

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. 28 OF 2000

The State of Maharashtra :: **APPELLANT**
(Org. Complainant)

-: Versus :-

Ananda Vedu Pagar
Police Head Constable
B. No.1972, Class III,
Pimpalgaon Baswant Police Station,
Distt. Nasik. :: **RESPONDENT**
(Org. Accused)

Ms R. M. Gadhvi, A.P.P. for the appellant-State.
Mr. Sachin B. Shetye, Advocate with Ms D. S. Mondkar, Advocate for the
respondent.

CORAM : S. B. SHUKRE, J.
12th JUNE, 2015

ORAL JUDGMENT

1. This is an appeal preferred by the State against the judgment and order dated 20/8/1999 delivered by Special Judge, Nashik, thereby acquitting the respondent of the offence punishable under Section 161 of the Indian Penal Code and also for the offence punishable under Section 5(2) read with Section 5(1)(d) of Prevention of Corruption Act, 1947. Briefly stated, facts of the case are as under.:

The complainant in this case is one Rajaram Shinde against whom and whose family members a complaint had been filed on 31/7/1987 by one Sulochana Shinde with police station,

Pimpalgaon Baswant. The complainant, Sulochana Shinde, had made some allegation against the wife of Rajaram Shinde and also Rajaram and his relatives in respect of a quarrel that had taken place on 31/7/1987 in between Sulochana on the one hand and wife of Rajaram and her relatives on the other hand. Rajaram and other members of his family including his wife against whom complaint was lodged by Sulochana were summoned to police station Pimpalgaon Baswant on 05/8/1987. At that time, respondent was attached to said police station as Police Head Constable and it was he who had summoned the said persons. In response to the summons, Rajaram and some other male members of his family visited police station, Pimpalgaon Baswant and met the respondent. On seeing only male members attending the police station, the respondent got annoyed and asked Rajaram as to why the female members did not come to the police station. Respondent threatened Rajaram and other persons accompanying him to detain them in the police station till the female family members came to the police station. Rajaram got frightened and pleaded with respondent not to resort to any coercive measure. Respondent then made a demand of bribe of Rs.200/- from Rajaram for not arresting him and also not taking any further action in the matter. The amount being on the higher side, Rajaram requested the respondent to reduce the amount.

Respondent agreed to take Rs.100/- as bribe for doing official work from Rajaram and also agreed to accept this amount on 07/8/1987. Rajaram assured the respondent to fulfill his demand on 07/8/1987 and thereafter he and others, who were accompanying him, returned to the village.

On 07/8/1987, in the morning, Rajaram Shinde went to the office of Anti Corruption Bureau at Nashik as he was not willing to pay the bribe amount to the respondent and lodged a complaint against the respondent at the said office. It was decided to lay a trap for the respondent and catch him red handed while accepting the bribe amount. Therefore, services of two independent panchas were requisitioned and on their arrival, the complainant and both the panchas were explained the procedure that was followed in laying of the trap. They were also explained about the role of anthracene powder in making a trap successful. A demonstration regarding working of anthracene powder was given to the complainant Rajaram and panch witnesses. Complainant had produced one currency note of Rs.50/- denomination, two currency notes of Rs.20/- each and one currency note of Rs.10/- denomination. Anthracene powder was sprinkled on the currency notes and they were handed over to the complainant to be kept by him in left side pocket of his shirt. The complainant was told to give those currency notes only upon demand being made by the

respondent. The shadow witness, Bhaskar, was instructed to accompany the complainant all the time and witness the transaction that would be taking place between the complainant and the respondent. The complainant was also told the manner in which signal was to be given. Second panch witness was asked to remain with the members of the trap party.

As decided, the raiding party reached Pimpalgaon-Baswant and alighted from the vehicle at some distance before police station, Pimpalgaon-Baswant. While complainant and shadow panch witness together went to police station, Pimpalgaon-Baswant, the second panch witness and other members of the raiding party concealed themselves in an ambush. On arrival at the police station, the complainant and shadow panch saw the respondent as standing in the varandah of the police station. The respondent took them to a nearby Datta Mandir, where he recorded statements of the complainant and some other persons. After completion of recording of statements, the complainant asked the respondent to join him for a cup of tea. The respondent agreed and he along with the complainant and panch witness went to a nearby hotel. At the said hotel, "Nilkanth Hotel", all the three together had a cup of tea and after having finished with tea, the respondent inquired from the complainant as to whether or not his work was done. Complainant replied in the affirmative and

