
(2015) 04 BOM CK 0385
In the Bombay High Court
Case No : Criminal Appeal No. 295 of 2002

The State of Maharashtra	Vs	APPELLANT
Maroti Putaji Tagadpalle		RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

Citation : (2015) ALLMR(Cri) 4292

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

Bench : Single Bench

Advocate : S.R. Palnitkar, A.P.P., for the Appellant; Vijay Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.T. Joshi, J.—Heard both sides. Aggrieved by the acquittal of the respondent by the learned Special Judge, Nanded vide judgment and order dated 15/2/2002 from the offences punishable under section 7, 13(1)(d), 13(2) of the Prevention of the Corruption Act, 1988, the present appeal is preferred by the State.

2. The prosecution case in short is as under:--

That respondent - Maroti works as a Clerk in the Office of the Deputy Executive Engineer, Zilla Parishad Sub Division at Hadgaon, District - Nanded. During the relevant period, complainant P.W. 1 - Milind Malik Sakle was working as a Road Roller Driver. The T.A. bills of the complainant which were filed on 17/5/1995 were pending in the Office. The respondent was required to process the same. He (complainant) therefore requested the respondent on 4-5 occasions for sanctioning of the bills. On 12/6/1995, at about 1.00 pm., when the complainant visited the Office, at that time, the respondent made a demand of Rs. 175/- as bribe and further warned that unless the same is paid, the bills would not be passed. The complainant paid an amount of Rs. 25/- to the respondent and assured to make the balance of the payment later on that is upon receipt of the

salary. He received the salary on 13/6/1995. Since the complainant did not want to pay any bribe to the respondent, he approached the Anti Corruption Bureau of Nanded and filed the complaint to this effect on 14/6/1995 at Exhibit 10.

P.W. 5 - Deputy Superintendent of Police of the Anti Corruption Bureau, namely, Devidas Penurkar recorded the complaint and conducted the investigation. On the same day, he thereafter collected two panch witnesses from the Building and Construction Department of Nanded by making request to their Senior, Accordingly, P.W. 2 Baban Deshmukh and Ashok Sone attended the Anti Corruption Bureau Office as the panchas. Thereat, usual exercise of reading over of the complaint, giving demonstration regarding the anthracene powder, collection of decoy money of Rs. 150/- from the complainant, applying the anthracene powder to the decoy money was carried. The decoy money were two currency notes in the denomination of Rs. 100/- and Rs. 50/-. The amount was kept in the left side shirt pocket of the complainant.

Thereafter, by a private jeep, the raiding party went to Hadgaon at the Office Thereat, P.W. 2 Baban Deshmukh was kept in the company of the complainant to visit the respondent. The respondent was not found in the Office. Therefore, the party went to the house of the respondent. He was however not found there. Therefore, the party again returned back to the Office. At that time, the respondent was however found in the Office.

During talk, the complainant told the respondent that he had brought the amount whereupon the respondent told that all of them would take tea together. Therefore, the complainant, the panch and the respondent went to the canteen which is behind the Office. In the canteen, the respondent made demand of the money. Thereupon, the complainant paid the decoy money to the respondent. He accepted the same and kept it in the pocket of his shirt. Thereupon, the complainant gave signal upon coming out of the canteen. The raiding party reached on the spot. The respondent was caught and, thereafter, the exercise regarding testing the person and the clothes of the concerned under the ultraviolet lamp was undertaken. The hands of the respondent and hands of the complainant were found positive for application of anthracene powder. Panchanama of the same was prepared.

Thereafter the Investigating Officer collected the documents concerning the transaction from the Office. Necessary sanction to prosecute the respondent was obtained by the Investigating Officer from P.W. 4 Anil Diggikar, the then Chief Executive Officer of Zilla Parishad and the chargesheet came to be filed.

3. Before the learned Special Judge, in all five witnesses were examined. Those were P.W. 1/complainant Milind Sakle, P.W. 2 Panch Mr. Baban Deshmukh, P.W. 3 Deputy Engineer of Zilla Parishad, namely, Gunderao Anmole, who has produced the documents. P.W. 4 Anil Diggikar, the Chief Executive Officer of Zilla Parishad, Nanded and P.W. 5 the then Deputy Superintendent of Police i.e. the Investigating Officer Devidas Penurkar.

