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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.781 OF 2013**

The State of Maharashtra
through Dy. S.P.
Anti Corruption Bureau, Kolhapur

... Appellant

Vs.

Shri Ravsaheb Aabaji Vasagadekar
Age : 55 years, Occu. Service.
R/o : Plot No.60-A Dr. Babasaheb
Hsg. Society, Vichare Mal. Kolhapur.

... Respondent

Mr. S.S. Pednekar for the Appellant.
Mr. Ujwal R. Agandsurve for the Respondent No.1.

CORAM : SMT. SADHANA S. JADHAV, J

DATE : 17th SEPTEMBER 2019.

ORAL JUDGMENT :

1. The State being aggrieved by the judgment and order dated 23rd October 2012 passed by the Special Judge, Kolhapur acquitting the respondent of the offences punishable under sections 7, 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 in a Special Case No.5 of 2010 has approached this Court by filing the present appeal.

2. Such of the facts necessary for the decision of this appeal are as follows :-

The case pertains to the functioning of Ratnappa Kumbhar Nagar Co.Op. Housing Society. The complainant PW1 - Mr. Balasaheb Krishna Mali was officiating as Chairman of the Society in the year 2006-2007. In the year 2006, the society had passed a resolution that they would give gift to all the members in the form of coupon of Rs.500/-. One Mr. Prakash Yadav who happens to be the member of the society had serious objections to the same, since it was his contention that the society is distributing gift coupons without the permission of the Assistant Registrar. On 14th November 2006 Mr. Prakash Yadav had filed a complaint before the Assistant Registrar, Karveer complaining about the illegal and malafide practices in which the society was indulging. It appears that a notice was issued by the Assistant Registrar to the governing body of the society on 23rd November 2006. In the year 2006 one Mr. Nimbalkar was officiating as the Assistant Registrar of the Co.Op. Housing Society. The charge was taken over by the present respondent in the year 2007. Mr. Nimbalkar had closed the file however it appears that the present respondent had opened the file.

3 In fact, the elections to the said society were due and election programme was prepared by the present respondent and was submitted to the society for approval. PW1 had returned the said election programme by making certain changes.

4 It is alleged that on 15th September 2007 PW1 complainant had been to the office of the Assistant Registrar i.e. the present respondent and had sought expeditious disposal of the complaint filed by Mr. Prakash Yadav. According to him, the respondent had demanded a sum of Rs.20,000/- to dispose of the said application. Since he was not willing to pay the said amount he had approached the office of the Anti-Corruption Bureau and lodged a report. After following initial procedure, it was decided to lay a trap on 17th September 2007.

5 In the present case, there is no verification of the demand made by the accused person. On 17th September 2007, PW1 – Mr. Mali had approached the office of the Assistant Registrar along with shadow panch i.e. PW2 – Revansiddha Bagewadi. There was no discussion about the complaint filed by Mr. Prakash Yadav. In fact, the discussion was about the election programme. The Assistant Registrar was busy and he had told the complainant that the election programme is almost ready and will be

handed over to him within short time. At that juncture, PW1 along with PW2 had left the office of the Assistant Registrar. He revisited the office after an hour and at that time, as admitted by PW1, there was no demand of bribe amount. He inquired with the accused in respect of the sanction of election programme. The accused had called upon the main clerk Mr. Patil and gave instructions to him to prepare letter in respect of the election programme. It is admitted by PW1 in the cross-examination that at that time, he had not made any attempt to pay any amount of bribe to accused nor accused demanded any amount to him. The bribe amount which was negotiated to Rs.15,000/- was extended towards the accused and he had allegedly asked the complainant to keep it in the diary. Needless to say that after the trap, amount was found in the diary of the year 2004-2005, the traces of anthracene powder were not seen on the hands of the accused person.

