

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 360 OF 2004

The State of Maharashtra

...APPELLANT.

VERSUS

Mohan Madhusudan Daskhedkar
Age : 43 years, Occu. Service,
R/o. Selu, Tq. Selu, Dist. Parbhani.

...RESPONDENT

...

Mr. S.D. Ghayal, A.P.P. for appellant.

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CORAM: S.S. SHINDE, J.

DATE : 9th MAY, 2017

JUDGMENT :

Heard.

2. This Appeal is directed against the judgment and order dated 27th February, 2004, passed by the Special Judge, Jalna in Special Case PCA No. 11 of 2001, thereby acquitting Respondent — Mohan Madhusudan Daskhedkar, from the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

3. Brief facts leading to filing of the present Appeal, as per the prosecution case, are as under:-

. The complainant Pandit Madhavrao Kapale (PW-2) lodged the complaint in the office of Anti Corruption Bureau, Jalna on 19th July, 2001, alleging demand of illegal gratification on the part of the accused for measurement of land and preparation of report of measurement in favour of the complainant. It is the case of the prosecution that, 2 acres 10 gunthas land from Gat No.108 of village Gosavi Pangri owned by Tanabai Nagorao Kapale was entered in the name of Chandrabhan Nama Sawant of the same village. The son of the complainant submitted the application in the office of the Deputy Director of Land Records, Office at Aurangabad. One Dhondiba Ratan Raimule informed the complainant on 18th July, 2001 that, the file has been referred to Taluka Inspector of

Land Records, Mantha. The complainant and Raimule had visited the office of the Respondent on 18th July, 2001 at Mantha and met respondent. They made enquiry with the accused in connection with pending file of measurement of land. The accused told that, land has been measured and the report has to be submitted to the office of Deputy Director of Land Record at Aurangabad. The accused told that, the complainant should pay Rs.2500/- to the accused so as to give the favourable report. After discussion, the accused assured to do work after receiving an amount of Rs.1000/-. The complainant paid Rs.500/- as part of bribe amount and it was agreed that, the remaining amount of Rs.500/- will be paid within short period to the accused i.e. respondent. The accused gave assurance to the complainant that, the work would be done after paying remaining amount of Rs.500/-. The complainant assured the accused that, balance amount of Rs.500/- would be paid on Friday. The accused asked the complainant to pay remaining

amount at his office.

. It is the case of the prosecution that, the complainant did not want to pay the bribe amount, he approached to the office of Anti Corruption Bureau at Jalna. After filing such complaint, as usual procedure was followed and preparations were made to lay the trap. All the panch witnesses and also the complainant were properly briefed and the entire exercise towards pre-preparation of trap was done. Accordingly, on 20th July, 2001, the complainant, two panchas and raiding party members have started from Jalna to Mantha at 9.45 a.m. and reached at Mantha at 11 a.m. Thereafter, the complainant met the accused, the accused demanded Rs.500/- and the said amount was given by the complainant to the accused. The accused counted currency notes, and put the said notes in the pocket of jacket wore by him. The complainant gave signal to the raiding party members, and the raiding party members arrived at

the spot and caught hold the hands of the accused. Thereafter necessary formalities were completed. According to the prosecution case, the amount and also pocket of jacket of the accused was examined under ultra violet lamp and said examination revealed bluish shade on the currency notes and also the pocket of jacket. Thereafter, the said amount was kept and sealed in the pocket and the necessary panchanama was drawn to that effect. Thereafter, the investigation proceeded, the charge-sheet was filed and after full-fledged trial, the Special Court acquitted the Respondent – accused. Hence this Appeal.

4. Learned A.P.P. appearing for the appellant/State invites my attention to the evidence of the complainant and the panch witnesses, and submits that though the complainant turned hostile and did not support the prosecution case, nevertheless, his part of evidence from the examination in chief, which is favorable to the

prosecution, can be taken into consideration. He submits that, the complainant did admit that, the complaint was given and signature on the said complaint belong to him. He invites my attention to the evidence of other prosecution witnesses and submits that, the trap was successful and the prosecution did prove beyond doubt the involvement of the accused, and therefore, the Appeal deserves to be allowed.

