

(2017) 05 BOM CK 0062
In the Bombay High Court
Case No : 240 of 2002

State of Maharashtra

APPELLANT

Vs

Pradeep Vishwasrao Jadhav, & Anr.

RESPONDENT

Date of Decision : 11-05-2017

Acts Referred:

[Prevention of Corruption Act, 1988](#), [Section 7](#), [Section 12](#), [Section 13\(2\)](#), [Section 13\(1\)\(d\)](#) - Public servant taking gratification other than legal remunerat

Citation : (2017) 05 BOM CK 0062

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

Advocate : Amit Palkar

Final Decision : Dismissed

Judgement

1. By this appeal, State is challenging the judgment and order dated 31.10.2001, passed by the Special Judge, Thane, in Special Case No.6 of 1992, thereby acquitting the respondent Nos. 1 & 2, for the offences punishable under Sections 7, 12 and 13 (1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. Brief facts of the appeal can be stated as follows : In the year 1990, P.W.1 Bhanudas Dhotre had constituted one organization by name, "Navi Mumbai Nagrik Sangharsha Samiti". On 25.10.1990, he alongwith the Secretary of the organization, went to the office of Assistant Charity Commissioner, for registration of the organization. Respondent No.1 was working as Assistant Charity Commissioner; whereas respondent No.2 was working as Senior Clerk in the said office. He approached respondent No.2 Smt. Sabale with a request to register his organization. Respondent No.2 repeatedly called him to come her office i.e. on 21.12.1990, 31.12.1990 and 4.1.1991, raising various objections to the registration of the organization. According to P.W.1 Dhotre, he complied with

all those objections. Despite that his work was not completed. Hence on 14.1.1991, he made enquiries with respondent No.2 about the reason for the same. Thereupon respondent No.2 told him that in their office no work is done unless money is paid and if P.W.1 Dhotre wanted the work to be done earlier, he would have to pay Rs.200/to herself and Rs.300/for respondent No.1, thus totally an amount of Rs.500/in consideration of his work being done earlier. P.W.1 tried to meet respondent No.1 also on the same date and thereafter on 18.1.1991. At that time respondent No.1 also, in the presence of respondent No.2, told P.W.1 Dhotre that he will have to pay an amount of Rs.500/as told by respondent No.2, then only his work will be done earlier. Thus, P.W.1 Dhotre was convinced that unless he pays an amount as demanded by respondents, his work will not be done earlier. Hence he approached the office of A.C. B. and complained about the same to P.W.6 Khaire.

3. P.W.6 Khaire arranged to lay a trap with the assistance of two panch witnesses. He gave necessary instructions to P.W.1 Dhotre and also sprinkled anthracene powder on the five currency notes of Rs.100/each. It was directed to P.W.1 Dhotre that only if respondent No.2 makes demand of Rs.500/, out of which Rs.200/to be paid to herself and Rs.300/for respondent No.1, P.W.1 Dhotre should pay that amount and give prearranged signal. Accordingly, P.W.1 Dhotre went to the office of respondent No.1 alongwith panch namely P.W.2 Anchewar. There, he approached respondent No.2, who directed him to go to the cabin of respondent No.1. Accordingly P.W.1 Dhotre went to the cabin of respondent No.1 and paid him an amount of Rs.300/from the marked currency notes. Respondent No.1 accepted the same. P.W.1 then came out of the office and gave prearranged signal. P.W.6 Khaire and the other panch P.W. 4 Smt. Deshpande, who were waiting outside, came in the office and then respondents were caught hold of. Their hands were checked for the traces of anthracene powder and anthracene powder was found on the hands of respondent No.1. All of them were brought to A.C. B. Office. There complaint of P.W.1 Dhotre was recorded vide exh.65. Statements of witnesses also came to be recorded accordingly.

4. Thereafter, on obtaining requisite sanction from P.W.3 B.G. MorePrincipal Secretary, Law and Judicial Department, Mantralaya, Mumbai, chargesheet came to be filed against respondents, for the offences punishable under Sections 7, 12 and 13 (1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

5. The trial Court framed charge against respondents vide exh.14. Respondents pleaded not guilty and claimed to be tried raising defence of denial and false implication.

6. In support of its case, prosecution examined in all 6 witnesses, including P.W.1 complainant Bhanudas Dhotre, P.W.2 panch Tukaram Anchewar, P.W.3 - Sanctioning Authority Principal Secretary D.V. More, P.W.4 panch Vandana Deshpande, P.W.5 Damodar Garde who was working in the office of respondents and lastly P.W.6 Investigating Officer - PI Khaire.

