

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1082 OF 2012

State of Maharashtra
(At the instance of Manikpur,
Police Station, Tal – Vasai.

... Appellant

Vs.

Dilip Ramji Palande
Age – 46 years,
Police Head Constable, Buckle No. 1762,
Manikpur Police Station.

... Respondent

Mr. S. S. Hulke, A.P.P. for Appellant.
None for the respondent.

CORAM : A.S. GADKARI, J.
DATE : 18th September 2020.

ORAL JUDGMENT :-

Heard Mr. Hulke, learned A.P.P. for the appellant-State. Despite service, none appeared for the respondent.

Perused the entire record.

2. The appellant-State has questioned the correctness of the Judgment and Order dated 29th November 2011 passed in Special Case No. 175 of 2007 by the learned Additional Sessions Judge, Vasai, acquitting the respondent from the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988.

3. The record indicates that, the tempo bearing No. MH-43-E-2709 owned by Aakaram Jadhav, met with an accident while proceeding from Vasai

to Vashi and the documents of it were seized by the respondent. It was alleged that, for returning the said documents the respondent initially demanded of Rs.3,000/- to 3,500/- from the owner of the tempo. After negotiations, the respondent asked the Driver of the tempo (PW-1) to pay Rs.1500/- for returning the said papers/documents. The owner of the tempo was not willing to pay the said gratification to the respondent and therefore a complaint by the Driver of the said tempo was lodged with Anti Corruption Bureau (ACB), Thane on 29th September 2005.

4. The Investigating Agency after completing the necessary legal formalities laid a trap. After the tainted amount was handed over to the respondent, informant gave predetermined signal to the police and accordingly a raid was conducted. During search the bribe amount was found on the top of the cupboard, kept under one paper and cardboard in the police chowky. After completion of investigation Police submitted charge-sheet. The prosecution examined in all five witnesses in support of its case. The defence of the respondent was of total denial. The Trial Court after recording evidence and hearing the learned counsel for the respective parties, acquitted the respondent by its impugned Judgment and Order dated 29th November 2011.

5. Minute perusal of the record would indicate that, PW-1 Babasaheb Anna Mane, the driver of the tempo, did not support prosecution case and therefore he was thoroughly cross examined by the learned A.P.P.,

however nothing beneficial to the prosecution has been elicited from it. PW.-1 has deposed that, after receipt of papers from the respondent, he kept the bribe amount on the table of the respondent. However, as per the evidence of Investigating Officer (PW.-5) the said amount has been recovered from the top of the cupboard which was kept under one paper and cardboard, from the police chowki. The panch witness namely Prakash Narayan Naik (PW.-2) has deposed that, PW.-1 handed over the bribe amount to the respondent in the varhanda of the police station. Thus, there is vast variance in the place of acceptance of amount by the respondent and its recovery.

6. It is the settled position of law that, demand is *sine qua non* in the case of bribery. Unless there is proof of demand of illegal gratification, proof of acceptance will not follow. Reliance is placed on the decisions of the Hon'ble Supreme Court namely, (i) *N. Sunkanna Vs. State of Andhra Pradesh*, reported in (2016) 1 SCC 713, (ii) *T. K. Ramesh Kumar Vs. State*, reported in (2015) 15 SCC 629 and (iii) *Khaleel Ahmed Vs. State of Karnataka*, reported in (2015) 16 SCC 350.

7. Perusal of evidence of the prosecution witnesses would further clearly indicate that, the prosecution has failed to prove the basic ingredient in the present crime i.e. demand of bribe by the respondent. It appears that, the demand of bribe by the respondent has not been brought on record by leading cogent evidence by the prosecution. Thus, it is clear that, the

prosecution has failed to prove firstly the demand of bribe by the respondent and secondly, to prove beyond any reasonable doubt that, the respondent in fact accepted the tainted amount at a particular place in presence of independent witness.

8. After perusing the entire record and the impugned judgment and Order, this Court finds that, the view adopted by the trial Court is a reasonable and possible view in the facts and circumstances of the present case. The Trial Court has not committed any error either in law or on facts while passing the impugned Judgment and Order dated 29th November 2011.

Appeal is accordingly dismissed.

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

(A.S. GADKARI, J.)

Omkar S.
Kumbhakarn
Digitally signed
by Omkar S.
Kumbhakarn
Date:
2020.09.22
13:57:56 +0530