10/2009 either at Kolgaon or at Beed. In the circumstances, the complainant filed the complaint with Anti Corruption Bureau, Beed on 28/10/2009.

. Upon filing of the complaint, the verification of the demand was carried via a mobile conversation between the complainant and the appellant, which was

heard and witnessed by the panch witnesses already collected by the complainant as the mobile phone was kept on speaker mode on the very same day i.e. on 28/10/1999. During the said conversation, the appellant again asked as to what has happened regarding the money, upon which the complainant told that he has obtained the subscription from the affected agriculturists and the amount would be paid on the next day.

. In the circumstances, PW4 – Investigating Officer Mr. Bhimrao Shingade, Deputy Superintendent of Police, Anti Corruption Bureau, Beed has carried the investigation. He had collected panch witness including PW3 – Yogiraj Gurkhude, the panch witness. Regular exercise of showing the demonstration of application of anthracene powder was given to the said witness and the complainant.

. The decoy money was brought by the complainant on the next day with the Anti Corruption Bureau Office. Accordingly, on 29/10/2009, the trap was laid at Madalmohi. The complainant and the shadow panch witness went ahead in one hotel. Meeting took place

between the complainant and the appellant. Thereat, the appellant again made the demand of the money in presence of the panch witness. Accordingly, the complainant produced the decoy money and the same was accepted by the appellant.

. Thereafter, the necessary panchanama regarding these activities and later-on activities of examining the appellant and, thereafter, the complainant under he ultra violet lamp for confirming the presence of anthracene powder at the relevant places of the body and clothes, had taken place. Thereafter, further investigation was carried. Statements of necessary witnesses were recorded. PW2 Mr. Laxman Chaure, the then Executive Engineer of MSEDCL, Beed has granted sanction at Exhibit 29 and the chargesheet came to be filed.

4. Before the learned Special Judge, the complainant was examined as PW1. As already narrated, PW2 is the sanctioning authority. PW3 Yogiraj Gurkhude was the shadow panch witness while PW4 — Bhimrao Shingade is the eye witness.

5. The appellant did not deny that he has made the demand of money and, thereupon, accepted the same in presence of the panch witness. His defence, however, is that during the relevant period, he was supervising the functioning of around 30 transformers within three villages.

. On 27/10/1999, he received information from the agriculturist that the present transformer named and styled as 'Bhosale Distribution Point' had become defunct. He therefore told those agriculturists that he has no authority to replace the transformer and, therefore, he will have to report to the Junior Engineer at Madalmohi. He further told that he has given report to the Junior Engineer and the agriculturists should meet the Junior Engineer. Accordingly, the agriculturists alongwith the appellant met the Junior Engineer Mr. Mohare. The agriculturists told that since it was the period of rabbi crop season, it was necessary to immediately provide water to the crops. Upon that Mr. Mohare told that during the

relevant period, there was very less labour with the MSEDCL. There was also no vehicle and there was certain defect in the functioning of certain vehicles. Therefore, he hold that in case the agriculturists would privately provide for all this, the transformer would be immediately replaced within two days. Upon that, the agriculturists told that since they do not have the skilled labour with them and all this infrastructure, they would pay the expenses.

. Accordingly, on 29/10/1999, said Mr. Mohare passed order of replacement of the transformer. The necessary infrastructure was arranged for, including eight labours, bullock cart, tempo etc. One employee was also sent by Mr. Mohare with the said vehicle.

. At the time of the trap, appellant was waiting for receipt of the transformer and the labours. The wages of the labours were fixed and in the circumstances, the appellant has accepted the amount at the time of trap towards payment of these expenses. In the circumstances, he claimed acquittal.

6. The learned Special Judge earlier convicted the present appellant vide judgment and order dated 29/3/2012 in Special Case No.7 of 2010. Thereafter, in Criminal Appeal No. 291 of 2012, this Court vide judgment and order dated 17/02/2014 has remanded the case for giving opportunity to the present appellant to place evidence. Copy of the said judgment and order dated 17/2/2014 is accepted and marked as "X" for the purpose of identification.

