

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.162 OF 2000

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

ANNASAHEB MAHADEV BHANDARE)...RESPONDENT

Mr.Deepak Thakre, APP for the State.

Mr.Niranjan Mundargi, Advocate for the Respondent.

CORAM : ABHAY M. THIPSAY, J.

DATE : 27th JULY 2015.

JUDGMENT :

1 The respondent was prosecuted on the allegation of having committed the offence punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'P.C.Act'). After holding a trial, the learned Special Judge, Kolhapur, by his judgment and order dated 29th September 1999 held the respondent not guilty

and acquitted him. The State of Maharashtra is aggrieved by the said order of acquittal, and has therefore, after obtaining the leave of this court, filed the present appeal challenging the same.

2 I have heard Mr.Deepak Thakre, the learned APP for the State. I have heard Mr.Niranjan Mundargi, the learned counsel for the respondent. With their assistance, I have gone through the evidence adduced during the trial and the impugned judgment.

3 For the sake of convenience and clarity, the respondent shall hereinafter be referred to as 'the accused.'

4 The prosecution case, as put forth before the trial court, in brief, may be stated thus :

One Gopinath Sankpal and his wife were accused in a case in respect of an offence punishable under Section 306 of the Indian Penal Code (IPC) read with Section 34 thereof. The mother of the said Gopinath – Smt.Laxmibai – had committed

suicide and Gopinath and his wife were alleged to have abetted the commission of suicide by Smt.Laxmibai. After investigation, a charge-sheet was filed against Gopinath and his wife in respect of the aforesaid offence in the court of Judicial Magistrate First Class, Ichalkaranji. The date for appearance before the Magistrate, was given as 22nd July 1993, on which date, the said Gopinath (hereinafter referred to as “the complainant”) appeared before the Magistrate and furnished bail bonds. However, the wife of complainant was unable to remain present before the Magistrate on that date, and had sought exemption from personal appearance for the day, which was granted. The next date before the Magistrate was 2nd September 1993. The complainant, apparently, had engaged two advocates and one of the advocates wanted him to get the copies of the police papers and accompanying documents before 2nd September 1993. The complainant, therefore, went to the Police station and asked for the copies of the charge-sheet, but was informed that copies were already sent to the court of the Magistrate. On 1st September 1993 i.e. the day prior to the date on which the matter was fixed

before the Magistrate, the complainant went to the Magistrate's court. The accused was working there as a Clerk. He was looking after the criminal table, and apparently, was responsible for getting the copies of the charge-sheet from the police and for supplying the same to the accused persons. The complainant demanded the copies of the police papers from the accused. The accused told him that he would have to give Rs.65/- therefor. The accused, allegedly, further said, that unless this amount was paid, he would not deliver the copies of the police papers to him. The complainant said that he would pay the amount on the next date, but actually went to the office of Anti-Corruption Bureau (ACB) Kolhapur, and lodged a complaint against the accused. The complaint was recorded. A trap was arranged on 2nd September 1993 and the panchas were called. An amount of Rs.65/- was obtained from the complainant. Anthracene powder was applied to the same. The properties of anthracene powder were explained to the complainant and the panchas. The numbers of the currency notes were noted in the panchnama. The police party and the panchas then left for the court of Magistrate, and reached there at

about 1.40 p.m. The case, in which the complainant and his wife were accused, was called out before the Magistrate and was adjourned. Thereafter, the complainant went to the accused and demanded the copy of the police papers. The accused asked him whether the complainant had brought the amount and the complainant told him that he had brought the amount of Rs.65/-. The accused, then, told the complainant that he needed Rs.69/-. The complainant thereupon told that he had only an amount of Rs.65/- with him, and that, he would pay the amount of Rs.4/- on the next date. Thereafter, the complainant handed over Rs.65/- to the accused, and the accused accepted it. After the pre-decided signal was given, the accused was apprehended.

5 The prosecution examined seven witnesses during the trial. The first witness is the complainant himself. The second witness Krishnaji Natekar is a panch, who had accompanied the complainant, as per the trap laid. The third witness – Sanjay Tukaram Bote and the fourth witness – Krishant Bhiku Saloke – are the employees working in the court of Magistrate at the

material time. They have been examined only to show that the accused was concerned with the work of getting the police papers / charge-sheets of various cases coming to the Magistrate for supplying to the accused persons in those cases. The fifth witness Malgonda Patil is a Head Constable attached to Hupri Police Station, who had filed the charge-sheet in the case against the complainant and his wife. The sixth witness Chhagansing Bais, District Judge, is the Sanctioning Authority. He had granted sanction to prosecute against the accused, as required under Section 19 of the P.C.Act. The seventh witness – Sadashiv Chavan – is the Investigating Officer, who had laid the trap.

