

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.767 OF 2004

The State of Maharashtra ... **Appellant**
V/s.
Baban Rudrappa Jadhav
Age about 47 yrs.,
R/o.Priyadarshini Colony,
Plot No.16, Uchgaon,
Tal.Karvir, Dist.: Kolhapur. ... **Respondent**

.....
Mrs.S.Gajare-Dhumal, APP for the Appellant/State.
Mr.Anand S.Patil, Advocate for the Respondent.
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CORAM : ABHAY M. THIPSAY J.

DATED : 29TH JULY 2015

ORAL JUDGMENT :

1. The respondent, who was, at the material time, working as a police Head constable, was prosecuted on the allegation of having committed offences punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The learned Special Judge, Kolhapur, after holding a trial, found him not guilty and passed an order of acquittal. 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. I have heard Mrs.S.Gajare-Dhumal, the learned Additional Public Prosecutor for the appellant/State. I have heard Mr.Anand S.Patil, the learned counsel for the respondent. With their assistance, I have gone through the impugned Judgment and entire evidence, adduced during the trial.

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, may be stated thus :

On 03/10/2001, one Ajit Jadhav, while working with a goldsmith, had some quarrel with a co-worker, as a result of which the said co-worker - Powar - assaulted the said Ajit Jadhav. Powar as well as Ajit Jadhav both went to *Juna Rajwada* Police Station to file complaints against each other. The accused was on duty at that time. He registered the report made by Ajit Jadhav as a non-cognizable case. It appears that the said Ajit Jadhav and his brother Milind Jadhav were not satisfied with the registration of Ajit Jadhav's report as non-cognizable case. They wanted that the case should be registered in respect of a cognizable offence. The accused demanded an amount of Rs.500/- from Milind Jadhav (hereinafter referred to as, “the complainant” for the sake of clarity) so as to get a new offence registered against the said Powar and to have him arrested. The complainant negotiated and

finally the amount of bribe was fixed as Rs.300/-. As the complainant did not want to pay the bribe, he went to Anti Corruption Bureau office and reported the matter. His complaint was taken down and a trap, as per the usual procedure, was laid. The police party and the panchas then went to the *Juna Rajwada* Police Station and when the accused demanded the amount, the tainted currency notes, to which Anthracin powder had been applied, were handed over to the complainant. After the complainant gave the pre-determined signal, the accused was apprehended. Traces of Anthracin powder were found on the fingers of his hand and also on the pocket of the shirt of the accused.

5. The prosecution examined three witnesses during the trial. The first one is Milind Jadhav – the complainant himself. The second is the panch Mahesh Kamble and the third is the Investigating Officer/trap laying officer Inspector of Police – Sanjay Nikam.

6. The defence of the accused, as can be seen from the cross-examination of the prosecution witnesses and also from the written statement filed by him in the trial Court, was that he had been falsely implicated. According to the accused, on the basis of the complaint lodged by the brother of the complainant, a case in respect of a non-cognizable offence was registered and at the same time, the brother of the complainant was advised to approach the

Court for further action. According to the accused, necessary note had been taken in the register and the signature of the brother of the complainant had been obtained in token of having seen the note. The accused also stated that though the case was registered in respect of non-cognizable offence, action under Section 151 of the Code of Criminal Procedure was taken against the opposite party on the basis of the complaint lodged by the brother of the complainant. That, the complainant was insisting that the case should be registered in respect of cognizable offence. Legally, it was not possible to do so and that, therefore, the accused had refused to do so. That, the complainant, therefore, bore grudge against the accused and, had falsely implicated him. The accused also denied that any traces of Anthracin powder were found on his hands and shirt pocket.

7. I have carefully gone through the evidence adduced during the trial. I have gone through the impugned Judgment and considered the reasoning of the learned Special Judge, which led to the acquittal of the accused.

8. The learned Judge, *inter alia*, observed that the likelihood of the accused making a demand of the money from the complainant did not exist, because the accused had also told the brother of the complainant that the case was in respect of non-cognizable offence and that, for further action he would have to approach the Court. Since the brother of the complainant and the

complainant were made to realize this, there was no question of the accused demanding any money from them for converting the non-cognizable case into one cognizable case.

9. The learned Special Judge also observed that in his evidence the complainant mentioned that when he went to police station (after having lodged complaint with the ACB), one Sudhir Chougule - Deputy Superintendent of Police was present with him. The learned Special Judge doubted this, observing that it was not likely that Deputy Superintendent of Police would visit the police station along with the complainant, and further that, the accused would demand money in the presence of a superior officer of police. The learned Special Judge also emphasized the fact that as per the complainant's version, two or three other policemen were present when the demand of illegal gratification was allegedly made by the accused and when the gratification was accepted. The learned Special Judge observed that the statements of those persons had not been recorded by the Investigating Officer, which was not proper.

10. The learned Judge noticed some discrepancies in the prosecution case. He observed that though the non-cognizable offence had been registered on the basis of the complaint of the brother of the complainant, still the arrest of the opposite party was made by exercising the power under Section 151 of the Code

of Criminal Procedure. It was nobody's case that at that time any money was demanded from the complainant. Thus, the learned Special Judge took into consideration the unlikelihood of the possibility of accused having demanded any illegal gratification from the complainant, supposedly for converting the non-cognizable case into a cognizable one.

11. The learned Special Judge also noticed some discrepancies in the matter of drawing of panchanama and doubted the accuracy of the record made by the Investigating Officer.

12. After carefully considering the matter, though it is not possible to agree with the entire reasoning of the learned Special Judge, on the whole, it cannot be doubted that there did exist some doubt – a reasonable one - about the truth of the prosecution case. There is substance in the conclusion arrived at by the learned Special Judge that there was no apparent motive for the accused to have demanded any illegal gratification, when the matter had been finally decided, so far as he was concerned, by asking the complainant's brother to approach the Court. Further, the presence of the Deputy Superintendent of Police in the police station with the complainant, as spoken about by him, was suspicious.

13. It is well settled that when two views are possible on the basis of evidence adduced during the trial and the trial Court has taken one of them leading to acquittal, then, this Court would not interfere with that view in an appeal from acquittal.

14. No case for interference is made out.

15. The appeal is dismissed.

(ABHAY M. THIPSAY J.)