. Upon remand, the appellant has examined defence witnesses and closed the case. The learned Special Judge had later on, again convicted the present appellant for the said offences. Hence, the present appeal.

7. Mr. Deshmukh, learned counsel for the appellant submits that the evidence on record itself would show that the present appellant had not made any demand of money and it was the Junior Engineer, who told the agriculturists that in case they want immediate replacement of the transformer, they will have to bear

the expenses. The learned Special Judge has however, overlooked this material and wrongly convicted the present appellant. Hence, he submitted that the appeal be allowed.

8. On the other hand, learned A.P.P. submitted that the rules of MSEDCL admittedly did not provide for acceptance of any expenses from consumers of the electrical company. In the circumstances, he submits that the reasoning of the learned Special Judge, cannot be faulted with.

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

I) Whether the prosecution has proved that on 27/10/2009, the present appellant being a public servant had made the demand of Rs.5,000/- from complainant – Bibhishan as the gratification other than the legal remuneration for carrying the official duty of replacement of the transformer and accepted an amount of Rs.500/- on the same day ?

II) Whether the prosecution has further proved that on 29/10/2009, the present appellant again accepted an amount of Rs.4,500/-, as balance of the gratification other than the legal remuneration as detailed supra ?

III) Whether the prosecution has further proved that the present appellant, being a public servant, has obtained an amount of Rs.5,000/- from the complainant by corrupt means ?

My findings to all the points are in the negative. The appeal is therefore allowed and the appellant is therefore acquitted of all the offences for the reasons to follow.

R E A S O N S

10. There is no denial to the fact that the money was demanded for carrying the immediate work of

replacement of the transformer and that even the said money was accepted by the present appellant. The only question is, as to who has put up the proposal and what was the consideration for payment of the said money to the present appellant.

11. The complainant in his cross-examination had admitted that on 27/10/2009, he alongwith certain agriculturists and the appellant met the Junior Engineer Mr. Mohare at Madalmohi. He also admitted that at that time, the Junior Engineer told them that they must bear the expenses of loading, unloading and installing of the transformer and also of carrying the old transformer in a private vehicle.

. In this state-of-affair, the verification panchanama as well as the statements of the shadow panch witnesses would show that on the mobile, the conversation was regarding the demand of money and as to whether there could be reduction in the money.

. The statement of the shadow panch witness as well as the panchanama at Exhibit 37 immediately

recorded after the trap would also show that at the time of acceptance of the decoy money, there was no conversation that any money was demanded towards the personal gratification by the appellant but only query was made, as to whether, the money was brought and, thereafter, the same was paid.

. When all these facts were submitted before the learned Special Judge, the learned Special Judge at paragraph no.33 of judgment observed that the said defence is not corroborated. The learned Special Judge however has not taken into consideration that the defence was admitted by the complainant in his cross-examination and further probabalized by the dialogue that took place during the verification and also at the time of trap, as detailed supra.

12. In that view of the matter, reasonable doubt has arisen, as to whether the present appellant has sought the money as a personal gratification or for expenses towards immediate replacement of the transformer on the direction of his senior i.e. Junior Engineer - Mr. Mohare.

13. Whether any rules of MSEDCL provide for acceptance of the money by its employee, is not the issue before this Court. The issue is, as to whether the appellant has demanded the money and accepted the same as gratification other than the legal remuneration for carrying the official work. The above material has cast a reasonable doubt on the prosecution case.

14. In that view of the matter, the following order:-

15. Criminal Appeal is hereby allowed.

16. The impugned judgment and order of the learned Additional Sessions Judge, Beed, convicting the present appellant for the offences punishable under section 7, 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, is hereby set aside.

. Instead, the appellant is acquitted of all the offences.

17. Fine amount, if any, deposited by the appellant be repaid to him after a period of sixty days from the date of this judgment.

18. Disposal of the property on the lines of the directions issued by the learned Additional Sessions Judge, Beed.

[M.T. JOSHI]
JUDGE

arp/-