

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5234 OF 2017

The State of Maharashtra,
Through Dy. S. P. Shri I. G. Shaikh,
ACB, Ahmednagar. ...Applicant

Versus

- 1] Sadashiv Dada Pawar,
Age : 52 years, Occu. PHC B. No. 825,
Shrirampur City Police Station,
R/o Police Line, Shrirampur,
Dist. Ahmednagar.
- 2] Ajay Bhaurao Gaikwad,
Age : 47 years, R/o Gangarde Vasti,
House No. 6065, Near Sakhar
Kamgar Hospital, Ward No. 6,
Shrirampur, Taluka Shrirampur,
Dist. Ahmednagar. ...Respondents

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Mr. S. P. Sonpawale, A. P. P. for Applicant-State.
Mr. V. R. Dhorde, Advocate for Respondent Nos. 1 & 2.

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CORAM : SMT. VIBHA KANKANWADI, J.
RESERVED ON : 9-08-2018.
PRONOUNCED ON : 21-11-2018.

JUDGMENT :

01. Present application has been filed by the State
prosecution challenging the Judgment and Order of

acquittal of the respondents-original accused persons in Special Case No. 1 of 2016 passed by Special Judge, ACB (Additional Sessions Judge) at Shrirampur, Dist. Ahmednagar on 12.6.2017 for the offences punishable under Sections 7, 12, 13(1)(d) read with 13(2) of Prevention of Corruption Act (hereinafter referred to as 'P. C. Act').

02. It is not in dispute that the original accused No. 1 was serving in Police department and, therefore, he was a public servant. However, accused No. 2 is not public servant within the meaning of either P.C. Act or I.P.C.

03. The prosecution had come with a case that one Shakil Babukhan Pathan resident of Ramchandranagar, Shrirampur, Dist. Ahmednagar had filed complaint with City Police Station, Shrirampur against one Rajjak Sayyad and his family members on the ground that Rajjak and his family members had attacked Shakil. He had sustained two stitches injury on his head. Rajjak had also filed complaint against Shakil, his wife and brother's wife. It is stated that preventive action was taken against them on the basis of said complaint. Shakil was of the view that inspite of bleeding injury sustained by him, the Police had registered non-cognizable offence against Rajjak.

Shakil, therefore, met his Advocate and sought legal advice. On the basis of advice given by the Advocate, he filed application for certified copies on 12.7.2015. Thereafter, he came to know through newspaper on 15.7.2015 that an offence punishable under Section 325, 323, 504 and 506 read with Section 34 of I.P.C. has been registered against him. It was also mentioned that the investigation is handed over to accused No. 1 Sadashiv. Therefore, Shakil went to City Police Station and met accused No. 1 on 16.7.2015 and made enquiry. Accused No. 1 told him about the registration of the offence and also his intention that he would arrest him prior to Ramjan Idd. Shakil, therefore, requested accused No. 1 that since the entire family is observing fast i.e. 'Roja' he should not be arrested before the festival. He also tried to contend that Rajjak had filed false case against him. Thereupon accused No. 1 told Shakil that if he gives an amount of Rs. 5,000/- [Rs. Five Thousand Only] then he will not arrest Shakil before Idd. Shakil was not interested to pay the amount, but, he was interested to avoid the arrest. With displeasure he agreed to pay the amount. Then he gave information about the incident to ACB, Ahmednagar on phone.

04. Thereafter, Dy.S.P. Shaikh and his staff

alongwith panch witnesses came at Shrirampur and met the complainant. His complaint was reduced into writing. Verification of the demand of accused No. 1 was tried to be made with the help of panch No. 1 Ganesh Subhashrao Muley, but, on that day they could not meet accused No. 1. Trap was therefore, postponed.

05. Thereafter, again on 17.7.2015 the entire team went to Shrirampur. Complainant and panch No. 1 G. S. Muley went to verify the correctness of the demand. After negotiations, the amount was settled at Rs. 3,000/- [Rs. Three Thousand Only]. Thereafter, the trap was arranged. The amount which was produced by the complainant was given to ACB Officer and thereafter, anthracene powder was applied on the currency notes. Trap was arranged. But, again accused No. 1 could not meet, hence, actual raid was postponed.

06. The entire team again gathered on 20.7.2015. Complainant Shakil was given the tainted currency notes. He alongwith panch No. 1 G. S. Muley were sent to Police Station. Even the family members of Shakil were called to Police Station. Accused No. 1 completed the work and thereafter, Shakil and his family members were directed to go to the Court at Shrirampur. It is stated that Shakil

gave the tainted currency notes to homeguard accused No. 2 as per the instructions of accused No. 1. According to Shakil, said demand was made by accused No. 2 in front of canteen in the Court premises. The amount was accepted by accused No. 2 and it was kept in the back side pocket of his pant. Signal was given and he was caught with tainted currency notes. Post-trap panchnama was completed. After collecting documents Dy.S.P. Shaikh lodged F.I.R. against both the accused on behalf of State.

