

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.485/2016
IN
CRIMINAL APPEAL NO.363/2017

Central Bureau of Investigation,
ACB, Nagpur.

..Appellant.

..Vs..

Jagadanand S/o Budhiram Raut,
the then Station Superintendent,
Ghuggus Railway Station, Ghuggus,
Tehsil and Distt. Chandrapur.

..Respondent / accused.

Ms. M.R. Chandurkar, Special Advocate for the appellant.

Shri Krishna Motwani, Advocate assisted by Shri A.D. Hajare, Advocate for the respondent.

CORAM : Z.A.HAQ, J.
DATE : 3/4.8.2017.

By this application, the Central Bureau of Investigation (ACB) has prayed for leave to file appeal to challenge the judgment passed by the Sessions Court acquitting the respondent / accused of the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

When the matter was called on 24th July, 2017, Shri A.D. Hajare who appeared for the respondent, sought adjournment, the matter was adjourned for 31st July, 2017 with the understanding that the matter will be taken up for

final disposal. This Court directed that R and P be called. On 31st July, 2017, the matter was adjourned to 2nd August, 2017 on request of Shri A.D. Hajare, Advocate. On 2nd August, 2017, Shri A.D. Hajare, Advocate sought permission to withdraw the vakalatnama and requested for being discharged from appearing for the respondent / accused. By order passed on 2nd August, 2017 request made by Shri A.D. Hajare, Advocate came to be rejected. Ms. M.R. Chandurkar, Special Advocate appearing for the appellant started arguments. At this stage, Shri Krishna Motwani, Advocate appeared and sought permission to file vakalatnama on behalf of the accused. As Court time was over, matter was kept part heard for today. Today, Shri Krishna Motwani, Advocate filed pursis dated 3rd August, 2017 and alongwith it filed vakalatnama signed by the respondent, who is reported to be present in the Court.

After hearing Ms. M.R. Chandurkar, Special Advocate for the appellant and Shri Kirshna Motwani, Advocate assisted by Shri A.D. Hajare, Advocate for the respondent and considering the grounds raised in the memorandum of appeal, leave as prayed for is granted.

CRIMINAL APPEAL NO.363/2015

JUDGMENT

1. The appeal is taken up for hearing.
2. The appellant has challenged the judgment passed by the Special

Court acquitting the accused of the offence punishable under Sections 7, 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act.

3. The case of the prosecution is:

The accused had been working as Station Superintendent at Ghuggus Railway Station, Tahsil and District Chandrapur at the relevant time. Pravin Dhage was granted contract of maintenance of sanitation. On 8th December, 2003 the accused visited the running room and told Pravin Dhage that he will pay Rs.500/- per month so that his contract continues otherwise the accused would put adverse remarks because of which the contract may be terminated, that because of threats given by accused Pravin Dhage got disturbed and frightened and reported it to his father Dnyaneshwar Dhage (complainant), that Dnyaneshwar Dhage (complainant) who was serving as Goods Guard at Ghuggus Railway Station met the accused on 8th December, 2003 in his office and pointed out inability to pay Rs.500/- per month as the earning was not sufficient, however, the accused insisted for payment of amount of Rs.500/- within a couple of days and threatened that if the amount was not paid he will put adverse remarks, that Dnyaneshwar Dhage (complainant) approached the Superintendent of Police C.B.I., Nagpur and lodged report in writing in Hindi language (Exh. No.11), on that basis Crime No.16/2003 (Exh. No.22) came to be registered on 10th December, 2003. The case was referred to P.S.I. Khalid Baig, who arranged for 2 independent

panchas - Shri Hinganekar and Shri Pramod Pekade, who had come to the office of C.B.I. and had shown their willingness to act as panchas. P.S.I. Khalid Baig explained the further steps which were to be taken by the investigating agency, the panchas were given the complaint which they read and put their signatures on it, the characteristics of sodium carbonate and phenolphthalein powder were explained and demonstration was given, the complainant supplied 5 notes of Rs.100/- denomination, phenolphthalein was applied to the notes, personal search of complainant was taken through panch No.1 Shri Hinganekar and after verifying that the complainant was not carrying any other article with him, 5 notes of Rs.100/- denomination were kept in the pocket of shirt of complainant, the necessary steps were taken, formalities were completed and then raiding party with both panchas and complainant started for Ghuggus Railway Station by government jeep at about 12.05 Hrs., reached there at 3.05 p.m., necessary instructions were given to all the members of the raiding party. At about 3.20 p.m. the complainant was asked to meet the accused and panch No.1 Hinganekar accompanied the complainant. The complainant and Shri Hinganekar went to the office of accused, where accused was present, and after exchange of pleasantries the complainant and panch No. 1 sat on the chairs, the accused enquired whether the complainant had brought Rs.500/-, the complainant answered in the affirmative and handed 5 notes of Rs.100/- denomination to the accused, who kept the notes in pocket of his shirt and told the complainant to continue to pay Rs.500/- per month. Then the

