

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 3 OF 2013

The State of Maharashtra
[Through Police Inspector,
Anti Corruption Bureau]

...Appellant

vs.

Sau.Sunanda Subhash Korvi

...Respondent

Mr.S.R.Agarkar – APP for Appellant – State.

Mr.Manohar S. Mandavkar – Advocate for Respondent.

CORAM : S. M. MODAK, J.

DATED : 10TH AUGUST 2023

P. C. :

1. Heard learned APP for Appellant – State and learned Advocate for the Respondent – Accused.

2. The Court of Special Judge – Kolhapur as per the judgment dated 30th August, 2012 was pleased to acquit the Accused for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 [**“PC Act”**]. As such, the *‘presumption of innocence’* is reinforced. So, the issue is whether the findings by the trial Court are perverse and whether it can be interfered with by the Appellate Court.

3. The Respondent was working as a Head Constable in Shirol

MIDC Police Station. The motorcycle of the *defacto* complainant Milind Manohar Konduskar met with an accident on 4th December, 2009. It was in front of Bus Stand of village – Top. One Nayaku Salunkhe was injured, whereas, father of Konduskar fell from the motorcycle and he also got injured. He was operated at City Hosiptal – Rajarampuri – Kolhapur and got discharged on 1st January, 2010.

4. The present Respondent was intending to record a statement of father of Mr.Konduskar. It could not be recorded due to ill-health. Mr.Konduskar sent his employee to Police Station for the purpose of an enquiry. Then Mr.Konduskar went personally. The Respondent took him to task. She recorded a statement of Mr.Konduskar. The Respondent demanded Rs.5,000/- if at all the motorcycle is to be returned. First, Mr.Konduskar was perturbed and hence, he lodged the complaint with Anti Corruption Bureau – Kolhapur on 8th January, 2010 (Page No.58).

5. Pre-trap panchnama was performed on 8th January, 2010 (Page No.75). Mr.Konduskar handed over tainted currency notes to the tune of Rs.5,000/-. The *defacto* complainant and the Panch witness – PW No.2 – Smt.Sulochana Manohar Mandare went to the Shirol MIDC Police Station for the purpose of verification of a demand on 8th January, 2010. At the time of verification, the Respondent

referred about Rs.10,000/-. A verification was recorded in a digital recorder. After returning to the Office of Anti Corruption Bureau, verification panchnama was performed (Page No.70). Audio conversation is also reproduced therein.

6. On this background, a trap was laid on 8th January, 2010 at about 17.35 hours in Shirol MIDC Police Station. The panchnama is on Page Nos.79 to Page No.83. It contains the happenings after the predetermined signal is given by the *defacto* complainant. However, prior to giving of a signal, there has to be offering of tainted currency notes and the acceptance. Unfortunately, it is not there. There is a reference that search was taken and tainted currency notes of Rs.5,000/- were found with the Respondent. On this background, the FIR is lodged by the Investigating Officer – Dy.S.P – Madhukar Dhondiba Shinde – PW No.3.

7. During the trial, in all 3 witness were examined. They are ; PW No.1 – *defacto* complainant ; PW No.2 – Smt.Sulochana Manohar Mandare – Trap Panch and PW No.3 – Madhukar Shinde – Investigating Officer. Sanctioning Authority was not examined because the sanction was admitted by the defence. (Page No.112).

8. The trial Court has not believed the Prosecution evidence on the following grounds :-

- (a) Before the Court, the complainant deposed that the Respondent made a demand of Rs.10,000/- and on his request, she reduced it to Rs.5,000/-. Whereas, it is not there in the complaint.
- (b) The *defacto* complainant is silent on the aspect of reduction of demand in the complaint.
- (c) The evidence of *defacto* complainant is not corroborated substantially by Panch witness because she admitted during cross-examination that she was standing outside the Police Station when *defacto* complainant went inside.
- (d) The trap panch is silent about conversation about *defacto* complainant and the Accused.
- (e) The evidence of Panch witness is silent about the conversation in between Mr.Konduskar and the Respondent about reducing the amount.
- (f) Furthermore, there is a doubt from where the tainted currency notes were recovered, that is to say, from the pocket of the shirt or from the pocket of the pant of the Accused. So far as recovery of the amount from the person of the Accused is concerned, it was removed by Dy.S.P. Mr.Shinde as per the version given by the complainant. Whereas, the Investigating Officer himself has stated that Panch witness Mrs.Mandare removed the amount from the possession of the Accused. (Para 35).

- (g) The panch witness has not deposed about recording of conversation.
- (h) Even Mr.Konduskar admitted that he was already handed over the key of the motorcycle and in fact, he was also asked by P.I. Yadav to take back the motorcycle. The illegal gratification was demanded for the purpose of handing over the motorcycle. However, the above evidence suggests that the key was already handed over. So, no work remained with the Respondent. (Para 36).

9. For the above discussion, the trial Court found the Prosecution evidence not reliable and trustworthy. It is true that mere recovery of money unless preceded by satisfactory evidence about the demand of an illegal gratification has no value.

10. If there is variance in the evidence of complainant on one hand and averments in the complaint, how such testimony can be believed. Panch witness has not supported the *defacto* complainant as on material aspect. Conversation is recorded and transcription is prepared but it cannot be considered without a certificate issued under Section 65B of Evidence Act.

11. After hearing both of them, I do not think that the findings recorded by the trial Court needs interference. The judgment is well reasoned judgment and after proper appreciation. There is no

perversity in those findings. No interference is warranted. Hence,
Appeal is dismissed.

[S. M. MODAK, J.]