

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 387 OF 2002

State of Maharashtra	...	Appellant
Vs.		
Dattatray Shankar Kolekar	...	Respondent (Orig. Accused)
Mr.S.R.Agarkar, APP, for the Appellant/State.		
None of the Respondent.		

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 16th May, 2017.

ORAL JUDGMENT :

The State of Maharashtra challenges the judgment and order dated 14.12.2001 passed by the Special Judge, Ratnagiri in Special Case No.1 of 1991, thereby acquitting the accused of the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of corruption Act, 1988.

2. Such of the facts necessary for the decision of this appeal are as follows :-

On 19.9.1989, one Krishna Gotad approached the office of the Anti-Corruption Bureau at Ratnagiri and lodged a report alleging therein that prior to five months, he had constructed a cattle shed in his land for

which he had incurred expenses to the tune of Rs.4,500/-. Due to heavy rains, the cattle shed had collapsed. Mr. Gotad had given the said information to the Police Patil who instructed him to inform the Talathi. Accordingly, the complainant had met the Talathi Mr. Gadre of Saja Wanzole and had informed him about the damage to the cattle shed. The Talathi and the Gramsevak had visited the spot and prepared a panchnama. The statement of the complainant was recorded. The proposal was given to the Tahsildar. That he was also informed by the Kotwal that the Circle Inspector would be visiting the spot for enquiry. The respondent herein happens to be the Circle Officer. The Circle Officer had visited the spot and recorded statement of the complainant and had also assured him that he would take necessary steps to get the compensation sanctioned. It was alleged by the complainant that when he was proceeding towards S.T. Stand, the accused followed him and informed him that if he wants to get the compensation sanctioned then he will have to pay an amount of Rs.250/- and then he would recommend the proposal for compensation. According to the complainant, he had made several visits to the office of Tehsildar and enquired about his compensation. He had also met the Circle Officer who had reiterated the demand and therefore the complainant was constrained to approach the office of the Anti-Corruption Bureau.

3. The Anti-Corruption Bureau had taken steps to arrange for a trap and also conducted a pre-trap panchnama. A trap was laid on 28.9.1989. After completion of investigation, charge-sheet was filed and the case was registered as Special Case No.1 of 1991.

4. It is pertinent to note that in the present case, original complainant Mr. Krishna Gotad has resiled from his earlier statement and was declared hostile. As a consequence, the alleged demand for gratification could not be proved. Krishna Gotad has specifically stated in his deposition that “It did not happen that accused made demand of Rs.250/- as a bribe from me”. Throughout his deposition before the Court, he has taken different stances and hence the inevitable conclusion that could be drawn by the Special Judge was that the original complainant was not a reliable witness and hence no implicit reliance could be placed on the evidence of the complainant. Hence, the prosecution has failed to establish the demand.

5. The learned Special Judge, on the basis of the evidence adduced by the prosecution, has also taken into consideration the nature of sanction accorded to prosecute the accused. The prosecution has examined PW-5 Mr. Chatterjee who has accorded sanction to prosecute. It is seen that he had received the papers of investigation in the month of September 1990

and he had accorded sanction in the month of December 1990. In his deposition before the Court, Mr. Chatterjee had not stated that he had perused the papers of investigation and had applied his mind and considered the grounds for recording evidence. He has admitted in his cross-examination that he does not remember as to whether the application filed by Mr. Gotad was a part of the investigation papers. He had also admitted that he had no knowledge as to whether the application of Krishna Gotad was rejected by Talathi on 14.8.1989. He has also admitted that the proforma of sanction order is still in his office and that the contents in the proforma of sanction and contents in the final sanction order are the same. The Special Judge has rightly observed that according sanction to prosecute the accused is not a mere idle formality, but is a solemn and sacrosanct act which offers protection to the Government servant against frivolous prosecution and that it is incumbent upon the concerned authority to apply its mind to the facts and circumstances of the case in order to conclude that a prima facie case is made out before according such sanction to prosecute.

6. Needless to reiterate that the prosecution has miserably failed to establish the guilt of the accused mainly on two grounds. Firstly, the complainant has turned hostile and, therefore, the demand for gratification

has not been proved and secondly, the sanction suffers from non-application of mind and hence, cannot be a valid sanction as contemplated under the Prevention of Corruption Act, 1988. The learned Special Judge has assigned justifiable reasons for acquitting the accused of the charges levelled against him. Hence, no interference is called for.

The Appeal stands dismissed.

(SMT. SADHANA S.JADHAV, J.)