

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 27 OF 2003

State of Maharashtra. ... Appellant.

V/s.

1. Mohan Omkar Giri,
Age Adult, Occ. Service,
(Police Sub-Inspector)
(deceased)
2. Pandurang Vasant Chavan,
Age Adult, Occu. Service,
(Police Constable Buckle No.1113)

Both R/o Nandura, Dist. Buldhana. ... Respondents.

Dr.F.R.Shaikh, A.P.P for the appellant- State.

Mrs.S.R.Kumbhat with Kunal Kumbhat for respondent No.2.

CORAM : S.B. SHUKRE, J.

DATED : 19th October 2015.

JUDGMENT :

This appeal is preferred against the judgment and order dated 14th August 2002 passed in Special Case No.13/1996 by the Special Judge, Pune thereby acquitting the respondents- accused of the offences punishable under section 7, 13(1)(d) read with section 13(2) of the

Prevention of Corruption Act. Briefly stated, the facts of the case are as under:

(i) Both the respondents being accused Nos.1 and 2 were charged with commission of offences punishable under sections 7, 13(1) (d) read with section 13(2) of the Prevention of Corruption Act on the allegation that on or about 24th October 1994 the respondents demanded an amount of Rs.25,000/- for release of Rasul Khan Ahmed Khan and Lala Shaikh Hasan from the complainant- Mohammad Mumtaz Mohammad Ali and, on the same day, in the evening, on demand, accepted the amount of Rs.5,000/- as motive or illegal consideration and in order to obtain pecuniary advantage for releasing Rasul Khan Ahmed Khan and Lala Shaikh Hasan from the custody of both the accused persons. At that time, the accused No.1- Mohan Omkar Giri was working as Police Sub-Inspector and accused No.2- Pandurang Vasant Chavan was working as Police Constable and were attached to the Police Station Nandora, Buldhana. Thus, both were public servants. They had come to Pune in connection with investigation of a case relating to aluminium wire and happened to visit the scrap shop of the complainant- deceased Mohammed Mumtaz Mohammad Ali. There were two more scrap shops situated adjoining the shop of the complainant, one owned by Khalil Khan and the other owned by Fazal Khan. Through all these shops, the complainant as well as other two owners, namely, Khalil Khan and Fazal Khan were dealing in sale and purchase of scrap material. Rasul Khan was the partner of the complainant- Mohammed Mumtaz Mohammad Ali and Lala Shaikh Hasan was the servant working in the neighbouring shop run by Khalil Khan. There was another person by name Rafique who was working as servant

in the shop owned by Fazal Khan. One Khalikh was working as servant in the shop of Mohammad Mumtaz Mohammad Ali. These three servants i.e. Lala Shaikh, Rafique and Khalikh were being viewed by the PSI-Mohan Giri and Constable- Pandurang Chavan as suspects in the theft case and, therefore, they were looking forward to interrogate them. Their efforts, however, could not bear fruit as they could not arrest any of them initially. Therefore, they called upon the respective shop owners to produce their servants before them at the place where they were temporarily staying in Pune. They were then staying at Park Lodge. In the night of 23rd October 1994, the respective shop owners went to Park Lodge and informed these police officials about their inability to find out and make available the servants for their police interrogation. On the next day also i.e. on 24th October 1994 when these two police officials visited the three shops, they could not succeed in arresting these servants. Thereafter with the help of the shopkeepers, one of the servants i.e. Lala Shaikh Hasan was traced out at Kasarwadi and he was taken into custody by accused Nos.1 and 2. At that point of time, Rasul Khan, the partner of the complainant- Mohammed Mumtaz Mohammad Ali, was also detained by both the accused. After some time, they called the shop owners to the lodge where they were staying, and when the shop owners visited the lodge, both the accused demanded Rs.25,000/- as bribe from them for releasing Lala Shaikh Hasan and Rasul Khan. Some negotiations took place between the accused persons on one hand and shop owners on the other and it was agreed that the shop owners would pay Rs.5,000/- as bribe and the accused persons would release Lala Shaikh Hasan and Rasul Khan.

(ii) The complainant arranged an amount of Rs.2,000/- while Khalil Khan and Fazal Khan arranged for Rs.1,500/- respectively. Thus, the shop owners managed to mobilize Rs.5,000/-. However, as they were not willing to pay the bribe, they decided to lodge a complaint against both the accused with Anti Corruption Bureau (ACB), Pune. The complaint was, however, made by only one shopkeeper i.e. Mohammad Mumtaz Mohammad Ali.

(iii) It was decided to lay a trap so that both the accused persons could be caught red-handed while accepting bribe. Panch witnesses were called. The complainant and Panch witnesses were explained as to how the trap would be laid and made successful. Necessary demonstration was given and Panchanama was prepared. Proper instructions were given to all the concerned. As decided, the trap party went to Park Lodge and on demand of bribe by accused No.2- Pandurang Chavan an amount of Rs.5,000/- was handed over to him in the presence of Panch No.1- Tukaram Waghmode. Predetermined signal was given and both the accused were apprehended by the members of ACB. Bribe amount of Rs.5,000/- which was lying near a flower pot was lifted by Panch No.2 and handed over to Police. Search of accused No.2 was taken. His both hands as well as right side hip pocket of his full pant was found to be containing traces of anthracene powder. All formalities were completed. Panchanama was prepared. Statements of the witnesses were recorded, sanction for the prosecution was obtained and charge-sheet was filed against the respondents- accused persons.

