

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.463 OF 2000

The State of Maharashtra	]	 Appellant /
	]	(Org. Complainant)

Versus

Devappa Tatoba Khot,	]	
Aged about 45 years,	]	
Police Head Constable,	]	 Respondent /
R/at Police Head Quarter, Kolhapur.	]	(Org. Accused)

Ms. R.M. Gadvi, A.P.P., for the Appellant.

Ms. Madhavi Tavanandi for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 16TH OCTOBER, 2015.

ORAL JUDGMENT :

1. The State has preferred this Appeal challenging the acquittal of Respondent/Accused for the offence punishable under Sections 13(i)(d) r/w. Section 13(2) of the Prevention of Corruption Act, by the Judgment and Order dated 23rd March, 2000, passed by the Additional Sessions Judge, Kolhapur.

2. Brief facts of the case can be stated as follows :-

The Complainant/Informant herein, namely, PW-1 Pandurang Bhandare, has lodged a complaint application to PSI Shirol, Tahasildar and Collector, Kolhapur, making a complaint against one Namdeo and Neminath Suryavanshi in respect of the damage caused to the common pipeline running from his field, bearing Gat No.1078. To make enquiry in respect of the said complaint application, he had been to Narsinhwadi Outpost. There, the Respondent/Accused was on duty as Police Head Constable and in order to make enquiry in the said complaint application, Respondent demanded the amount of Rs.200/- from PW-1 Pandurang. When PW-1 Pandurang pleaded his inability to raise the amount of Rs.200/-, Respondent reduced the demand to Rs.100/-. PW-1 Pandurang assured to handover the said amount to the Respondent on 8th March, 1993. However, on that day, he could not raise such amount. Hence, he again went to the Respondent, pleaded his inability and assured to give him the said amount on the next day. However, on the next day, i.e. 9th March, 1993, PW-1 Pandurang went to the office of the Anti Corruption Bureau and lodged complaint against the Respondent vide Exhibit-20 for making illegal demand of the bribe amount. His complaint was reduced into writing by PW-7 PI Sadashiv Chavan. He made arrangement for laying trap, called two Panchas, including PW-2 Uday Gholkar, and the

trap was laid. The Respondent was found in possession of the amount of Rs.100/-, as found to be given by PW-1 Pandurang to him in response to his demand. The said amount was seized from the possession of the Respondent under Panchanama and thereafter, after completion of usual investigation, the papers were submitted for obtaining sanction. PW-6 SP Bhagwant More accorded the sanction on perusal of the papers and accordingly the Charge-Sheet came to be filed in the Trial Court against the Respondent for the offences punishable under Section 13(i)(d) of the Prevention of Corruption Act.

3. The Trial Court framed charge against the Respondent vide Exhibit-6. Respondent pleaded not guilty and claimed trial, raising the defence of false implication. In support of its case, Prosecution examined in all seven witnesses. The material witnesses, being PW-1 First Informant Pandurang, PW-2 Panch Uday Gholkar and PW-6 the Sanctioning Authority SP Bhagwant More. On appreciation of their evidence, the Trial Court was pleased to hold that the Prosecution has failed to prove the guilt of the Respondent beyond reasonable doubt. The Trial Court arrived at this finding on the basis of appreciation of testimony of PW-1 Pandurang, finding it to be totally bereft of credence. The Trial Court also noticed several other infirmities and inconsistencies in the case put up by

the Prosecution and, as a result, acquitted the Respondent of the charge levelled against him.

4. This Judgment of the Trial Court is challenged in this Appeal by the learned A.P.P. by submitting that there is consistent evidence of PW-1 Pandurang, First Informant, thoroughly corroborated by the evidence of PW-2 Panch Gholkar, which proves the demand of the bribe amount and also the acceptance of the said amount. Hence, according to the learned A.P.P., the Trial Court has committed an illegality in disbelieving the case of the Prosecution and acquitting the Respondent.

