

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 383 OF 2002

The State of Maharashtra. ... Appellant.

Versus

- 1 Murlidhar Shridhar Vedpathak,
(Appeal abated as per Court's
order dated 28/1/16).
- 2 Tanaji Maruti Bhondawe
Age 34 years, Occ. Service,
Resident at Rawet,
Tal. Haveli, Dist. Pune. ... Respondents.

Mr. S.S. Pednekar, APP for State.

Mr. Ganesh M. Mohite, advocate for respondent No. 2.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : APRIL 20, 2016

JUDGMENT :

1 The State being aggrieved by the Judgment and Order passed by the Special Judge, Pune in Special Case No. 15 of 1993 dated 29/11/2001 thereby acquitting the respondents of the offence punishable under Section 7, 12 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 has preferred this Appeal.

2 During the pendency of the appeal, learned Counsel for the respondent has filed on record the death certificate of Murlidhar Vedprakash who is respondent No. 1 issued by Pimpri-Chinchwad Municipal Corporation to the effect that the respondent No. 1 has expired on 3/2/2010. In view of this, the appeal as against respondent No. 1 stands abated.

3 As far as respondent No.2 is concerned, it is the case of the prosecution that the respondent No. 2 happened to be working as driver of the respondent No. 1. Due to pendency of this appeal, the respondent No. 2 has been denied increment, promotion and other service benefits although he is still in service.

4 Such of the facts necessary for decision of this appeal are as follows :

(i) It is the case of the prosecution that the complainant Bapu Dattoba Malshetti was a contractor who was entrusted with the work of renovation of the house of Vijay Dharashivkar of Survey

No.110/1/23 at Rahatni Kalewadi for Rs. 2, 50,000/-. That Vijay Dharashivkar had paid an amount of Rs. 1,76,000/- to the complainant i.e. Shri Malshetti towards part-payment of the construction cost.

(ii) It is alleged that on 25/2/1995 original accused No. 1 had visited the site of construction/renovation and had apprised the contractor that the work undertaken by him was illegal and without the permission of the Municipal Corporation and therefore, original accused No. 1 had asked the complainant Shri Malshetti to discontinue the work forthwith. A notice was also issued to that effect.

(iii) The accused No. 1 had made a second visit on 8/5/1995. The construction work was in progress. That the accused No. 1 had apprised the contractor that he should discontinue the work forthwith or he would be constrained to demolish the said structure. The second notice was served upon the complainant. A notice was also issued to Shri Vijay Dharashivkar.

(iv) It is the case of the prosecution that on 15/5/1995 original accused No. 1 had been to the site of the construction. There were

implements on the said site. It is alleged that the accused No. 1 had demanded an amount of Rs. 10,000/- towards illegal gratification for permitting the complainant to continue with his work. The amount of gratification was negotiated and it was decided that the contractor shall pay an amount of Rs. 5,000/-.

(v) That since Malshetti was not inclined to pay the same, he had approached to the office of the Anti Corruption Bureau.

(vi) The Anti Corruption Bureau had requested Bhaskar Urankar and Vasant Chavan to act as panchas. According to the prosecution, trap was successful.

(vii) It is alleged that at the time of exchanging the amount, the present respondent No. 2 who happens to be the driver of the original accused No. 1 was initially seated in the car. He was summoned by the accused No.1. After accepting the gratification the accused No. 1 handed over the said tainted currency notes to the respondent No. 2 and had directed him to keep it in safe custody.

5 The learned Counsel for the respondent rightly submitted that the learned Special Judge had appreciated the fact that the sanction

accorded for the prosecution of the accused was not in accordance with law and it has caused great prejudice to the accused. Secondly, it is rightly submitted that the original accused No. 2 had no knowledge of the demand of the gratification made by the accused No. 1 to the complainant Malshetti. Even when the accused No. 1 had handed over the amount to the accused No. 2, he had no knowledge about any transaction whatsoever and therefore, it cannot be said that the accused No. 2 had aided, abetted, facilitated or had shared any common intention with the accused No. 1 to obtain illegal gratification in discharge of official duties.

6 Needless to say that demand is sine qua non for acceptance. In the present case, it is not the allegation of the prosecution that the accused No. 2 at any stage had demanded the gratification or was present with the accused No. 1 at the time of demanding or accepting the gratification. That only because he was working as a driver with the original accused No. 1, it cannot be said that he had any intention or knowledge about the demand and acceptance of the gratification. In any case, learned Sessions Judge has recorded justifiable reasons

for acquitting the original accused No. 1. The said findings do not call for any interference.

7 There is a specific admission by the original complainant to the effect which reads as follows :

“It is true that construction should not be demolished and hence I had to go and filed complaint. It is true that due to complaint construction was not demolished.”

8 It is a matter of record that the original accused No. 2 had not accepted the amount from the complainant but he was entrusted with the amount by the accused No. 1 and hence, it is clear that on the face of the evidence adduced by the prosecution, there was no occasion to even draw presumption against the accused No. 2 under Section 20 of the Prevention of Corruption Act, 1988. Hence, the appeal filed by the State being sans merit deserves to be dismissed.

9 The findings recorded by the learned Special Judge do not call for any interference. Hence, Judgment and Order passed by Special

Judge, Pune in Special Case No. 15 of 1993 dated 29/11/2001 is hereby maintained. The appeal is dismissed and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)