(iv) Both accused pleaded not guilty to the charge framed against them. On merits of the case, learned Special Judge found that the prosecution failed to prove beyond reasonable doubt the offences that were charged against the accused persons and, therefore, by judgment and order dated 14th August 2002, acquitted them of the offences charged against them. Not being satisfied with the same, the State is before this Court in the present appeal.

2. During the pendency of this appeal, accused No.1 i.e. respondent No.1 died and, therefore, the appeal stood abated against respondent No.1.

3. I have heard learned A.P.P. for the appellant- State and Mrs.Kumbhat, learned counsel for respondent No.2. I have carefully gone through the entire record including the impugned judgment and order.

4. The learned A.P.P. appearing for the State has submitted that this is a case which reasonably discloses improper appreciation of evidence of the prosecution by the learned Special Judge. He submits although the complainant was not examined by the prosecution he being dead at the relevant time, there was available on record other evidence which convincingly showed that bribe amount of Rs.5,000/- was demanded and accepted by the respondents- accused for performing official work. Therefore, he submits that this case requires reconsideration of the entire evidence and reversal of the findings recorded by the learned Special Judge.

5. According to the learned counsel for respondent No.2, the view taken by the learned Special Judge is neither illogical nor perverse nor impossible and, therefore, this case would require no interference at the hands of this court. She submits that it is a well settled law that in an appeal against acquittal it is not permissible for the appellate Court to substitute its view for that of the view taken by the trial Court unless it is shown by the prosecution that the view taken by the trial Court is based upon no evidence or based upon some extraneous consideration or is the result of ignorance of well settled principles of law. According to her, that being not the case here, this appeal deserves to be dismissed.

6. On going through the prosecution evidence available on record as well as the impugned judgment and order, I find that there is substance in the argument of learned counsel for the respondent No.2 and there is no merit in the submissions advanced by learned A.P.P. for the State.

7. It is seen from the evidence available on record that although material witnesses were available for the examination by the prosecution they were not examined and no satisfactory explanation for their non-examination was given by the prosecution. It is needless to say that in a case in which the complainant is dead, the blame cannot be placed upon the prosecution for non-examination of the complainant. But, if there were other witnesses who, according to the own case of the prosecution, were also present when the demand of bribe was allegedly made by the accused persons which is so in the present case, it can reasonably be expected that the prosecution would examine such witnesses who had

seen the accused persons making demand of bribe amount. It is not the case of the prosecution that these persons i.e. Khalil Khan and Fazal Khan who, in fact, contributed Rs.1,500/- each for the bribe amount of Rs.5,000/-, were not available for being examined as prosecution witnesses. Their examination as prosecution witnesses would have gone a long way in establishing beyond reasonable doubt prosecution case because of the fact that the complainant- Mohammed Mumtaz Mohammed Ali was not available he being dead. Non-examination of such material witnesses, as rightly observed by learned Special Judge, has created a great doubt about the genuineness of the prosecution case against the respondents. In fact, their evidence could have been the best evidence in the present case but, unfortunately, the best evidence has not been placed before the Court. The inference would be obvious and it would be one adverse to the prosecution that is to say, had the prosecution examined those witnesses they would not have supported the prosecution case.

8. The learned Special Judge has also found that there was material inconsistency in respect of presence of traces of anthracene powder on the hands of respondent No.2 as seen from the evidence of the investigating officer R.V.Kulkarni and Panchanama vide Ex.19. It has been pointed out by learned Special Judge that in the Panchanama, Exh.19, it is mentioned that finger tips of both hands of respondent No.2 together with right side hip pocket were found to be containing anthracene powder, but, the investigating officer in his evidence before the Court (which includes his admission given in the cross-examination) has asserted that except on the right hand fingers and hip pocket of respondent/accused No.2 nothing

incriminating was found on the clothes and person of any of the accused. Such an inconsistent evidence further deepens the doubt about the prosecution case against the respondent No.2. This is, therefore, a fit case where benefit of doubt must go to respondent No.2 and learned Special Judge has, in fact, given it to him and rightly so.

9. As regards granting of sanction, there seems to be some doubt about the Deputy Inspector General of Police having authority in law to grant sanction for prosecution of both the accused persons. However, I do not wish to go into this aspect of the case as I have already found the prosecution case as against respondent No.2 as of highly doubtful nature and the reasons for this conclusion have also been given in the earlier paragraphs. Resultantly, I find that no case is made out for interference with the impugned judgment and order. The appeal deserves to be dismissed.

10. The appeal stands dismissed.

(S.B. SHUKRE, J.)