5. Per contra, the learned counsel for the Respondent/Accused has submitted that the Trial Court has, after proper appreciation of the oral evidence and the conduct of PW-1 Pandurang, found him to be totally a man without having any credibility and hence the Trial Court has rightly disbelieved his evidence. Moreover, the Prosecution has also failed to prove in the case that any such demand of bribe amount was made by the Respondent in the presence of PW-2 Panch Gholkar. It is also urged that Respondent has no authority or jurisdiction to give any finding either in favour of the Complainant / First Informant or against him. Hence, there was no question of his extending any favour to PW-1 First Informant

Pandurang. Therefore, there was no reason at all for him to make the demand or PW-1 Pandurang to pay the amount. The learned counsel for the Respondent has also relied upon the various decisions of this Court to submit that the evidence which is required to be adduced in such cases, which affect the moral and integrity of the public servant, is required to be of the highest credibility. Here in the case, that necessary ingredient of credibility is conspicuously lacking and in such situation, the Prosecution cannot be said to have proved the requisite ingredients of the offence. According to the learned counsel for the Respondent, the Judgment of the Trial Court, therefore, does not call for any interference.

6. At the outset itself, this Court would like to remind itself that this being an Appeal against acquittal, the scope of the Appeal as such is very limited. Unless and until it is pointed out that the Judgment of the Trial Court suffers from some perversity, i.e. the evidence which was required to be taken into consideration is not considered by the Trial Court, or, the findings of the Trial Court are based on patently illegal principles of law, this Court cannot interfere in the said finding. Merely because this Court, on the basis of the said evidence, can arrive at a different conclusion, this Court cannot interfere in the Judgment of the Trial Court, which does not suffer from perversity.

7. In the present case, the Judgment of the Trial Court reflects that the Trial Court has found the conduct of PW-1 First Informant Pandurang to be totally bereft of credence. At several paras in the Judgment, the Trial Court has, after appreciating the entire facts and circumstances in which PW-1 Pandurang has lodged the complaint application, observed that PW-1 Pandurang is not worthy of credence. Even in the conduct of the trial and at the time of giving evidence also, the Trial Court has noted that PW-1 Pandurang is not a man worthy of credence, as he is in the habit of making false applications against the persons and authorities. In para No.77 of its Judgment, the Trial Court found that the conduct of the First Informant during the course of recording of his evidence was also not bonafide one and, therefore, he is not a man of credence, but simply to cause harassment to the Respondent and any how to grab some money, if possible, from the persons, whose names are mentioned in the application, he has moved the Anti Corruption Bureau. The Trial Court also found on the basis of the facts and circumstances that the real facts are suppressed by PW-1 Pandurang. Even the Investigating Officer and the Anti Corruption Bureau were required to make preliminary enquiry in the matter, which they have not done. On the basis of this finding arrived at by the Trial Court, the Trial Court has held that, to prove the case of the

Prosecution beyond reasonable doubt, the sole testimony of the Informant, to whom the actual demand of the bribe amount was made, has to be reliable, which was not the fact in the instant case.

8. Needless to state, that in the cases relating to offences of prevention of corruption, as to the aspect of proving the demand of bribe amount, to extend some favour, the only evidence is that of the Complainant. As held by this Court in ***Manohar Dhondu Sawant Vs. State of Maharashtra & Anr., 2006 (2) AIR Bom R 294***, mere proof of the acceptance of money by the Accused is not sufficient since money can be accepted for any number of reasons and, therefore, the demand and acceptance of bribe is an essential ingredient. To prove the demand of the bribe amount, except for the evidence of PW-1 Pandurang, in the instant case, whose evidence is more or less that of an accomplice evidence, there is no corroborating evidence. The evidence of Panch also goes to prove that when they visited the Respondent, there was no talk at all about the complaint application or as to what action Respondent has taken therein. In such situation, mere payment of the said amount by PW-1 Pandurang to the Respondent and acceptance of the said amount by the Respondent is not sufficient to prove the ingredient of the demand of the bribe amount.

9. The result, therefore, is that the necessary ingredients of the offence are not proved by the Prosecution satisfactorily in the present case. Moreover, if the evidence of PW-1 Pandurang himself is found to be of a suspicious and doubtful nature, he being not found to be a man of credence, it cannot be said that the view taken by the Trial Court suffers from any perversity or calls for any interference at the hands of this Court. In consequence, therefore, the Appeal holds no merit and hence stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]