

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

CRIMINAL APPEAL NO.272 OF 2015

The State of Maharashtra

...Appellant/
(Orig. Complainant)

vs.

Bhujang @ Nana Dattatraya Kadam
Age : 51 years, Occ.: Service,
R/o. Manas Apartment, 506,
Dhairy-Sinhagad Road, Pune.
Originally inhabitant of Sawale Galli,
Barshi, District Solapur.

...Respondent
(Orig. Accused)

Mr. H.J. Dedhia, APP for State.

Mr. Rohan Nahar i/b. Mr. Vishwesh Bhise, for Respondent.

CORAM : S. M. MODAK, J.
DATE : 16th JANUARY 2024

JUDGMENT :-

1. The Special Court as per the provisions of the Prevention of Corruption Act, Pune as per the Judgment dated 26th September 2013 has acquitted the present Respondent for an offence punishable under sections 7, 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act.
2. The correctness of the said decision is challenged at the instance of the State. The Appeal was admitted on 30th January 2015. Today, I have heard learned APP and learned Advocate Shri Nahar for the Respondent – Accused.
3. Learned APP and learned Advocate Shri Nahar have invited my

attention to the oral evidence in the form of 4 witnesses and the documentary evidence and they have also brought to my notice various observations. Mainly, the trial Court has acquitted the Respondent on the following grounds:-

- (i) The *bonafides* of the complainant PW 1 – Shaikh Rashid Chottu Miyya are not above suspicion.
- (ii) There is inconsistency in between the testimony of PW 1 – *de facto* complainant and PW 2 – Fakir Mohammad Chand Shaikh – Trap Panch.
- (iii) Even there are *lacunae* in the investigation and certain provisions of Anti-Corruption Manual were not followed by raiding officer PW 3 – Dy.Sp. Shri Vijay Dhopavkar.

4. The Respondent was working in the Home Department at the relevant time. He was attached to newly created Alandi Police Station, Pune as Assistant Police Inspector. The sanction to prosecute him was granted by the Director General & Inspector General of Police on 20th July 2010. He was not examined as the sanction was admitted by the accused (Exh.22).

Factual Matrix

5. The *de facto* complainant – PW 1 – Shaikh Rashid Chottu Miyya (page 31) deals in scrap materials in the name and style as ‘Bharat Steel’ at village Chakan. He used to purchase scrap materials and used to sell it

to various factories. He was also having one shop at Devachi Alandi. He was being harassed by the Police Officers attached to Alandi Police Station. The FIR is lodged by Dy. Sp. Vijay Dhopavkar on 16th October 2008 (page 67) with Alandi Police Station. This was in respect of an incident of pre-trap demand made earlier to approaching Anti-Corruption Bureau at Ahmednagar on 15th October 2008. He has chosen not to approach A.C. B. at Pune. Earlier to this demand, his contention is the present Respondent and his Assistant one Rahul Kale took custody of one Tempo No.MH-04-C-3419 and parked it in the campus of Alandi Police Station unauthorisedly. This tempo is not owned by the *de facto* complainant Shaikh Rashid but one businessman from Ahmednagar was its owner and he has sent that tempo to the *de facto* complainant for the purpose of loading of scrap material. This was two months earlier to trap.

Prior Incidents

6. This is not the first incident wherein the *de facto* complainant was harassed but four months earlier also the Respondent along with his colleague extracted Rs.1,50,000/- and on two occasions Rs.30,000/- under the fear of seizing the truck. Earlier to this incident also his truck was seized and legal action was taken at that time. *De facto* complainant got custody as per the order of the Court.

7. However, on this occasion the *de facto* complainant was tired of the persistent demand and he has not met the Respondent for 8 to 10 days.

As per the business practice followed by the *de facto* complainant and that businessman from Ahmednagar, it was the responsibility of Mr. Shaikh Rashid to see that the tempo will be released. Unwillingly, he met the Respondent and at that juncture, the Respondent demanded Rs.90,000/-. The Respondent disagreed to reduce the amount instead threatened him to detain in jail. Eight days thereafter, the *de facto* complainant also prayed for reduction. He was asked to pay Rs.50,000/- initially and Rs.40,000/- was to be paid later on. Earlier practice of handing over money in an envelope was followed on this occasion also.