complainant came out with panch No.1, signalled the raiding party, the raiding party rushed to the office of accused and after verifying the identity of the person, who had taken the amount from the complainant, the hands of accused were held, right hand fingers of accused were tested in solution of sodium carbonate, the colour of solution became pink, the solution was kept in a bottle which was sealed, then left hand fingers of the accused were tested in sodium carbonate, however, colour of solution did not change and this solution was destroyed, fresh solution of sodium carbonate was prepared, fingers of the raiding party were tested and as colour of solution of sodium carbonate did not change, it was destroyed, fresh solution was prepared and right hand fingers of the complainant were tested in it, colour of solution became pink, this solution was kept in a bottle which was sealed, the left hand fingers of complainant were tested in fresh solution of sodium carbonate but the colour of this solution did not change and, therefore, it was destroyed 5 notes of Rs.100/- were seized, fresh solution of sodium carbonate was prepared, left pocket of shirt of accused was examined, colour of solution became pink, this solution was kept in a bottle which was sealed, and shirt was sealed in an envelope. Post trap panchanama was recorded, the matter was handed over to P.I. Shri Khujur, who recorded the statements of witnesses, conducted further investigation and filed charge-sheet for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. The charges were framed, read over and explained to the accused, the accused did not accept the

guilt and claimed to be tried and, therefore, the trial was conducted.

4. After conclusion of trial, the Sessions Court has recorded that the prosecution has proved that there was legal and valid sanction for the prosecution of the accused, however, the prosecution has failed to prove that the accused had demanded Rs.500/- on 8th December, 2003 and had accepted the same on 10th December, 2003 from the complainant as gratification other than legal remuneration as motive or reward for continuing the contract and abused his position as public servant.

5. The learned Special Advocate has pointed out the conclusions of the Special Court in paragraph No.59 of the impugned judgment which are to the effect that there is no evidence on record to show that the accused had put adverse remarks against Pravin Dhage (son of complainant). The Special Court has recorded that the accused might have scolded the complainant for loss of tale lamps of railway and that the complainant might have been required to compensate for the said lamps because of which the complainant might be holding grudge against the accused. The Special Court found that there is no clinching evidence about initial demand of amount by the accused and there is no explanation for not examining Pravin Dhage to whom the initial demand was made by the accused, as alleged by the prosecution.

It is submitted that the conclusions of the Special Court are perverse

and overlooking the defence taken by the accused. The learned Special Advocate has referred to the evidence of Madhukar Champat Kaswate (D.W.1) who has deposed in his examination-in-chief that the accused had demanded him change of Rs.500/-, he told accused that he was not having change and then Dnyaneshwar Dhage (complainant) told the accused that he would give the change and handed over 5 notes of Rs.100/- denomination which the accused had kept in his pocket. Referring to this evidence, it is argued that the defence has admitted that 5 notes of Rs.100/- denomination were found in the pocket of shirt of accused and in the cross-examination this witness has admitted that such statement is given for the first time and it was not stated when his statement was recorded by C.B.I. on 13th February, 2004. Relying on this, the learned Advocate has submitted that the defence taken by the accused is after thought and shows that the claim of the prosecution that the accused had taken 5 notes of Rs.100/- denomination from the complainant as gratification to favour his son to enable him to continue with his contract, cannot be doubted.

6. The learned Advocate for the accused has pointed out the contradictions in the deposition of Dnyaneshwar Dhage - complainant (P.W.1) who has stated in his examination-in-chief (in paragraph No.9) that the accused had taken 5 notes of Rs.100/- denomination from the pocket of his shirt and had kept the notes on table whereas Ashok Hinganekar (P.W.4) -

Panch No.1 has stated in his examination-in-chief that after the raiding party barged into the office of accused and identified the accused, the complainant was asked to stay outside and it is submitted that if the complainant was sent outside the office of accused how he can depose about the actions taken by the raiding party after he was sent out of the office of accused.

