

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 443 OF 2012

The State of Maharashtra
Through PI, Anti Corruption
Bureau, Jalgaon

..APPELLANT
(Ori.Complainant)

VERSUS

1] Dilip Vikram Patil,
age : 47 years,
R/o Police-line Amalner,
Dist. Jalgaon

2] Ravindra Jijabbrao Patil,
age : 26 years,
R/o Dheku Ambasan,
Tq. Amalner,
Dist. Jalgaon

..RESPONDENTS
(Ori.Accused)

--

Mr.N.T. Bhagat, A.P.P. for the appellant/State

Mr.B.R. Waramaa, Advocate for respondents

--

CORAM : M.T. JOSHI, J.
DATE : JANUARY 18, 2016

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by acquittal of the respondents from
the offences punishable under Section 7, 13(1)(d)

read with Section 13(2) of the Prevention of Corruption Act, 1988 by learned Addl. Sessions Judge, Amalner, in Sessions Case No.6 of 2011, the State has preferred present appeal.

3] The prosecution case, in short, is as under :-

. Complainant - Sandeep Patil used to ply his MARUTI van for transporting the passengers on fair between Neem and Amalner. On 9th January, 2011, present respondent no.1 - Deelip Patil, who was serving as Traffic Police Constable, stopped the van of the complainant and questioned as to how, the passengers were being carried without permit. He made a demand of Rs.1,000/- as bribe and ultimately, in negotiation, agreed to accept amount of Rs.500/- and warned that said money should be paid on the next day otherwise, the complainant would be prosecuted. In the circumstances, the complainant approached the

office of Anti Corruption Bureau, Nashik and filed the complaint.

. PW 3 - Ravindra Budwant, Deputy Superintendent, Anti Corruption Bureau, conducted the investigation. Two panch witnesses including PW 2 - Uttam Bhoje were called. For the purpose of verification of demand, the complainant was asked to make a call to respondent no.1 over mobile phone and talk with him by keeping the speaker phone in 'on mode'. During the talk over mobile phone, the respondent again made demand for Rs.500/- and therefore, it was decided to lay a trap.

. The decoy money brought by the complainant was smeared with anthracene powder and the raiding party proceeded towards the Bus Stand at Amalner. Thereat, respondent no.1 told the complainant to come near Bhagwat Bus Stop and he would come

there. The raiding party also proceeded to said bus stop. Thereat, respondent no.1 again questioned as to whether, the money was brought. Thereupon, the complainant was to tender the decoy money to respondent no.1, but respondent no.1 told that the money should be paid to respondent no.2, who was standing near him. The decoy money was, therefore, handed over to respondent no.2. Thereupon, the predetermined signal was given by the complainant and the raiding party apprehended both the respondents.

. Thereafter, necessary exercise of testing of the hands and clothes of the complainant and respondent nos.1 and 2 was carried, which confirmed the above transaction. Thereafter, the Investigating Officer moved the sanctioning authority for grant of sanction to prosecute respondent no.1. Upon receipt of the sanction, order, charge sheet came to be filed.

4] Before the learned Addl. Sessions Judge, Amalner, the complainant, the panch witness i.e. PW 2 and the Investigating Officer were examined. The Sanctioning Authority was not examined. During the examination-in-chief of the Investigating Officer, the sanction order was exhibited.

5] The learned Addl. Sessions Judge took into consideration the evidence on record. He concluded that there are numerous contradictions in the oral evidence. He, therefore, acquitted the respondents from the offences, as detailed supra. Hence, the present appeal.

6] Learned A.P.P. for the appellant – State submitted that the learned Addl. Sessions Judge has taken into consideration the minor contradictions in the oral evidence. He submitted that the panchnama regarding the conversation over

the mobile phone about verification of demand, is very clear. Further, during the trap, respondent no.2 has accepted the decoy money on behalf of respondent no.1. The same has been proved from the mouth of the independent panch witness. He, therefore, submitted that present appeal may be allowed.

7] On the other hand, Mr.Waramaa, learned counsel for the respondents, took me though the evidence on record and appreciation of the same by the learned Addl. Sessions Judge. He submitted that all the material has been taken into consideration by the learned Addl. Sessions Judge. The findings of the learned Addl. Sessions Judge not called as perverse. He further points out that the sanction order was not proved much less the issue, as to whether the sanctioning authority has applied its mind at the time of the sanction.

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

A] Whether the sanction accorded to prosecute the respondents is valid and legal ?

B] Whether the prosecution has proved that present respondent no.1, being a Police Head Constable, had made a demand of Rs.500/- as a gratification other than legal remuneration ?

C] Whether the prosecution has further proved that present respondent no.2 has aided in commission of the offence ?

D] Whether the prosecution has further proved that the respondent no.1, being a public servant, has made demand of said amount as a pecuniary advantage by using his position as public servant and committed criminal misconduct ?

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

R E A S O N S

9] It is to be noted that the sanctioning authority is not examined. Therefore, the issue, as to whether the sanctioning authority has applied its mind while granting the sanction, has not been satisfactorily proved by the prosecution. That apart, on facts also, there are major variances between the deposition of the complainant and the panch witness as regards the actual facts.

10] As regards the verification exercise, while the complainant deposed that over the mobile phone, the respondent no.1 had made a demand of

Rs.500/-, according to the panch witness, there was no reference to sum of Rs.500/-. Further, according to the prosecution, when the raiding party went to Amalner, the complainant made phone call to respondent no.1 asking him for a specific venue. According to the complainant, at the time of making such phone call, he again kept the speaker phone of the mobile in 'on mode' and the panch witness has heard about the conversation. The panch witness, however, deposed that the speaker of the phone was not 'on' and the complainant was about 20 to 30 feet away from him.

11] As regards the actual incident of the trap, a minor contradiction has arisen. The complainant deposed that during the trap, the respondent no.1 made demand of bribe. However, the panch witness deposed that respondent no.1 had made query as to whether, the complainant has brought the money.

12] Considering all these facts on record, the learned Addl. Sessions Judge has acquitted the respondents.

13] Since the reasons of the learned Addl. Sessions Judge are based on the material placed before him, in the present appeal against the acquittal, no interference is warranted.

14] In the result, the appeal is hereby dismissed.

[M.T. JOSHI, J.]