Approach to ACB

8. The *de facto* complainant on this occasion has decided to approach the Anti-Corruption Bureau. The Respondent is hailing from Pune area but he has chosen to approach Anti-Corruption Bureau, Ahmednagar. As stated above, his initial complaint was recorded on 15th October 2008. PW 2 is one of the panch and contention is deliberately a member from Muslim community is called. It was also considered by the trial Court (para 20). The pre-trap panchanama was performed on 15th October 2008 in between 12.15 to 15.45 hours. Shaikh Rashid handed over 50 currency notes of Rs.1,000/- denomination. They were used as tainted notes. Then the trap was arranged in the premises of Alandi Police Station. It was successful. The said panchanama was carried out from 15th October 2008 at 21.20 hours to 2.25 hours on 16th October 2008 (Exh.28) (page 57).

9. Even though Anti-Corruption Manual advises not to keep the tainted notes in an envelope, Dy. Sp. Dhopavkar for the reasons best known to him has kept those notes in an envelope and the envelope was offered by Shaikh Rashid. The Respondent has not accepted that envelope but the envelope was kept on the table. The complainant kept letter on that envelope. As instructed predetermined signal was given by coming out of the Police Station and Dy. Sp. Dhopavkar, other pancha and raiding party members have entered the Police Station and caught the Respondent. The formalities were completed. When the hands of Respondent were examined, nothing uncommon was found and rightly so, because it is not the prosecution case that he has accepted the envelope or touched it. On completion of the investigation, charge sheet was filed.

Prosecution Witnesses

10. The following are the prosecution witnesses:-

(a)	PW 1	Shaikh Rashid Chottu Miyya	Exh.20	page 37	Complainant
(b)	PW 2	Fakir Mohammad Chand Shaikh	Exh. 26	Page 43	Trap Panch
(c)	PW 3	Dy. Sp. Vijay Dhopavkar	Exh. 32	Page 70	Investigating Officer
(d)	PW 4	Dy. Sp. Dilip Patil	Exh. 35	Page 83	Investigating Officer

Findings of Trial Court

11. When I have read evidence and the findings recorded, the learned

Judge has scrutinized the evidence in detail, he had gone into it and other aspect and the submissions made before him. He found the conduct of the *de facto* complainant as tainted one and also that of Dy. Sp. Dhopavkar. He laid emphasis on lacunae of investigation and also not following the manner.

12. After reading those observations, I do not find that there is any reason to interfere in the said judgment. The conclusion was drawn after proper appreciation and judgment is reasoned one. It is a settled law that in an Appeal against judgment of acquittal, the Appellate Court should be slow in interfering in the said judgment. Even though learned APP tried to convince me, I am unable to agree with his submission.

13. Now, I will give reasons why I have come to this conclusion:-

- (I) Learned trial Judge pointed out the lacunae in investigation in not collecting the material either by recording the statement of the tempo owner who is from Ahmednagar. Admittedly, the *de facto* complainant was not the owner of the tempo.
- (II) What prevented the Investigating Officer who is PW3 from recording the statement of the owner?
- (III) It could have thrown light in what manner this tempo was parked at Devachi Alandi and ultimately, this has led to transporting that tempo and parking it in the premises of

Alandi Police Station (Gargoti).

14. Learned trial Judge has emphasized about inaccurate details of the demand. On two aspects, he found demand as unsatisfactory. One is the details of demand i.e. to say the date and place are not mentioned (para 17) and there is inconsistency in between PW 1 and 2.

Inconsistency

15. Furthermore, the learned trial Judge has noticed about variance in between the testimony of PW1 on one hand and PW2 on the other hand. The variance is in respect of the details of the events that took place after raiding party members visited Devachi Alandi on 15th October 2008. The variance is as follows :-

(a) According to *de facto* complainant, they entered the Police Station only on two occasions i.e. to say, firstly immediately after visiting Devachi Alandi and as some other persons were present there. The Respondent instructed them to wait. The *de facto* complainant went for Namaz prayer and when he met the Respondent after the prayer, at that time, it is the accused Respondent who inquired why Rs.90,000/- was not brought (para 6 of his evidence).

