

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 83 OF 2012

State of Maharashtra

... Appellant

Vs.

Anil Ramchandra Dhumase,
Age : 35 years, Occ. : Service,
Police Head Constable B. No. 517,
attached to Vani Police Station,
Nashik Rural

... Respondent

Mr. S. S. Hulke, A.P.P. for Appellant-State.
Mr. Siddharth Jaguste for Respondent.

CORAM : A.S. GADKARI, J.
DATE : 7th October 2020.

ORAL JUDGMENT :

This is an Appeal under Section 378(1) of Code of Criminal Procedure against the Judgment and Order dated 06th October 2010 passed by the learned Additional Sessions Judge, Nashik in Sessions Case No. 9 of 2006, acquitting the respondent from the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the P.C. Act').

2. Heard Mr. Hulke, learned A.P.P. for Appellant-State and Mr. Jaguste, learned counsel for the respondent. Perused entire record.

3. The prosecution case in brief is as under :-

(i) Mr. Ashok N. Tadakhe (PW-1) was resident of village Pandane, Taluka Dindori, Dist. Nashik. He was in the business of sale of fertilizers and was running a shop under the name and style as 'M/s. Shree Agro Agency' at Vani, District Nashik. On 3rd March 2005, Mr. Ashok Tadakhe had filed an application with Vani police station against Mr. Mohan Y. Mahale, Smt. Shankuntala M. Kokate, Mr. Durgesh Kokate and Mr. Nilesh Kokate, alleging that, the said four persons had demanded ransom amount of Rs. 50,000/- from him. That, Mr. Mohan Mahale was having criminal background and was in the business of selling liquor, however the Vani police station did not take cognizance of his complaint by registering crime against the said persons. Therefore there was enmity between Mr. Ashok Tadakhe on one hand and the said four persons on the other hand. Mr. Ashok Tadakhe (PW-1) was having a Scorpio vehicle bearing No.MH-15-BD-1491 and was using it for his business purpose.

(ii) It was alleged that, on 27th May 2005 at about 8.00p.m., Mr. Ashok Tadakhe (PW-1) gave dash to the motorcycle of Mr. Nilesh Kokate. Smt. Shakuntala Kokate, mother of Nilesh Kokate, was a pillion rider at that time. A crime was registered at the instance of Mr. Nilesh Kokate, in the night of 27th May 2005. Police Inspector Mr. Nandvalkar then attached to Vani Police Station called Mr.Ashok N. Tadakhe (PW-1) to the police station and

thereafter arrested him in the said crime. In due course of time, Mr. Ashok Tadakhe (PW-1) was released on bail by the learned Judicial Magistrate First Class, Dindoshi. The record further indicates that, Police Inspector Mr. Nandvalkar, thereafter filed charge-sheet against Mr.Ashok N. Tadakhe (PW-1) under Section 307 and other allied sections of I.P.C.

(iii) It is the further prosecution case that, after release on bail of Mr.Ashok Tadakhe (PW-1), the respondent and Police Constable Mr. Taru from time to time visited his shop and demanded an amount of Rs. 50,000/- for not initiating Chapter Proceeding (chapter case) against him. That, on 01st September 2005, the respondent accepted Rs.50,000/- from Mr. Ashok Tadakhe (PW-1) with an assurance that, he would not file chapter case against PW-1. Due to constant demand of money by respondent and Police Constable Taru, Mr.Ashok Tadakhe (PW-1) lodged complaint with the Anti-Corruption Bureau on 5th September 2005.

(iv) After completing necessary legal formalities including the verification of pre-trap demand by the respondent, the Anti-Corruption Bureau decided to lay a trap on 13th September 2005 in the shop of PW-1 situated at Vani. It is alleged that, the respondent had been to the shop of Mr.Ashok Tadakhe on 13th September 2005 and accepted the tainted amount from him. After receipt of pre-determined signal from the PW-1, the respondent was apprehended by the Officers of the Anti-Corruption Bureau.

After receipt of sanction from the Competent/Sanctioning Authority (PW-3), and completion of investigation charge-sheet came to be filed in the Court of Competent Jurisdiction.

(v) The Trial Court framed charge below Exhibit-2. The contents of charge were read over and explained to the respondent in vernacular language to which he denied and claimed to be tried.

It was the defence of respondent that, one Smt. Vatsalabai Rajgire who was then serving as Police Head Constable at Vani police station was having animosity against the respondent. The reason for animosity as stated by the respondent was that, he had taken legal action against the son of Smt. Vatsalabai Rajgire, as he was allegedly indulging in illegal transportation of public. That, the respondent had filed three criminal cases against him at Vani Police Station. Due to filing of said criminal cases, Smt. Vatsalabai Rajgire was having grudge and animosity against the respondent and therefore in connivance with Mr.Ashok N. Tadakhe (PW-1), the respondent has been falsely implicated in the present crime. It was also the defence of respondent that, on the date of alleged trap, i.e. on 13th September 2005, no criminal case against Mr.Ashok N. Tadakhe (PW-1) was assigned to him for investigation and/or enquiry and therefore, there was no reason for him to demand any amount from the respondent. It was his further defence that, on the date and time of incident, the respondent called him to his shop and forcibly put the

tainted money in his shirt pocket.

(vi) The prosecution in support of its case has examined in all five witnesses. The respondent examined Shri Devidas W. Kokate, an Advocate by profession as his defence witness. The Trial Court after recording evidence and hearing the parties to the present case was pleased to acquit the respondent from the charges framed against him by the impugned Judgment and Order dated 06th October 2010.

