

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 691 OF 2001

State of Maharashtra

... Appellant

Vs.

Vitthal Bhikaji Acharekar
R/at Plot No. 163, Pradhikaran,
Nigadi, Pune 411 044.

... Respondent

Mr. S. R. Agarkar APP for the State.
None for Respondent.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : MAY 16, 2017.

JUDGMENT:

1) Being aggrieved by the Judgment and Order dated 30/04/2001 passed by Special Judge, Pune in Special Case No. 3 of 1995 thereby acquitting the accused of the offence punishable under section 7 and 13 (1) (d) r/w section 13 (2) of Prevention of Corruption Act, 1988, the State of Maharashtra has filed this appeal challenging the acquittal.

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

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(i) One Narendra Dosa who was working as an estate agent had approached office of Anti Corruption Bureau(A.C.B.), Pune on 18/03/1994 and had lodged a report that the accused respondent herein who was working as Maintenance Surveyor in the office of City Survey Office, Lonavala had demanded illegal gratification of Rs. 5000/- in order to give new measurement plan, property card and map in respect of land survey no. 74/1 and 74/2. According to Mr. Dosa, the amount was to be handed over to the accused on 21/03/1994. A.C.B. had reduced his statement into writing and had called upon two public servant to act as panchas and it was decided that the trap should be conducted on 21/03/1994.

(ii) On that day, the complainant accompanied with panchas had been to the office of the accused, on demand had paid Rs. 5,000/- and soon thereafter, had given a signal. Raid was successful. The Investigating Agency had recorded pre-trap panchanama and post-trap panchanama in accordance with Law. The investigation was completed. Accused was a public servant. Hence, sanction for prosecution was obtained from the appointing authority. Charge-

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sheet was filed and the case was registered as Special Case No. 3 of 1995. Prosecution examined 6 witnesses to bring home the guilt of the accused.

3) P.W. 1 Narayan Mohite happens to be the Panch who had accompanied the complainant at the time of trap. P.W. 1 deposed before the court that on 19/03/1994, he was summoned to the office of A.C.B. Pune. At the time of incident, he was working as senior clerk in the Soil Conservation Department in Central Building Pune. He has deposed before the Court that on 21/03/1994, he was member of the raiding party. He had been to the office of the accused along with complainant. That the complainant had inquired with the accused about his work. Accused had allegedly reacted by asking as to whether he had brought the amount of Rs. 5,000/- as demanded. That the accused demanded the said amount which was given to him by the complainant. Accused had informed the complainant that he would hand over the papers of Mhaske and had further directed the complainant to collect the papers from Mhaske. That the complainant handed over the tainted money to the accused, he counted the same and kept in the pocket of his shirt. That the raid was successful. Anthracene powder was found on tainted notes as well as

the fingers of the accused on one of his hand and also on the left side pocket of T-shirt inside and outside. In the cross-examination, P.W. 1, has categorically admitted that when he was posted at Ghodegaon, the accused was working as surveyor at Ghodegaon and that he was acquainted with the accused. That the examination of P.W. 1 was deferred till the evidence of complainant was concluded.

4) P.W. 2 Narendra Dosa is the complainant. He has deposed before the court that he had acted as sole agent in the transaction of sale and purchase of survey no. 74/1 and 74/2 of Tungarli. It was a non agricultural land and that construction work was to commence on the said site. That in November 1993, he had given an application to the accused who is working as City Surveyor. The said application was submitted on behalf of Alishan Builder and R. S. Zaveri and others. Application dated 04/11/1993 was taken on record and marked as Exhibit 21. That he had regularly inquired with the accused about the application made by him. The complainant needed documents since purchasers wanted to start construction on the property.

5) P.W. 2 has further deposed that on 16/03/1994, he had been to the City Survey office for demanding necessary documents. He had met one Mhaske who was Surveyor and was sitting near the accused. According to the complainant, accused/respondent had asked Mhaske to accompany him to the site. Complainant had taken his architect also. As per application, Mhaske was to take survey of survey no. 74/1 and 74/2, however, Mhaske had taken survey of only one property and had assured that he would prepare survey map and hand over that map to accused. Complainant had therefore, again approached the survey office on 18/03/1994 for collecting documents. He was informed that documents are not ready since it takes lot of work. Accused had informed him that he would have to trace the survey map and for which he had demanded Rs. 5,000/-. He was also allegedly informed by the accused that as far as survey no. 74/2 is concerned, he would have to pay additional fees. Complainant has alleged that accused had given him a clear indication that he would not complete the work unless the demand is fulfilled. According to the complainant, he needed the documents urgently and therefore, had agreed to fulfill the demand. He had requested the accused to complete the work and it was agreed that he would give copies on 21/03/1994.

Complainant had approached the office of A.C.B., Pune on 19/03/1994.

6) It is pertinent to note that complainant has admitted that there was a transaction between him and the accused prior to 21/03/1994. That he had paid Rs. 1800/- to the accused for getting the work done as far as survey no. 74/2 is concerned. The complainant has admitted in the cross-examination that for obtaining documents of plot no. 6, he had not made any application but documents were made over to him. The witness has proved the contents of the report lodged by him at A.C.B. Pune which is marked as Exhibit 22.

7) In the cross-examination, it is admitted that the non-judicial stamps were purchased by Alishan Builders from Sunita Motiram Desai in 1988.

8) According to the complainant, he had given an application seeking certain documents on record. The said application is marked as Exhibit 21. It is admitted in the cross-examination that the complainant had not obtained any acknowledgment on Exhibit 21. He was not certain as to whether application was made for measurement of CTS No. 74/A-1 or 74/2.

