

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 432 OF 2000

The State of Maharashtra. ... Appellant.

Versus

Saheb Bardan Pande.
Aged about 32 years,
Occ.: Sub-Engineer, M.S.E.B.,
Savakarwadi, Taluka-Mallegaon,
District-Nashik. ... Respondent.

Mrs. A.A. Mane, APP for State-appellant.

Mr. Shantanu R. Phanse, advocate for respondent.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : APRIL 28, 2016

P.C.:

1 The State being aggrieved by the Judgment and Order passed by Special Judge, Malegaon dated 11/2/2000 thereby acquitting the respondent of the offence punishable under Section 7, and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 has filed the present appeal.

2 It is the case of the prosecution that the present respondent was working as Sub-Engineer of Maharashtra State Electricity Board and was posted at Malegaon. One Appa Shripad Phasale had visited the office of MSEB at Savkarwadi on 12/11/1987 to enquire about the procedure for obtaining electrical connection in his agricultural land. According to him, there was abundant water in the well situated in Gat No. 633 and 637 of village Zadi. The complainant Appa Phasale had met the respondent herein. That Mr. Pande had given him relevant information and had directed to produce the 7/12 extract of the land alongwith certificate to show his ownership over Gat No. 633 and 637. It was also necessary to file a certificate showing that the mother of the complainant is a marginal land holder. According to Mr. Phasale, he had obtained all the requisite certificates and filed an application to the concerned office. The respondent herein had given him A-1 form and asked him to get it signed from his mother. The form was given to the complainant on 16/11/1987.

3 According to the complainant, he had revisited the office in December, 1987. However, he did not get proper response from

the respondent. It is alleged that in January, 1988 respondent had demanded Rs. 3000/- for the purpose of giving electricity connection on his agricultural land. The said amount was negotiated and settled to Rs. 2500/- on 1st February, 1988 the complainant had allegedly parted with the amount of Rs. 1000/- in favour of the respondent. However, the respondent was insisting upon the payment of the remainder amount.

4 On 8/2/1988 the complainant had expressed his inability to satisfy the gratification but had assured the respondent that he would put in the best of his efforts. Since he was not inclined to give illegal gratification, he had approached the office of Anti-Corruption Bureau, Nashik and lodged the report.

5 Pursuant to the report filed by the complainant, the Anti-Corruption Bureau, Nashik had arranged the trap. Two public servants were summoned to act as panchas. The complainant was given necessary instructions. The trap was scheduled on 11/2/1988. According to the prosecution, the accused had accepted the amount and the trap was successful. Thereafter, DYSP of Anti-Corruption

Bureau lodged a report at the police Station, on the basis of which Crime No. 14 of 1988 was registered against the respondent under Section 161 of the Indian Penal Code and Section 5(1)(3) read with Section 5(2) of the Prevention of Corruption Act, 1947. The sanction for prosecution was obtained and charge-sheet was filed.

6 It is pertinent to note that the prosecution examined four witnesses to bring home the guilt of the accused. P.W. 1 Amar Ramdas Nikam had acted as panch to the trap. P.W. 2 Appa Phasale is the complainant. P.W. 3 Smt. Rama Vitthal Raichur was the typist of the sanctioning authority Mr. Ghisad and P.W. 4 Narayan Dalvi, who happens to be the investigating officer.

7 P.W. 1 Amar Nikam happens to be the shadow witness to the trap. He was working as clerk in Zilla Parishad, Nashik. He has deposed before the court in respect of pre-trap panchanama. P.W. 1 has deposed before the Court that at about 11.40 a.m. they met Mr. Pande in the office. Mr. Fasale wished him. Thereafter, Mr. Pande had asked Mr. Fasale to wait for some time and later on informed him that he has to attend the meeting. While he was leaving his office, he

had asked Mr. Phasale whether he had brought the money. Thereafter, Mr. Phasale and P.W. 1 followed him outside the office. Mr. Pande asked money and thereafter, had accepted the same. The raiding party had approached and informed Mr. Pande that they were from Anti-Corruption Bureau. In the cross-examination, P.W. 1 has categorically stated that while leaving the office, he was holding the keys in his right hand. It is further admitted that Mr. Pande did not ask the complainant whether he had brought money while proceeding towards door but had asked him only after he had left the office.

