

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 152 OF 2001

The State of Maharashtra

.. APPELLANT
(Ori. Complainant)

VERSUS

Shaikh Yousuf Shaikh Imamoddin,
Age : 43 years, Occu.: Service,
Sr. Clerk, Asstt. Charity
Commissioner Office,
Latur

.. RESPONDENT
(Ori. Accused)

Mr. N.T. Bhagat, A.P.P. for the appellant/State
Mr. N.P. Patil Jamalpurkar, Advocate for respondent/sole

CORAM : M.T. JOSHI, J.

DATE : 08/01/2016

ORAL JUDGMENT :

Heard both sides.

2. Aggrieved by the acquittal of the present respondent by the learned Special Judge, Latur vide judgment and order dated 29/12/2000 passed in Special Case No. 1 of 1999 from the offences punishable under section 7, 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988, the State has preferred the present appeal.

3. The prosecution case, in nutshell is as under:-

. That PW3 – complainant Shivaji Madne wanted to have registration of a society and, therefore, he had filed necessary application with the Assistant Charity Commissioner at Latur. The present respondent was the Clerk dealing with the said file. The complainant visited the office of respondent on 5-6 times for making enquiry regarding the registration.

. On 28/09/1998, the respondent made demand of Rs.300/- to process the file and get the registration. The complainant told him that he would pay the money on the next day i.e. on 29/09/1998. However, as he was not willing to give any bribe, he filed complaint with the Anti Corruption Bureau, Latur, on the basis of which the investigation was started by Deputy Superintendent of Police of Anti Corruption Bureau Mr. Dapkekar.

. The Investigating Officer collected two panch witnesses including the shadow panch witness Mr. Doijad. Demonstration of application of the anthracene powder was shown to all of them. Anthracene powder was applied

to the decoy money brought by the complainant. Thereafter, the party proceeded to the Office of the Assistant Charity Commissioner. Thereafter, panch Doijad and the complainant went to the office of the Assistant Charity Commissioner. It was instructed to the complainant that he should pay the decoy money after the demand is made by the respondent and, thereafter, he should give the signal by touching his ear.

. Accordingly, the shadow panch witness and the complainant entered the office. At that time, one of his friend Sadashiv was also there. Respondent again made a demand of the money and, thereafter, complainant handed over the same and which was kept in the pocket by the respondent. Thereafter, the necessary exercise of examination of the hands and clothes of the complainant and the respondent was carried, which confirmed the above activities.

. In the circumstances, the Investigating Officer carried further investigation, collected the sanction to prosecute the respondent from his appointing authority and filed the chargesheet.

4. Before the learned Special Judge, Latur, in all 12 witnesses were examined. It was however gathered that at the time of actual trap, in-fact, the respondent had asked the shadow panch witness and the colleague of the complainant to be away from them as some important work was to be done. He has given these instructions twice as they were following him. While both of them were away and while the complainant and respondent were under a staircase, the decoy money was handed over. In the circumstances, the only material left was the evidence of the complainant that earlier demand was made by the respondent. Respondent's defence however was that in-fact, the application itself was not complete. One person's name was later-on inserted as one of the member of the society and physical presence of the said person was needed. Further, certain erasures were there in the application, against which the initials were required. The affidavit was also not verified. Therefore, the respondent had asked for the compliance of the same. The complainant was irritated and, therefore, he filed a false complaint.

5. During the cross-examination, the complainant admitted insertion of a new name of a member in the application after searching cross-examination. He also admitted that no initials were put against the cross made in the application. The affidavit also was ultimately admitted to have been unverified. Considering all these facts, the learned Special Judge acquitted the respondent.

6. Learned A.P.P. submits that the decoy money in-fact was found on the person of the respondent. Therefore, the learned Special Judge ought to have raised the presumption, as is available under section 20 of the Prevention of Corruption Act. He further submitted that the deposition of the complainant ought to have been relied by the learned Special Judge.

7. On the other hand, Mr. N.P. Patil Jamalpurkar, learned counsel for the respondent submitted that the reasons forwarded by the learned Special Judge are based on the material produced before him. The said view cannot be called as unreasonable and, therefore, in the present appeal against acquittal, no interference is

warranted.

8. On the basis of this material, following points arise for my determination :-

I) Whether the prosecution has proved that on 28/09/1998, in the office of Assistant Charity Commissioner, Latur, present respondent has made a demand of Rs.300/- as gratification other than the legal remuneration, as a reward or motive for issuing registration certificate to the complainant and, thereafter, on 29/09/1998, at about 12:45 pm, he again made the said demand and accepted the said gratification ?

II) Whether the prosecution has further proved that the present respondent obtained pecuniary advantage by corrupt and illegal means being a public servant ?

. My findings to both the points are in the negative. The appeal is therefore dismissed for the reasons to follow.

R E A S O N S

9. The cross-examination of the complainant would show that the application submitted by him was

incomplete. He admitted that the name of the additional member was put later-on in the application and his physical appearance was required in the office. The corrections were made in the application but no initials were put before the same. Further, the affidavit also remained unverified. Since there is no corroboration to the statement of the complainant regarding demand and acceptance at the time of raid in view of the above position that according to the prosecution, the demand or acceptance was not made in presence of the shadow panch witness, we have the solitary statement of the complainant.

10. The complainant's statement however is deficient to inspire any confidence for the above reasons. There is every possibility that though the complainant has visited the office of Assistant Charity Commissioner on 5-6 times, the application remained incomplete and no registration certificate could be issued. Therefore, out of anger, he might have tried to pressurize the respondent. In that view of the matter, the solitary statement of the complainant cannot be relied upon.

11. The learned Special Judge has taken into consideration all the material on record and has forwarded his reasonable and probable view. In the circumstances, the following order:-

12. Criminal Appeal is hereby dismissed. Bail bonds, if any, of the respondent shall stand cancelled.

[M.T. JOSHI]
JUDGE

arp/