7. On appreciation of their evidence, trial court found various inconsistencies, infirmities and lacunas in their evidence. The trial Court also found that sanction for prosecution was not legal and valid and accordingly the trial Court acquitted both the respondents of the offences punishable under Sections 7, 12 and 13 (1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

8. In this appeal, I have heard learned APP Shri.Palkar. According to him, there is sufficient evidence on record to prove the guilt of respondents as P.W.1 Dhore has supported prosecution case. Even panchas have also corroborated his evidence. Hence according to him, the trial Court has committed an error in acquitting respondents of the charges levelled against them.

9. At the outset itself, it has to be stated that the scope of the jurisdiction of the appellate Court in an appeal against acquittal is fairly well settled to the effect that the appellate Court can interfere in the judgment of trial Court only if it is found to be manifestly illegal or perverse. In the instant case, if the evidence on record is analyzed, it can clearly be seen that P.W.1 Dhotre has not remained consistent in his case of demand of bribe amount by the respondents. It is pertinent to note that in his complaint he has stated that demand of Rs.200/was made by respondent No.2 for herself and Rs.300/for respondent No.1. However, in evidence before Court he has stated that respondent No.2 has demanded Rs.1,000/for getting the work done and only when he pleaded his inability to pay said amount of Rs.1,000/, she has reduced it to Rs.500/. This part of his evidence is conspicuously silent in the complaint and therefore, it is in the nature of omission. Furthermore, as per trap arranged in pursuance of the information given by him, an amount of Rs.500/was to be paid to respondent No.2 out of which amount of Rs.200/was for respondent No.2 and Rs.300/for respondent No.1. However, in the evidence before the Court, P.W.1 Dhotre has stated that he directly went to the office of respondent No.1 and respondent No.1 asked him whether he has brought the cash, then he gave an amount of Rs.300/to respondent No.1. Thereafter, he came outside and gave signal. However, as he was frightened, he had not given amount of Rs.200/to respondent No.2. Thus, as admitted by P.W.6 Khaire and panchas P.W.2 and P.W. 4, trap was not successful, but it was failed.

10. Significantly, some fatal admissions are given by P.W.1 Dhotre in his cross examination to the effect that respondent No.2 has not asked him to come with money. He has also admitted that the entire amount was not to be paid either to respondent No.2 or respondent No.1. He has further admitted that he was to first make demand of registration certificate and when demand of the bribe amount was made by respondent No.2, he should pay Rs.200/to her. In his cross examination, he has admitted that respondent No.2, however, has not made demand, therefore, there was no question of his paying any amount to her.

11. Thus, cross examination of this witness goes to prove that he has not at all remained consistent with the case made out in the complaint or even as stated in the pretrap panchnama. The contents of pretrap panchnama and also that of

evidence of panch witnesses namely P.W.2 Anchewar and P.W.4 Deshpande, clearly go to prove that amount of Rs.500/was to be paid to respondent No.2 only on demand; whereas as admitted by P.W.1 Dhotre, Respondent No.2 has not demanded the amount and he has paid part of amount to respondent No.1, that too without there being any demand by respondent No.1. The evidence of panch witness P.W.4 Deshpande also goes to show that as per pretrap panchnama, it was decided to give bribe amount to a female person and she does not know why it was given to a male person. Further she has admitted that she is not in a position to state as to what happened to the marked currency notes of Rs.500/ whether they were actually given or not.

12. Moreover, the evidence of P.W.5 Damodar Garde, goes to show that file of P.W.1 Dhote was already cleared on 2.1.1991 itself i.e. much before demand and the trap. From this evidence also, the case of prosecution that the demand was made for clearing the file fails to inspire confidence in judicial mind. Trial Court has considered all these facts in appreciation of evidence of prosecution witnesses. The Trial Court has also considered and rightly held the sanction is not legal and valid as original file itself was not available before the sanctioning authority. P.W.3 More has admitted that he has no personal knowledge as to which papers were placed before Minister for giving sanction.

13. In view of these facts, which are borne out from the record, it has to be held that the conclusions arrived at by the trial Court are the ones which are plausible and possible one. The trial Court has, thus, rightly held that the prosecution has failed to prove its case against respondents beyond reasonable doubt. The appeal is, therefore, without any merit, hence, stands dismissed. The bail bonds of the respondents stand cancelled.