

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

**CRIMINAL APPEAL NO. 803 OF 2003**

The State of Maharashtra  
Through A.C.B., Jalgaon

APPELLANT

VERSUS

1. Raju Madhav More,  
age : 28 years, Occup.: Nil,
2. Jagdish Budha Chavriya,  
age : 36 years, Occup.: Nil,  
Accused No. 1 residing at  
Jalgaon and Accused No.2  
residing at Bhusawal

RESPONDENTS

----

Mr. R.B. Bagul, A.P.P. for the appellant/State  
Mr. P.N. Kalani, Advocate for the respondents

----

**CORAM : M.T. JOSHI, J.**  
**DATE : 25/01/2016**

**ORAL JUDGEMENT :**

1. Heard both sides.
2. Aggrieved by the decision of the learned Special Judge, Jalgaon, dated 13<sup>th</sup> August, 2003, rendered in Special Case No. 17 of 1997, acquitting the respondent no. 1 from the offence punishable under section 7 and 13 (1) (d) read with section 13 (2) of the

Prevention of Corruption Act, and respondent no. 2 from the offense punishable under section 8 and 12 of the Prevention Corruption Act, the State has filed the present appeal.

3. The prosecution case, in nutshell, is as follows.

. That complainant PW1 – Sayyad Asif Sayyad Nabab used to drive auto-rickshaw without any permit at Jalgaon. On 8<sup>th</sup> April, 1997, due to insistence of one passenger, he was required to take the auto-rickshaw within the railway premises of Jalgaon. In the circumstances, present respondent No. 1, who was on duty as police head constable, accosted him. He took away his motor driving licence and made a demand of Rs. 100/- for not filing the case against him. The complainant promised to pay it lateron. In the circumstances, he filed complaint on 8<sup>th</sup> April, 1997.

. The investigating officer P.I. PW3 Hiranman Kankhare recorded the complaint at Exhibit-41. He collected two panch witnesses, including PW2 Habib Tadvil serving in Irrigation Department at Chopda. The demonstration of application of anthracene powder was

given to the complainant and the panch witnesses. The decoy money brought by the complainant was smeared with anthracene powder and thereafter, the trap was laid at the railway station.

. When the complainant and the shadow panch witness went in the compound of the railway station, they found the present respondent No. 2 who was monitoring the cycle stand there. Upon making enquiry with him, he called respondent No. 1. Thereafter, respondent No. 1 again made demand of money towards the return of the licence and towards not filing any case against him. When the complainant offered decoy money to the accused/respondent No.1, he directed that the accused No. 2 shall accept the same. Accordingly, the decoy money was paid to accused No.2. The raiding party arrived at the spot and the next of the exercise of examination of the hands and cloths of accused No. 1, accused No.2 and the complainant under the ultraviolet lamp had started. The said examination confirmed the above transaction.

4. Thereafter, the investigating officer obtained sanction to prosecute accused No. 1 from the sanctioning

authority PW4 Jawaharsing Murlising, the then Superintendent of Police (Railways) who accorded the sanction vide Exhibit-54. Thereafter, the chargesheet came to be filed.

5. Before the learned Special Judge, while the complainant has deposed on the line of the prosecution, the shadow panch witness PW2 Habib Tadvī initially deposed that nothing has happened in the office of the Anti Corruption Bureau before they left for the trap. In the circumstances, the A.P.P. sought permission to cross-examine the shadow panch witness. Upon grant of permission, he was cross-examined. During cross-examination, however, the shadow panch witness supported the prosecution case that during the trap, the present accused No. 1 had made the demand of the bribe money and accordingly, the same was paid.

6. The defence of the respondents was that in fact, on the date of the incident, the complainant not only entered the premises of the railway station but even gave dash to one bicycle. The respondent No.2, therefore, had claimed compensation of Rs. 100/- to be paid to the cycle-owner and the amount was demanded and

paid towards the said compensation.

7. The learned Special Judge has found that the sanction accorded by the sanctioning authority is not valid as the same is granted without application of mind. On facts also, the learned Special Judge found that the case is not proved beyond reasonable doubt. On merit also the prosecution case was disbelieved. Hence, the acquittal of the respondents came to be recorded.

8. The learned A.P.P. submitted that the complainant as well as independent panch witnesses have deposed about demand and acceptance of the money. Merely because certain partial admissions were given by the complainant regarding dash to the bicycle, the learned Special Judge ought not to have disbelieved the prosecution case. He further submitted that the sanction accorded by the sanctioning authority is valid and legal.

9. On the other hand, Mr. P.N. Kalani, learned counsel for the respondents, supported the reasons forwarded by the learned Special Judge.

