

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 547 OF 1997
WITH
CRIMINAL APPLICATION NO. 240 OF 2015

Prabhat Sakharam More.

Since deceased through his legal heirs

1. Smt. Vijaylaxmi Prabhat More.

Age : 48 years, Occ. Nil

2 Rohini Prabhat More.

Age : 24 years, Occ. Education.

3 Gomati Prabhat More.

Age : 23 years, Occ. Education

4 Arati Prabhat More.

Age: 20 years, Occ. Education

5 Gorakshnath Prabhat More.

Age : 18 years, Occ. Education

All R/o Room No.2, Police Colony,

Near S.T. Stand, Mohol.

..Appellant.

v/s.

1 The State of Maharashtra.

2 The District Superintendent of

Police(Rural), Solapur.

..Respondents.

WITH
CRIMINAL APPEAL NO. 562 OF 1997

Hiralal Baba Tanpure.

Aged : 58 years, Gathade Plot,

Talwalkar

House No. 411/C, Pandharpur,

District : Solapur.

..Appellant.

v/s.

The State of Maharashtra.

..Respondent.

Mr. Vijay Killedar, advocate for appellant in Cri. Appeal No. 547 of 1997.

Mr. R.M. Agrawal, advocate for appellant in Cr. Appeal No. 562 of 1997.

Mr. Y.M. Nakhwa, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : SEPTEMBER 18, 2019.

JUDGMENT :

1 The appellants herein are convicted vide Judgment and Order dated 26th August, 1997 by Special Judge, Solapur in Special Case No. 2 of 1996. The appellant No. 1 is convicted for the offence punishable under section 323 and 342 of the Indian Penal Code and sentenced to suffer R.I. for 6 months on each count and to pay fine of Rs. 250/- on each count I.d. to suffer R.I. for two weeks. The accused No. 1 is further convicted for the offence punishable under section 13(2) read with 13(1)(d) of the Prevention of Corruption Act and sentenced to suffer R.I. for a period of one year and to pay fine of Rs. 1,000/- I.d. to suffer R.I. for 6 months. The accused No. 1 is further convicted for the offence punishable under section 7 of the Prevention of Corruption Act and sentenced to suffer R.I. for 6 months and to

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pay fine of Rs. 500/- I.d. to suffer R.I. for 3 months. Accused No. 2 Prabhat Sakharam More is convicted for the offence punishable under section 342 read with section 34 of the Indian Penal Code and sentenced to suffer R.I. for 6 months and to pay fine of Rs. 250/- I.d. to suffer R.I. for two weeks. Accused No. 2 is further convicted for the offence punishable under section 12 of the Prevention of Corruption Act and sentenced to suffer R.I. for one year and to pay fine of Rs. 1000/- I.d. to suffer R.I. for nine months. Hence, these appeals.

2 Such of the facts necessary for the decision of these appeals are as follows :

That accused No. 2 Prabhat More (since deceased) had been to the house of P.W. 1 Dattatray Sutar on 18/6/1994 and informed him that Neminath has filed complaint against him and others and therefore, they were called by accused No. 1 PSO Hiralal Tanpure at Vairag Police station. That Dattatray was working as Secretary of Shekha Gavali Milk Produces Co-operative Soccity, Nalvandi. Dattatray alongwith his brother Vishnu, father Bhagwan and Neminath accompanied the accused No. 2 to the bus stand to reach Vairag Police Station. At the bus stand, they met Mahadeo Katakdhond, who was the chairman of the said society. They had requested Mahadeo Katakdhond and Piraji Gavali to accompany them to Vairag

Police Station and hence, they all had been to police station.

3 It is alleged that PSO had enquired with them as to why they had not returned the due amount to Nemichand. The accused No. 1 had threatened P.W.1 Dattatray and others. Thereafter, he assaulted Dattatray and Vishnu with leather belt and fists and had directed the head constable Prabhat More to detain them in the lock up, which is next to the PSO room. While they were in custody, there was a demand of Rs. 2000/-. The accused persons had told Dattatray and Vishnu that in the eventuality, he pays the gratification, the matter will be settled. They had expressed their inability and incapacity to pay the said amount. There was negotiation over the said amount and finally, it was agreed that PSO would receive Rs. 1,000/- for settling the matter. Since, the accused No. 1 refused to release them unless some amount was paid, Mr. Katakdhond had paid Rs. 500/- to accused No. 1. They were reminded that the remainder amount of Rs. 500/- should be paid within 2 days. They all apprehended that they would be again detained by the police and therefore, they had agreed to give an undertaking that they would pay the amount to Neminath Bhagwan, Sutar, Neminath Sutar, Dattatray Sutar and Vishnu Sutar were directed to file an undertaking to the police that they would pay Rs. 300/- to Neminath every month and would pay an amount of

Rs. 10,500/- by Padwa festival. The undertakings are from Exh. 29 to 32 respectively.