7. After examining the record, going through the judgment and hearing the learned Advocates for the respective parties, I find that the discrepancies / contradictions pointed out by the learned Advocate for the respondent / accused are not material and not sufficient to create a doubt about the case of the prosecution. The defence taken by the accused that 5 notes of Rs.100/- denomination given by the complainant to the accused were found with the accused as he had taken change of Rs.500/- from him is unequivocal as reflected from the evidence of Madhukar Kaswate (D.W.1). Madhukar Kaswate (D.W.1) has stated that the accused had demanded change of Rs.500/- from him and when he stated that he was not having the change, Dnyaneshwar Dhage (complainant) offered change and accordingly, he gave 5 notes of Rs.100/- denomination to the accused which the accused kept in his pocket. The story / defence put-forth by the accused is improbable and cannot be accepted. Because of this defence, the discrepancies pointed out by the learned Advocate for the accused lose their significance.

8. It is argued on behalf of the accused that prosecution has not been able to prove that demand was made to Dnyaneshwar Dhage (complainant) as Pravin Dhage is not examined. It is submitted that as initial demand is not proved, the Special Court has rightly acquitted the accused of the charge of commission of offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. The submission made on behalf of the accused is misdirected. The learned Special Advocate has rightly pointed out from the evidence of Dnyaneshwar Dhage (complainant) that the prosecution has proved that the accused had demanded Rs.500/- per month. Though the demand was made by accused to favour Pravin Dhage (son of complainant), there is sufficient evidence on record to show that demand was made not only to Pravin Dhage but also to Dnyaneshwar Dhage (complainant). The evidence on record shows that the demand was made on 8th December, 2003 i.e. before the raid was conducted on 10th December, 2003. The prosecution has proved its case. The Special Judge has committed an error in recording that the prosecution has failed to prove that initial demand was made by the accused. The conclusions of the Special Judge are overlooking the evidence on record.

9. I find that the prosecution has proved that the accused demanded Rs.500/- on 8th December, 2003, asked for Rs.500/- per month to favour Pravin Dhage (son of complainant) to enable him to continue the contract of

maintaining the sanitation, the accused accepted Rs.500/- from the complainant on 10th December, 2003 for continuing the contract of Pravin Dhage and thus abused his position as public servant.

10. In view of the above, I find that the prosecution has succeeded in proving the guilt of the accused. The judgment passed by the Special Court acquitting the accused of the charge of offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act is unsustainable and is required to be set aside and it has to be held that the respondent / accused - Jagadanand S/o Budhiram Raut is liable for conviction for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

11. The matter is kept for hearing on sentence on 4th August, 2017 at serial No.1.

The respondent / accused Jagadanand S/o Budhiram Raut shall remain present on 4th August, 2017 at 10.30 a.m.

04.08.2017.

12. Heard.

The learned Special Advocate has left it to the Court to pass appropriate orders as far as the quantum of sentence is concerned. The

learned Advocate for the respondent / accused has submitted that the appellant is aged about 55 years, having the responsibility of maintaining his wife, the departmental enquiry is conducted against the respondent and he is given punishment of compulsory retirement and looking to the nature of offence, lenient view be taken.

13. In my view, the interests of justice would be sub-served by directing the appellant / accused to undergo simple imprisonment for 6 months (as prescribed at the relevant time prior to the amendment of the Act) and shall pay fine of Rs.1,000/- (Rs. One Thousand) and in default of payment of fine to undergo simple imprisonment for further 10 days.

14. Hence, the following order:

(i) The judgment passed by the Special Court in Special (CBI) Case No. 7/2004 on 20th December, 2014 is set aside.

(ii) The respondent is convicted for the offence punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and is directed to undergo simple imprisonment for 6 months and shall pay fine of Rs.1,000/- (Rs. One Thousand) and in default of payment of fine to undergo simple imprisonment for further 10 days.

(iii) The respondent is present. He is taken in custody and sent to Central Jail, Nagpur.

(iv) The envelope containing currency notes of Rs.500/- (Rs. Five Hundred) as per the denomination mentioned in seizure memo be returned to Deputy Superintendent of Police, Central Bureau of Investigation, Anti Corruption Branch, Nagpur, after obtaining due receipt / acknowledgement and remaining property being worthless be destroyed after appeal period is over.

(v) A copy of this judgment, duly authenticated by Court Sheristedar, be supplied to the respondent / accused free of costs.

(vi) The appeal is **allowed** in the above terms.

At this stage, learned Advocate for the respondent / accused has prayed for suspension of sentence for a period of four weeks. However, considering the facts of the case, the prayer is rejected.

JUDGE

Tambaskar.