thereafter, respondent demanded bribe amount of Rs.100/- from the complainant. Complainant took out the currency notes from his shirt pocket and handed them over to the respondent. Respondent accepted the currency notes and counted each of the currency notes by his hand and then he placed them in the pocket of his shirt. Complainant then gave pre-planned signal to the members of the raiding party on which they arrived at the hotel and caught hold of the respondent and on being asked by them about the tainted currency notes, respondent removed them from the pocket of his shirt and handed them over to the investigating officer. Fingers of the respondent and complainant as well as shirt pockets of both of them were tested in ultraviolet light whereupon blue glow appeared on the fingers, currency notes as well inner portions of the shirt pockets. It was, therefore, confirmed that the tainted currency notes smeared with anthracene powder had been given by the complainant and accepted by the respondent. The currency notes and the shirt were seized in presence of the panchas. A detailed panchanama was recorded and a formal complaint was filed against the respondent. Statement of witnesses were recorded and after completion of investigation, a charge-sheet was filed against the respondent.

A charge for an offence punishable under Section 7 of the Prevention of Corruption Act equivalent to Section 161 of the

Indian Penal Code and also for an offence under Section 13(i)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 equivalent to Section 5(2) read with Section 5(i)(d) of the Prevention of Corruption Act, 1947 was framed against the respondent. As the respondent pleaded not guilty to the same, he was tried for the said offences, in accordance with law. On merits of the case, learned Special Judge found that the prosecution failed to prove beyond reasonable doubt the offences with which the respondent was charged and, therefore, acquitted the respondent of the same. The State has preferred the present appeal against acquittal of the respondent.

2. I have heard learned A.P.P. for the appellant-State and learned Counsel for the respondent. I have carefully gone through the impugned judgment and order and also record of the case.

3. According to learned A.P.P., there is sufficient evidence available on record to nail the appellant for the offences with which he has been charged in this case. She submits that appreciation of evidence by the trial Court is perverse. The evidence of P.W.-3 Khazasan Gaffur, the sanctioning authority in the matter, sufficiently shows that he had applied his mind and properly arrived at the conclusion about sufficiency of the material for proceeding further in the matter against the respondent and that there is also a corroboration to the evidence of the

complainant, P.W.-2 Rajaram Shinde regarding demand and acceptance of bribe amount coming from the testimony of shadow panch witness, P.W.-1 Bhaskar. She also questions the finding of the trial Court that the prosecution has failed to establish that the amount of Rs.100/- that was accepted by the respondent, was for doing some official work and was received as a motive or reward for not arresting the complainant and the family members and for not proceeding further in the matter. She submits that the evidence of the prosecution, if carefully perused, would show that even these essential ingredients of the offences punishable under Sections 161 I.P.C. and Section 5(2) of the Prevention of Corruption Act, 1947 have been fulfilled in this case and, therefore, she further submits, the findings recorded by the trial Court need to be interfered with.

4. Learned Counsel for the respondent has submitted that in an appeal against acquittal, it is well settled law that finding of innocence of the accused recorded by the trial Court cannot be upset by the appellate Court just because two views are possible. He submits that unless it is shown that the view adopted by the trial Court is so illogical that it cannot be taken at all or that it is the result of non consideration of material evidence or consideration of some extraneous material, appellate Court cannot interfere with the findings recorded by the trial Court. He submits

that such being not the case here, no fault with the impugned judgment and order could be found.

5. It is seen from the impugned judgment and order that the trial Court has acquitted the respondent mainly on three grounds, namely –

(1) Sanction accorded by the competent authority is improper and invalid;

(2) P.W.-2 Rajaram Shinde being an interested witness as well as an accomplice of the respondent has not been corroborated by any independent witness on material aspects of the case, i.e. demand of the bribe money, and

(3) there is no satisfactory evidence to show that the amount of Rs.100/- was accepted by the respondent as an illegal gratification or as a motive or reward for doing some official work as the prosecution witnesses have admitted that whatever work the respondent was entrusted with in this case had been already completed by him and nothing had remained in his hands.