6 It is more than clear that even according to the complainant he was seeking expeditious disposal of the complaint filed by Prakash Yadav, however, he has admitted in the cross-examination that he had not requested the accused to dispose of the complaint filed by Prakash Yadav but he had gone to seek election programme. In fact, the complainant had

visited the office of the Assistant Registrar i.e. the respondent for the first time on 12th September 2007. At that time, no demand was extended by the accused and the complainant was asked to revisit after two days. He, therefore, revisited the office on 15th September 2007 on which day allegedly there was a demand and on 17th September 2007 he revisited the office. In fact, the very purpose of revisiting the office or approaching the Assistant Registrar has not been set out by the prosecution.

7 There are several inconsistencies in the evidence adduced by the prosecution. PW2 has admitted, that initially, in the request letter to the Irrigation Department the name mentioned was Mr. Joshi. The said letter is at Exh.24. Thereafter, his name was deleted and replaced by the name of PW2. It is specifically stated that Mr. Mali approached the office of Anti-Corruption Bureau. He had stated that the amount was demanded for disposing of the application of Prakash Yadav filed by the society whereas it is clear that the said file was closed and the reason for approaching the Assistant Registrar was for finalising the election programme. Besides this, Mr. Prakash Yadav had also filed a dispute before the Co-operative Court, Kolhapur under section 91 of the Maharashtra Co-operative Societies Act, 1960 bearing No.199 of 2009 seeking temporary

injunction to summoning of general body meeting of the said society which was scheduled on 14th November 2009. That was in respect of the election programme of the said society. It is admitted in the cross-examination by the complainant PW1 - Mr. Mali that he had filed a written say in the said proceeding but had not stated that the Assistant Registrar had demanded illegal gratification for sanctioning election programme. Moreover, the amount that was to be paid to the Assistant Registrar was not taken from the account of the society but that amount was drawn from the personal account of the complainant – PW1.

8 In fact, four issues that need to be appreciated in the present case are that firstly, the complainant had not stated before the Anti-Corruption Bureau the purpose for which the gratification was demanded. At the trial also he was not sure as to whether it was for the disposal of the complaint filed by Prakash Yadav or for giving election programme.

Secondly, there was no demand on 12th September 2007. The demand was made on 15th September 2007 i.e. the date when he approached the office of Anti-Corruption Bureau. The demand by itself had not been proved as there is no verification of demand.

Thirdly, on the day of trap i.e. 17th September 2007, the conversation of demand of gratification was not initiated by the accused but it was initiated by the complainant.

Fourthly, the amount of gratification was kept in a diary. It was not actually accepted by the accused. Hence, there were no traces of anthracene powder, in said diary, and on the same page they have found the bio-data of the daughter of the respondent. He was looking forward to settle her marriage.

It is neither the case of the prosecution, that the amount was extended by way of reward and therefore, it can be safely inferred that the accused has been able to rebut the presumption drawn under section 20 of the Prevention of Corruption Act, 1988 by demonstrating the preponderance of probabilities. It appears that the complainant did not wish to hold the elections of the said society as he was officiating as the Chairman and the respondent in the capacity of the Assistant Registrar was of the opinion that the society is due for holding elections.

9 This Court while considering an appeal against conviction in Appeal No.161 of 1995 had observed as follows :-

“The court cannot go beyond the evidence adduced by the

prosecution unless the accused on the same set of evidence is able to present a different view of the matter. Only in such a situation where two views are possible the court may take a view in favour of the accused.”

10 The Apex Court in the case of *Govindaraju @ Govinda Vs. State By Srirampur P.S. and Anr.*¹, had observed as follows:

“In the present case, on a cumulative reading and appreciation of the entire evidence on record, we are of the considered view that the learned trial Court had not fallen in error of law or appreciation of evidence in accordance with law. The High Court appears to have interfered with the judgment of acquittal only on the basis that ‘there was a possibility of another view’. The prosecution must prove its case beyond any reasonable doubt. Such is not the burden on the accused.”

11 In an appeal against acquittal when the other possible view is in favour of the respondent accused, it would not be appropriate to set aside the judgment of acquittal. In the present case, even factually prosecution had failed to prove the guilt of the accused beyond reasonable doubt.

12 In view of the above discussion, the appeal filed by the State being sans merit deserves to be dismissed. Hence, the appeal is dismissed.

(SMT. SADHANA S. JADHAV, J)

1 2012 (4) SCC 722