

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CRIMINAL APPELLATE JURISDICTION

## CRIMINAL APPEAL NO.1367 of 2003

**The State of Maharashtra****.. Appellant***Versus***Arun Narayan Dabade****.. Respondent**

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Mr.A.R.Kapadnis, APP for the appellant State.

Mr.Umesh Mankapure with Ms.Shruti Kandoi, Advocate for the Respondent.

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**CORAM : P.N. DESHMUKH, J****DATED : 3<sup>rd</sup> OCTOBER 2016**

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**ORAL JUDGMENT :**

1           This Appeal is preferred by State of Maharashtra against the judgment dated 17<sup>th</sup> January 2003 passed by the learned Special Judge in Special Case No.5 of 2000, thereby acquitting respondent of the offences punishable under Section 7, 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988.

2           The case of prosecution in brief, can be stated as under :-

Respondent at the time of incident was working as a clerk in the office of Assistant Labour Commissioner at Sangli. Complainant Vilas Mohite had applied with the Bank to obtain loan to expand his business for which purpose authorities of the Bank had instructed him to produce licence issued in Bombay Shops and Establishments Act. Complainant, therefore, deposited necessary amount of Rs.150/- by paying challan and applied for issuance of said licence. However, respondent demanded bribe of Rs.500/- for issuing the same.

3           According to the case of prosecution, said amount of bribe was negotiated to Rs.400/- which was agreed to be paid on 18<sup>th</sup> October 1999. As complainant was not interested in making payment of bribe, he visited the office of Anti Corruption Bureau, Sangli and lodged his report (Exhibit-12). The Investigating Officer, thereafter arranged for two independent panch witnesses, who on their introduction with the complainant were informed of the complaint. Complainant thereafter produced 4 currency notes of Rs.100/- each in denomination. Both the panchas and complainant were then given demonstration of effect of *anthracin* powder when they are seen under the ultra violet lamp.

Complainant as well as both the panchas were then given necessary instructions. Complainant was also directed to give signal by placing his hand on his head, after the bribe money was paid to respondent on his demand. Pre-trap panchnama of all these facts is drawn vide Exhibit-14.

4           It is further case of prosecution that trap came to be laid in the office of respondent. When respondent demanded bribe amount of Rs.400/- from complainant, and on accepting the same near the lavatory of his office premises, handed over licence to the complainant. On receiving the proposed signal given by complainant, members of the raiding team rushed to the spot and apprehended the respondent. The bribe money was recovered which was concealed in a rack in the office of respondent. Post-trap panchnama of all these facts was drawn as per Exhibit-15. Further investigation was carried out by PW 4 Satish Mane, PI, who, during the course of investigation recorded statements of witnesses, obtained sanction to prosecute respondent from PW 3 Ramchandra Patil, being competent authority to accord sanction (Exhibit-17) for prosecution. On completion of investigation, charge-sheet is filed before the learned Special Court.

5 Charge is levelled against the respondent vide Exhibit-7 to which he denied and claimed to be tried. The case of respondent is of false implication. According to respondent, since two months prior to 16<sup>th</sup> October 1999, complainant was regularly visiting his office with regard to issuance of licence under the Bombay Shops and Establishments Act, and employees working in this Department had instructed complainant to comply with various documents, which compliance was duly made by him on 16<sup>th</sup> October 1999, and was thus, directed to collect the licence on 18<sup>th</sup> October 1999, on which date same was supplied to him at 10.00 a.m. However, Complainant being annoyed due to his repeated visits to the office of respondent for a period of two months has falsely involved the respondent by lodging a report against him. It is the case of respondent that, at the material time, complainant along with one more person contacted respondent in the afternoon and forcibly made attempt to pay some money to him, which he refused to accept, and in the mean time, police arrived on the spot and apprehended the respondent.

6 Respondent did not examine any witnesses in support of his defence. Learned Special Judge considering the evidence of witnesses on record, acquitted respondent of all the charges levelled against him. Hence, present Appeal.

7            Learned APP has submitted that there is sufficient evidence to establish involvement of respondent in the present case, as according to him, from the evidence of complainant, it is established that respondent, on the day of incident had demanded bribe of Rs.500/- to issue licence under Shops and Establishment Act, and on accepting the bribe, issued the licence. Learned APP further submitted that evidence of complainant is fully corroborated by evidence of PW 2 Bagul, independent panch witness who has deposed about respondent had demanded and accepting bribe on the day of incident in his presence. It is therefore, prayed that Appeal be allowed, setting aside judgment of acquittal passed by the learned Special Judge, and respondent be convicted accordingly.

