IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 572 OF 2012

The State of Maharashtra	]
(Through Faujdar Chawdi Police	]
Station, Solapur)	]...**Appellant**
Versus	
Dnyaneshwar Mahadev Pawar	]
Age 40 Years, Occcu :Service	]
R/o. 384, Budhwar Peth, Benind S. T. Stand,	]
Solapur.	]...**Respondent**

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Mr. H. J. Dedhia :-	APP for Appellant – State.
Mr.Fazlur Rahman a/w.Mr. Dalbag Singh Rai :-	Advocate for Respondent.

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CORAM : S. M. MODAK, J.

DATE : 20th AUGUST 2024

ORAL JUDGMENT:-

1. Heard learned APP Mr.Dedhia and learned Advocate for Respondent / acquitted Accused.

2. The Respondent is acquitted by the Court of Special Judge, Solapur for the offences punishable under Sections 7, 13(1) (d) r/w. 13(2) of Prevention of Corruption Act, 1988 ("PC Act") as per the judgment dated 29th December 2011. It's correctness is challenged by the Appellant – State.

3. <u>The only issue arisen in this Appeal is, "*whether the money demanded by the Respondent as Tax Recovery Officer of Solapur Municipal Corporation is by way of an **illegal gratification** or whether it is by way of **recovery of arrears of tax** of house property bearing No. 57*"</u>. The trial Court gave a benefit of doubt to the Respondent and acquitted him.

4. It is true that there was a demand of money firstly on 12th December 2003 by the Respondent and this demand was reiterated on 15th February 2003 at the time of trap. The money was demanded for forwarding the file to higher officials.

<u>Prosecution case</u>

5. One Shyama Mohan Gaikwad purchased a hut from one Karimbi Bagwan. Her son Kisan applied for transfer. Even he paid ₹500/-

(Rupees Five Hundred only) on 1st September 1997. Till the year 2003, the hut was not transferred. Even Kisan expired in the year 1998. In the month of October 2003, Shyama Gaikwad informed *de-facto* Complainant Anand Janrao about non-transfer of the hut in her name. He was her maternal relative. That is why, *de-facto* Complainant Anand came into picture.

6. First, he met one Shri.Bhandari. He advised Anand to meet the present Respondent. The Respondent gave evasive answers. First demand was made on 12th December 2003. In the complaint lodged on 15th December 2003, Anand has stated following facts :-

"पवार यांनी – पैसे दिल्याशिवाय काम होणार नाही असे सांगितले."

7. Somehow, Anand paid ₹200/- to the Respondent. Anand was asked to pay remaining amount of ₹300/- on Monday. Anand got disturbed and approached Anti-Corruption Bureau, Solapur on 15th December, 2003 and lodged complaint at Exhibit - 18.

Evidence

8. When question of giving evidence has come, Anand has deposed before the Court as "*I inquired with him (Respondent) when the case will be opened. So I was told by him that Rs.500/- (Rupees Five*

Hundred) will be required". According to learned Advocate for Respondent, Anand has not inquired for what purpose, the money is required. It may be by way of an illegal gratification or by way of arrears of the house tax. His emphasis is, the money has to be demanded by way of an illegal gratification as a '*motive*' for doing some official work. No doubt, whatever stated in the Complaint at Exhibit - 18 is not deposed by him before the Court.

9. When the question of deposing the facts at the time of trap has come, Annad reiterated same facts except the purpose for which the money is required. That finds place at Page No.61. So also, he has not clarified for what purpose the money is demanded.

10. Learned Advocate for Respondent laid emphasis on the conduct of Anand. Anand has signed the Application not in his own name but as Kisan Mohan Gaikwad. In fact, Kisan has died in the year 1998 only. (Paragraph No.6). It is important to note, how much house tax was in arrears. The total house tax due in the year 2003 is ₹1673/- (Rupees One Thousand Six Hundred Seventy Three). The details of payment are as follows :-

(i) ₹850/- (Rupees Eight Hundred Fifty) was paid on 9th December

2003. The receipt is at Exhibit-27. (Admitted by the Respondent). There was some issue whether the Respondent has issued the receipt. But there is nothing on record to show that he has issued it.

(ii) ₹823/- (Rupees Eight Hundred Twenty Three) was balance in the month of October-2003.

11. A plea was raised that there was pressure on the Respondent from higher officials of the Corporation for recovery of the arrears of house tax otherwise he will be held responsible. Two such documents are shown to me from the trial Court record. But they were not proved. Nothing was suggested to the witness about this pressure. It cannot be considered.

Evidence of trap panch

12. The evidence of P.W.2 is material about the conversation at the time of trap. He deposes :-

> "Accused asked the Complainant as 'आणले का पैसे?'. Complainant replied in the affirmative. Complainant was told by the Accused 'आणले तर देउन टाका प्रकरण लवकर पाठवतो' ."

13. During cross-examination, his conversation was marked as 'portion mark-A' from the trap-panchnama. There is a reference

"राहिलेले पैसे आणले का?" in the panchnama which he has admitted. The Investigating Officer P.W.4 has admitted that unless entire property tax is paid, there can be no transfer (Paragraph-11).

14. I do agree with submissions advanced on behalf of Respondent on two aspects. The observation of trial Court is not correct. **Firstly**, it is in respect of official work of the Respondent. The trial Court observed :--

> "*The accused has no power to transfer the property by accepting bribe or without bribe. Without payment of tax, property cannot be transferred*". (Para No.30).

It is not the case of prosecution that Respondent was competent to transfer. In fact, the money was demanded for sending file to higher officials. The above observation of the trial Court is wrong.

15. **Secondly**, the trial Court observed :--

> "*The Investigating Officer ought to have asked explanation from the Respondent why the money is accepted*".

It is recorded in paragraph No. 33. Why Investigating Officer will ask the Respondent why the money is demanded when the identity of notes is established. Investigating Officer was not expected to ask. In fact, Respondent if could have given an explanation to the Investigating Officer, it could have been considered.

16. Except above two points, I agree with the findings of the trial Court. The issue lies within a thin line, whether the money is demanded by way of bribe or by way of arrears of house tax. Learned Advocate for Respondent relied upon following judgments :-

(i) ***Vijaykumar Vs. State of Tamilnadu.***[1]

(ii) ***Selvaraj Vs. State of Karnataka.***[2]

(iii) ***Sanjiv and Anr. Vs. State of Himachal Pradesh.***[3]

He also emphasised that there were five to six persons present at the time of trap but they were not examined. Even, Shyama Gaikwad, who is the purchaser of the hut, was not examined as a witness.

17. I am inclined to confirm the findings of the trial Court. Benefit of doubt has to be given to the Respondent. It is for the reason that the *de-facto* Complainant in his Complaint at Exhibit - 18 even though stated that *"the work will not be done without payment of money"*, he has not deposed this fact before the trial Court. It has not come in the

1 (2021) 2 SCC 687
2 (2015) 10 SCC 230
3 (2022) 6 SCC 294

evidence that the accused was entitled to issue receipt. When the evidence of the Complainant and Punch witness on the point of demand is perused, what we can gather is, that money is demanded. <u>This demand will become a demand of illegal gratification only when there is a reference that money is demanded for doing some official work.</u> Unfortunately, the *de-facto* Complainant has not deposed that Respondent has refused to do the work unless the money is paid. If he could have deposed these words, it could have got a demand of an illegal gratification. For these reasons, I am not inclined to interfere in the judgment of acquittal. Hence the order :-

<u>O R D E R</u>

The Appeal stands dismissed.

[S. M. MODAK, J.]

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