

(1)

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

CRIMINAL APPEAL NO.98 OF 2004

The State of Maharashtra
Through Police Station,
Shivaji Nager, Nanded.

..APPELLANT

VERSUS

1. Ambadas s/o Laxmanrao Pawar,
Age: 40 years, Occ: Sub Engineer,
Pushp Nager, Nanded.

2. Tukaram Arjunrao Pardhe,
Age: 43 years, Occ: Service,
Dinkar Colony, Nanded.

3. Baburao s/o Namdeo Hatkar,
Age: 38 years, Occ: Waiter,
Shivaji Nager, Nanded.

..RESPONDENTS

Mr N.T. Bhagat, A.P.P. for appellant;
Mr A.S. Gandhi, Advocate for respondent No.1;
Mr R.N. Chavan, Advocate h/f Mr Vijay Sharma,
Advocate for respondent Nos. 2 and 3

CORAM : N.W. SAMBRE, J.

DATE : 7th MARCH, 2016

ORAL JUDGMENT :

Present criminal appeal is preferred by
the State questioning the acquittal of the
respondents-accused in Special Case No. 2 of 2002

(2)

by learned Special Judge, Nanded, for an offence punishable under Sections 7 and 13 of the Prevention of Corruption Act, 1988.

2. Few facts as are necessary for deciding present appeal against the acquittal are as under :

Complainant Nandkishor Ramrao Girgaonkar was employee of one Vikramsinha Bisen, contractor, who has entered into agreement with Khemchand Dayama and Rekha Anilkumar Vyas for carrying out construction of their respective premises. It is the case of the prosecution that since at the site of construction, electricity connection was required, Nandkishor, employee of Vikramsinha visited the office of M.S.E.B. on 15th December, 2001 along with the application for granting electricity connection. The said application was moved by complainant Nandkishor based on the special power of attorney executed by Khemchand in favour of the complainant for carrying out all necessary formalities for taking electricity

(3)

connection. It is then informed that pursuant to the application, quotation of Rs.14,000/- was given to the complainant, which he deposited in the bank on 18th December, 2001. After he submitted photo copy of the said demand receipt, illegal gratification of Rs.500/- was asked by accused No.2 from the complainant, against which, amount of Rs.400/- was paid.

3. As electric connection still was not given, accused No. 2 informed the complainant that accused No.1 Engineer is demanding additional Rs.2000/-, without such amount, electric connection cannot be given.

4. As a consequence, the complainant went to the office of Anti-Corruption Bureau, Nanded and his complaint came to be recorded in writing. Along with two panchas i.e. Panch No.1 Sadanand Kurude and Panch No.2 Rajabhau Doiphode accompanied. at the behest of accused No.2, amount was tendered to accused No. 3, resulting into successful trap.

(4)

5. Pursuant to trap, after subsequent investigation, charge sheet came to be filed against the accused persons and charge was framed at Exhibit-24, to which the accused persons pleaded not guilty. In the statement recorded under Section 313 of the Code of Criminal Procedure, the defence as could be read is, the employer of the complainant Nandkishor, namely, Satishsinha Bisen had electric connection and against the said connection, amount of Rs.2000/- was outstanding, which was demanded from him, who has got infuriated because of the same and implicated the accused persons in the false crime.

6. In support of prosecution, the complainant Nandkishor is examined at Exhibit-31. Exhibit-32 is Special Power of Attorney, Exhibit-36 is copy of the bill. PW-2 Sadanand Kurude, employee with the I.T.I. Nanded, is examined at Exhibit-38. Exhibit-40 is pre-trap panchnama, Exhibit-42 is demand note against the application, Exhibit-43 is

(5)

the application for grant of connection, Exhibit-44 is test report issued by Contractor Saigrace Electricals, Exhibit-46 is the application on plain paper demanding connection, Exhibit-49 is the spot panchnama after trap, Exhibit-50 is plan of spot in question, Exhibit-55 is deposition of PW-3 Anil Deshkar, Sanctioning Authority, Exhibit-56 sanction order, Exhibit-57 is the evidence of PW-4 Govind Belde, Sanctioning Authority for accused No. 2, Exhibit-58 is sanction order, Exhibit-62 is the evidence of Investigating Officer, A.P.I. PW-5 Sanjay Kendre, Exhibit-63 is the complaint dated 20th December, 2001, report lodged in the police station is at Exhibit-64. The prosecution has tendered pursis at Exhibit-37, Exhibit-51 informing that the prosecution does not want to examine witness namely Rajabhau, panch witness No.2 and Vikramsinha, employer of the complainant, as their testimonies are not material and Ganpati Kapate, who has drawn spot map signed on the spot map is not in dispute.

