

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 199 OF 2020

The State of Maharashtra,
Through Deputy Superintendent of Police
Anti-Corruption Bureau, Amravati,
Dist. Amravati.

.... **APPELLANT**

// **VERSUS** //

Vinod Manikrao Thorat,
Aged 56 years,
R/o Dwarka Nagar, Near Tathod
Mangal Karyalaya Akola.

.... **RESPONDENT**

Shri I.J. Damle, A.P.P for appellant
Shri V.B. Bhise, Advocate for respondent

CORAM : **N.B. SURYAWANSHI, J.**
DATE : **22/02/2021.**

1. Heard Shri Damle, learned Additional Public Prosecutor for appellant and Shri Bhise, learned Advocate for respondent - State.

2. **Admit.**

3. Heard Finally with consent of the parties.

4. By this appeal the State has challenged judgment and order of acquittal passed by the learned Sessions Judge, Amravati in

Special Case No. (ACB) 10/2009 thereby acquitting the respondent from the offences punishable under Sections 7, 13(i)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

5. The prosecution case in nutshell is that, the accused at the relevant time was working as a Block Development Officer. The complainant was serving as a Gramsevak, he proceeded on medical leave as he had undergone treatment for chest pain. He was medically advised to take bed rest for a period of 2 months. Thereafter he joined his duty on the post of Gramsevak. The complainant thereafter approached the concerned clerk, who used to deal with preparation of pay bills, for preparing his bill of 59 days leave pay. The complainant was asked to meet the accused - Block Development Officer. The accused demanded an amount of Rs.5,000/- for approving his bill for 59 days. After discussion, the bribe amount was settled at Rs.4,000/-. The complainant went and lodged complaint at Anti Corruption Bureau, Amravati. After completing the pre-trap-panchanama and necessary formalities, the complainant along with shadow panch entered the cabin of the respondent-accused and spoke with him about his leave salary bill. The accused asked whether the amount was brought. The

complainant then took out the tainted notes from his left hand shirt pocket and handed it over to the respondent-accused. The respondent-accused after accepting the notes kept them in the right side trouser pocket. Thereafter the complainant gave signal and the trap was executed. After completion of investigation charge-sheet came to be filed and the accused was charged for the offences punishable under Sections 7, 13(i)(d) the Prevention of Corruption Act. He denied the charge and his defence was that the said amount was received by him towards recovery of water tax. The learned Trial Court after appreciating the evidence acquitted the accused. Hence this appeal.

6. Heard the Additional Public Prosecutor for the appellant and the learned Advocate for the respondent. The learned Additional Public Prosecutor has taken me through the record and vehemently submitted that the prosecution had proved that the respondent had demanded and accepted the bribe amount. Shadow panch has supported the case of prosecution. Therefore, the learned Trial Court has failed to appreciate the evidence on record in the proper perspective. The learned Trial Court has given undue importance to the defence evidence thereby ignoring the cogent and

reliable evidence led by the prosecution. The acquittal is contrary to the evidence placed on record by the prosecution. The sanction granted was valid. Therefore the impugned judgment of acquittal is liable to be set aside. He therefore submitted that the appeal be allowed and the impugned judgment is set aside.

7. Per contra, the learned Advocate for the respondent supported the judgment of the learned Trial Court. According to him, the respondent has led evidence in support of his defence wherein the circumstances probabalising his defence were brought on record. The respondent has proved that the amount accepted by him was towards water Taxes. Hence the prosecution has failed to prove the offences against the respondent beyond reasonable doubt. He stated that the learned Trial Court has rightly appreciated the evidence and was justified in acquitting the respondent. He submitted that no case is made out by the appellant to interfere in impugned judgment and order. Hence the appeal be dismissed.

8. Heard the learned Additional Public Prosecutor and the learned Advocate for the respondent at length. Perused the notes of evidence filed along with the appeal.

9. In support of its case the prosecution has examined six witnesses. The defence on the other hand has examined four witnesses.

10. PW4 - Narayan is the sanctioning authority who has accorded section vide sanction order Exh.63. He has admitted that the documents perused by him at the time of granting sanction were not reflected in the sanction order. He has further admitted that individually as a Under Secretary he had no power to appoint as well as to remove Block Development Officer and that power lies with the Government.

11. The learned Trial Court has observed in the impugned judgment that the demand and acceptance of amount was proved by the prosecution in the evidence of PW1 and PW2.

12. One independent witness namely Vinod Lawale was examined as Court witness. Vinod was working as service executive in the Life Insurance Committee, he was present at the time of trap. However, he has not supported the case of the prosecution on the aspect of demand and acceptance of the bribe amount. On the contrary, his evidence supports the defence. He has deposed that

when he was explaining his policies to the respondent, one person entered the chamber who had brought the water bill amount. When the respondent asked that person to keep the amount with him the said person was in hurry and handed over the amount to the respondent and left the office. Thereafter, the raiding party entered the office of the respondent and caught him with tainted notes. Though this witness was declared hostile and was cross examined at length by the learned Additional Public Prosecutor, nothing could be brought out in his cross examination to implicate the respondent-accused.

13. The respondent had taken a specific defence that on 11/02/2008 i.e. on the date of initial demand of bribe, he was on tour and he visited various Gram Panchayats. He proved that he was on tour on that date by examining DW1 - Shashikant Murtizapurkar, DW2 - Mohd. Atiqr Rahim, DW3 - Baban Kolhe. All these witnesses have brought on record the certified copies of Visit Register Extracts (Exhs. 104 to 110), which show that the respondent visited their Gram Panchayats on 11/02/2008.

It is the specific defence of the respondent that the complainant was working as Gram Sevak and there were dues

relating to water taxes of Maharashtra Jeevan Pradhikaran which were outstanding towards the Gram Panchayat of the complainant, and those were paid by the complainant-PW1. The said defence is corroborated in the evidence of Court witness -Vinod Lawale. Defence witness Pradeep Wankhede, a Gram Sevak has deposed that he used to deposit arrears of water taxes at Panchayat Samitee with the cashier and whenever the cashier was on leave he used to hand over cash to the Block Development Officer and used to take the receipt subsequently. His evidence indicates that on several occasions the amounts towards arrears of water taxes were handed over directly to the Block Development Officer and it was not always deposited with the cashier.

14. On evaluation on the evidence on record, it is clear that the sanction order is vitiated as the PW4 was not the appointing or removing authority of the respondent. On this ground alone the acquittal of the respondent is justified. Apart from that the prosecution has failed to prove demand and acceptance. The defence of the respondent is fortified in the evidence of the Court witness – Vinod Lawale who was an independent witness. On the

date of alleged initial demand i.e. on 11/02/2008, the respondent was not in the office.

15. The learned Trial Court has properly appreciated the evidence and has acquitted the respondent by giving proper reasoning. A possible view is taken by the learned Trial Court and no fault can be found with the order of acquittal. There is no merit in the appeal. Hence the appeal is therefore dismissed.

JUDGE

J.Pethe..