

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 733 OF 2007

The State of Maharashtra

...Appellant

vs.

Mahesh Dattatraya Kamane

Age – 30 years,

R/o – Ground Police Line,

Room No. 107, Satara City,

Dist – Satara

...Respondent

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

Mr. Prathamesh Pravin Galinde a/w Mr. Navinya Rajendra Gadiya i/
by Mr. Rahul S. Kate - Advocate for the Respondent

CORAM : S. M. MODAK, J.

DATE : 03rd FEBRUARY, 2023

JUDGMENT :-

1. The Constitutional bench of the Hon'ble Supreme Court in case of *Neeraj Dutta V/s. State (Govt. of N.C.T. of Delhi)*¹ has held that even if evidence of the Complainant is not available or if he has not supported the prosecution case, on the basis of other evidence, the Court can ascertain whether the ingredients of Section 7, 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act are satisfied.

1 AIROnline 2022 SC 1160

2. In this appeal also the Complainant has not supported the prosecution case and hence this Court is supposed to undertake that exercise. This exercise has already been undertaken by the trial Court and it was concluded that the case is not proved. That is how the State has challenged the judgment of the acquittal passed by the Special Judge, Satara on 29/11/2006.

3. There are cases in which Public servants are trapped for accepting illegal gratification. It is on account of showing some favour and this favour is for doing some work. There has to be connection in between the official work and demand for illegal gratification. These are the ingredients of Section 7 of the Prevention of Corruption Act. Whereas Section 13(1)(d) of the said Act these are not requirements.

Official Work

4. The Respondent demanded bribe for assisting the Complainant-Sangita Gaikwad in a case instituted against her by one Jalindar Jadhav for the offence punishable under Section 138 of the Negotiable Instrument Act. The Respondent was entrusted with the responsibility of serving the summons on the Complainant and that

is how there was an occasion for the Respondent to misuse his official position. The trial Court has rightly not accepted these reasons. There has to be some specific work which is official work. It is connected to the duties of accused or not is not relevant. But it must be official function. It is not clarified as to how the Respondent will help the Complainant in that cheque cases. The Respondent was only entrusted with the job of serving the summons and there is no evidence how he is connected to that case and its final outcome. So basic link was not established by the prosecution. I endorsed those findings. Even Sanctioning authority could not gather as to what help the Respondent can give to the Complainant. (Para no. 3 of the cross-examination.)

5. This was considered by the trial court in para nos. 26 and 27 of the judgment. The trial court observed that 'none of the prosecution witnesses has deposed about the mode and manner in which accused was going to help the Complainant and how he was going to get decided criminal case instituted against her in her favour.

Demand

6. We are concerned with the evidence on the point of demand prior to lodging the complaint and reiteration of that demand at the time of trap. We have got the evidence of P.W. No. 1 – complainant-Sangeeta Gaikwad and P.W. No. 2- Sau. Anuradha Mahadik. However the prosecution could not get any assistance from the evidence of the P.W. No. 1 on both the counts. P.W. No. 2- Anuradha did supported the prosecution case on the point of the reiteration of the demand at the time of trap. However it was not accepted by the trial court.

7. When there was complaint filed by the Jalindar Jadhav for the offence punishable under Section 138 of the Negotiable Instrument Act, the summons came to Satara City Police Station. The Respondent was entrusted the job of service of summons. When he visited the house of the complainant on the date of trap that is 17/10/2001, he did possess that summons.

8. The Complainant was apprised about receipt of the summons and assured the result in her favour, if money is paid to

him in second week of September, 2001. Initially, it was telephone call by the Police Constable(not named). The demand was reiterated in the third week of September, but on this occasion the Respondent came to her house and demanded the money of Rs. 500/-. The Respondent again telephoned her on 15/10/2001 and demanded Rs. 500/-. The Respondent had come to the house of the Complainant on 17/10/2001. But at that time, raiding party members were present. In the meantime, there was complaint lodged on 17/10/2001 to Anti Corruption Bureau, Satara. The Respondent was caught while accepting bribe of Rs. 500/- and then Deputy Superintendent P.W. No. 4 Pandurang Khot lodged the complaint.

9. However, when it is turn of the Complainant to attend the Court and depose, she has cleverly omitted those portion wherever there is a reference of the Respondent-accused. She did said that there is phone call from the Police Station, she did said about visit of the Police Constable, lodging of the complaint and raiding party members visiting her house.

10. So also she had given explanation about offering of Rs.

500. After seeing the Respondent in the house she realized that he was not the same fellow to whom he has paid Rs. 500/- earlier. That is why she was confused. She put the amount in the hand of the accused. Even she has said about reply reaction of the Respondent. The Respondent replied what is purpose of giving that amount. She was declared hostile. Nothing was elicited during cross-examination to support the prosecution case. On this background, the trial Court rightly disbelieved her.

11. When the question of appreciating the evidence of P.W. No. 2, Panch Witness had come, the trial Court concluded that she is truthful witness.

12. It is true that panch witness can certainly say about reiteration of the demand and acceptance of the amount. The trial Court believed her on the point of the acceptance of the demand. Even the Complainant has said accused accepted that amount. So the question is whether it is in pursuance of demand made by the Respondent. It is also important to consider the other circumstances P.W. No. 4-Investigating Officer deposed that from motor cycle of the

Respondent, he collected copy of the summons. The Respondent wants to rely upon this circumstance to prove his innocence. He wants to suggest that he had gone there to discharge of his official duty. It finds place in the evidence of P.W. No. 4 (page 140).

13. Whereas the trial Court dealt with this piece of evidence in para no. 22 to para no. 24. The trial Court found the explanation given by the Respondent as probable. If the Respondent wants to demand a bribe for showing favour, why he will go there alongwith summons. As I have said that nature of the favour alleged against the Respondent is vague. So there is inherent lacunae in the prosecution case. As said above there is no evidence about pre-complaint demand, the law is well settled. The evidence about acceptance of money cannot be considered unless there is the evidence about demand. In this case, it is absent. So I agree with the trial Court.

14. So I agree with the trial Court. So I am not in disagreement with the finding of the trial court on the point of sanction. So there is no evidence of demand and as said above on

the basis of other circumstances, the demand is not proved. No other witnesses on the point of demand is examined.

15. The view taken by the trial court is a possible view. The Appellant has not made out any ground for interference. The Appeal is meritless and hence it is dismissed.

[S. M. MODAK, J.]