9) Upon perusal of Exhibit 21, it appears that the said application was prepared on 04/11/1993. Application is shown to have been received only after the trap i.e. practically three days after the trap. On the day of the trap, the said application was not traceable in City Survey Office. It was not found in the possession of the accused, in the office records or at his house. The said application marked at Exhibit 21 was found in the office on 25/03/1994 lying on the floor just behind the chair occupied by the accused while discharging his official duties. It is pertinent to note that on the date of the incident, a search was conducted in the office and the said application was not found. On 30/03/1994, application marked at Exhibit 21 was shown to P.W. 2 by Dy.S.P. Chorge. The complainant was confronted with the said application and he admitted that the date on the said application was 04/11/1993. It is admitted in the cross-examination that three weeks prior to 21/03/1994, accused had furnished the site map, correction extract (खाडाखोड उतारा), index-2 concerning plot 6 without making an application. According to the complainant, accused had accepted Rs. 1800/- and therefore, had given the said records without filing any application. The complainant could not furnish

the said documents to Dy.S.P. Chorge when his statement was recorded.

10) According to the complainant, Mhaske had carried out the measurement of CTS No. 74/A-1 on 16/03/1994. It is pertinent to note that neither Mhaske nor the architect of the complainant has been examined as witnesses. It is specifically admitted by the complainant that on 18/03/1994, there was no separate demand and negotiation for CTS No. 74/2. Mhaske had not measured CTS No. 74/A-1. He measured CTS No. 74/2. On 18/03/1994, the map prepared by Mhaske was not shown to the complainant. The learned Special Judge has rightly held that application which was marked at Exhibit 21 was fabricated after the trap and was inserted in the records. The learned Special Judge has rightly held that application marked at Exhibit 21 was found in suspicious circumstances in the office of the accused three days after the trap lying on a floor. It was abundantly clear that the complainant had not filed any application for seeking the said document. There is also an admission that he had got the documents in respect of plot no. 6 without making an application.

11) The learned Special Judge has rightly observed that in all probabilities the complainant wanted to get his work done illegally and has therefore filed a false complaint.

12) P.W. 3 Dagdu Madake was working as Dy. Settlement Commissioner and is sanctioning authority.

13) P.W. 4 Gulab Honrao, who was working as peon in the city survey office of Lonavala. He has deposed before the Court that he and the accused were only two employees working in that office. That they both had keys of the office. According to him, he had found the application Exhibit 21 on 23/03/1994 near the door behind the seat of the accused in the office. Application was found folded and he had kept the same on the table of the accused. On 24/03/1994, he had been to the residence of the accused and informed him about finding of application of Narendra Dosa. On 24/03/1994, the in-charge officer Mr. Ghodekar had asked P.W. 4 to give the application and the key to the accused. P.W. 4 has admitted in the cross-examination that after post-trap panchanama was completed, he had locked the office and the

accused was taken by A.C.B. officials. On 22/03/1994, office was closed throughout the day. On 23/03/1994, City Survey Officer Ghodekar had asked P.W. 4 to go to Lonavala office and bring concerned documents. It is admitted in the cross-examination that the application was found on 25/03/1994. On 28/03/1994, P.W. 4 had shown the said application to in-charge officer Mr. Ghodekar and on his instructions had given the copy to the accused. It is amply clear that the document itself was created after 21/03/1994.

14) P.W. 5 Sadashiv Ghodekar has admitted in the cross-examination that he had taken search of the office register and that there was no entry of any application filed by Narendra Dosa on 03/11/1993 or 04/11/1993. It is admitted that application was not submitted by Narendra Dosa for measurement. P.W. 5 has also admitted that on 28/03/1994, for the first time, P.W. 4 had shown him the application at Exhibit 21. P.W. 5 has further admitted that on 02/11/1993 and 03/11/1993, accused had attended his office and on 04/11/1993, accused had prepared monthly statement by sitting in the office at Pune. Admittedly, application at Exhibit 21 was not received by the accused nor a copy of the same was inwards in the City Survey office. The

learned Special Judge has rightly held that in the absence of application, there was no reason nor occasion for the accused to demand Rs. 5000/- for getting the said copies.

15) It is true that the acceptance of the amount of Rs. 5000/- is established by the prosecution, however, the demand for the said amount has not been established since the application at Exhibit 21 was never given to the accused.

16) Demand is sine qua non to acceptance. It is admitted position in law that acceptance by itself would not be an offence and demand has to be a condition precedent for accepting the amount which would show that the accused has voluntarily accepted an illegal gratification.

17) In the case of **Subhash Sonavane v/s. State of Gujrat** reported in **AIR 2003 SC 2169**, the Hon'ble Apex has held that

“Mere acceptance of money – Not sufficient for convicting accused under S. 13(1)(d)(i) There must be evidence on record that accused 'obtained' any amount by corrupt or illegal means – Complainant not

supporting prosecution case on the points of demand and acceptance – From evidence of panch witness it was not clear that there was any demand by accused and amount was paid to him by complainant-Accused acquitted.”

17) In view of this, it can be safely said that accused/respondent in the present case has rebutted the presumption and has put forth preponderance of probability to arrive at a conclusion that the accused is not guilty of the offence for which he was charged. The learned Special Judge has assigned justifiable reasons. Rationally speaking, no other view is legally possible. Hence, no interference is warranted. Hence, following order.

ORDER

- (i) Appeal stands dismissed.
- (ii) The Judgment and Order dated 30/04/2001 passed by Special Judge, Pune in Special Case No. 3 of 1995 is hereby upheld.
- (iii) Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J.)