

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

29 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.38 OF 2021

THE STATE OF MAHARASHTRA
VERSUS
ABASAHEB RAGHUNATH RATHOD

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Mr. R.B. Bagul, APP for the applicant
Mr. N.S. Ghanekar, Advocate for the sole respondent

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CORAM : SMT. VIBHA KANKANWADI, J.
DATE : 27th JUNE, 2022

ORDER :

1 Present appeal has been filed by State/Prosecution challenging the acquittal of the accused by learned Special Judge, Latur, Dist. Latur on 01.02.2021 in Special Case (ACB) No.12/2014; thereby acquitting the accused of the offence punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as PC Act, for short).

2 Original accused/present respondent was serving as Inspector in Public Trust Registration Office at Latur at the time of incident.

3 Prosecution had come with a case that original complainant Shastri Dnyanoba Chavan was working as Librarian in Prerana Sarvajanic Vachanalaya in village Murdhav, Tq. Renapur, Dist. Latur. Accused in his official capacity had issued notice to the Library of the complainant for inspection; however, it was blank. Complainant went to the office of accused to make inquiry about the said notice. Accused had demanded amount of Rs.50,000/- at that time for sending positive report of inspection of the library. Complainant gave him amount of Rs.5,000/- each on three occasions. But then he says that for rest of the amount of Rs.35,000/- there were settlement talks and it was agreed that complainant would pay Rs.10,000/-. Complainant was not ready to give bribe anymore, hence, he approached Anti-Corruption Bureau, Latur and lodged complaint on 12.11.2013.

4 It is further prosecution story that after Chavan made complaint to ACB, Latur, two panchas were called and arrangement of raid was made. The prior formalities were completed. Complainant produced amount to be given as bribe in the form of ten currency notes of Rs.1,000/- each. After giving of instructions to complainant and panchas, the police party, panchas and complainant went to office of the accused, in Diwanji complex at Latur. Complainant and the panch No.1 met accused. Thereafter accused

demanded the bribe amount by sign, accordingly, it was kept by complainant in the drawer of the table of accused. Complainant went outside and gave signal to the raiding party. Then P.I. Mr. Ankushkar went inside the office with staff, panch No.2 and disclosed his identity. They took search and found the ten tainted currency notes of Rs.1,000/- each in the drawer of the table. Trap panchnama was executed. Accused was taken into custody. P.I. Mr. Ankushkar lodged First Information Report (FIR) against the accused.

5 Investigation was undertaken after the registration of the offence. Statements of the witnesses were recorded. Accused was arrested. Voice sample was collected. Sanction was obtained. Investigating Officer had sent the voice recorded conversation and the sample after taking the hash value to the expert. Therefore, after the completion of the investigation, charge-sheet has been forwarded only against accused.

6 After the accused appeared before learned Special Judge, Charge vide Exh.33 has been framed for the offence punishable under Section 7 as well as for offence under Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act. Contents of the charge were read over and explained to the accused in Marathi. He pleaded not guilty. Trial has been conducted. Prosecution has examined in all 5 witnesses to prove the guilt of

the accused. It appears from the cross-examination of the prosecution witnesses taken on behalf of the accused and from his statement under Section 313 of Code of Criminal Procedure, that his defence is of total denial and false implication.

7 After perusing the evidence and hearing both sides, the learned Special Judge, has held that the prosecution has proved the sanction order, but failed to prove the guilt of the accused beyond reasonable doubt. Hence, accused came to be acquitted. Hence, this appeal by the prosecution.

8 Heard learned APP Mr. R.B. Bagul for the applicant/prosecution and learned Advocate Mr. N.S. Ghanekar for the respondent/accused. Perused the copies of evidence made available by the prosecution. Following point arise for determination, finding and reasons for the same are as follows :

P O I N T

Whether the prosecution has proved that the accused being the public servant working as Inspector in Public Trust Registration Office at Latur, by corrupt and illegal means and by abusing his position as public servant demanded Rs.10,000/- from Complainant Shastri Chavan for giving

positive report of inspection of his library, as a motive or reward for doing the said work in the exercise of his official function and thereby, committed offence punishable under Section 7, offence under Section 13(1)(d) punishable under Section 13(2) of Prevention of Corruption Act ?

FINDING

In the negative.

REASONS

9 It has been vehemently submitted on behalf of applicant/prosecution that the learned Trial Judge has not appreciated the evidence properly. It is not in dispute that the accused is a public servant. He was assigned with the duty of carrying out inspections of various libraries under his jurisdiction. Depending on his report, those libraries would have received the grants from the Government. It appears that there might be some shortcomings in the library of the accused and then the complainant needed the favourable report. But as a public officer, accused was bound to give true and correct report about his inspection. However, with corrupt practice, he demanded illegal gratification. PW 3 - Chavan is the complainant. He has deposed as to how he had approached the accused and

accused had demanded initially Rs.50,000/-. Complainant had even paid Rs.15,000/- out of that amount. The settlement was made for rest of the amount of Rs.35,000/- and unwillingly complainant agreed to give Rs.10,000/-. No amount was due from complainant to accused, therefore, complainant was knowing that whatever accused was demanding was 'bribe' i.e. illegal gratification. Complainant has proved his complaint. The evidence of all prosecution witnesses is corroborating with each other. The panch witness has specifically stated that the tainted amount was recovered from the accused. The demand and acceptance of the bribe amount has been proved. There is no explanation given by the accused as to how the tainted amount was in his possession. Sanction is also proved and it has been so held by the learned Special Judge. There is no technical defect left in the evidence of the prosecution; however, learned Trial Judge has acquitted the accused by taking hyper-technical ground. It ought to have been held that the prosecution has proved the guilt of the accused beyond reasonable doubt. Learned APP has prayed for admitting the appeal, as it requires re-assessment of the evidence.

