

(2016) 02 BOM CK 0218
In the Bombay High Court
Case No : Criminal Appeal No. 195 of 2001

State of Maharashtra

APPELLANT

Vs

Harischandra s/o Govindrao Kharat

RESPONDENT

Date of Decision : 11-02-2016

Acts Referred:

Prevention of Corruption Act, 1988 — Section 12, Section 13(2), Section 13(l)(d),
Section 7

Citation : (2016) ALLMRCri 4976

Hon'ble Judges : M.T. Joshi, J.

Bench : Single Bench

Advocate : Mr. Satej S. Jadhav, Advocate, for the Respondent No. 1; Mr. A.R. Kale, A.P.P, for the Appellant/State; Mr. R.D. Sanap, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

M.T. Joshi, J.(Oral) - Heard both sides.

2. Aggrieved by the acquittal of respondent No. 1 (since deceased) from the offences punishable under section 7, 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act and of the present respondent No. 2 from the offence punishable under section 12 of the Prevention of Corruption Act, by the learned Additional Sessions Judge, Beed, vide judgement and order dated 10.01.2001, passed in Special Case No. 50 of 1993, the State has preferred the present appeal.

3. During the pendency of the present appeal, respondent No. 1 - Harischandra has died and hence, the appeal has already abated as regards him.

4. The prosecution case, in short, is as under :-

That deceased respondent No. 1 Harischandra was working as Nimtandar and the respondent No. 2 as a Surveyor in the office of the District Inspector of Land Records (for short, "D.I.L.R."), Beed, during the relevant period. At that time,

deceased respondent No. 1 made demand of Rs. 200/- as gratification other than legal remuneration from complainant Bhagwat Varat of village Padalsingi to show more area of the proposed acquired land for percolation tank. He had accepted the amount of Rs. 200/- on 3rd December, 1992 and the rest of the amount was agreed to be accepted lateron. Thereafter, the complaint came to be filed with the Anti Corruption Bureau, Beed.

During the trap on 3rd December, 1992, deceased respondent No. 1 again made a demand of bribe, accepted the same and thereafter, handed over it to the present respondent No. 2.

5. Before the learned Special Judge, in all four witnesses were examined. Complainant - Bhagwat was examined as PW1. PW2 Shrikant Pathak was the shadow panch witness, PW3 Vikram Khedkar was the sanctioning authority while PW4 - Bhaurao Chavan - the then Deputy Superintendent of Police, A.C.B., Beed has conducted the investigation.

6. The learned Special Judge came to the conclusion that the sanction accorded by PW3 Vikram Khedkar to prosecute the respondents is not valid. On facts, however, the learned Special Judge came to the conclusion that deceased respondent No. 1 had made a demand of illegal gratification and accepted the same with the abetment of the respondent No. 2. In view of the defect found in the sanction order, both the respondents were acquitted. Hence, the present appeal.

7. Upon death of respondent No. 1 - Harischandra, we are not required to find out as to whether the prosecution has proved that earlier demand made by him to the complainant is proved. We have to find out as to whether the present respondent No. 2 has consciously accepted the amount knowing it to be an illegal gratification.

8. It is the prosecution case that deceased respondent No. 1 made a query to the complainant as to whether the money was brought. The complainant answered in the affirmative. Thereafter, deceased respondent No. 1 himself accepted the decoy money and handed it over to the present respondent No. 2.

Thus, the prosecution case itself would show that the present respondent No. 2 has not in any way abetted the act of either making demand or acceptance of the amount as the gratification other than the legal remuneration. It was a case of merely handing over the amount by deceased respondent No. 1 to present respondent No. 2.

9. Even otherwise, as against the prosecution case, the complainant PW1 Bhagwat has deposed in examination-in-chief that when he tendered the decoy money to deceased respondent No.1, he (deceased respondent No.1) asked him to handover the same to respondent No. 2 directly. This major contradiction in the deposition of these two witnesses itself was sufficient to find out that the prosecution has failed to prove its case beyond reasonable doubt as regards the

surviving respondent No. 2.

10. In the circumstances, the issue as to whether an incharge appointing authority can grant sanction to prosecute the respondents would be of merely academic interest. Hence, the following order :-

11. The criminal appeal is hereby dismissed. The bail bonds of respondent No. 2, if any shall stand cancelled.