

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.144 OF 2015

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

RAVINDRA TUKARAM CHOUGULE)...RESPONDENT

Mr.S.V.Gavand, APP for the Applicant – State.

Mr.Vilas B. Tapkir, Advocate for the Respondent.

CORAM : P N. DESHMUKH, J.

DATE : 5th OCTOBER 2016.

PC. :

1 This application is filed by State of Maharashtra for leave to file appeal against judgment dated 11th September 2015 passed by learned Special Judge, Pune, in Special Case No.41 of 2013 thereby acquitting respondent of all the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act.

2 Heard the learned counsel for applicant and the learned APP. Learned APP has contended that from the evidence of complainant, prosecution has established demand of bribe of Rs.500/-

by respondent for which evidence is fully corroborated by independent evidence of PW2 name. It is further contended that before laying a trap, based on information received by complainant, the Investigating Officer verified the demand by making phone call by complainant to applicant and from such phone call, prosecution has established that respondent, prior to complainant lodging report had demanded bribe of Rs.500/-. In that view of the matter, learned APP submitted that application needs to be allowed as the learned special court had considered the evidence in much hyper-technical manner and has acquitted the applicant holding that though as per the case of prosecution, on complainants making phone call to respondent at 10.55 a.m., he has demanded bribe, there is no such phone call in the CDR Exhibit 28 on record and has contended that, the learned trial court failed to appreciate the case of prosecution that though there was no such call at 10.55 a.m., the call was made by complainant to respondent at 11.02.21 a.m. and in view of above evidence, has submitted that the approach of learned special court on this court disbelieving the case of prosecution is not sustainable and has thus prayed that application be allowed.

3 Learned counsel for respondent on the other hand by referring to the evidence has made an attempt to establish that evidence of complainant is not satisfactory at all as it does not establish demand by respondent. It is thus contended that in the absence of satisfactory evidence to establish first demand, acceptance and recovery of bribe from the possession of respondent is of no relevance. It is also contended that case of prosecution is even otherwise doubtful as complainant has materially improved her case so as to suit the case of prosecution. It is thus submitted that application be rejected.

4 It appears to be the case of prosecution that at the time of incident, respondent was working with one Mr.Ghadashi (Mukadam) as his assistant, while complainant was serving as sweeper in Pune Municipal Corporation for last 23 years.

5 It is the case of prosecution that since respondent made demand of bribe of Rs.500/- from complainant to grant exemption from marking her presence on duty in the afternoon session, complaint came to be lodged on the basis of which, pre-trap panchnama came to be drawn in the presence of panch witnesses and after giving necessary

instructions to complainant and panchas, a trap came to be laid in which respondent came to be arrested as was found to have demanded and accepted bribe of Rs.500/-, which came to be seized from his possession.

6 In the background of submissions advanced as aforesaid and the case of prosecution, evidence of complainant reveals that at the time of incident, respondent who was assisting Mukadam and where she was working as sweeper, was required to mark her presence thrice in a day i.e. at 6 a.m., 10.30 a.m. and 1 p.m. According to her, Mukadam used to take 200 Rs. from each of the sweepers, who were 16 in number to condone the late mark and said amount was referred as "Y" which according to complainant was collected as bribe by respondent on the day of salary of the sweepers. She has further deposed that at the time of incident, respondent enhanced amount of Rs.200/- to Rs.500/- and for non-payment of said amount for two months, was subjected to harassment, and thus, she agreed to pay Rs.1,000/- to respondent on her meeting with him on 8th March 2013, on which date respondent had demanded said amount. Complainant assured to make said payment two days thereafter and on the same day approached office of ACB and lodged her report. She has further stated

