

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1244 OF 2011

The State of Maharashtra Dy.S.P.,Anti Corruption Bureau, Nashik and PSO, Kalwan Police Station, Kalwan, Dist -Nashik.	...Appellant (Org.Complainant)
V/s. Ramdas Namdeo Aher Treasury Awwal Karkun, Tahsil Office, Kalwan, District Nashik.	...Respondent (Org. Accsued)

Mrs.P.P.Bhosale, APP for the applicant-appellant-State.
Mr.S.V.Kotwal i/by Mr.Ashwin R. Kapadnis, for respondent.

CORAM : A.R. JOSHI, J.

DATE : 14TH AUGUST 2015

ORAL JUDGMENT :

1. Heard learned APP for the State in this Criminal Appeal challenging the judgment and order of acquittal of the respondent in the matter of offences punishable under sections 7 and 13(1)(d) read with 13(2) of Prevention of Corruption Act. The main judgment and order was passed by the Additional Sessions Judge-2 and Special Judge (Under P.C. Act), Nashik on 20th April 2011. Being aggrieved by said order of acquittal State

had preferred an application for leave to file appeal which was initially allowed and the appeal was numbered and appeal is for final hearing.

2. The case of the prosecution in nutshell is that there were counter chapter cases between the two groups, one belonging to the complainant and his parents and other relatives and other group of one Mohan Shirasath. The said chapter cases were not pending by end of December 2003 before the Thasildar at Kalwan, District-Nashik. Initially the chapter case was with another officer but then subsequently it was transferred to the present respondent-accused. He was then working as a Senior Clerk. He was assigned the work of preparing the papers and also for the process of bail in the chapter cases. According to the complainant, initially on 2nd January 2004 respondent demanded Rs.4,000/- as illegal gratification for assisting the complainant by releasing him on bail. On that day according to the complainant he paid Rs.2,000/-. The respondent asked him to come on 05th January 2004 with remaining amount. On 05th January

complainant allegedly could arranged Rs.1,500/- and gave it to the respondent and still Rs.500/- were remaining to be paid which were demanded by the respondent and were to be paid on the next date i.e. of 08th January 2004. As the complainant was not desirous of paying that balance amount he went to Anti Corruption Bureau office and reported the matter. His complaint was taken down. Necessary pre-trap procedure was adopted and the raid was conducted at the office of the Tahsil on 08th January 2004. It was so happened at 11.10 a.m. on 08th January. That time apparently in the office other staff members were present. During the raid as earlier instructed there was a conversation between the complainant P.W.No.1 and present respondent, during which demand was made for Rs.500/- and the complainant gave five G.C.notes of Rs.100/- each which were earlier smeared with anthracene powder. Respondent counted the notes and kept in left side pocket of his shirt. Thereafter the complainant gave signal as per instructions, to the raiding party members. Police officials and P.W.No.4 entered the office and the trap procedure was continued. Inquiry was made with the respondent-accused.

Initially he denied accepting the money and thereafter stated that he had kept money in his pocket. Panch No.2 was asked to take out the money and during the trap procedure the hands of the panchas, complainant and also respondent were tested under ultra violet light. It was ascertain that there was a bluish glow seen on the hands of the respondent and such glow was also seen from the margin of the pant pocket. Then after completing of the usual panchnamma the offence was registered against the respondent.

3. During the trial four prosecution witnesses were examined. Out of them P.W.No.1 is the complainant, P.W.No.2 is first panch, P.W.No.3 is sanctioning authority and P.W.No.4 is investigating Officer. During the arguments it is specifically submitted on behalf of the respondent-accused that apparently the taking of the cash amount of Rs.500/- i.e. five currency notes of Rs.100/-, is not in disputed but the defense of the respondent is required to be accepted, further argued, as it is probable on preponderance of probabilities.

4. It is further submitted that in the year 2002 the respondent was appointed as Election Officer for the election of the concerned Gram-Panchayat and admittedly in that election present complainant and one Gawande were the contesting candidates. During the election, there was frequent contact between the present complainant P.W.No.1 and the respondent accused. That time the complainant requested the respondent to advance a loan of Rs.500/- as he was in need of money. Accordingly said amount was paid by the respondent. By pointing this defense learned counsel for the respondent stated that this defense is substantiated by respondent by entering into the witness box and giving his evidence and subjecting to him cross-examination. It is further pointed out that the conduct of the complainant P.W.No.1 is required to be viewed with circumspection inasmuch as initially during the cross-examination said P.W.No.1 had denied having taken part in the election 2002 and also subsequent event as to he making application for cancellation of the nomination of his opponent one Mr. Gawande. On this aspect this Court has gone through the substantive

evidence of respondent-accused and his cross-examination. Also this court has gone through the relevant part of the cross-examination of P.W.No.1. Initially P.W.No.1 denied taking part any such election and making any application for cancellation of nomination of one another candidate Gawande. However, it is observed that when the application preferred by the P.W.No.1 and on which the order of rejection was passed by this respondent, rejecting the application, was shown to the complainant P.W.No.1, he had accepted the factual position. The said election application form is Exh.22 and the order passed thereon by the respondent is Exh.23. As such in the opinion of this Court initially the complainant showed his ignorance and also denial regarding any such event taken place in the Gram-Panchayat election of the year 2002 but subsequently he accepted that the events had happened. As such in the considered view of this Court the defense of the respondent is probablized and it was held so by the learned Special Court by disbelieving the case of the prosecution and the contentions of the complainant.

5. Apart from the above the trial Court also discussed the variance in the substantive evidence of the P.W.No.1 as to the actual date when for first time there was demand of Rs.1,000/- by the respondent to the P.W.No.1 complainant. Apparent discrepancy whether the demand was of 2nd January 2004 or of 3rd January 2004, raises a doubt and it was entertained by the trial Court. Thirdly the factual position was also considered by the trial Court as to alleged demand of money was for releasing the complainant on bail in a chapter case. According to the complainant the amount was asked for releasing the complainant on PR bond. However, the document Exh.29 produced before the trial Court show the application of the complainant party in which the bail procedure by way of acceptance of surety has been completed on 05th January 2004. Infact there was nothing like releasing the complainant and his relatives, on PR bond. This aspect was also held as mitigating circumstance to the case of the prosecution by the trial Court.

6. The arguments advanced on behalf of the respondent

that the judgment is not perverse and the view taken by the trial Court cannot be treated as erroneous is required to be accepted. Considering the substantive evidence of P.W.No.1 in the opinion of this Court the view taken by the trial Court cannot be said as unwarranted or perverse in any way. With in the powers of this Court to interfere in the judgment and order of the acquittal it cannot be said that this is the matter in which there should be reappraisal of the material brought before the trial Court and then entertain different view. In the result present appeal is dismissed and disposed of.

The judgment and order of acquittal impugned in the present appeal is upheld.

(A.R. JOSHI, J.)