

Shiv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.593 OF 2018**

The State of Maharashtra

... Appellant

Vs.

Manik Saybanna Kokani
Resident of Vidyavihar Apartment
Pankhabavdi, Solapur

... Respondent

Mr. H. J. Dedhia APP for the Appellant-State.

Mr. Pramod G. Kathane with Samyak A. Bhatkar, Ms. Pooja V. Kamble
for the Respondent.

CORAM : S. M. MODAK, J.

DATED : 20TH JANUARY 2023

JUDGMENT :

1. The Respondent-accused was acquitted for the offence punishable under sections 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act vide judgment and order dated 8th July 2016 passed by the Sessions Judge, Solapur in Special (ACB) Case No.7 of 2013.

2. The State has chosen to approach this Court by way of present Appeal. The complainant, PW 1 – Mohammed Pathan has not supported the prosecution case in toto. The trap panch during cross examination gave explanation (the Respondent has refused to accept illegal gratification and it has fallen down) supporting the

Respondent-accused. There were lacunas in the investigation also.

3. For these reasons the prosecution case was not accepted by learned Sessions Judge. Even though I have heard learned APP Shri Dedhia, it did not convince me to interfere in the impugned judgment.

4. As against this learned Advocate Shri Kathane with full force supported the findings which leads me to take decision to confirm the judgment of acquittal and to dismiss the Appeal. I will give the reasons hereinafter.

5. The prosecution case in nutshell is as follows :

The Anti Corruption Bureau was approached by PW 1 – Mohammed Hanif Valli Pathan. He was having many sons. It seems some of them were in conflict with law. They were booked by the police. The complainant was booked for murder offence with Jail road police station. Whereas from his one son 30 mobile sets being stolen property were seized. From his another son Maulali also 10 mobile handsets were seized by Fauzdar Chawadi police station. There was also prosecution under the Bombay Prohibition Act. On this background there was occasion for the complainant to visit Railway police station, Solapur on 27th December 2011. Earlier to that his son Umar was called by the police, however, he escaped and returned home. He told his father to visit police station and to bring his articles taken over by the police.

6. The complainant met Inspector Khandare attached to Railway police station, Solapur, who asked the complainant to get his sons

Umar and Faruq, who have escaped from the police station. They interacted with each other. For showing favour Mr. Khandare demanded Rs.50,000/- initially and finally it was settled to Rs.25,000/-. However, Mr.Khandare seems to be clever man and instead of agreeing to accept amount himself he had given mobile number which was of present Respondent. He was serving as Police Naik attached to Railway police station, Solapur.

7. The complainant was unhappy with this incident, and he approached Anti Corruption Bureau and lodged the complaint on 1st January 2012. PI Smt. Sangita Hatti was satisfied. She completed pre-trap formalities and then trap was arranged. The Respondent cleverly admitted pre-trap panchnama and the sanction. Though the complainant agreed to offer Rs.25,000/- towards illegal gratification, the tainted currency notes of Rs.15,000/- were only prepared and offered to Respondent-accused.

8. Though during examination in chief, the complainant and panch witness has said that the currency notes were kept by the Respondent-accused in the left side pocket of his shirt, it was revealed during the cross examination of panch witness that the Respondent-accused refused to accept the amount and it fell down. It suggest of no acceptance. There is also change in place of trap.

9. It is important to note that the complainant was not knowing the Respondent. It is matter of record that the Respondent was not present when initial talk took place in the police station. He was not aware about this talk. The evidence suggest that place of trap was

initially near Sayyed Bukhari Dargah and then it was changed to Kadadi chawl. The prosecution did adduced some evidence about conversation of demand. The complainant called the Respondent on his mobile number. Though initially, there was no talk the Respondent reverted back. He told the complainant to come near Dargah. This was at the time of pre-trap formality.

10. At the time of trap, the complainant was accompanied by PW 2 and as there were other raiding party members, they have taken precaution including giving tape recorder to the complainant. It seems that the complainant was not conversant with the functioning of tape recorder, and he was not aware whether it was on or not. The Respondent accepted the amount and kept it in its right side pant pocket whereas according to panch witness it was kept in left side shirt pocket. This is one of variance noted by learned Sessions Judge. Then post-trap formalities were completed. As learned Prosecutor realised that the complainant is not supporting, the questions were put to him which are permissible during the cross examination.

11. With the assistance of both sides I have perused the evidence. He admitted certain questions whereas denied other questions. His testimony was rightly discarded. Before the police, he has not said about giving a call to the Respondent and reverting back by the Respondent. Even about reiteration of bringing the amount by the Respondent, he has not stated before the police.

12. The panch witness PW 2 though was loyal to the prosecution, during cross examination he gave certain answers which favour the

Respondent-accused. It seems that he was truthful witness because he deposed what really has happened. When the amount was offered by the complainant to the Respondent, the Respondent refused to accept it and the tainted currency notes fell down and even there was scuffle in between the complainant and the Respondent. He lifted currency notes on the say of police and that's why there was glittering on his hand. This explanation is probable explanation. Learned Advocate Shri Kathane for the Respondent-accused is right that acceptance is not proved. He is also right that there is variance in between mode of acceptance. According to the complainant, the amount was kept in right side pant pocket whereas it was kept in shirt pocket as per panch witness. Such variance should not occur.

13. It is true that the complainant is treated as accomplice and his evidence needs corroboration from independent witness. It is not there. The evidence of the complainant is also not reliable. There is absolutely no evidence of demand of money by the accused. Reiteration of demand at the time of trap is by way of after thought because it is not stated to police by the complainant. There are certain ancillary objections. Rafiq Pathan, son of the complainant is not examined so also Satish Kokane is not examined. He is the person, who is the owner of Honda Activa. The papers belonging to the complainant were kept in dickey of Honda Activa. It was told by the Respondent to the complainant at the spot. How that Honda Activa came on spot and what is relationship with the Respondent could have been piece of evidence for reliability of the prosecution case.

14. Lastly, there is report under section 169 of the Code of Criminal Procedure thereby discharging accused Khandare. In fact he is officer from whom demand of money started. It has also weakened the prosecution case.

15. Learned Sessions Judge has also rightly disbelieved the evidence on the point of tape recording. The transcription of audio conversation was tendered in the examination but the prosecution failed to play tape recorder in the Court and thereby proving identification of voice through the complainant.

16. Hence, on all grounds the prosecution case is not reliable. There are inherent lacunas in the investigation. So also there are loopholes when the trial was conducted. Hence, learned Sessions Judge has rightly given benefit of doubt to the Respondent-accused. The findings are not erroneous. I find no reason to interfere in the impugned judgment. The Appeal is meritless and hence, is dismissed.

(S. M. MODAK, J.)