8 At this stage, learned Counsel for the respondent rightly submits that P.W. 1 appeared to be in a confused state of mind and has not proved that the accused had questioned about the amount or demanded the same. It is further submitted that on the date of incident, there was no work pending with the accused and therefore, there was no reason for demanding gratification.

9 P.W. 2 Appa Shripat Phasale is the complainant. It is admitted by the complainant that he had approached Mr. Pande and enquired about the procedure. At that time, Mr. Pande had given him

a list of documents to be submitted including 7/12 extract from village-talathi. It is admitted by P.W. 2 that after getting instructions from Mr. Pande, he obtained 7/12 extract. It is also admitted that he had only given one 7/12 extract alongwith his application although he had given two 7/12 extracts to the Anti-Corruption Bureau. It is also admitted that the application at Exh. 38 does not bear thumb impression of his mother. He has feigned ignorance about the scribe of Form at Exh.38. It is also admitted that the certificate of being a marginal holder was not annexed alongwith his application given to Mr. Pande. It is also admitted that at the time of filing complaint to Anti-Corruption Bureau P.W. 2 was aware that M.S.E.B. office at Malegaon has sent his papers to M.S.E.B. Office at Dabhadi as per procedure. It is also admitted that he has annoyed with the M.S.E.B. since it had not supplied him electricity earlier and therefore, he had visited Malegaon office twice to make enquiry. He was under impression that his application was not forwarded from M.S.E.B. Office, Savakarwadi to Malegaon.

10 P.W. 3 Smt. Rama Vitthal Raichur was working as typist in the office of M.S.E.B. Office at Bandra with Joint Director of

M.S.E.B., Bombay Mr. Ghisad who was the sanctioning authority in the present case. The prosecution has examined P.W. 3 to prove that valid sanction was accorded for prosecuting the accused respondent. It cannot be said that the sanction has been proved. She has also admitted that the sanction order does not bear her name as typist who had typed confidential correspondence. According to her, she had typed her initials on the forwarding letter. She has also admitted before the Court that it was the first time she had stated that Mr. Ghisad had given dictation to her which she had typed. Hence, it cannot be inferred that there was valid sanction in the eyes of law to prosecute the respondent.

11 P.W. 4 Narayan Shankar Dalvi is the complainant as well as the investigating officer. He has deposed before the court that Mr. Phasale had written it in his own hand writing that he had no money transaction with Mr. Pande.

12 The learned Counsel for the respondent submits that in fact, at the time of incident, there were 5 to 6 persons seated in the office of the accused. That the accused had not enquired about the

identity of the shadow witness and that the learned Special Judge had held that the accused would not have accepted illegal gratification in the presence of stranger. Learned Special Judge has rightly held that the previous demand was not proved neither the prosecution has been able to establish that on 11/2/1988 an amount of Rs. 1,000/- was accepted by the accused. It appears that the grant of valid sanction has not been proved by the prosecution. It is true that grant of sanction to prosecute is not an idle formality. It is a protection granted to the public servant that they should not be exposed to criminal prosecution only because they choose to work within the frame work of law, rules and regulations.

13 In the case of **Suraj Mal v/s. State (Delhi Administration)** reported in **AIR 1979 SC 1408**, the Hon'ble Apex Court has observed as under:

“In our opinion, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable.”

14 The learned Counsel for the respondent submits that the respondent has retired on 28/2/2012, but he has been denied of pensionary benefits since the appeal against acquittal is pending. It is admitted position in law that whenever two views are possible, the Court shall take into consideration the view that is favourable to the accused in the interest of justice. In the present case, the appellant has been acquitted in the year 2000. There are no reasons to interfere with the findings recorded by the learned Special Judge. Hence, the Criminal Appeal stands dismissed and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)