

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.115 OF 2016

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

SUNIL NARAYAN DESHPANDE)...RESPONDENT

Ms.N.S.Jain, APP for the Applicant - State.

Mr.Kuldeep Patil, Advocate for the Respondent.

CORAM : A. M. BADAR, J.

DATE : 1st SEPTEMBER 2017

P.C. :

1 This is an application for leave to appeal filed by the State seeking to challenge the judgment and order dated 6th February 2016 passed by the learned Special Judge under Prevention of Corruption Act, Pune, thereby acquitting the respondent / accused of offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act.

2 Heard the learned APP, who argued that page 32 wherein evidence of the complainant is placed on record, shows that there was demand and acceptance of bribe by the accused. The learned APP further argued that evidence of PW2 Sanjay Hastoliya shows acceptance and evidence of PW3 P.I. Vaishali Galande shows that there was preparation for laying down the trap. Requirement of sections are fulfilled, and therefore, offences are proved.

3 I have also heard the learned advocate appearing for the respondent / acquitted accused. He drew my attention to the complaint Exhibit 9, pre-trap panchnamas Exhibit 14 and 17 as well as post-trap panchnama Exhibit 18. The learned advocate by taking support of these documents argued that evidence of the prosecution coming from the mouth of complainant Tanaji Dhumal (PW1) is totally contrary to evidence of shadow panch PW2 Sanjay Hastoliya and Investigating Officer PW3 P.I. Vaishali Galande. The learned advocate submitted that the place of acceptance of illegal gratification is stated differently by all these

three witnesses and therefore, the learned trial court has rightly acquitted the respondent / accused. The learned advocate further argued that even the initial demand is not proved by the prosecution as seen from evidence of PW1 Tanaji Dhumal and particularly from paragraph 9 thereof.

4 I have carefully considered the rival submissions and also perused oral as well as documentary evidence placed on record.

5 Briefly stated, the case of the prosecution was to the effect that complainant PW1 Tanaji Dhumal was doing business of transport and he is owner of vehicle of Tavera make bearing no. MH-12-CT-5790. On 21st June 2013 that vehicle came to be detained at Police Station Velha by the Police Inspector as well as respondent / accused Sunil Deshpande on the ground that the same was used for committing offence of kidnapping. On 5th July 2013 PW1 Tanaji Dhumal contacted respondent / accused Sunil Deshpande, Police Hawaldar and requested him for release of his

vehicle. It is case of the prosecution that for doing this favour, respondent Sunil Deshpande – a public servant has demanded an amount of Rs.25,000/- towards illegal gratification. Ultimately, complaint – Exhibit 9 in the Anti Corruption Bureau (hereinafter referred to as ACB), Pune, came to be lodged on 9th July 2013. On that day, verification of the demand came to be allegedly conducted by the ACB by calling two panch witnesses, by putting the cell phone of PW1 Tanaji Dhumal on speaker phone mode and the demand was allegedly heard by the panch witnesses and the conversation came to be transcribed. The trap was laid on 11th July 2013 but it failed, as public servant was not present at the Police station. Then again, on 13th July 2013, a trap was laid and according to prosecution case, the respondent / accused had accepted the amount of illegal gratification of Rs.13,000/- at the last room, on the southern side of a building known as Aai Jogeshwari Krupa Building of Velha. After noticing pre-determined signal, the trap party went to the spot and caught the respondent / accused red handed with tainted currency notes.

6 On this factual drop back, now let us see what evidence is adduced by the prosecution in order to prove this demand and acceptance of illegal gratification. It is well settled that while considering appeals from acquittal, if the court ultimately finds that the view taken by the trial court is probable view in the matter, then such view needs to be accepted, rather than taking some different view which may be equally probable.

7 So far as PW1 Tanaji Dhumal – the complainant is concerned, he has candidly deposed that the amount of illegal gratification was paid by him to respondent / accused at Police Station Velha, and that too, near the vehicle which was detained by the Police Station Velha, Pune. Version in his chief-examination is relevant on that aspect.

8 So far PW2 Sanjay Hastoliya – shadow panch is concerned, he deposed that on the day of the trap i.e. on 13th July 2013, he along with PW1 Tanaji Dhumal had been to Aai Jogeshwari Krupa Building and then met the respondent / accused

in the last room situated on the southern side, second floor of the building, where the amount of illegal gratification was paid to the respondent / accused.

9 As against this, Investigating Officer PW3 PI. Vaishali Galande came up with a version that on the day of the trap i.e. on 13th July 2013, PW1 Tanaji Dhumal and PW2 Sanjay Hastoliya went to Aai Jogeshwari Krupa Building. They met one person at first floor staircase. The trio then went to second floor and after sometime she noticed pre-determined signal given by PW1 Tanaji Dhumal. It is worthwhile to note that even the post-trap panchnama shows that it is case of prosecution that PW1 Tanaji Dhumal and shadow panch met the delinquent public servant at the staircase of first floor of the building and then the trio went to second floor room of the respondent / accused.

10 Thus, conflicting evidence led the learned trial court to disbelieve version of the prosecution regarding acceptance of illegal gratification by the respondent / accused public servant.

Careful scrutiny of evidence of these three witnesses as discussed supra, goes to show that their evidence is not at all consistent, so far as place of acceptance of illegal gratification is concerned.

11 To crown this all, it appears that the prosecuting party has suppressed the genesis of the incident. It is case of the prosecution that on 5th July 2013 at Police Station Velha, the respondent / accused demanded illegal gratification of Rs.13,000/- from PW1 Tanaji Dhumal. In paragraph 9 of his chief examination, PW1 Tanaji Dhumal has come up with version that till 9th July 2013, there was no demand of illegal gratification to him. He stated that the demand was conveyed to him through Nilesh and Tanaji Shelar. This version is totally contradictory to the prosecution case, as reflected from the complaint – Exhibit 9.

12 With this discrepant and lacunic version, the learned trial court was pleased to acquit the respondent /accused of alleged offences. No infirmity can be found in the impugned judgment and order of acquittal, considering the nature of

evidence adduced by the prosecution, so also considering the suppression of genesis of prosecution case.

13 In the result, no case for grant of leave is made out.
The application is rejected.

(A. M. BADAR, J.)