(b) Whereas, the panch witness PW 2 was advised to enter the Police Station thrice. Firstly, at 7.15 pm the Respondent asked them to wait for 30 minutes. Secondly, it was about 7.45 pm, at that time, there was some interaction in between Shaikh Rashid and the Respondent. Respondent

inquired about money. Shaikh Rashid replied he would inform his colleague. Finally Respondent asked them to come after one hour and on the third occasion, they again entered Police Station at 8.50 pm and at that time, this money was offered (para 2, 3 and 4 of his evidence).

16. Learned trial Judge has emphasized on this inconsistency. So if they have met the Respondent thrice, their version ought to have been consistent. I agree to the said observations.

Demanded by whom

17. Another reason why the learned trial Judge doubted the demand is for the reason that Shaikh Rashid while interacting with the Respondent lastly has deposed :-

“Accused asked me as to why I have not brought full amount of Rs.90,000/-. I said that at present I am paying Rs.50,000/- and would pay remaining amount of Rs.40,000/- while taking my vehicle.” (page 33).

18. On the other hand, the trap panch PW2 has deposed :-

“Complainant said that he has brought the amount of Rs.50,000/-”. (para 4) (page 45).

19. So to say as per the panch witness, it is not because the Respondent who has made inquiry as to how much amount Shaikh Rashid has brought but it is Shaikh Rashid only who has said that he has brought Rs.50,000/-. This statement does not find support from Shaikh Rashid. If

particular event has happened and that too, in a prosecution under P.C. Act wherein evidence of demand is material, the law favours consistency in between the evidence of two witnesses. Because demand is one of the ingredient for an offence under section 7 of the Prevention of Corruption Act.

Corroboration

20. It is also well settled that the *de facto* complainant is also interested witness. So law expects corroboration from an independent witness called as Panch. This inconsistency is there which goes to the root of the matter and rightly the trial Court has emphasized on this inconsistency. One cannot overlook the background of arranging the trap. It is undisputed fact that the *de facto* complainant was arrested and his tempo was seized by Police Officer none other than the present Respondent on earlier occasion, though not immediately but earlier to the date of the trap. Now, the lacunae in the prosecution evidence have occurred due to the over enthusiasm of the witnesses or where really there was no demand. There may be several reasons for this inconsistency. This inconsistency has to be viewed seriously for the reason that the *de facto* complainant was arrested earlier.

Other Lacunae

21. It is true that it has come in the evidence about the telephonic conversation in between *de facto* complainant and the Respondent prior

to the date of the trap. It has also come in the evidence of Dy. Sp. Dhopavkar that Shaikh Rashid was having mobile handset. It is true that in case of demand, the Investigating Agency is taking care in collecting the materials by way of verification of those demands. Even it has come in the cross-examination of Dy. Sp. Dhopavkar that they were provided with tape-recorder and camera (para 12 of his evidence) but he had chosen not to use those electronic devices for the purpose of verification of demand. Reason put forth by him was they were not in working condition. Even he admits that during his tenure of three years at Nagar he has never used those electronic devices. This explanation is objectionable. It means that he has considered those electronic devices insignificantly. Then why the Government has provided these devices. It is only for the reason of collection of materials so that it can be put by way of evidence. For the reason best known to him, he has not taken care in collecting those materials even when there was telephonic communication.

22. As said above, there is provision of not keeping tainted currency notes in the envelope. By blatant disregard to these instructions Dy. Sp. Dhopavkar had chosen to keep those currency notes in the envelope.

23. Learned trial Judge has taken pains in going through instructions (K) of Chapter (V) from the Manual (page 23 of the Judgment). Furthermore, it is a fact that the Respondent has not touched the envelope. That is why, nothing uncommon was found when his hands

were examined after the trap. Learned trial Judge has discussed this piece of evidence in paragraph 24 of the judgment. There is no reason to disagree with this conclusion.

24. These are my reasonings, why I agree with the findings of the trial Court. It is true that it has come in the evidence of Dy. Sp. Dhopavkar that the tempo was parked in the premises of Alandi Police Station. They saw it in the Police Station but merely because it is parked in the premises, that does not take prosecution case further. It does not prove the case of demand and acceptance.

25. So for the above discussion, I find no merit in the Appeal and the Appeal is dismissed.

[S. M. MODAK, J.]