

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 233 OF 2003

The State of Maharashtra
(Through Police Station,
Gangapur, Dist. Aurangabad

...Appellant
(Ori.Applicant)

Versus

Yadavrao Trimbakrao Somwanshi
Age : Major, Occu : Service
R/o Savkhed Ganga,
Tq. Vaijapur, Dist. Aurangabad.

...Respondent
(Ori. Accused)

Mr.A.V.Deshmukh, A.G.P. for Appellant.
Mr.R.S.Deshmukh, Advocate for respondent Sole **(Absent)**

CORAM : A.M.DHAVAL, J.
Dated: March 17, 2018

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ORAL JUDGMENT

1. This is an appeal by the State against the Judgment of the acquittal passed by learned Special Judge, Aurangabad in Special Case No.4/1997 dated 24.09.2002 whereby the respondent was acquitted of offences punishable under sections 7, 13(1) (d) and 13 (2) of Prevention of Corruption Act.

2. Heard learned A.P.P. Mr.A.V. Deshmukh. None present for the respondent in spite of the 2-3 adjournments.

3. As held in the case of **Bani Singh Vs. State of Uttar Pradesh AIR 1996 SC 2439**, criminal appeal need not be adjourned when the accused does not remain present in spite of service of notice.

4. a) The prosecution case disclose that PW1-Babasaheb purchased two acres land from gut Nos. 117 and 118 at Babhulgaon Ganga, Vaijapur Taluka on 15.01.1996 from Nemichand Badjate for Rs.1,05,000/-.

b) PW1 wanted to obtain loan by keeping charge on said land. The respondent was serving as Talathi. PW1 had gone to the respondent for obtaining mutation and 7/12 extract with mutation entries. The accused demanded Rs.5,000/- for issuing 7/12 extract. As per PW1-Babasaheb, he made negotiations but the accused declined to reduce the amount. Therefore, PW1 Babasaheb refused to make payment and left spot. On 12.05.1996, the accused/respondent came to him and made inquiry with him as to why he had not been to him for his work. Babasaheb-PW1 expressed his inability to make payment of Rs.5,000/- and told him that if he would prepare 7/12 extract on the next day, his work of loan could be done. The accused called him on the next date at Vaijapur and assured to provide 7/12 extract. On 13.05.1996 at the house of accused, he had demanded from PW1 minimum amount of Rs.1,500/- as advance and the rest amount later on. The accused

provided 7/12 extract to PW1 and told him to bring Rs.1,500/- in his office on 16.05.1996. On 17.05.1996, PW1 informed the accused that he could not make arrangement for money. When he was called on next Monday at the house of the accused with Rs.1,500/- and the balance amount was to be paid after receiving loan from the Bank, the accused told him that he would keep the work of mutation ready. PW1 reported the matter to Anti-Corruption Bureau, Aurangabad. (Exh.11) wherein, he disclosed that he had no desire to pay him bribe and he had no enmity with him.

c) On the next date, the officer of Anti-Corruption Bureau called the panchas, made usual preparations and gave instructions and then laid a trap and accordingly, arranged plan at the house of the accused. PW1-Babasaheb, PW2-Dilip Shinde and PW3 Yeshwant Pawar, the government servants, visited the house of the respondent. Raiding team led by PW4-PI More was just behind them. At about 2.45 p.m., he has demanded Rs.1,500/- and PW1 paid the amount in presence of PW3. PW1 came out and gave signal and the accused was caught red handed with the bribe amount of Rs.1,500/-. Thereafter, office of the accused was searched and copy of mutation No.530 and 531 was attached and panchanama (Exh.27) was drawn. Thereafter, Pw4 lodged F.I.R. (Exh.32). It is defence of the accused that PW1 had requested him to pay his land revenue. Accordingly, the accused had paid land revenue of Rs.1,539/- on behalf of PW1. The accused accepted Rs. 1,500/- from

PW1 as refund of land revenue and he requested him to pay the remaining amount of Rs. 39/- and demanded the same. He has disclosed past incident showing that PW1 had requested him to enter his name as agricultural tenant on a land. But he did not do so, and therefore, PW1 has falsely implicated him. Accordingly, he had given statement immediately after the trap panchanama Exh.30.

d) After sanction from PW2 Sub Divisional Officer, Exh.21, the charge sheet came to be filed against the respondent. The charge was framed under sections 7, 13 (1)(d) and 13(2) of the Prevention of Corruption Act.

e) The accused pleaded not guilty. He denied that he demanded Rs.1,500/- from PW1. The prosecution examined four witnesses, victim, sanctioning authority, panch No.1 and the Investigating Officer. The statement under section 313 Cr.P.C. was recorded. One defence witness Sheshrao Kulkarni produced entry about the payment of agricultural cess on behalf of PW1 and his relatives.

5. After considering the evidence on record, the learned Special Judge acquitted the accused. Undue importance is given in the Judgment to the fact that the original statement of the accused made after the trap was not proved. It was held that the accused

had already issued 7/12 extract to PW1 and, therefore, there was no cause for making payment of bribe amount by PW1. The discrepancies in the evidence of PW1 and PW3 regarding the incident and the conduct of the accused disclose that he had not accepted bribe amount.