8            Learned counsel for the respondent, on the other hand, had pointed out that there is no corroboration to the evidence of complainant from the evidence of independent panch witness, and as such, submitted that prosecution had failed to establish demand by respondent. It is also pointed out that even no subsequent demand at the time of incident is established. It is also contended that from the evidence of PW 3 Ramchandra Patil,

the sanctioning authority, it has come on record that in fact, respondent was not competent to issue licence, and as such, there is no reason for respondent to demand any bribe, as alleged. It is therefore, prayed that Appeal is liable to be dismissed.

9           With the assistance of learned counsel for both the sides, I have scrutinized the evidence on record. So far as first demand is concerned, it has come in evidence of PW 1 Vilas Mohite - the complainant that for the purpose of obtaining loan, he was in need of licence issued under Shops and Establishment Act for which on 16<sup>th</sup> October 1999, he had deposited Rs.150/- by challan, and handed over all papers to respondent for issuing the licence. He has further stated that on receipt of documents, respondent directed him to see him on 18<sup>th</sup> October 1999, when he demanded Rs.500/- upon which complainant informed that he would make payment in the afternoon and visited the office of Anti Corruption Bureau at around 10.30 am and lodged a report (Exhibit-12)

10           On the point of incident, further evidence of complainant is to the effect that on meeting the respondent, he asked if he has brought the money, to which he replied in

affirmative, and therefore, instructed complainant to accompany him towards lavatory where complainant paid 4 currency notes of Rs.100/- each in denomination, and gave the proposed signal upon which members of the raiding team arrived and apprehended respondent.

11           On considering above evidence of complainant, it thus appears that his evidence do not establish any demand by respondent, much less for Rs.500/- which was negotiated to Rs.400/- for issuing licence for which complainant had applied for, as what has come in the evidence of complainant, as aforesaid, is that on his visiting office on 18<sup>th</sup> October 1999 and on meeting the respondent, respondent had issued him licence under the Shops and Establishment Act at 10.00 am. In view of above evidence, apparently, there appears no reason for respondent to demand any bribe for issuing licence.

12           Similarly, on the point of incident, though it is evidence of complainant that on his meeting respondent, he inquired that he had brought the money, to which complainant replied in affirmative, evidence of complainant, as aforesaid, do not establish as to with reference to what amount respondent had

inquired from the complainant, as evidence of complainant about respondent demanding bribe, or for a particular purpose, is silent, as what is deposed by complainant is that respondent demanded Rs.500/- which was negotiated to Rs.400/-.

13           Moreover, complainant's evidence with reference to his negotiating amount to Rs.400/-, also does not appear to be satisfactory, as he appears to have materially improved his case on this aspect. When he expresses his inability as to why no such fact is mentioned in his report to police though claims to have stated to police that he has no financial capacity to pay Rs.500/- and thus, informed respondent that he would pay Rs.400/-.

14           The case of prosecution even otherwise is not convincing, at all, as it has also come in the evidence of complainant that after he was issued with licence, he directly went to office of Anti Corruption Bureau. In fact, there appears no reason for complainant to approach the authorities under Anti Corruption Bureau as he was issued with the required licence.

15           In that view of the matter, there appears much substance in the case of respondent of his false implication when it

is stated that complainant since prior to 16<sup>th</sup> October 1999 on which day he completed the documentation, was required to attend office of Inspector, under the Bombay Shops and Establishments Act, for about two months, was annoyed and thus, inspite of his being issued with the required licence on 18<sup>th</sup> October 1999, lodged false complaint with the Officials of Anti Corruption Bureau against respondent.

16 Evidence of complainant on the point of demand as well as subsequent demand and acceptance on the day of incident even otherwise does not find corroboration from independent witness PW 2 Bagul. As from his evidence, it has come on record that after receiving necessary instructions from the Investigating Officer, he had accompanied complainant to the office of the respondent when complainant inquired from him if his licence was ready to which respondent replied in affirmative, and inquired from complainant if he had brought the money as demanded by accused. This evidence of complainant do not establish case of prosecution of respondent demanding bribe. As evidence of complainant on this aspect is silent as his evidence is only to the effect that on 18<sup>th</sup> October 1999, after respondent issued licence to him at 10.00 am, he demanded Rs.500/-. Evidence of

complainant as such, do not establish that said amount was demanded as bribe, which in fact, cannot be demanded as according to complainant, licence was already issued to him on that day at 10.00 am before such demand is made.