07. Further investigation was taken up. Statements of witnesses were recorded. The voice recording was checked. Transcripts were prepared. After the completion of investigation, charge-sheet was filed.

08. After the accused appeared before the learned Trial Court, charge was framed against them. Contents of the charge were read over and explained to them in vernacular. They pleaded not guilty. Trial was conducted. Prosecution has examined in all 10 witnesses in order to bring home the guilt of the accused persons. After considering the evidence on record and hearing both the sides, the learned Trial Court came to the conclusion that the prosecution has failed to prove the charge against both the accused and therefore, they have been

acquitted from the charge under Section 7, 12, 13(1)(d) read with 13(2) of Prevention of Corruption Act. Prosecution intends to challenge the said acquittal.

09. Heard Mr. S. P. Sonpawale, learned A. P. P. for Applicant-State and Mr. V. R. Dhorde, learned Advocate for Respondent Nos. 1 & 2. Perused the record and proceedings.

10. It has been submitted by the prosecution that the learned Trial Court has not appreciated the evidence properly. The testimony of the complainant PW-2 Shakil is corroborated by PW-3 Ganesh Muley, panch No. 1 as well as by PW-4 Dy.S.P. Mr. Irfan Shaikh, the informant and Investigating Officer. The sanction has been proved through PW-1 Dr. Saurabh Tripathi, the then Superintendent of Police, Ahmednagar. The tainted currency notes were found with accused No. 2. The said amount was given to accused No. 2 as directed by accused No. 1 and therefore, acceptance was for and on behalf of accused No. 1. Accused No. 2 has not given any explanation as to how he was found possessing the tainted currency notes. The demand was verified and after the negotiations, the amount was fixed at Rs. 3,000/- [Rs. Three Thousand Only]. The learned Trial Court has unnecessarily placed reliance on

the technicalities. The amount was accepted by accused No. 2 for accused No. 1 who had promised the complainant that he will not arrest him till the festival is over. The said amount was in the form of gratification. There was no final transaction between accused No. 1 and complainant prior to the date of incident. Under such circumstance, the learned Trial Court ought to have convicted both the accused. There is a good arguable case for the prosecution and therefore, he prayed for granting leave to appeal.

11. The learned Advocate appearing for the respondents relied on the reasons given by the learned Trial Court while acquitting the respondents.

12. It can be seen from the prosecution story itself that on the day when complainant had given a phone call to ACB, Ahmednagar, Dy.S.P. Mr. Shaikh and his team went to Shrirampur, reduced the complaint of Shakil in writing. They did not meet accused No. 1 and therefore, even the verification was dropped. It is stated that the verification was done on 17.7.2015. But, thereafter, the further trap was postponed. It is stated that the trap was successful on 20.7.2015 that too in the Court premises where Shakil and his family members were produced before

the Court. Thus, it is to be noted that on the day when the amount was allegedly accepted, Shakil and his family members were already arrested by accused No. 1 and were produced before the Court. Under such circumstance, where is the question of giving any amount. Another fact that is not clarified is, how accused No. 2 came in picture. When according to prosecution as well as the testimony of PW-2, 3 and 4, accused No. 1 had met Shakil in the Police Station and thereafter, Shakil and his family members were taken to Court, why there was no attempt on the part of Shakil to give the tainted currency notes in the Police Station itself. Complainant had tried to lodge report against Rajjak, but, it was registered as non-cognizable offence. On the basis of the complaint lodged by Rajjak, offence was registered against Shakil and therefore, there is every possibility that Shakil had grudge against accused No. 1 who was investigating the matter against him. Possibility of implicating accused No. 1 can not be ruled out. Further, the best possible evidence was in the form of electronic evidence. However, proper proof of the electronic evidence has not been led. Another fact that is also required to be noted is that the Investigating Officer in this case recorded the statement of Shakil under Section 164 of Cr.P.C. That means Investigating

Officer was not sure that Shakil would stick to his version at the time of his evidence or not. Definitely, there are contradictions, omissions and improvements in the testimony of PW-2, 3 and 4. The offence being technical, all the facts are required to be taken into consideration minutely. Even if the electronic evidence is not proved by the prosecution properly, yet, for the sake of arguments we consider the contents of transcript. It can be seen that there is no clear demand by accused No. 1. There is no proper investigation and evidence to connect accused No. 1 with accused No. 2. Accused No. 2 was not a public servant and therefore, it was not necessary for him to explain as to how he come in possession of the tainted currency notes. Unless there would have been an evidence in clear terms beyond reasonable doubt that accused No. 1 had specifically told complainant Shakil that the amount should be handed over to accused No. 2, it can not be stated that both the accused were answerable for the tainted amount. Therefore, whatever view was taken by the learned Trial Court appears to be a probable view on the basis of evidence led by the prosecution. Merely because, second view is possible the Appellate Court can not take the second view. No arguable case is made out to grant leave

to appeal to the prosecution.

13. Hence, following order;

ORDER

The application is rejected.

[SMT. VIBHA KANKANWADI]

JUDGE

Dahibhate/-.