6. So far as concerned the finding recorded by the learned Special Judge regarding improper and invalid sanction given by the competent authority, i.e. P.W.-3 Khazasan Gaffur, who

was the then Special Inspector General of Police, Nashik, I am of the view that the finding is perverse as learned Special Judge has not considered several important facts which have appeared in the evidence of this witness. Learned Special Judge appears to have been swayed in forming his such flawed opinion by the failure of the prosecution to bring on record earlier sanction given in the same case, which was found to be defective by the Special Judge and which was the reason for discharging of the respondent in this very case earlier. After discharge of the respondent by the Special Judge in this Case, the prosecution once again placed the matter before P.W.-3 Khazasan Gaffur for his reconsideration and after carrying out an exercise of revisiting the prosecution case as against the respondent in a complete manner, P.W.-3 Khazasan Gaffur made up his mind and accorded sanction for prosecuting the respondent for the offences punishable under Section 161 I.P.C. and Section 5(2) read with Section 5(i)(d) of the Prevention of Corruption Act. The chapter of defective sanction given earlier was already over and the sanction accorded thereafter by P.W.-3 Khazasan Gaffur was available on record. Therefore, there was no need for the prosecution to again produce in evidence previous defective sanction on which it was not basing its case against the respondent. Of course, learned Counsel for the respondent did give a suggestion to the effect that wordings of the present

sanction were almost identical to that of the earlier sanction, but the suggestion was promptly rejected by P.W.-3. Therefore, a mere suggestion like this would not necessitate production on record of the previous defective sanction in order to make any comparison between the earlier sanction and present sanction, which is at Exh.37. Such need would have arisen if material defects in the present sanction (Exh.37) had been noticed by or brought to the notice of the Court. On careful perusal of the sanction order vide Exh.37 as well as the evidence of P.W.-3, I find no material irregularity in either of them. The evidence of P.W.-3 is clear enough to indicate his application of mind as well as his satisfaction about prima facie making out of the offences alleged against the respondent and the need for proceeding further in the matter. The sanction order vide Exh.37 also sufficiently discloses such application of mind on the basis of material placed before P.W.-3. Therefore, the findings recorded by learned Special Judge that sanction in this case was improper and invalid cannot be held to be based upon the evidence available on record and, therefore, it deserves to be reversed. Accordingly, I hold that the prosecution has succeeded in a reasonable manner in establishing the fact that there was proper and valid sanction for prosecution of the respondent in the instant case.

7. As regards the other aspects of this case, which relate

to corroboration of evidence of the complainant-P. W.-2 Rajaram Shinde on the essential ingredients of bribery offences punishable under Sections 161, I.P.C. and 5(2) read with Section 5(i)(d) of the Prevention of Corruption Act, 1947 and discrepant nature of prosecution evidence, I find that there were indeed some inadequacies in the prosecution evidence which required corroboration from the independent witnesses. There could be no second opinion about the observation of the learned Special Judge that in a case like the present one, the complainant has to be regarded as an accomplice of the accused i.e. the respondent and also an interested witness. In this case, it is an admitted fact that several other criminal complaints filed against the complainant P.W.-2 Rajaram Shinde were pending investigation at Pimpalgaon-Baswant police station. It is also an admitted fact that in some of these cases, the respondent himself was the investigator. The complainant, P.W.-2 Rajaram Shinde, therefore, was a witness, who could be said to be interested in putting some pressure or may be even entrapping the respondent in a false bribery case and, therefore, as rightly held by the Special Judge, corroboration to his testimony was a *sine qua non* in the present case.

8. P.W.-2 Rajaram Shinde has stated that a demand of Rs.200/- was made by the respondent for not arresting him and not proceeding further in the complaint filed against him and his

family members by Sulochana on 05/8/1987 and that it was agreed between himself and the respondent that instead of Rs.200/-, the complainant would pay to the respondent bribe of Rs.100/- on 07/8/1987. Curiously enough, the complainant, P.W.-2 Rajaram, after returning to his house from the police station on 05/8/1987, chose to remain silent regarding demand of bribe amount by the respondent. He did not lodge any complaint against the respondent till about 10.00 a.m. of 07/8/1987. No explanation regarding belated lodging of the F.I.R. by the complainant has appeared on record either through the testimony of the complainant or through the circumstances brought on record though the evidence of other prosecution witnesses. In the instant case, delay in lodging of complaint against the respondent creates a doubt about creditability of P.W.-2 Rajaram.

