

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

**CRIMINAL APPLICATION NO.115 OF 2015
(For Leave to Appeal by State)**

The State of Maharashtra ... **Applicant**
V/s.
Dhaku Bhairu Kale ... **Respondent**
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Mr.S.V.Gavand, APP for the Applicant/State.
Mr.A.S.Khandeparkar with Mr.Amogh Karandikar with Ms.Apoorva
Khandeparkar, Advocate for the Respondent.
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CORAM : P N. DESHMUKH J.

DATED : 14th SEPTEMBER 2016.

P.C.

1 This application is filed for grant of leave to file appeal by State of Maharashtra against the Judgment and Order dated 29/06/2015 passed by the learned Special Judge, Sindhudurg in Special Case No.14 of 2013, vide which respondent came to be acquitted of the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2 Heard learned Additional Public Prosecutor for State and learned counsel for the respondent. With their assistance, perused the evidence as well as the impugned Judgment. It appears to be the case of prosecution that respondent at the time of incident was working as Surveyor in the office of T.I.L.R., while complainant is a Builder and

Developer, and on 26/06/2012 had purchased land bearing Survey Nos.47-A, H.No.9-A and 9-B bearing Property Card No.2942, 2943, 2944, and 2945 from one Ajit Wadkar, and for that purpose wanted entry of above said property in the Assessment list of Sawantwadi Municipal Counsel, and for that purpose was required to have entry of the same in 7/12 extract at Talathi Office, as well as, in the Property Card at the office of TILR, where respondent was working. It is the case of the prosecution that for that purpose complainant had applied on 09/07/2012 by annexing the copy of sale deed. On 25/07/2012, complainant approached office of respondent to enquire about his application, however, he could not meet the complainant. After two-three days, he again visited the office of respondent and enquired about entries, if any, made in the Property Card about property purchased by complainant as detailed above, upon which respondent is stated to have demanded amount of Rs.10,000/-, claiming same to be required to be paid by complainant for making entry in the Property Card. It is further case of prosecution that complainant tried to negotiate the amount, however, there was no change in the same and at the same time, complainant and respondent exchanged their cell numbers with direction to complainant by respondent to make him phone call and to enquire about the matter.

3 It is further case of prosecution that on 16/08/2012, complainant went to the office of respondent and enquired about his work, when respondent told him to call him on phone. It is also case of prosecution that thereafter on 18/08/2012 and 19/08/2012 respondent demanded Rs.10,000/- to the complainant by making

phone call directing complainant to attend him along with bribe money and, at this juncture, complainant realized that as his work could not be done without payment of bribe money, he, therefore, visited office of Anti Corruption Bureau, Sindhudurg at Kudal and lodged his report at Exh.12.

4 It appears that thereafter, in presence of two panch witnesses, necessary instructions were given to complainant, as well as, both the panchas, and by applying anthracene powder to the bribe money, same were given in the custody of complainant with directions to complainant to pay the same to respondent only on demand. Thereafter, pre-trap panchanama was drawn, and trap came to be laid at the office of respondent, where respondent came to be apprehended since was found to have demanded and accepted bribe of Rs.10,000/-.

5 In the background of case of prosecution, as aforesaid, from the evidence of complainant, it has come on record that as per instructions he accompanied with P.W.No.2-Vikrant Ramakant Haldankar-the panch witness, visited the office of respondent, where he was found present and shook hands and then, respondent has demanded the bribe money, which amount was taken out by complainant from his pocket by his left hand and offered it to respondent, which he accepted, and thereafter complaint came out of the office and give the proposed signal. It is further stated by complainant that on arrival of members of raiding team, respondent tried to eat the currency notes, however, as he could not chew them, threw them on the ground, wherefrom bribe money came to be seized.

6 Evidence of P.W.No.2-Mr.Haldankar-panch witness, who accompanied complainant is to the effect that after he visited office of respondent, respondent demanded money by extending his left hand, upon which complainant on removing bribe amount from his pocket by his left hand handed over to respondent, which he accepted and then respondent went to the chamber of Mr.Kadam Deputy Superintendent of Land Record, while both of them came out and complainant gave the proposed signal. It is, thus, found that evidence of complainant finds corroborated with the evidence of panch on the issue of demand. However, it is necessary to consider, if above evidence of complainant and panch is convincing to be acted upon.