4 P.W.5 had sent an application to the Superintendent of Police, Solapur for enquiry into matter. The statements of the witnesses were not recorded by the Superintendent of Police and the matter was closed. Vishnu had then filed an application to Lokayukt on 23/6/1994 (Exh. 47) supported with an affidavit to that effect which is at Exh. 48. It was contended in the said applications that Neminath Sutar had in fact, adopted Vishnu by an adoption deed. He thereafter, wanted to cancel the adoption deed and therefore, had filed a suit. Neminath was apprehensive that the adoption deed would not be cancelled and therefore, he was annoyed with the whole family. He therefore, approached Vairag Police and filed an application seeking recovery of Rs. 10,500/- from Dattatray, Vishnu, Bhagwan and Neminath. It is apparent on the face of the record that the police personnel were working as recovery agents.

5 On 29/6/1994 Lokayukt had passed an order that appropriate action be taken on the basis of the said complaint.

6 P.W. 8 Bhaurao Rupchand Chavan was at the relevant time officiating as Dy. S.P., ACB, Solapur. He had received

letter on 22nd May, 1995 from Director ACB Maharashtra alongwith copies of the complaint application and affidavit filed by Vishnu Neminath Sutar. The complaint pertains to detention in the lock-up and demand of bribe by the accused in the sum of Rs. 1000/- and acceptance of Rs. 500/- as a part of the illegal gratification from the complainant.

7 The Dy. S.P. had initiated enquiry. During the course of enquiry, he had recorded the statement of the complainant Vishnu Sutar as well as Katakdhond who had parted with Rs. 500/- in order to save Dattatray and Vishnu Sutar. P.W. 8 Chavan had submitted his report to Director of ACB, Bombay through Dy. Commissioner of Police, ACB Pune. He had drawn the conclusion in the said report that there is sufficient incriminating material to show that the accused No.1 had rather demanded Rs. 1000/- from Vishnu Sutar and had accepted Rs. 500/-. Thereafter, the Director of Anti Corruption Bureau had directed P.W. 8 Mr. Chavan to register an offence against the accused and on the basis of the said directions, the complaint was filed by P.W.8 against the accused at the Vairag Police Station, which was registered as Crime No. 114 of 1995. The complaint is at Exh. 63.

8 Dy. S.P. Anti Corruption Bureau had taken over the

investigation. He had taken all steps in the course of investigation. He had arrested the accused No. 1. He had then recorded statements of all the witnesses under section 161 of the Code of Criminal Procedure, 1973. On 19th May, 1995 he had arrested accused No. 2. He had further seized the original station diary from Vairag Police station dated 18/6/2019, 19/6/2019 and 20/6/2019 from Dy. S.P., Barshi, which are marked at Exh. 37. The appropriate authority had granted sanction to prosecute vide sanction order dated 18/5/1996 which is at Exh. 59.

9 It is pertinent to note that in the course of enquiry, it had transpired that in fact, Vishnu Sutar had sent complaint about the said incident to Superintendent of Police Solapur and it was referred to CPI Lamture. It had transpired that CPI Lamture had conducted the enquiry and had sent a report to Superintendent of Police, Solapur indicating that the enquiry needs to be closed.

10 In the cross-examination, P.W. 8 has admitted that there was no lock-up guard appointed on that day. However, he has voluntarily submitted that in the absence of the appointment of any lock-up guard, PSO of that police station is the lock-up guard. Despite there being a lengthy cross-

examination, the defence has not been able to create any dent in the substantive evidence of P.W.8.