10. On the basis of above material and the submissions advanced on behalf of both sides, the following points arise for my determination :-

(I) Whether the prosecution has proved that the sanction accorded by the sanctioning authority - PW4 Jawaharsing Murlising is legal and valid ?

(II) Whether the prosecution has proved that on 7<sup>th</sup> April, 1997, the present respondent No. 1 made demand of an amount of Rs. 100/- and thereafter, accepted the same on 10<sup>th</sup> April, 1997 through the respondent No. 2 as gratification other than the legal remuneration for not filing the case against the complainant ?

(III) Whether the respondent No. 2 has abated the commission of the aforesaid offence ?

(IV) Whether the respondent No. 1 has committed misconduct by obtaining the pecuniary advantage to him being a public servant ?

My finding to above point No. (I) is in the affirmative and findings to the above points No. (II) to (IV) are in the negative. The appeal is, therefore, dismissed for

the reasons to follow :

**R E A S O N S**

11. The FIR of the complainant filed at Exhibit-41 on the next day of the incident of initial demand i.e. 8<sup>th</sup> April, 1997 would reveal that he was knowing only the buckle number of the accused/respondent No. 1. Therefore, he had made enquiry and found that the name is Raju Madhav More i.e. respondent/accused No. 1. It would be thus clear that on 9<sup>th</sup> April, 1997, at the time of filing of the complaint, the complainant knew the name of the accused/ respondent No.1.

. Despite this, it is the prosecution case that during the trap on 10<sup>th</sup> April, 1997, the complainant made enquiry with accused/respondent No. 2 about the 'traffic hawaldar who generally remains on duty at the place'. Only when the accused/respondent No. 2 questioned as to whether he wanted Raju Madhav More, the complainant answered in the affirmative.

12. These facts would show that either the statement in the complaint that the complainant knew the name of accused/respondent No. 1 at the time of filing

of the complaint is false or the complaint is recorded later on after the entire exercise of trap was over. Not only this, the complainant, during cross-examination, admitted that at the time of incident, he did not merely enter the railway premises but had even given dash to one bicycle. He, however, denied further suggestion that any compensation was demanded or the money asked for was towards any compensation. The very fact of genesis of the incident, which required the meeting between the complainant and the respondent/accused No. 1 i.e. the dash given to the bicycle, was suppressed by the prosecution. The accused/ respondent No. 2 admittedly is the operator of the cycle stand. In the circumstances, the statement of the defence witness that his bicycle was damaged is corroborated by the above facts.

13. Last but not the least, the panch witness has deposed that there was certain conversation between the police constable and the complainant and thereafter, the bribe money was paid. Thus, the independent panch witness failed to give the details of the conversation to find out as to whether the said money was demanded

towards any bribe or towards any compensation as claimed by the defence.

. In that view of the matter, in my view, the appreciation of the evidence made by the learned Special Judge is based on the material placed before him. The view cannot be called as unreasonable or improbable. There is no perversity in the findings arrived at by the learned Special Judge. Therefore, on facts, there is no need to interfere in the order of acquittal passed by the learned Special Judge.

14. As regards the sanction, PW4 Mr. Jawaharsing Murlising, the then Superintendent of Police (Railways), during cross-examination, has deposed that a draft of the sanction order was received by him from the Anti Corruption Bureau and the wording of the draft sanction order and the sanction order issued by him is almost similar. He further deposed that the sanction is as per the draft. He, however, denied that he had not perused the papers and did not apply his mind before according sanction.

. In the circumstances, the learned Special Judge

has observed that the sanctioning authority has not applied its mind at the time of according sanction to prosecute the respondent/accused No.1.

15. It is, however, to be noted that grant of sanction though involves the administrative action, the order requires technical wording. In the circumstances, if some draft is forwarded by the Anti Corruption Bureau and the same is used by the sanctioning authority for passing the order, that itself would not be a ground to come to the conclusion that the sanctioning authority has not applied its mind while according sanction. The reasoning forwarded by the learned Special Judge in this regard, therefore, cannot be accepted. In my view, PW4 Mr. Jawaharsing Murlising had applied his mind while according the sanction. The sanction accorded to prosecute the respondent/accused No. 1 was, therefore, legal and valid.

16. However, since, on facts, we found that the prosecution has failed to prove its case beyond reasonable doubt, there is no need to interfere in the order of acquittal of the respondents. In the result, the following order:-

17. The appeal is hereby dismissed. The bail bonds of the respondents, if any shall stand cancelled.

**[M.T. JOSHI]**  
**JUDGE**

npj/criapl803-2003