7 While considering the cross-examination of complainant, he has admitted that for having entry in the Property Card, it is necessary to make application to that effect to the office of TILR, and further admitted that there is no question of any officer demanding bribe, if any such application is made and is already disposed of. On being confronted with application at Exh.14, complainant has admitted that his application was already disposed of. Nothing is brought on record by prosecution to establish, as to in spite of rejection of application, as aforesaid, respondent had any reason to demand bribe from complainant. Moreover, complainant has further admitted that work of taking entries in the Property Card is of Superintendent of TILR, who admittedly, at that time, was one Mr.Kadam, while respondent was working as Surveyor.

8 At this juncture, when evidence of P.W.No.5-Vilas Pandurang Patil-Sanctioning Authority is perused, reveals that he has

accorded sanction as per Exh.35, and has admitted that the sanction granted by him was with reference to land bearing City Survey Nos.2942 to 2945, while the sale deed which was filed by complainant along with his application for taking entry in the Property Card, was in respect of City Survey No.3942 to 3945. This witness has specifically admitted that said fact was not brought to his notice, nor it was noticed by him. He has further admitted that had this fact would have been brought to his notice, or would have noticed by him, he would have enquired into it. This witness on being confronted with application at Exh.16 filed by complainant on 09/07/2012, has admitted that by making such application, complainant has attached copy of said sale deeds in respect of lands bearing Survey Nos.2942 to 2945 and has sought correction, which application was in fact pending on the date of raid, which was carried on 29/08/2012, and in fact, as a per notice dated 31/08/2012, issued by Mr.Kadam DILR, complainant was directed to remain present in the office with reference to his application at Exh.16 on 01/09/2012. In view of fact, as aforesaid, and evidence of Sanctioning Authority, it appears that in spite of said Authority having confusion in respect of City Survey Numbers, as aforesaid, without enquiring into the same, nor without considering fact of complainant making any application for correcting the City Survey Numbers, and same being pending with DILR, accorded sanction.

9 Coming back to case of prosecution on the point of demand, though it is the case of prosecution that there was a demand by respondent by making phone call to complainant on 18/08/2012 and also on 19/08/2012, evidence of P.W.No.6-Vasant Jadhav-Nodal Officer of concerned Cell Company had specifically deposed that

according to CDR at Exh.48, there was no calls made from the cell number of respondent to complainant's cell number either on 18/08/2012 or 19/08/2012. Thus, case of prosecution of alleged demand of respondent on above two dates on phone also does not stand for any reason.

Similarly, evidence of complainant as well as P.W.No.2-the panch witness on the aspect of alleged demand and acceptance of bribe by respondent at the time of trap on 29/08/2012 is also not convincing, when complainant has admitted that in spite of having no instructions to open topic of survey measurement, and though was not instructed to shake hand with the respondent, complainant opened such topic, as well as, shook hands with respondent. Similarly, it further appears to be the case of prosecution that at the time of incident whatsoever conversation took place between complainant and respondent was recorded, however, complainant has stated that he do no remember whether demand made by respondent is recorded in the conversation and has admitted that there is no such reference in the post-trap panchanama.

Moreover, in further cross-examination, respondent has suggested his case to complainant, of his telling complainant about his handing over amount of Rs.12,000/- to him, as Computer System was not working, of which he would issue challan to him. Though suggestion, as put forth, has been denied by complainant, there appears much substance in the same, when complainant has admitted that he has told respondent that on his handing over amount of Rs.12,000/- to him, respondent was to issue challan thereof. Complainant has also admitted that in the recorded conversation, there is no reference of

accused making any demand of amount. Though prosecution has examined P.W.No.4-Sunil Vengurlekar-police constable, he is not on the point of conversation whatsoever recorded, but has only deposed about the manner of recording conversation and has proved C.D., as such, his evidence does not establish case of prosecution any further. In fact, P.W.No.2 independent panch has also admitted that there is no recorded conversation in respect of demand of bribe money by complainant. Similarly, the Investigating Officer has also not disputed said aspect. The panch has also admitted that respondent has not enquired from complainant if he has brought the bribe money. On the contrary, has admitted that it is the complainant, who on reaching to office of respondent was insisting respondent saying “nsÅ dk] nsÅ dk”. P.W.No.2 has further admitted that complainant has not followed instructions given by the officer during pre-trap panchanama. Similar is the evidence of Investigating Officer.

10 Having considering the evidence as discussed above, the view taken by the learned Special Judge does not appear to be perverse. On the contrary, from the evidence on record, the view taken by learned Judge appears to be possible view to be taken. I, therefore, do not find any perversity in the Judgment of the trial Court. Application is liable to be rejected.

11 Application is rejected.

(P. N. DESHMUKH J.)