4. Perusal of record would indicate that, as a matter of fact Police Inspector Mr. Nandvalkar, after completion of investigation had submitted charge-sheet against Mr.Ashok N. Tadakhe(PW-1) for a crime under Section 307 and other related sections of I.P.C. on the basis of complaint lodged by Mr. Nilesh Kokate. The respondent was not having any authority under the law to initiate Chapter Proceeding against the complainant herein i.e. PW-1. It is to be noted here that, Mr.Ashok N. Tadakhe (PW-1) lodged his complaint on 05th September 2005, the alleged pre-trap demand was made on 06th September 2005 and the trap was laid by the Investigating Agency in the shop of the respondent on 13th September 2005.

5. As noted earlier, it is the specific defence of the respondent that, he had filed three criminal cases against the son of Smt. Vatsalabai Rajgire, Police Head Constable, then attached to the Vani police station. She got

infuriated and therefore had a grudge against the respondent. She therefore in connivance with Mr.Ashok N. Tadakhe (PW-1), who was accused in the criminal case under Section 307 of I.P.C. instituted by Mr. Nilesh Kokate, decided to implicate the respondent in a false case.

Mr. Devidas Kokate, an Advocate by profession, the defence witness examined by the respondent, in his testimony has stated that, on 13th September 2005 at about 1.30 p.m. he was proceeding towards his house from the Court. At about 1.55 p.m., he reached at Vani and at that time, there was blockage of traffic in the public square due to heavy rush of vehicles. He therefore, parked his vehicle at a side of the road and came in the square. He noticed the respondent who was present there, engrossed in clearing the traffic. Another constable present there was helping respondent in clearing the traffic. DW-1 was discussing with the accused regarding some criminal cases in which the respondent was an Investigating Officer. At that time, one Mr. Laxman Arne came there and told the respondent that, a quarrel was going on in the shop of Mr.Ashok N. Tadakhe (PW-1) and therefore the respondent was called there to resolve the issue. Advocate Kokate (DW-1) along with respondent therefore went to the shop of PW-1. As it was a day of Bazar at Vani, in the shop of PW-1 many people were present. PW-1 thereafter took respondent towards the corner of his shop and were talking with each other. At that time, the complainant (PW-1) put some cash in the shirt pocket

of the respondent. Immediately some persons rushed there and caught hold hands of the respondent. DW-1 therefore realized that, the said persons were Officers of the Anti-Corruption Bureau. After two months of incident, his statement was recorded by the Officers of the Anti-Corruption Bureau.

6. The record indicates that, the Investigating Officer of the present crime i.e. PW-5 had recorded statement of Mr. Laxman Arne. i.e. the person from the shop of PW-1 who had been to the public square on 13th September 2005 at about 1.30 p.m., for calling the respondent to the shop of PW-1, on the pretext that, a tiff had occurred in the shop. In the list of witnesses submitted by the Investigating Officer (PW-5) along with the charge-sheet, at serial no. 8 the said Mr. Laxman Arne was cited as a witness.

Perusal of record would reveal that, the said Mr. Arne was not examined by the prosecution for the reasons best known to it. Though Advocate Mr. Devidas Kokate (DW-1) has categorically stated in his deposition that, his statement was recorded by the Investigating Officer (PW-5), his name is conspicuously absent from the list of witnesses annexed to the charge-sheet. It further appears from the record that, DW-1 had no reason to take side of anybody in the present crime and he had deposed bare truth which he saw/noticed on the date of alleged incident. It is to be noted here that, in his cross examination by the learned A.P.P. nothing beneficial to prosecution has been elicited. The Trial Court in its impugned Judgment and Order has

observed that, the theory put up by the prosecution that, the respondent would accept bribe amount in presence of many persons in the shop of the PW-1 is far from reality. The said observations are deduced from the findings of the Trial Court.

I find substance in the said observations made by the Trial Court. The deposition of DW-1 inspires more confidence in the mind of this Court than the deposition of PW-1. PW-1 had every reason to have grudge against police Inspector Nandvalkar and the present respondent for lodging a crime against him on the basis of the complaint made by Mr. Mangesh Kokate and taking it to its logical end i.e. by filing charge-sheet against the complainant (PW-1) herein under Section 307 and other allied sections of the Indian Penal Code.

7. The record further clearly indicates that, the respondent was successful in rebutting presumption as contemplated under Section 20 of the PC. Act. The evidence adduced by the respondent is more reliable and trustworthy. It is to be noted here that, there was no reason for the respondent to go to the shop of PW-1 by leaving his duty of clearing traffic in a public square. It clearly appears that, it was only due to the emergency call which was given by the PW-1 through his servant Mr. Laxman Arne, calling the respondent to resolve a tiff which was ostensibly occurred in the shop of (PW-1) on the day and time of incident.

8. After taking into consideration the entire material available on record and perusing the impugned Judgment and Order, this Court is of the view that, the Trial Court has not committed any error either in law or on facts while passing impugned Judgment and Order dated 6th October 2010. There are no merits in the Appeal.

Appeal is accordingly dismissed.

9. This Judgment will be digitally signed by the Personal Assistant of this Court. All the concerned will act on its production by fax or e-mail of a digitally signed copy of this Judgment.

(A.S. GADKARI, J.)

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Kumbhakarn
Digitally signed
by Omkar S.
Kumbhakarn
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