

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 37 OF 2017

The State of Maharashtra .. Applicant

v/s.

Taufiq Yusuf Sayyad ..Respondents

Mr. P.H.Gaikwad Patil APP for the Applicant.
Mr. Jayant Bardeskar for the Respondent No.1.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 22nd AUGUST, 2017.**

P.C.

1. This is an application filed by the State seeking leave to challenge the judgment and order dated 19th December, 2016 in Special Case No.3 of 2014 whereby the learned Sessions Judge has acquitted the respondent of the offence punishable under Section 7, 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988.

2. Mr. Gaikwad Patil, the learned APP has submitted that the evidence of the complainant-PW1 proves that the respondent herein who is a PSI attached to Dahanu Police Station, and posted at

Ashagad Check post, had demanded bribe of Rs.3500/- for allowing PW1 to ply his vehicle on the said road. The learned APP has further submitted that the complainant had reported the matter to ACB and that the evidence of PW2 vis-a-vis PW4 amply proves that the pre-trap panchanama was drawn. The complainant had produced three notes of Rs.1000/- each and one note of Rs.500/- and five notes of Rs.100/- each. Anthracin powder was applied to the notes of Rs.3500/-. The learned APP further submits that the evidence of PW1, PW2 and PW4 proves that the complainant as well as the PW2 had gone to Ashagad Check post, and after the complainant had expressed his inability to pay Rs.3500/-, the respondent had demanded Rs.3000/-. The learned APP further submits that the evidence on record proves that the respondent was caught red handed while accepting bribe of Rs.3000/-. The learned APP further submits that anthracin powder was detected on the hands of the respondent accused. He, therefore, submits that the learned Trial Judge was not justified in acquitting the accused.

3. The learned Counsel for the respondent has submitted that the

records clearly indicate that the respondent was on escort duty on 8.11.2013. He has not at Ashagad Check post at the time the alleged demand was made. He has further drawn my attention to the evidence of PW1 wherein he has admitted that he had not gone to the ACB office on 8.11.2013. He therefore contends that this evidence falsifies the entire case of the prosecution about the complainant going to the ACB Police Station and drawing of pre-trap panchanama in the office of the ACB in his presence etc. The learned Counsel for the respondent further submitted that the evidence of PW1 indicates that after the respondent had demanded the amount of Rs.3000/- he had informed PW4 about the same and that the PW4 had removed Rs.500/- note on which anthracin powder was applied. Since PW4 had touched a 500/- Rupee note smeared with anthracin powder, there was possibility of the traces of the said powder having come onto the hands of the accused. He therefore contends that the order of the learned Judge is not perverse or illegal and hence this is not a fit case for granting any relief.

4. I have perused the records and considered the submissions

advanced by the learned Counsel for the respective parties.

5. It is not in dispute that respondent is a public servant within the meaning of Section 21 of Indian Penal Code. At the relevant time he was attached to Dahanu Police Station and was posted at Ashagad Check post. It is the case of PW1 that one constable Nate had told him that he had to pay hafta to three persons if he wanted to ply his vehicle on the said route. PW1 claims that he had told Nate that he would not be able to pay the said amount. He contends that he had directly contacted the respondent accused on 8.11.2013 and that the respondent accused and the respondent accused had demanded Rs.3500/- as bribe.

6. PW1 has stated that thereafter he went to ACB Cell and informed PSI Jadhav about the said demand. PSI Jadhav called the panchas and recorded his statemnet as regards demand of bribe. Subsequently, he was called to Thane with Rs.3500/-. He has deposed that PSI Jadhav had smeared the notes with anthracin powder in presence of the panchas and a pre-trap panchanama was

drawn. Thereafter, at about 3.15 p.m. they proceeded to Ashagad Check Post. He was accompanied by PW2 Satish Majre. He told the respondent accused to reduce the bribe amount. The accused accordingly agreed to reduce the bribe amount to Rs.3000/-. PW1 claims that he went to PSI Jadhav and informed him that the demand was reduced to Rs.3000/-. Thereafter PSI Jadhav took out one note of Rs.500/- from the envelope and the balance amount of Rs.3000/- was kept in the shirt pocket of PW1. PW1 claims that at about 7.45 pm he went to the police check post and gave an amount of Rs.3000/- to the respondent accused. He made the per-determination signal. PSI Jadhav came to the police check post and caught hands of the respondent accused. The amount of Rs.3000/- which was in the hands of the accused was seized.

7. It is pertinent to note that PW1 has stated in the cross examination that the demand of bribe was made by the respondent accused on 8.11.2013 at 2.00 p.m. It may be mentioned that the accused had produced the records before the trial court to show that he was on escort duty at Kalyan Bhiwandi till 3 p.m. The learned

Judge has held that considering the distance between Ashagad Check Post and Kalyan Bhiwandi, it would not be possible for the respondent accused to return to Ashadgad Check post before 5 p.m. The prosecution has not been able to explain the said discrepancy. It is also to be noted that though PW1 and PW2 claim that the initial report was recorded at ACB Cell at Thane, PW1 has admitted in his cross examination that on 11.11.2013 he was at Ashagad during the entire day. He has stated that he had only spoken to Godambe. He was acquainted with Godambe and he had told him that he need not come to Thane and that the members of ACB would come to Thane. PW1 has stated that he was at Ashagad during the entire day. This statement itself falsifies the case of the prosecution that PW1 had gone to ACB Cell at Thane and lodged the report and that pre-trap panchanama was drawn at ACB Cell at Thane.

8. The evidence of PW1 also indicates that the amount of Rs.3,500/- which was to be paid to the accused was smeared with anthracin powder. PW1 claims that after the accused had reduced the demand from Rs.3500/- to Rs.3000/- , he had contacted PSI

Jadhav and that PSI Jadhav had removed Rs.500/- from his pocket and kept the balance amount of Rs.3000/- in his pocket. It is thus evident that even before PW4 Jadhav had caught hands of the accused, he had already touched the notes which were smeared with anthracin powder. This gives rise to the possibility of the traces of anthracin powder having come on to the hands of PW4 and having been transferred on to the hands of the accused.

9. In the light of the above facts and circumstances, the learned Judge has held that the prosecution has not established the guilt of accused beyond reasonable doubt. The order of acquittal is neither perverse nor illegal and does not warrant interference.

10. Hence, the application is dismissed.

(ANUJA PRABHUDESSAI, J.)