that on 11th March 2013, she again visited office of ACB when her report Exhibit 7 came to be recorded and on the same day in the presence of two panch witnesses, Investigating Officer verified the demand by complainant making phone call to respondent. On this aspect, evidence of complainant reveals that on that day, he spoke to respondent on cell phone and informed him that she wanted to give him “Y” when respondent inquired about location, to which complainant informed that she was in Pashan area upon which respondent told her to wait for sometime and said that he would call back to her in short while. From her evidence it has come on record that within five minutes respondent called her on her mobile phone, when she informed respondent that she was going to supermarket area and whether respondent can come at that place. On considering evidence of complainant, it is thus noted that on her making phone call to respondent on 11th March 2013, while verifying the alleged demand, it has come in the evidence of complainant that she wanted to pay respondent “Y” which according to her is bribe money and it has further come in her evidence that on receiving back phone call from respondent, it is complainant who informed him that she is going to supermarket area and thus inquired if respondent can come there. From the evidence, therefore, it is clear that from the telephonic

conversation, neither respondent demanded bribe money nor directed complainant to come with such amount to any specific place, but it is complainant herself, who informed him that she wanted to pay the amount and called respondent at supermarket area.

With reference to evidence of complainant about her calling respondent on phone on 11th March 2013 and within five minutes respondent calling back her, when with the assistance of learned APP the CDRs on record are considered, it is noted that there is only one call made by complainant to respondent on 11th March 2013 at 11.02 a.m. and on that date there is no call from respondent to complainant.

7 In that view of the matter, case of prosecution with regard to first demand does not appear to be convincing and the learned trial court in the light of above aspect appears to have rightly considered the evidence when it is noted that in the instant case, case of prosecution creates reasonable doubt about the authenticity of demand, allegedly made by accused from the mobile conversation and has thus held that in the absence of proof of demand, mere acceptance and recovery of tainted currency notes from the possession of respondent, is of no consequences.

8 Even otherwise, evidence of complainant with regard to subsequent demand at the time of incident, also does not appear to be convincing, as she has stated that after she along with panch Sarla visited supermarket and they were waiting in the tea stall, respondent arrived in sometime and inquired about “Y” amount to which she replied in affirmative and further deposed that as she wanted to give it to respondent has accordingly paid the sum and gave the proposed signal. Evidence of complainant as well as contents of post trap panchnama, refers to complainant making phone call to respondent. Similar are the CDRs. As such evidence of complainant as aforesaid establish that she wanted to give money to respondent and had contacted respondent on phone. Having considering her evidence as aforesaid, there appears much substance in the case of respondent of his false implication.

9 Even otherwise, case of prosecution does not appear to be convincing on the point of monetary demand by respondent, in view of evidence of complainant that there was only one Mukadam namely Mr.Ghadshi, who used to mark presence, sanction leave etc. of 60 workers who were paying Rs.200/- per month to him for several years.

Complainant is also found to have materially improved her evidence when she claimed to have stated in her statement to police that respondent met her at Model Colony on 8th March 2013 i.e. the day on which first demand is alleged to have been made by respondent, on which date, respondent has demanded Rs.500/- and claims to have further stated that after recording her complaint, she had called respondent at 11.00 a.m. and in five minutes received phone call from respondent who had directed her to come to supermarket with the bribe money, and that, has further claimed to have stated in her statement before police that respondent agreed to accept "Y" amount, none of these facts are mentioned in her statement. She has further deposed to have stated in her statement that respondent at Om Supermarket inquired from her whether she had brought "Y" amount to which she replied in affirmative, however, is unable to assign any reason why all these aspects are missing from her statement.

In the evidence of PW3 Vinod Satav, Investigating Officer, all these omissions of complainant are duly proved when the Investigating Officer had specifically admitted that complainant has not stated any of these facts in her complaint and statement recorded by him.

10 Having considering facts as aforesaid, complainant appears to have materially improved her version. Similarly, though according to case of prosecution there is a tape recorded conversation of alleged fact by respondent, admittedly, no such conversation is brought on record by leading best possible evidence.

11 Having considering facts as aforesaid, prosecution appears to have failed to establish its case. Moreover, 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.

12 In the result, application is liable to be rejected.

Leave is refused.

(P. N. DESHMUKH, J.)