

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 163 OF 2008

The State of Maharashtra
Through Anti-Corruption Bureau,
Raigad, For Sunil Maruti Dalvi,
Age 36 years, Occ. Private Service,
R/of. Village Khari, Tal. Roha,
District Raigad.

..Appellant

Vs.

Sanjay Padmakar Bhanushali
Age 40 years, Occ. Junior Clerk,
Maharashtra State Electricity Board,
Roha Office, District Raigad.
R/of. Shri Samarth Prasad, Second floor,
Adharwadi, Kalyan (E), District Thane.

..Respondent

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Mr. R. M. Pethe, APP for the Appellant / State.

Mr. Vinay J. Bhanushali i/b. J. G. Bhanushali, for the Respondent.

CORAM : C.V. BHADANG, J.
DATE : 26 NOVEMBER 2021

Judgment :

. By this Appeal, the State is challenging the acquittal of the Respondent – Accused from the offences punishable under Section 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

2. The prosecution case may be briefly stated thus-

That the Complainant Sunil Dalvi (P.W.1) is the resident of Village Khari, District Raigad and is having electric connection at his house. At the relevant time, the Respondent was working as a Junior Clerk with the Electricity Board at Roha, District Raigad. The Complainant had paid his electricity bill upto March 2001. However, as he was not in receipt of the further bills, he went to the office of the electricity board on 25 July 2001 and met the Respondent who gave him bill for the period from April 2001 to June 2001 for Rs.5,000/- which according to the Complainant was exorbitant and was incorrect. The Complainant showed the receipts of the previous payments and questioned the correctness of the bill. It is the material prosecution case that the Respondent demanded an amount of Rs.1,500/- as illegal gratification for reducing the bill amount and accepted Rs.300/- on the same day and asked the Complainant to bring further amount of Rs.1,000/- on 30 July 2001. The Complainant thereafter approached the Anti Corruption Bureau (ACB) and lodged a complaint, on the basis of which a trap was arranged in presence of the panchas on 30 July 2001. However, the said trap was required to be adjourned to 31 July 2001 as the Respondent was not present in his office. According to the prosecution, a trap was laid on 31 July 2001 at 15.15 hours at the office of the Respondent when the Respondent accepted an amount of Rs.1,000/- as illegal gratification from the Complainant for

showing the favour of reducing the electricity bill amount. Upon investigation, a chargesheet came to be filed against the Respondent.

3. The learned Special Judge at Raigad framed a charge against the Respondent under the relevant sections. The Respondent pleaded not guilty to the charge and claimed to be tried.

4. The specific defence of the Respondent is that the bill was already corrected and reduced to Rs.2,401/- on 25 July 2001. He claimed that the Complainant had applied for the payment of the bill amount in installments which the Respondent was authorised to accept and the amount of Rs.1,000/- was accepted towards the part payment of the electricity bill and not as illegal gratification.

5. At the trial, the prosecution examined in all four witnesses namely the Complainant – Sunil Dalvi (P.W.1), Panch Gorakh Fadtare (P.W.2), PI CID Alibag – Prakash Bagwe (P.W.3) and the Sanctioning Authority Mr. Kumar Swami (P.W.4), Superintendent Engineer of the Electricity Board. The prosecution has produced the record of the investigation. The Appellant did not lead any evidence in defence.

6. The learned Special Judge by the impugned judgment and order dated 27 April 2006 in Special Case No.3/2002 has acquitted the Respondent. Hence, this Appeal.

7. I have heard the learned APP for the Appellant and the learned counsel for the Respondent. With the assistance of the learned counsel for the parties, I have gone through the record.

8. It is submitted by the learned APP that the recovery of the tainted currency notes has been established and the same is sufficient to raise presumption under Section 20 of the said Act which has not been rebutted by the Respondent. It is submitted that the learned Special Judge was in error in holding that the defence of the Respondent is probable. He therefore submitted that the acquittal of the Respondent is not legal and proper.

9. The learned counsel for the Respondent has submitted that there is material on record to show that the bill was already reduced on 25 July 2001 and the Respondent had no authority to further reduce the amount. It is submitted that it was the Complainant who had applied for payment of the bill amount in installments which the Respondent was authorised to accept and therefore, the defence is clearly prababilised on the basis of the prosecution evidence and the statement of the Respondent made immediately after the trap.

10. I have carefully considered the rival circumstances and the submissions made.

11. The evidence on record clearly discloses that the Complainant had paid the electricity bill upto March 2001 and had approached the Respondent for non receipt of the subsequent bill. It has also come on record that the Respondent then gave the bill for Rs.5,000/- to the Complainant which was questioned by the Complainant being incorrect, in view of the earlier payments made for which the Complainant produced the receipts. The copy of the bill (Exh.21) clearly shows that bill for Rs.5,000/- being faulty bill was reduced to Rs.2,401/-, on 25 July 2001 itself. The copy of the bill at Exh.21 sets out the previous payments made by the Complainant and records that the faulty bill has been adjusted and the bill has been revised as per the orders of the Deputy Executive Engineer. Incidentally, this precisely is the defence taken by the Respondent who claims that upon the Complainant questioning the correctness of the bill of Rs.5,000/- he was taken to the Deputy Executive Engineer Mr. Lipare and as per his orders the revised bill for Rs.2,401/- was issued. Once the bill was revised on 25 July 2001 as per the orders of the Deputy Executive Engineer, the Respondent had no authority to further reduce the bill amount. Not only that there is an Application (Exh.26) on record which is an Application given by the Complainant for payment of the bill in installments.

The said Application bears an endorsement to accept Rs.1,000/- which is dated 31 July 2001. The Complainant in his evidence has accepted the said written consent cum undertaking by which he had agreed to pay the amount of Rs.1,000/- as the first installment and the balance within a month. Thus, the Application (Exh.26) is not disputed by the Complainant. The evidence of P.W.2 who is a panch also shows that immediately after the trap the Respondent claimed that the Complainant had paid the amount towards the payment of electricity consumption charges. The Sanctioning Authority (P.W.4) who at the relevant time was Superintendent Engineer of Pen Circle within whose jurisdiction the Respondent was working, had admitted in the cross examination that the Engineers, Linemen and the clerks were empowered and authorised to rectify the bills and collect the amount of bills. P.W.4 has stated that these employees were also empowered to hold camps on the weekly bazar days and by visiting the individual consumers collect the consumption charges. Clearly this must be in an attempt to ensure that over all arrears of the electricity bills are reduced. Considering the over all evidence of the Complainant, P.W.2 and the documentary evidence in the form of the bill (Exh.21) and the Application (Exh.26) and the admission by the Sanctioning Authority that the employees including clerks were authorised to accept the amount of the electricity bills, in my considered view, the Special Judge has rightly

come to the conclusion that the defence is probalised and the presumption, if any, stands rebutted.

12. It is now well settled that the Appellate Court in an Appeal of the present nature can interfere only where the finding recorded by the Trial Court is found to be perverse or an impossible view. If the view taken by the Trial Court is found to be plausible, no interference is called for (See the decision of the Supreme Court in *Chandrappa and Ors. Vs. State of Karnataka* ¹). Applying the principles, no case for interference is made out. The Appeal is without any merit and is accordingly dismissed.

C.V. BHADANG, J.

¹ (2007) 4 SCC 415