9. The initial demand of bribe was for Rs.200/- and it was made in the presence of Bhausaheb and Sudam Shinde. However, both these witnesses have not been examined by the prosecution and no explanation for their non-examination as witnesses is forthcoming from the prosecution. This is another doubtful circumstance which raises suspicion in one's mind about trustworthiness of P.W.-2 Rajaram Shinde. P.W.-1 Bhaskar, a shadow panch witness, has not specifically stated that respondent made demand of money and he also did not state the material fact

that the respondent then put forward his hand before P.W.-2 Rajaram while making the demand. According to P.W.-1 Bhaskar, what was asked by the respondent was the fact as to what happened to his work and thereafter the respondent made an expression of handing it over. P.W.-1 Bhaskar thus has not made any specific reference to the demand of Rs.100/- by the respondent.

10. The prosecution evidence further shows that after complainant and P.W.-1 Bhaskar had met the respondent at the police station, the respondent had taken them to a nearby Datta Mandir, where he recorded statements of complainant and some other witnesses and even after recording of the statements of witnesses, the respondent had not made any demand of bribe amount from the complainant. The complainant, after the work of recording of statements was over, had suggested to the respondent to having tea together at a nearby hotel. Even, at that point of time, the respondent did not make any demand and he simply accepted the offer of tea given to him by the complainant. According to the complainant, the respondent made demand of bribe amount from him at the hotel after they had consumed tea there. This statement of the complainant cannot be accepted as inspiring confidence for the simple reason that a person, who was interested in obtaining a bribe from another person, would not

wait for such a long time and would make his intention known as soon as the opportunity would present itself to him. In the instant case, admittedly, the opportunity for making of such a demand came the way of the respondent at Datta Mandir after the statements of witnesses were recorded and all other witnesses except the complainant i.e. P.W.-2 Rajaram and the shadow panch witness i.e. P.W.-1 Bhaskar had departed from that place. But, the respondent did not make any demand of bribe amount from the complainant at that time. The respondent also did not make any demand till he had tea leisurely with the complainant and P.W.-1 Bhaskar. This is something unnatural and does not appear to be fitting into the usual way in which human affairs are conducted. This gives rise to a reasonable possibility that the respondent may not have demanded any bribe amount from the complainant and the complainant, not being very happy with the respondent about the manner in which he was also investigating other complaints against the complainant and his family members, may have framed the respondent in this case in a false manner.

11. The possibility hinted at above appears to be very strong, if one considers one more factor, which is important. It is of the completion of work of recording of statements of witnesses in this case. If this work, which was assigned to a Police Head Constable that the respondent was at the relevant time, was

already over, nothing substantial had remained in the hands of the respondent, which could have been used by him for harassing the complainant. If nothing had remained in the hands of the respondent, it does not appeal to reason as to why the respondent would in the first place make a demand for bribe money and even if the demand was made, as to why in the second place the complainant would fulfill it. The complainant very well knew that whatever was in the hands of the respondent had been done and, therefore, it is surprising that even then the complainant allowed himself to believe that there was something in the hands of the respondent for which bribe was being demanded. This was, therefore, something which could not have been accepted as natural conduct of the complainant. Complainant has also not given any explanation as to why did he still feel that what the respondent was demanding was bribe only.

12. All the afore-stated doubts appearing in the prosecution evidence have not been cleared through any independent evidence or through the evidence of the witnesses examined by the prosecution in this case. These doubts give rise to a reasonable probability of complainant, having been annoyed with the respondent on his investigating criminal cases against him without showing him any favour, framing the respondent in a false trap case. Therefore, I find that the view taken by the trial Court

finding innocence of the respondent for the offences with which he was charged in the case, cannot be said to be so illogical as not at all arising from the evidence available on record. It is well settled law that if two views are possible, the one which favours the accused has to be adopted and it would not be open for the appellate Court, considering the appeal against acquittal, to substitute its own view for the view taken by the trial Court just because the other view is possible. The view taken by the trial Court is based upon the prosecution evidence and it cannot be said to be an outcome of consideration of any extraneous material. Therefore, I see no reason to make any interference with the impugned judgment and order. The appeal deserves to be dismissed.

The appeal stands dismissed.

S. B. SHUKRE, J.