

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.125 OF 2000

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

TUKARAM RAMCHANDRA KOLHE)...RESPONDENT

Mr.Deepak Thakre, APP for the Appellant – State.

None for the Respondent.

CORAM : ABHAY M. THIPSAY, J.

DATE : 12th AUGUST 2015.

ORAL JUDGMENT :

1 The respondent, who was, at the material time, working as a Sub-Engineer in Maharashtra State Electricity Board (hereinafter MSEB) was prosecuted on the allegation of having committed offences punishable under Sections 7 and 13(2) read with Section 13(1) of the Prevention of Corruption Act, 1988 (hereinafter P.C.Act). The Special Judge, Pune, after holding a

trial, found him not guilty and acquitted him, by a judgment and order dated 13th October 1999. The State of Maharashtra is aggrieved by the said order of acquittal, and has, therefore, after obtaining leave of this court, filed the present appeal, challenging the same.

2 None appeared for the respondent, when the matter was listed on board for final hearing on 10th August 2015. In view of the absence of the counsel for the respondent, the matter was adjourned till today, but today also none appeared for the respondent. Under these circumstances, the appeal is being decided after hearing the learned APP and after examining the record of the case.

3 I have heard the learned APP for the State. With his assistance, I have gone through the evidence adduced during the trial. I have carefully gone through the evidence of the *defacto* complainant Madhukar Bhujabal (PW2) and the impugned judgment.

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

5 The prosecution case, as put forth before the trial court, was to the effect that Madhukar Bhujabal (hereinafter referred to as 'the complainant') has ancestral land of 10 acres, standing in the name of his father Bhau Kondiba, in Village Shikrapur, Taluka Shirur, District Pune. There was a well in the land. In the year 1989, the complainant had submitted an application in the name of his father to the office of the MSEB, Shikrapur, for getting an electricity connection to the well. The complainant met the officers of the MSEB from time to time, but he was told that due to heavy load, the application filed by the father of the complainant, could not be considered for the time being. That, in August 1991, the complainant met the accused and made inquiries about the application, when the accused demanded an amount of Rs.500/- for giving him the quotation. The complainant, accordingly, paid an amount of Rs.500/- to the

accused. The complainant, then, did the necessary work by purchasing a capacitor, obtaining test reports; and also purchased an electric motor. However, inspite of meeting the officers of MSEB from time to time, the complainant could not actually get any electricity connection, as he was being told that due to heavy load, no electricity connections could be given. That, in January 1992, the accused told the complainant that the complainant should pay an amount of Rs.5000/- to him for getting the needful done. After negotiations, this amount was reduced to Rs.3000/-. According to the complainant, he told the accused that he could not pay the amount and paid only an amount of Rs.2000/- to him with the understanding that the remaining amount of Rs.1000/- was to be paid later. That, thereafter, the work of installing electric poles, wiring etc., was started by the complainant and completed. That, on 31st March 1992, the complainant received a message from the accused that he should meet the accused in the Shikrapur Office. The complainant went there when the accused told him that the complainant should pay to the accused the balance amount of Rs.1000/-, if he wanted the electric

connection. The complainant, then, approached the office of Anti Corruption Bureau, and narrated the happenings. The complaint was recorded and on the next day, a trap was laid. Anthracene powder was applied to the currency notes of Rs.1000/-, made available by the complainant and when the accused allegedly accepted the tainted amount, he was apprehended.

6 The prosecution examined four witnesses during the trial. The complainant, as aforesaid, was examined as Prosecution Witness no.2. The first witness Sanjay Paigude is a panch. The third witness Prakash Kothare is the sanctioning authority and the fourth witness Bhalchandra Kale is the trap laying officer.

7 The defence of the accused as appearing from the cross-examination of the prosecution witnesses, the answers given by him during his examination under Section 313 of the Code of Criminal Procedure, and the written statement filed by him, was to the effect that the work of the complainant earlier could not be done because there was heavy load on the transformer. According

to him, the proposal, not only of the complainant, but of several others, therefore, could not be sanctioned. When the capacity of the transformer was increased from 63 kilowatts to 100 kilowatts, the process of giving electricity connection had started. That, before actually giving an electricity connection, the applicant for such connection would be required to get certain work, such as erection of poles, wiring etc., done at the cost of such applicant. According to the accused, the work of the complainant was pending because the work of wiring, earthing, etc., was not completed. The accused took a categorical defence that the complainant had told him that he could not get the contractor to connect the capacitor, main switch etc., and had requested the accused to get a contractor for doing the work. The accused had, then, told the complainant that, that he would have to pay the charges of such contractor for doing the work and the complainant had agreed to pay such charges. According to the accused, on the same day, i.e., on 31st March 1992, he requested a registered contractor M/s.Om Allied Electrical, to do the work of the complainant privately and had told the complainant to give an

amount of Rs.1000/- for that work. Thus, the case of the accused is that, what the complainant gave to him on 1st April 1992, was towards the charges of the contractor, who had already gone to the well of the accused and had started the work, which was actually completed on 2nd April 1992. The installation report was also submitted by the contractor on 2nd April 1992.

8 The learned Special Judge, after evaluating the evidence of the complainant, found the defence of the accused probable. In doing so, the learned Special Judge, took into consideration certain admissions given by the complainant in his cross-examination.

9 Since the complainant admitted that he had asked the accused to find out a contractor to do the necessary work, and had showed willingness to pay the charges, the conclusion arrived at by the learned Special Judge, viz., that the prosecution had failed to prove that the amount that was paid to the accused was by way of illegal gratification, appears to be correct.

10 I have carefully gone through the evidence of the complainant, and I do not find any infirmity in the appreciation of his evidence, as done by the learned Special Judge.

11 The finding of acquittal recorded by the learned Special Judge, does not seem to be suffering from any infirmity or error. In any case, the view of the matter, as taken by the learned Special Judge, is certainly a possible view. It is well settled that in such cases, this court will not interfere with the finding of acquittal recorded by the trial court.

12 The Appeal is dismissed.

(ABHAY M. THIPSAY, J.)