10 Per contra, the learned Advocate appearing for respondent/accused supported the reasons assigned by the learned Trial Judge, while acquitting the accused. It was submitted that as per the

prosecution story, accused initially demanded amount of Rs.50,000/- and out of that complainant had given bribe amount of Rs.15,000/- on three occasions. It is surprising that at no earlier point of time, he felt that he should lodge a complaint. There was no verification of the demand at any earlier point of time. How after three payments, complainant realized that he should make a complaint ? There is no evidence collected by the Investigating Officer to show that in the past three installments were paid by complainant. We cannot take whatever complainant was saying as true in absence of proof. The voice sample is taken. But there was no evidence about identification of voice at the time of trial. The certificate under Section 65-B of the Indian Evidence Act was not annexed with the charge-sheet, which was mandatory. Mere seizure of tainted currency from the drawer of the table of accused was not sufficient to prove the guilt of the accused. Prosecution has not proved the 'demand' and 'acceptance'. Learned Trial Judge has rightly acquitted the accused.

11 At the outset, it can be said that the perusal of the evidence led by the prosecution would give an impression that it is corroborating to the prosecution story. However, apparent corroboration is not required to hold that any offence is proved beyond reasonable doubt. The story put forward by the prosecution and as it has been deposed by the complainant shows that

complainant was conducting affairs of a library, which in fact belonged to a Public Trust. When a Public Trust has come in picture, then the complainant who also appears to be the trustee, should show that Trust was doing its business as per the rules and regulations governing a Public Trust. The law requires that the Trust should submit its accounts with the Charity Commissioner every year. No such evidence has been collected by the Investigating Officer. Another fact to be noted from the prosecution story, even if we take it as it is, that certain amount was said to have been paid by complainant i.e. Rs.15,000/- on three different times. Complainant has not clarifies as to from which account, that amount was paid. Whether it was from the Trust money or his personal account ? If that amount was so paid from Trust account, then who had permitted such spending of the amount ? If it was from his personal account, then why he alone should pay the said amount ? It has not been brought on record as to who are the other trustees in the said Trust. The dates on which those payments were made is not disclosed. Thus, there is absolutely no evidence about earlier payments allegedly made to the accused for the same work. We cannot therefore, conclude that there was any nexus between the initial demand, part payment and alleged settlement of subsequent demand to Rs.10,000/- from remaining amount of Rs.35,000/-. There is no explanation by the complainant as to why he had not thought of lodging any complaint earlier. Another glaring

fact to be noted is that according to PW Ahmed - the then Charity Commissioner, the library of the complainant would have received grant of Rs.36,000/- with that report which accused would have given. Therefore, question arises as to whether for Rs.36,000/- complainant would have agreed to give Rs.50,000/- as bribe ? It is not the prosecution case that since beginning the complainant was not ready to give bribe. It appears that the resistance arose after part payment. Complainant has not stated that while negotiating further with accused, he had told that the government grant is less than the demand and, therefore, accused should reduce the figure. The prosecution story is itself, therefore unbelievable.

12 There are material discrepancies in the testimony of complainant and the panch No.1. Panch No.1 has stated that amount was demanded by the accused for giving favourable "audit report"; whereas complainant states that it was simply the favourable report for release of grant. Though the recording has been done, it was not played in the Court and identity of the voice has not been got done by prosecution. Merely matching of voice through some expert will not suffice. PW 4 is the expert and had given certificate, but in his cross, the Investigating Officer has admitted that he had not submitted the certificate under Section 65-B of the Indian Evidence Act along with charge-sheet. Mere seizure of tainted money from the drawer of

the table of accused is not sufficient to prove the guilt. The sanction to prosecute appears to have been granted mechanically. Critical assessment on the prosecution story ought to have been made before according sanction.

13 One more legal point that requires to be borne in mind while appreciating the evidence of complainant that, he being a party interested in making allegations against accused; his evidence will have to be scrutinized minutely. Reliance can be placed on the decision in ***Gulam Mahmood A. Malek v/s. State of Gujarat*** reported in 1980 (Supp) SCC 684; wherein it has been held that, “*the evidence of complainant himself is in the nature of an accomplice and his story is prima-facie suspect for which corroboration in material particulars is necessary*”. Similar ratio has been laid down in ***Panalal Damodar Rathi v/s. State of Maharashtra*** reported in AIR 1979 SC 1191. Further, it has been held in ***Deepakkumar Shashikumar Mishra v/s. State of Maharashtra*** reported in 2011 (4) LJ SOFT 146; after amendment in Indian Penal Code that, “*After introduction of section 165 – A of IPC making the person who offers bribe guilty of abatement of bribery, the complainant cannot be placed on any better footing than that of an accomplice. The uncorroborated testimony of complainant is not sufficient to uphold the conviction of the appellant*”. Therefore, very strong corroboration to the testimony of complainant is required.

14 The learned Trial Judge has rightly held that the previous demand was not proved. The contradictions and omissions in the testimony of the complainant and panch witness has been properly appreciated. The legal point involved are also fairly discussed. Therefore, when the evidence is lacking in all these material aspects, it will have to be held that the view taken by the learned Trial Judge in acquitting the accused is correct.

15 It is the cardinal principle of law that the merely because a second view is possible, the Appellate Court cannot replace that second view unless the trial Court has committed gross error and it has caused great prejudice to the prosecution. No case is made to convert the acquittal into conviction. There is no merit in the present appeal. It deserves to be dismissed, accordingly it is dismissed.

(Smt. Vibha Kankanwadi, J.)

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