

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.5423 OF 2015

The State of Maharashtra,
Through Dy. Superintendent
of Police, Anti Corruption
Bureau, Ahmednagar

..Applicant

Versus

Rohidas Babasaheb Zunjar,
Age 48 years, Occ. Service as
Police Head Constable,
B.No.163, Class-III, Kotwali
Police Station, Ahmednagar,
r/o. Shastrinagar, Kedgaon,
Ahmednagar

..Respondent

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Mr.A.R.Kale, APP for applicant – State

Mr.Rajendra Deshmukh, advocate for respondent

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CORAM : M.T. JOSHI, J.

DATE : FEBRUARY 25, 2016

PER COURT :

Heard.

2] Aggrieved by the acquittal of the
respondent/accused from the offences punishable
under Section 7, 13(1)(d) read with Section 13(2)

of the Prevention of Corruption Act, 1988 vide judgment and order dated 29th June, 2015 passed in Special Case (ACB) No.12 of 2013 by learned Judge, Special Court (ACB), Ahmednagar, the State wants to prefer an appeal and therefore present application for grant of leave to file appeal, is filed.

3] The prosecution case, in nut-shell, is that the complainant PW 1 – Smt. Chandrakala Shinde was serving as Peon in Rural Hospital, at Pathardi. Due to matrimonial dispute between her son Pravin and his wife Nirmala, a complaint was filed against all the family members of the complainant including the complainant herself with Kotwali Police Station, Ahmednagar. Present respondent/accused was making inquiry in the said case.

. It is the prosecution case that the respondent /accused made a demand of an amount of Rs.50,000/- as bribe from the complainant for not registering

the offence against the complainant and her family members. He threatened the complainant that if the amount of bribe is not paid, he would put all the family members of the complainant behind the bars and the government job of the complainant would come in jeopardy. He obtained an amount of Rs.10,000/- towards bribe for not taking action against the complainant and her family members. After about one year, he again obtained an amount of Rs.15,000/- and ultimately, on 4th January, 2013, the respondent made phone calls twice to the complainant and asked the complainant to make arrangement for Rs.10,000/-, as agreed earlier. He threatened that in case said amount is not paid, action would be taken. He also told that on the next day, he would visit the house of the complainant for collection of the amount.

. In the circumstances, the complainant filed complaint against the present respondent with the Anti Corruption Bureau.

4] PW 3 – Rajendra Mali, the then Police Inspector, Anti Corruption Bureau, Ahmednagar conducted investigation in the matter. He collected two panch witnesses including PW 2 – Mandakini Barawkar, shadow panch witness. Regular exercise of verification of the complaint was made. The decoy money was smeared with anthracene powder. The shadow panch witness was instructed to remain in the company of the complainant in her house. A voice recorded was kept with the complainant to record the dialogues between the complainant and the respondent.

. As agreed, the respondent arrived at the house of the complainant. During the talks, the complainant asked the respondent as to, what was the progress in the case. Upon that, the respondent asked about the bribe amount by gestures and by finger. Accordingly, the decoy money was handed over to the respondent and upon signal from the complainant, the raiding party

arrived at the spot and the respondent/accused was apprehended.

5] The sanction to prosecute the respondent was granted by PW 4 – Raosaheb Shinde, the then Superintendent of Police, Ahmednagar at Exhibit 49 and thereafter, the charge sheet was filed.

6] The record of the case would show that the complainant has not supported the prosecution case. She deposed that she has, in fact, given a hand written complaint and she did not remember, as to whether, the said complaint was typed on the computer in the office of Anti Corruption Bureau. Therefore, only her signature on the complaint Exhibit 93 was proved. She further deposed that in fact, the bribe was not demanded by the present respondent, but by one Police Constable – Bharati and the respondent had come only to collect the said amount.

7] PW 2 — Mandakini Barawkar, shadow panch witness, though initially supported the prosecution case, has deposed that at the time of the actual transaction of handing over of the decoy money, her back was towards the complainant and the present respondent.

8] The Investigating Officer *inter alia* deposed that the audio-clip taken from the memory card about the transaction was sent by him along with the samples of voices to Forensic Laboratory through the Superintendent, Anti Corruption Bureau. The office copy of the forwarding letter (Exhibit 41) was proved by him. However, no report of the Forensic Laboratory or even the transcription of the dialogues, was produced on record.

9] Upon appreciation of the material on record, it reveals that PW 1 — complainant and PW 2 —

Mandakini Barawkar have deviated from the prosecution case while, PW 3 – Rajendra Mali, the Investigating Officer did not take sufficient care to collect the report of the Forensic Laboratory.

. Why PW 3 – Rajendra Mali, Police Inspector, Anti Corruption Bureau, Ahmednagar, had failed to collect the forensic report is an enigma.

10] The learned Special Judge has highlighting the above lacuna. He further observed that the sanction accorded by PW 4 – Raosaheb Shinde, the then Superintendent of Police, was without application of mind. It is observed by the learned Special Judge that this witness admitted that he passed the order on the note-sheet prepared by the Office Superintendent. On the said note-sheet (Exhibit 52), he wrote as "sanction approved". In the circumstances, the learned Special Judge observed that there was non-

application of mind while granting sanction to prosecute the respondent.

11] Upon hearing both sides and perusal of the material on record, in my view, since the Superintendent of Police is a busy Officer, it is not expected from him that he himself should prepare any draft or note. Merely because certain note was placed before him for signature, it would not mean that he has not applied his mind.

. In the circumstances, when the sanctioning authority has deposed that he had carefully gone through the papers and upon his satisfaction, has granted sanction, it would show that there was application of mind while according the sanction. The reasons in this regard of the learned Special Judge cannot be accepted.

12] On merit, however, as detailed above, each of the prosecution witnesses, in one or another

manner, has ditched the prosecution case. In view of these facts, though the acquittal recorded by the learned Special Judge in favour of the present respondent cannot be termed as an honourable acquittal, the same cannot be interfered with, as reasonable doubt has arisen in the present case.

13] In the result, present application for grant of leave to file appeal, is hereby rejected. Leave to file appeal is refused.

14] A copy of this order be sent to the Director General, Anti Corruption Bureau, Maharashtra State, Mumbai, for taking necessary action as regards the conduct of PW 3 – Rajendra Mali, the then Police Inspector, Anti Corruption Bureau, Ahmednagar, in the light of the observations made herein above.

[M.T. JOSHI, J.]

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