6. Since there is admission about acceptance of money by the respondent from PW1, it is unnecessary to go into the other details. The main question is about demand. If there is no demand, the money received would not be bribe. What is to be proved, is not acceptance of money but acceptance of bribe.

7. In this regard, I find some material admissions supporting the defence of the accused (respondent). PW1 admitted that wife of the accused belongs to the village Ladgaon. The accused also belongs to the same village and he used to treat PW1 as his son-in-law. PW1 was knowing him for 10-12 years before the incident. The accused was serving as Talathi in village Ladgaon.

8. PW1 has admitted that his father and uncle were suffering sentences of life imprisonment in murder case and they had undergone sentences. He was managing their affairs on their behalf. PW1 himself was prosecuted for making encroachment on the land of the adjoining owner. There were 2-3 chapter cases pending against him. Thus, PW1 is not totally new to the

atmosphere in court and Police Station.

9. The learned Special Judge did not find substance in the statement of the defence witness that PW1 had some enmity on account of his desire to purchase land of Shamlal and Shantilal and the accused had not co-operated in the matter of mutations.

10. The accused had produced copies of registers at Exh. 54 to 65 showing entry of payment of land revenue of Rs.92/-each in different accounts of PW1 and his relatives. But there is statement by PW1 that accused has not paid this land revenue.

11. The learned Special Judge rightly observed that when mutation was effected and a copy of 7/12 extract showing the mutation entry was already given by accused to PW1 on 13.01.1996, there was no reason for PW1 to again go to the accused along with tainted amount. The learned A.P.P. Mr. A. V. Deshmukh argued that the accused was to provide 7/12 extract as well as copy of mutation to PW1, but 7/12 extract was only provided. However, the FIR by PW1 disclose that the demand of bribe was only for issuing 7/12 extract. There is no reference to demand of mutation extract by PW1 from the accused. The prosecution has not produced application for certified copy made by PW1 for mutation extract.

12. The material transaction on 20.05.1996 shows that

there is no clear evidence regarding demand. PW1 stated that he and PW3-Yeshwant had gone to the house of the accused on 20.05.1996 at 2.45 p.m. and thereafter, according to PW1, they had some talk about marriage. The evidence nowhere shows that PW1 demanded a copy of mutation extract and the accused demanded bribe for furnishing such copy. PW1's evidence shows that the accused told him that he was in need of money, he should arrange for it. PW1 stated that, he told him to do his work and accused told him to come in the evening and he would give him a copy of mutation, but this is not the prosecution case and, therefore, it is not disclosed in the charge. Pertinently, even after payment of tainted amount, PW1 did not insist for supply of copy of mutation entry. His cross-examination reveals admission that PW1 was a member of "Bhagya Lakshmi Sulabh Hafta Yojana" and he had requested to join the scheme as member. It was suggested that the accused and his daughter were also member of the said scheme, but PW1 said he was not aware of it.

13. PW3-Yeshwant Pawar was panch No.1. His evidence is not consistent with PW1 on the point of demand. He stated that on the date of trap at 2.30 p.m., PW1 and PW3 went to the house of the accused. PW1 had some talk for about 10 minutes and the accused told PW1 that he has done his work and whether he has brought his money. PW1 answered in the affirmative and took out money and gave it to the accused. The cross-examination of PW3 shows that

PW1 told him that he was leaving and the accused forced him to make the payment. PW3's evidence supports the stand of the accused that some amount was due from PW1 to the accused. PW3 stated that accused told PW1 to bring balance amount against him after making payment. According to PW3, the accused was demanding further small amount in balance. This evidence is consistent with the defence that there was dues of Rs.1,539/, the amount of Rs.1,500/- was recovered and Rs.39/- was in balance. The evidence of PW3 nowhere shows that PW1 asked the accused to provide him copy of mutation extract and the accused insisted for making payment of Rs.1,500/- as condition precedent for providing mutation extract to PW1. Even, subsequent events do not disclose that PW1 after making payment, demanded mutation extract. The 7/12 extract was already provided. The story of demand of mutation extract is afterthought and the evidence does not corroborate the said story. I, therefore, find that the findings of the learned trial Judge that the demand was not properly proved is reasonable and probable view.

14. There is one more lacuna in prosecution case. The accused is Talathi and the Collector is competent authority to appoint him and to remove him. The sanction was necessary from the Collector but the Police have obtained sanction of PW2 who was Sub Divisional Officer. The sanction is at Exh.21. PW2 has not produced any document to show that he was the appointing

authority. He stated that he was not aware, who had appointed accused as Talathi. Apart from his competency, there is also challenge to the evidence on the point of non-application of mind. He has given admission that he had issued consent order on the basis of papers sent to him by Police Station. He had not made inquiry with regard to the incident and with regard to the statement given by the accused. He was not even aware of the defence of the accused. There is admission that mutation extract copy needs certification from Circle Officer and the accused as Talathi could not have completed the said work of his own. Thus, I find that PW1 was not competent authority nor he has applied his mind while granting sanction.

15. For all these reasons, I hold that there is no scope to interfere with the Judgment of the acquittal. Hence, the appeal deserves to be dismissed. Hence, the order :-

ORDER

(A) The Appeal is dismissed.

(B) Bail bonds of the accused stand cancelled.

(A.M. DHAVAL, J.)

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