6 The defence of the accused, as taken by him before the trial court by filing a written statement, was that, that the complainant had approached him by saying that he wanted copies of the police report and charge-sheet, and that, money was handed over by the complainant to the accused for passing it on to the clerk of his advocate for getting the copy of the charge-sheet xeroxed. According to the accused, since the complainant had

said that it consisted of 65 pages, the amount that would be required for xeroxing the same, was estimated to be Rs.65/-, and it is thus that the figure was arrived at. It is also the case of the accused that when the complainant actually came for getting the copies on the next day, it was found that it consisted of 69 pages, and therefore, the accused had demanded four rupees more.

7 The learned Judge found the defence of the accused plausible.

8 Indeed, there are a number of suspicious features in the prosecution case.

9 In the first place, the complainant, being an accused in the case, was entitled to get a copy of the charge-sheet free of charge and as a matter of right. It was the responsibility of the Magistrate to see that the copy was supplied. It would be difficult to imagine that the complainant, who had engaged two advocates to defend him, would think of paying any bribe for obtaining the

copy of the charge-sheet, when he was anyway going to get it. This is particularly so, because, according to the complainant, he had gone to the accused for demanding the copy, just a day prior to the date, on which he had to appear before the Magistrate. The accused could very well have got the copies on the next date. The case of the complainant was that, his advocate wanted the copy urgently on the previous date itself, but, the advocate has not been examined as a witness to show that why he could not wait for another day. Moreover, the copies were actually obtained only on the next day, i.e., on 2nd September 1993, when the matter was on the board of the Magistrate and when the complainant was anyway required to remain present before the Magistrate.

10 Considering that the complainant had engaged two advocates, it was easy for him to bring the matter of the demand of bribe by the accused to the notice of the advocate, but the complainant did not do so.

11 The case in which the complainant was an accused was called out on 2nd September 1993, before the complainant paid the money to the accused. Why the complainant, at that time, did not request to the Magistrate for a copy, is not clear.

12 It also appears that after receiving the amount of Rs.65/-, the accused demanded four more rupees. There is substance in the contention advanced by Mr.Mundargi, the learned counsel for the accused, that the very demand of such odd figure indicates that the money that was being demanded, was towards the copying charges.

13 The learned Special Judge in his judgment considered all the aspects of the matter carefully. Among other things, he also noted that the complainant apparently had not disclosed the fact of his having approached the ACB when the matter appeared before the Magistrate on 2nd September 1993.

14 The learned Special Judge also noted that on 2nd September 1993 the matter had been called out before the Magistrate and effective work was done. It appears that a surety was offered for the wife of the complainant and the bail bonds were executed. The tainted amount was allegedly paid by the complainant to the accused at about 5.55 p.m., i.e., after the court hours.

15 Considering all the aspects of the matter, the learned Special Judge doubted whether the complainant genuinely wanted copies of the charge-sheet – which he was anyway to get, or whether he just wanted to trap the accused, for reasons known to him.

16 In my opinion, the appreciation of evidence, as done by the learned Special Judge, and the conclusion arrived at by him, does not suffer from any infirmity, error or illegality.

17 There is one more aspect of the matter, which is of considerable importance. In this case, the trap was laid and the raid was effected in the court premises itself. It was arranged during the working hours of court. No permission appears to have been obtained from the High court or the Judge in-charge of the Judicial Administration of the District, before laying such a trap. If the investigating agencies are permitted to lay traps in the court premises, on working days and during the working hours, it would not be conducive to the administration of justice. The staff attached to a Judge discharges duties under the instructions of the Presiding Officer. If the Police Officers, whose subordination to the Judicial Magistrate is evident from the provisions of the Code of Criminal Procedure, and who frequently visit the courts for obtaining remand or as witnesses, are allowed to raid the court premises without permission of the Presiding Officer of the court or the Principal District Judge, or the High court, there is every possibility of a serious threat to the administration of justice and the independence of judiciary, being posed. A similar view was

taken by the Allahabad High Court in **Surendra Sahai and Others vs. State of Uttar Pradesh** reported in **1997 Cri.L.J.1670**. In my opinion, therefore, it was absolutely improper on the part of the investigating agency to have laid a trap without seeking the previous permission of the Judge in-charge of the Judicial Administration of the District or the High court and without seeking permission to lay such a trap. Incidentally, it may be observed that, the trap was laid without verification of the demand.

18 The order of the acquittal of the accused, as passed by the Special Judge, is proper and legal.

19 The Appeal is dismissed.

(ABHAY M. THIPSAY, J.)