17            Similarly, evidence of PW 2 Bagul the panch, also do not establish that on complainant's meeting with respondent on the day of incident, he had inquired from complainant about the bribe money. As evidence of PW 2 is only to the effect that respondent has inquired from complainant if he has brought the money as demanded by him. As such, evidence of panch witness do not establish, if any, demand was made by respondent to the complainant and for what purpose.

18            From further evidence of panch witness, it has come on record that respondent then directed complainant to accompany him towards lavatory, and thereafter, took out the licence from the file kept in his office and after putting it in his pants, proceeded towards lavatory to whom complainant followed. He has further stated that respondent then demanded Rs.400/- from complainant which was paid by him accordingly, and thereafter, respondent issued licence to the complainant.

19           Above evidence of respondent is totally contrary to the evidence of complainant, firstly on the count that complainant's evidence is very specific that on his meeting respondent on 18<sup>th</sup> October 1999, he issued him licence at 10.00 am. As such, there was no reason for accused to supply any licence to complainant as deposed by panch witness.

20           Secondly, evidence of panch do not find corroboration from complainant's evidence on the point of demand of Rs.400/- as deposed by him. Even otherwise, evidence of panch as above-said, is not corroborated by evidence of complainant as complainant is totally silent on all the instances, which are alleged to have taken place as deposed by panch. Similarly, there is no corroboration to the evidence of panch when he has stated that after accepting bribe of Rs.400/-, respondent asked one of the persons who was present there to keep said amount with him, to which said person refused. Said person whose name appears to be one Mr.Bhirde, as has come in the cross-examination of panch, admittedly, is not examined by prosecution, inspite of specific evidence of panch that this person was available at the time of incident in the evening.

21           The case of prosecution of respondent demanding bribe is also not convincing as according to complainant's evidence after obtaining necessary licence, he had attended office of Inspector under the Shop and Establishments Act at Sangli. Respondent was working as a Clerk of Assistant Labour Commissioner, Sangli.

22           According to evidence of PW 3 Ramchandra Patil, the Sanctioning Authority who at the material time, was working as Addl. Labour Commissioner, Pune Division, was competent to appoint and to remove employees working under Bombay Shops and Establishment Act. As such, said authority was competent to accord sanction to prosecute and has deposed that respondent was working as a clerk while the Shop Inspector is the authority who decides whether to issue or to refuse grant of licence under the Bombay Shops and Establishments Act, by making necessary inquiry, in that respect and on visiting the place for which the licence is applied for, thus, according to his evidence, the Inspector under the Shops and Establishments Act is competent to issue such licence.

23 Admittedly, respondent was clerk, who according to further evidence of this witness, is required to maintain register with reference to applications received for issuance of licence, to take entries of such applications along with challans in the register. In fact, even in the evidence of Sanctioning Authority, it has come on record that as per entry in the Register, licence was already issued to complainant on 18/10/1999. According to him, the entry in the register is with regard to actual delivery of licence to complainant. In view of evidence of sanctioning authority as such, it is found that in fact, respondent was not competent to issue licence. Moreover, PW 4 Mane - Investigating Officer has admitted that the file with regard to the licence to be issued to complainant was at the material time, was lying with one Shri Pedgaonkar, the Shop Inspector. As such, there is sufficient evidence to hold that respondent was not competent to issue licence and thus for the reasons stated above appears to have been falsely introduced.

24 The scope of interference in an appeal against acquittal is by now well settled. Unless the view taken by trial Judge is either impossible or perverse, it is not permissible to this Court to interfere therein. In the application in hand, the learned

trial Judge by well-reasoned order has found that prosecution has miserably failed to prove the charges levelled against the accused. Upon perusal of Judgment and material placed on record, I do not find that the view taken by the learned trial Judge is either perverse or impossible so as to warrant any interference. The application is, therefore, dismissed. Leave is refused.

25           In view of evidence as discussed above, prosecution cannot be said to have established its case beyond reasonable doubt. In such circumstances, no permission u/s.20 of Prevention of Corruption Act can also be drawn since not attracted in the present case against the respondent.

26           Appeal is thus liable to be rejected. Appeal is dismissed.

**(P.N.DESHMUKH, J)**