

Engineer of PWD at Pune and as such complainant's work was under direct supervision of Respondent No.1 who used to demand commission from the contractors and unless such commission was paid, was not passing their bills. In the background of facts as aforesaid, it is the case of the prosecution that about one week prior to lodging of complaint, Respondent No.1 demanded 3 % commission with reference to the work carried out by the complainant and 2 % as a commission of the total amount of bills pending with him. Thus the total amount of commission as bribe demanded was to the extent of Rs.3,35,000/-. Though the complainant requested to negotiate the same, there was no change in the amount of demand and thus, as the complainant was not willing to make payment of bribe, he visited the office of Anti Corruption Bureau, Pune on 4 May, 2010 and lodged his report.

3 On receiving the report, fact of alleged demand by Respondent No.1 was verified by the members of Investigating Agency by sending the complainant along with panch, when the complainant has got conversation entered between him and Respondent No.1 tape-recorded. According to said conversation Respondent No.1 had demanded bribe from the complainant consisting first installment of Rs.1 Lac and had directed the same to be paid to Respondent No.2, who at the material time was working as Senior Clerk.

4 On verification of fact as aforesaid, complainant as well as both panch witnesses were given necessary instructions. Pre-trap panchanama of all these facts was drawn and the trap came to be laid in the office premises of Respondent No.1.

5 At about 3.10 p.m. complainant met Respondent No.2 and within a short time, the complainant gave the proposed signal to the members of raiding party by giving missed-call. Immediately on getting signal, the members of the raiding party apprehended Respondent No.2 and sealed the currency notes which were lying on his table. In the meantime Respondent No.1 arrived in the office of Respondent No.2, where from both of them were apprehended and taken to the office of ACB Pune along with the sealed currency notes after drawing post-trap panchanama. On completion of investigation, the charge-sheet came to be filed in the Special Court, Pune. On considering the evidence learned Special Court acquitted both the Respondents of the charges levelled against them, hence this application.

6 Learned APP submitted that from the evidence on record, all the charges levelled against the Respondents can said to be fully established and has prayed that the application be allowed. Learned advocate for both the Respondents has opposed the application saying that the same is devoid of merits as from the evidence on record, no case is made out against the Respondents.

7 In the background of the submissions as aforesaid, I have perused the evidence of the Complainant who has not supported the case of the prosecution, and as such is declared hostile. Complainant has denied entire case of the prosecution as suggested to him. It is specifically denied that Respondent No.1 as Executive Engineer was in habit of demanding commission @ 3 per cent in respect of the work allowed to the contractors and 2 per cent of the bill amount which

were pending with him for sanction. The Complainant has also denied the fact of pre-trap panchanama being drawn in his presence. Though the Complainant admitted to have arrived in the office of Respondent No.2 with P.W. Ravindra, the independent panch, has specifically denied that Respondent No.2 had demanded amount by making gesture, has further denied that said accused had accepted the amount by his right hand and kept on the table. It is also denied that Respondent No.2 counted the notes and thereafter the Complainant went out of the office premises and gave proposed signal.

8 Having considered the evidence of the Complainant as aforesaid, it does not establish involvement of either of the Respondents in any manner.

9 Prosecution has further relied upon the evidence of P.W.2 Ravindra Bhagwat, the independent panch with reference to case of prosecution verifying the alleged demand by Respondent No.1. His evidence reveals that when he had accompanied the Complainant to the office of Respondent No.1, he preferred to stay outside his cabin, as he has stated that it is the Complainant who entered the cabin of Respondent No.1 with the voice recorder and after 10 minutes came out of the cabin, when ACB officials took voice recorder in their custody. Though said witness has stated that from the conversation it revealed that Respondent No.1 had demanded bribe and had asked the Complainant to handover the bribe amount to Respondent No.2, prosecution do not find to have established said piece of evidence. On this aspect, learned Special Judge has rightly appreciated the evidence noting that the prosecution has not adduced best possible

evidence, as according to the evidence of P.W. Ravindra he was waiting outside the cabin and thus was unable to hear the conversation whatever might have taken place between Respondent No.1 and the Complainant. In that event though it is in the evidence that the conversation whatsoever took place was recorded, it was necessary for the prosecution to play the audio cassette before the Court and establish the conversation on record. The prosecution however did not find it necessary to bring this evidence on record. In that view of the matter and since the Complainant has not supported the case of prosecution, there appears no evidence establishing involvement of any of the Respondents.

10 With reference to the subsequent demand on the date of the incident, evidence of P.W. Ravindra, the panch witness, reveals that after he entered in the office of Respondent No.2 along with the Complainant, the Complainant switch on the voice recorder and entered into the cabin of Respondent No.2 while he was standing in the door of the cabin. As per his further evidence, some conversation took place between the Complainant and Respondent No.2 for five minutes and thereafter Respondent No.2 demanded bribe by making gesture by his right hand. Perusal of evidence of panch as aforesaid, the same appears to be silent as to what was the conversation took place between the Complainant and Respondent No.2. Evidence of panch on this aspect carries much meaning in view of the fact of the Complainant not supporting the case of the prosecution. In that view of the matter, the case of the prosecution fails even on this count.

11 Learned Trial Court further noted that even the case of the prosecution with regards the Complainant lodging report is

doubtful, as according to the facts, it is no case of the prosecution that on 3rd May 2010, the Complainant approached the office of ACB Pune to lodge his report. However, the requisition letter issued to the Government Office for providing two witnesses is dated 3rd May, 2010. In that view of the matter it is rightly observed by the Trial Court that as according to the case of the prosecution when the report was lodged on 4th May 2010, there was no necessity for Investigating Officer to issue requisition for providing panchas one day before. It, therefore, further appears that the case of the prosecution is full of doubts.

12 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 leveled 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.

(P.N.DESHMUKH J.)