(6)

7. Learned Special Judge, by the judgment and order impugned dated 15th September, 2003, has proceeded to record acquittal of the accused persons. As such, present appeal.

8. Mr. Bhagat, learned A.P.P., while questioning the acquittal, would submit that learned Special Judge has committed an error of granting acquittal though there is sufficient evidence on record to connect the accused persons to the crime in question.

9. According to Mr. Bhagat, learned A.P.P., testimony of complainant i.e. PW-1, who is examined at Exhibit-31 and testimony of panch witness PW-2 Sadanand Kurude who is examined as PW-2 at Exhibit-38 and testimony of Investigating Officer, who is examined at Exhibit-62 as PW-5 are sufficient enough to accord conviction. According to him, as such, the appeal needs to be allowed and accused needs to be convicted.

(7)

10. Per contra, Mr. Gandhi, learned Counsel for respondent No.1 and Mr. Chavan, learned Counsel for respondent Nos. 2 and 3 would urge that the prosecution has failed to establish the demand, so also sanction in the present case is vitiated, which has prompted learned Special Judge to grant acquittal. According to them, cumulative effect of the investigation is, no case beyond reasonable doubt is made out qua conviction of the present respondents and as such, prayed for dismissal of the appeal.

11. With the assistance of respective Counsel, I have perused original record. From the record, it depicts that complainant Nandkishor on 19th December, 2001 had been to the office of M.S.E.B. i.e. accused persons and thereafter has lodged complaint. According to him, Dy.S.P. Perke, to whom he has narrated grievance has recorded complaint, however, no such complaint is produced on record by the investigating agency. The investigating agency has rather relied upon the complaint which is dated

(8)

20th December, 2001 and from the record it appears that panch witnesses from I.T.I. college were called on the same day morning. Apart from above, it is brought on record that against employer of Nandkishor i.e. Satishsinha Bisen, amount of Rs.2000/- was outstanding towards electricity charges. Apart from above, when the trap was led, it is PW-2 who was directed to be accompanied with the complainant Nandkishor and amount was accepted by accused No.3 at the behest of accused No.1.

12. It is to be noted that sanctioning authority PW-3 Anil Deshkar, who is examined at Exhibit-55, has stated that complaint was not brought to his notice at the time of granting sanction. He has also admitted in his cross examination that he has not perused the entire documents including that of spot panchnama. According to him, for appointment of Junior Engineer i.e. accused No. 2, Establishment Officer or Deputy Establishment Officer are shown competent authorities. According to him, sanction order at

(9)

Exhibit-56 was issued by him. PW-4 Govind Belde, who is examined at Exhibit-57, in his cross examination has stated that receipt about test report at Exhibit-61 was not brought to his notice. He has also admitted that the complaint which is part and parcel of the record was not signed by the complainant.

13. PW-5, Sanjay Kendre, Investigating Officer, who is examined at Exhibit-62, has proved panchnama.

14. So far as the issue of demand is concerned, he admits that complainant on 19th December, 2001 visited him, however, he has not made any note of the same. He then claimed that after completion of typing of complaint, panchas were called. According to him, complaint of the complainant was already typed on 19th December, 2001, statement of both the panch witnesses were recorded on 21st December, 2001. He has admitted that he has not inquired as regards Dayama, employer of the complainant Nandkishor.

15. It could be summarized from the evidence as is brought on record during the trial that PW-1 Nandkishor gave complaint in writing on 19th December, 2001, which was never produced. There was another meter being No.C-44 which was issued in the name of Satishsinha Bisen, against which, amount of Rs.2000/- was outstanding as arrears.

16. Sanctioning authority in the present case, has in clear terms, admitted that they have not applied their mind and perused complete papers before grant of sanction.

17. As a consequence of evidence as is brought on record, demand of Rs.2000/- as is sought to be claimed by the prosecution, was not proved. The unsigned complaint of the complainant was placed on record, which was formed to be basis for laying down trap as against the accused persons.

(11)

18. In the above referred back ground, bribe amount of Rs.2000/- can be also inferred to have been paid towards outstanding bill of Satishsinha Bisen against Meter No. C-44.

19. As a consequence, as the complaint reduced into writing on 19th December, 2001 was not placed on record, sanction order suffers from non application of mind and demand itself was not proved properly, acquittal as is ordered by learned Special Judge, in my opinion, does not call for interference. Criminal Appeal, as such, fails and stands dismissed.

(N.W. SAMBRE, J.)

Tupe