5. Upon careful perusal of the evidence brought on record, and in particular, the evidence of the complainant, it is amply clear that, the complainant did not support the prosecution case. In his deposition before the Court, he stated that, he filed the complaint in the office of the Anti Corruption Bureau. He also identified the signature, however, he specifically stated that, he never visited the office of the Anti Corruption Bureau, on 18th July, 2001, and his son visited the office. He stated that, it was decided between him

and the accused that, he has to pay Rs.1000/- to get the work done and the accused was paid Rs.500/- and the remaining amount of Rs.500/- was to be paid after two days. However, he specifically stated that, he was never called at Anti Corruption Bureau office at Jalna on 20th July, 2001. It did not happen on the said date that, he was called at Anti Corruption Office and he was introduced with two panch witnesses. At this stage, the learned A.P.P. made prayer to declare PW-2 hostile and he conducted his cross-examination. In his cross examination by the A.P.P., PW-2 – Pandit Madhavrao Kapale stated thus:-

“Police has not recorded my statement. It is denied I put forth Rs.570 and Rumal on the table at the instance of Police. It is denied Police kept 5 currency notes having the denomination of Rs.100/- and returned Rs.70/- and towel to me. It is denied the characteristic of the anthracene powder was

disclosed to me. It is denied those currency notes were applied anthracene powder and ultra violet lamp was put on it and seen the brightness on it and those currency notes were put in my pocket. It is denied PSI gave instructions to me and panch. It is denied pre-trap panchnama was carried at the office. It is denied I myself, panchas and staff members started to Mantha in jeep. It is denied I first panch Patil was get down from the jeep and directed to proceed to the office of the accused. It is denied I and panch Patil stayed at the hotel and we called the accused while he was proceeding infront of the hotel. Then accused entered at the hotel and then we 3 persons have taken the Tea. It is denied then I make the enquiry to the accused in connection of the work and accused enquired me whether I have brought the amount. It is denied I make the enquiry to the accused whether I have to pay Rs.400/- to Rs.500/- and accused demanded Rs.500/- and I paid Rs.500/- to the accused and the accused kept that amount in his pocket. It is denied then I gave the signal after coming outside the hotel by rubbing the towel on my face and the raiding party

members have reached at the spot and caught hold hands of the accused. It is denied there was made a dark at the corner of the hotel and ultra violet lamp was put on my hand and pocket and seen the brightness (shining). It is denied my personal search was taken and Rs.70/- and towel was recovered from my possession. The portion mark 'A' from my statement is not true and correct one. It is denied I have compromised the case out of Court. It is denied I am giving false evidence to save the accused. I am not claiming attached Rs.500/-."

In his further cross-examination, he stated that, the Police has obtained his signature on blank papers and he is not able to tell what is written on it. He never went to Jalna and never filed the complaint.

6. The trial Court upon appreciation of the evidence of other prosecution witnesses and also the panch witnesses reached to the conclusion that, the first demand by the complainant was not

proved. So far, the demand at the time of trap is concerned, the complainant has refused the entire prosecution case, therefore, the trial Court has extended the benefit of doubt in favour of the accused. Upon independent scrutiny of the evidence on record and in the light of above recorded cross-examination of the complainant by the A.P.P., there is no manner of doubt that, the complainant did not support the prosecution case. In that view of the matter, in my considered opinion, the trial Court has rightly extended the benefit of doubt in favour of the accused. The view taken by the trial Court is plausible and 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 Wankhede**¹. Therefore, the prosecution could not prove the demand, which is sine qua non for establishing the case of the

¹ (2009) 15 S.C.C. 200

prosecution. Even if for a moment it is assumed that, an another view is possible on the strength of evidence brought on record by the prosecution, the same is no ground to interfere in the order of acquittal when plausible view is taken by the trial Court. There is double presumption in favour of the accused – respondent. Till he was tried, he was innocent and after full-fledged trial, he was acquitted by the trial Court. Therefore, the presumption of innocence gets affirmed.

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

[S.S. SHINDE, J.]

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