

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 1220 of 2012

The State of Maharashtra
(Through Karmala Police
Station, Karmala, Dist.Solapur) .. Applicant.
(Orig.Complainant)

Versus

Dashrath Sopan Narsale,
Age 47 years, Occ.Service,
R/o. Shinde Galli, Karmala,
District Solapur. ... Respondent
(Orig.Accused)

Mr AA Palkar, APP for the State.
Ms Meghna Gowalani, appointed Advocate, for the accused/
respondent.

Coram : R. N. Laddha, J.
Reserved on : 11 September 2023.
Pronounced on : 10 November 2023.

Judgment :

This Appeal is directed against the judgment and order passed by the Special Judge at Solapur in Special Case No.6 of 2006, whereby the accused/respondent came to be acquitted of the offence punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act').

2. The accused/respondent, who was working as an Assistant Lineman in the office of Assistant Engineer, MSEDCL, Karmala, is alleged to have demanded and accepted an illegal gratification of Rs.1,000/- by abusing his position as a public servant from the complainant Tukaram Vithhal Rode, as a motive/reward for providing electric supply and affixing meter to electric pump set in his agricultural land bearing Gat No.32/2/1A situated at village Bhose.

3. Upon receiving a complaint of demand of illegal gratification by the accused, the contents of the complaint were verified in the presence of panch witnesses. A trap was then set, and the accused was apprehended after accepting a bribe of Rs.1,000/-.

4. A report (Exh.35) was lodged at Karmala police station by Mr Bhaskar Thorat (PW 4), the investigating officer. Based on this report, an offence vide CR No.68 of 2006 was registered against the accused under Sections 7, 13(1)(d) read with 13(2) of the Act. Mr Baban Dagdu Naikwadi (PW 3), the then Executive Engineer, accorded sanction to prosecute the accused, and a charge sheet was subsequently filed. The charge came to be framed against the accused for the aforesaid sections. The accused abjured his guilt and claimed trial.

5. At the trial, to substantiate the indictment against the

accused, the learned trial Court recorded the evidence of witnesses, namely Tukaram Vithhal Rodge (PW 1), the complainant; Suresh Gangaram Waghmode (PW2), panch witness; Baban Dagdu Naikwadi (PW 3), the then Executive Engineer, who accorded sanction to prosecute the accused; and Bhaskar Prabhakar Thorat (PW4), the investigating officer. The statement of the accused under Section 313 of the Code of the Criminal Procedure, 1973 (for short CrPC), came to be thereafter recorded, consisting of denial and false implication.

6. After hearing the learned Counsel for the parties, the learned trial Court held that the evidence regarding the demand and acceptance of the bribe was questionable in several significant ways, and the defence put forth by the accused was probable. As a result, the accused was acquitted.

7. Being aggrieved by and dissatisfied with the impugned judgment and order of acquittal, the Appellant/State has preferred this Appeal.

8. I have heard Mr AA Palkar, the learned Additional Public Prosecutor for the State and Ms Meghna Gwalani, the learned Counsel for the accused/respondent and perused the impugned judgment, grounds in the appeal memo, evidence of the prosecution witnesses and the entire material available on record.

9. According to Mr AA Palkar, the Additional Public Prosecutor, the order of acquittal was not in accordance with the law. He stated that the trial Court misinterpreted the evidence presented by the prosecution and was swayed by several assumptions not supported by the evidence on record, resulting in a grave miscarriage of justice. He stated that the complainant provided a detailed account of events, which was corroborated by other witnesses. According to him, the evidence of the complainant and panch witness confirms the accused's demand and acceptance of the bribe. The evidence of PW 3 Baban Naikwadi demonstrates that he has thoughtfully accorded the sanction. Mr Bhaskar Thorat (PW4) testified that necessary procedures for setting up the trap were followed, and the accused was nabbed while accepting the bribe. In his view, the defence of the accused is not at all probable.

10. Ms Meghna Gowalani, the learned Counsel for the respondent/accused, supported the line of reasoning adopted by the trial Court to record the finding of acquittal. She made various submissions countering the arguments made on behalf of the Appellant/State.

11. After examining the evidence of the prosecution witnesses, it is clear that the complainant owned agricultural land, dug a well and installed an electric motor pump on it. In 1999, he applied for an electric meter and deposited the required quotation amount.

The Assistant Engineer, Mr More, informed the complainant that the meters were not available in his office. The MSEDG authority or customer can purchase electric meters from the open market, as per the government circular. The cross-examination of the complainant revealed that, on 7.4.2006, the complainant submitted an application, which was endorsed by Mr More, the Assistant Engineer and directed him to meet Mr Shaikh. Mr Shaikh also informed the complainant that electric meters were not available. After that, the complainant met the accused, who told him the meter could be purchased from the market and demanded Rs.1,000/- to bring the same. The cross-examination of PW 2 Mr Waghmode also shows that the accused was informed by the complainant that the electric meters were not available. The accused then asked for Rs.1,000/- to purchase the electric meter. The defence of the accused was that he accepted Rs.1,000/- to purchase the electric meter and not as a bribe.

12. The presumption of acceptance of gratification other than legal remuneration is rebuttable. The accused only has to show that his defence was probable. In this case, the defence version is supported by the prosecution's version. The MSEDG office did not have electric meters available, and they can be purchased from the open market. The government circular to that effect is also placed on record. When this fact was established, and the defence

was in conformity with such government circular, the accused having accepted Rs.1,000/- would not lead to the definite conclusion that the money was received as a bribe. The trial Court rightly concluded that the explanation given by the accused was probable and reasonable.

13. Resultantly, this appeal fails and is hereby dismissed.

[R. N. Ladhha, J.]