

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.562 OF 2002

The State of Maharashtra,
Through Dy.S.P.,
Anti Corruption Bureau,
Jalgaon.

...APPELLANT

VERSUS

Shri Devidas Ramchandra Wagh,
Age-45 years, Occu:Service,
R/o-Jalgaon.

...RESPONDENT

...
Mr. S.J. Salgare, A.P.P. for Appellant.
None present for Respondent.

...

CORAM: S.S. SHINDE, J.

DATE : 8TH MAY 2017

ORAL JUDGMENT :

1. This Appeal is directed against the Judgment and order dated 23rd May, 2002, passed by Special Judge and Additional Sessions Judge, Jalgaon in Special Case No.12 of 1997, thereby acquitting Respondent -Devidas Ramchandra Wagh,

from the offence punishable under Section 7, 13(1) (d)(i) read with Section 13(2) of the Prevention of Corruption Act.

2. Brief facts leading for filing present Appeal as per the prosecution case are as under:-

. Original complainant Pradeep Baburao Bhamre, resident of Jamner was desirous to start the business of plastic moulding and accordingly for the said purpose, he had taken loan from the financial institution. He wanted 'no objection certificate' from the Pollution Control Board so as to start the business of plastic moulding under the scheme sponsored by the Government of India. Accordingly, in order to get no objection certificate from the Pollution Control Board, complainant approached the office of the Pollution Control Board with all the required papers. He requested the concerned authority to issue said certificate forthwith so as to avoid further loss

of time. It is the case of the prosecution that when the complainant approached the concerned authority, the accused, who is employee in the said office, demanded Rs.5,000/- towards bribe. Complainant was dissatisfied with such demand and therefore on 17th February, 1997, he had been to the office of the Anti Corruption Bureau and there he lodged the report. On the basis of said report, trap was arranged by the Officers of Anti Corruption Bureau. Two independent panchas were summoned. Thereafter necessary preparation for laying the tray was done. It is the case of the prosecution that the accused, Respondent herein accepted the amount from the complainant and to that effect necessary panchnama was drawn. As per the prosecution case, trap was successful, in as much as the Respondent accepted the amount from the complainant and thereafter trap was laid and accused was found accepting the amount. After necessary investigation, charge-sheet came to be filed in the Special Court.

3. After filing charge-sheet, charge was framed and prosecution laid evidence. Complainant Pradeep Bhamre was examined as PW-2. During his examination-in-chief, he stated the manner in which he approached the Anti Corruption Bureau, thereafter necessary preparation was made to lay the trap and thereafter as demanded by the accused, the amount was given to accused and to that effect necessary panchnama was drawn. So far actual demand and acceptance of amount is concerned, it is stated by the complainant in his examination-in-chief that he was to give the amount to accused and in turn the accused was supposed to give no objection certificate signed by his superior. When actually he was supposed to give amount to the accused, he gave specific signal to the officers of the Anti Corruption Bureau. Before amount was given to the accused, complainant PW-2 has stated details about the conversation with the accused. It is stated by

PW-2 that when he went in the morning session on the day of trap, the accused stated him that superior officer was not present and therefore the complainant was asked to come in the afternoon session and accordingly between 5.30 to 6.00 p.m. the complainant went to the office of the accused. PW-2 has further stated details about what transpired in between 5.30 to 6.00 p.m. So far actual demand is concerned, PW-2 has stated that accused asked whether the complainant has brought money. Then accused took the complainant to other room and again inquired about money. Thereafter the complainant asked accused whether he is supposed to pay money to accused or any other employee of the office. However accused asked the complainant to pay money to him. Thereafter complainant took out the amount from the left side pocket from his shirt and gave it to the accused. Accused took that amount by his left hand and kept the same in the left side pocket of his pant. He specifically stated that panch Dusane (PW-3) was

also there in inner side room with him and the demand and acceptance was taken place in presence of Dusane. Thereafter complainant came out of the said inner room and gave signal to the raiding party and thereafter trap was laid. PW-2 complainant has stated further details about the manner in which trap was laid. Even in his cross-examination, PW-2 has stated that Panch Dusane i.e. PW-3 was present when actually accused demanded the amount and as a matter fact, amount was handed over to accused. Upon careful perusal of the examination-in-chief of PW-2, and also the cross-examination, it is abundantly clear that Panch Dusane was present inside the room when the amount was demanded and accepted by the accused. He has also stated that accused was not the authority to issue such no objection certificate but superior authority was supposed to issue no objection certificate.

4. Upon careful perusal of the evidence of

PW-3 Ravindra Jagannath Dusane, panch witness, in his evidence he has stated minute details about the manner in which they prepared themselves, thereafter preparation for trap was made and they visited the office of the accused and there was demand and acceptance. PW-3 has stated in his examination-in-chief that there was demand by the accused and amount of Rs.300/- was accepted by the accused and was found in left side pocket of the pant of the accused. However, in his cross-examination, PW-3 has not supported the prosecution case, in as much as he stated that when the accused and complainant went inside the inner room, he was sitting outside on the chair. After sometime Bhamre i.e. Complainant came out of that room and went to main door and made some signals and thereafter police squad came there. PW-3 has specifically stated that he did not know what happened in the inner room. Even he has denied that he has stated in his evidence that the accused demanded the amount from the complainant

and accepted the amount from the complainant. Therefore his admission that he did not go in the inner room and as such he had no occasion either to witness the demand or acceptance, entire prosecution case should fail.

5. The complainant Pradeep Baburao Bhamre (PW-2) on more than one occasion has made reference to Shri Dusane i.e. PW-3 in his evidence and in clear words stated the presence of PW-3 Dusane in inner room when the amount was demanded and accepted by the accused. Therefore, the evidence of PW-3 Dusane and his admissions in cross-examination has demolished the theory of the prosecution of demand by the accused. Apart from the fact that the prosecution failed to prove the demand, it has come on record that Respondent i.e. accused Devidas Ramdas Wagh, was not the ultimate authority to issue the no objection certificate and his superior officer was empowered to issue such no objection certificate.

6. In the light of evidence of PW-2 and PW-3, and discussion about the evidence of PW-2 and PW-3, I have minutely perused the findings recorded by the trial Court to find out whether those findings are in consonance with the evidence on record or there is any perversity. Upon careful exercise, I find that the findings recorded by the trial Court are in consonance with the evidence brought on record. The view taken by the trial Court lends support from the authoritative pronouncement of the Supreme Court in the case of State of Maharashtra vs. Dnyaneshwar Laxman Rao Wankhede¹. Therefore, since the prosecution could not prove the demand, which is sine qua non for establishing the case by the prosecution, in my opinion, the view taken by the trial Court is plausible and in consonance with the evidence brought on record. Even if for a moment it is assumed that, an another view is possible on the

¹ (2009) 15 S.C.C. 200

strength of evidence brought on record by the prosecution, the same is no ground to interfere in the order of acquittal when plausible view has been taken by the trial Court.

7. In the light of discussion herein above, the inevitable conclusion is that the Appeal filed by the State shall fail. Accordingly the Criminal Appeal stands dismissed.

[S.S. SHINDE, J.]