11 Accused has also examined defence witnesses. D.W. 1 Ramling Bhanudas Jadhav was head constable posted at Vairag Police Station on that day. He has produced the register for the period 17/10/1992 to 28/6/1995. At page No. 45, there is an entry in respect of the application filed by Vishnu Sutar against head constable Tanpure and constable More. It further appears that after making enquiry, report was sent on 31/8/1994. In the same register at page No. 48 Sr. No. 145 is the entry in respect of the application filed by Vishnu Sutar in respect of the said incident and the closure report was filed on 5/9/1994. There is also entry in the register, which shows that both the accused had left the out-post on 14th at 6 p.m. and returned to out-post on 15th at 2 p.m. It is categorically mentioned that none of the entry is in his own hand-writing. There is over-writing and interpolation in the movement register of outpost Khandvi as regard Entry No. 72, particularly date 14/6/1994. It prima facie appears that the evidence of defence witness corroborates with the evidence adduced by the prosecution, as it would substantiate the contention of the prosecution that Vishnu Sutar as well as Neminath Sutar had filed complaint about the acts/misdeeds by both the accused persons.

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12 P.W. 2 Raghunath was officiating as CPI of Police Station, Vairag from 1994 to 1997. He has also corroborated with the fact that Vishnu Sutar and Neminath Sutar had filed complaint against both the accused. He has also admitted in the cross-examination that there is over-writing and interpolation in the register maintained at Vairag Police Station.

13 Upon perusal the evidence adduced by the prosecution and the defence, it can be safely inferred that the prosecution has proved the guilt of the accused beyond reasonable doubt for the following reasons :

(i) There is direct evidence in the form of evidence of Katakdhond as Katakdhond had accompanied Dattatray and Vishnu to the police station as they were summoned by accused No. 1 through accused No. 2 in respect of the complaint filed by Neminath Sutar.

(ii) The complaint of Neminath was only pertaining to the fact that Vishnu and Dattatray have taken Rs. 10,500/- from him and that he was seeking return of the said amount. No particular offence was made out. No offence in as much as non-cognizable case or cognizable case was registered against Vishnu, Dattatray and therefore, it was not necessary to summon them to the police station. It was apparent that the police

personnel were working as recovery agents.

(iii) The complaint filed by Vishnu is further substantiated by the fact that the PSO had taken an undertaking which is at Exh. 29, 30, 31 and 32. The said undertaking is to the effect that the complainant and 3 others would pay Rs. 300/- per month to Neminath and by Padwa festival, they would repay whole amount of Rs. 10,500/-. All those letters are dated 18/4/1994. The said letters are attested by police head constable Khandvi, Buccle No. 376, who is not examined either by the prosecution or the defence. That, in fact, is sufficient to show that the complainant and the witnesses had been to the police station and they were forced to give an undertaking to the police at the instance of accused No. 1 who was officiating as police station officer at Vairag Police station on that day.

14 It is a sorry state of affairs that Vishnu had first filed complaint about the said incident to the Superintendent of police, Solapur. Enquiry was shown to be conducted but never conducted and closure report was filed. He had filed applications before the District Superintendent of Police at Solapur, Barshi and Vairag. However, police machinery had turned deaf ears towards the said complaint. Thereafter, Vishnu had filed a complaint to the Lokayukt and action was initiated

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pursuant to the directions given by Lokayukt.

15 P.W.8 has conducted a detailed enquiry in respect of the said complaint and submitted a detailed report, on the basis of which Crime No. 114 of 1995 is registered at Vairag Police Station against the accused persons. It is in these circumstances that delay in registration of FIR would not be fatal in any manner to the prosecution.

16 It has been proved that accused No. 2 had succumbed to the directions of accused No. 1 and had actually put the complainant in lock-up on 18/4/1994. He had gone to village, Malvandi, Taluka Barshi to call upon Dattatray and Vishnu to the police station. As far as accused No. 1 is concerned, the learned Counsel Mr. Agrawal submits that at the time of commission of offence, the accused No. 1 was 56 years old and as on today, he is nearly 80 years old. He is bed ridden and has suffered two paralytic attacks. The learned advocate has placed on record the medical certificate which shows that he is bed-ridden. In view of this, he cannot be directed to surrender after dismissal of the appeal.

17 Learned Counsel Mr. Killedar has submitted that the accused No.2 Prabhat More has expired and the appeal is being

prosecuted by legal heirs of original accused No. 2.

18 The act of the police, working as recovery agents on behalf of Neminath is proved by the prosecution beyond reasonable doubt. The manner in which the undertaking was taken by putting the complainant in lock-up is also proved. Hence, the Judgment and Order of conviction deserves to be maintained, as it calls for no interference.

19 Hence, the appeals being sans merits are dismissed.

20 In view of dismissal of the appeals, the Criminal Application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]