The learned Special Judge, however, came to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt. It was found that the work of sanction of the T.A. bills was not within the jurisdiction of the respondent. P.W. 2 Baban deposed that he was unable to hear the conversation between the complainant and the respondent. Further, the payment of the bills was delayed not due to any malafide activity of the respondent but as the superior officer was on long leave, as has been proved. Further, the case of acceptance was not proved as only two fingers of the respondent were found positive for application of the anthracene powder and even his shirt pocket was found negative regarding application of the anthracene powder. In the circumstances, the trial Court held that the defence that at the time of taking tea, the complainant attempted to give currency note of Rs. 5/- to the hotel owner and, thereafter, shook hand with the respondent. Further, though, admittedly, independent witnesses were available in the canteen, none of them were examined and hence the acquittal came to be recorded.

4. Mr. Palnitkar, learned A.P.P. submits that P.W. 2, the panch witness initially turned hostile to the prosecution case. He deposed that he was unable to hear the conversation between the complainant and the respondent as they were talking in low tone but the said hostile witness has also supported the prosecution case that an amount of Rs. 150/- i.e. the decoy money was passed by the complainant to the respondent as against the defence case that attempt was to give currency note of Rs. 5/- only to the respondent and, thereafter, the complainant shook hand with the respondent, thereby making it possible that some fingers of the respondent would be tested positive under the ultraviolet lamp. In the circumstances, he submits that when the prosecution case is proved beyond reasonable doubt, the learned Special Judge ought to have convicted the respondent.

5. On the other hand, Mr. Sharma, learned counsel for the respondent supports the reasoning of the learned trial Court.

6. On the basis of this material, following points arise for my determination:--

- i) Whether the prosecution has proved that on 12/6/1995, the respondent attempted to obtain an amount of Rs. 175/- from the complainant as gratification other than the legal remuneration as reward for sanctioning of the T.A. bills?
- ii) Whether the prosecution has proved that on 12/6/1995, the respondent accepted the advance of the illegal gratification of Rs. 25/-?
- iii) Whether the prosecution has proved that on 14/6/1995, the present respondent at Hadgaon, accepted an amount of Rs. 150/- as illegal gratification, as detailed supra?
- iv) Whether the prosecution has proved that the respondent being a public servant, has attempted to obtain an amount of Rs. 150/- by corrupt or illegal means by abusing his position as a public servant?

My finding to all the aforesaid points is in the negative. The appeal is therefore dismissed for the reasons to follow.

REASONS

7. The evidence of P.W. 3 Gunderao Anmole, the then Deputy Engineer of the Zilla Parishad would show that he was the sanctioning authority of the T.A. bills. He himself was on earned leave for the period from 17/5/1995 to 16/6/1995. The bills could not have been sanctioned without log book and the said log book was with the Senior Clerk Mr. Kadam. Even the said Senior Clerk Mr. Kadam was on leave during the said period. Besides this, this witness, thereafter, was on training from 12/6/1995 to 16/6/1995. Further, the bills of the complainant were already prepared by the accused and he (P.W. 3) had signed the said T.A. bills on 10th or 11th June, 1995.

8. P.W. 2, the panch witness initially deposed that in the canteen, the complainant and the respondent were conversing in low tone as against his alleged earlier statement to the Investigating Officer that he had heard the respondent making demand of the gratification. He however deposed that in the canteen the complainant gave amount of Rs. 150/- i.e. the decoy money to the respondent and the respondent kept the same in his shirt pocket. He thereafter deposed that the said decoy money was found in the pocket of the shirt of the respondent, which tested positive to the ultraviolet lighting test. The witness was thereafter declared hostile and he was cross-examined. During cross-examination, he deposed that after demand from the respondent, the complainant paid the decoy money to the respondent.

9. It was suggested to the complainant during cross-examination that the respondent wanted to pay the bill of tea but the complainant restrained him. He further denied that when the respondent tried to hand over the note of Rs. 5/- at that time, the complainant by his hand restrained him to do so and in the process, he caught the hands of the respondent. He further denied that the said only currency note of Rs. 5/- was found glittering during the ultraviolet light examination. He denied that as his bill was pending for long time, he became angry and, therefore, he filed a false complaint against the respondent.

10. The evidence on record thus would show that the bill was pending since long; firstly because of the leave of P.W. 3 Gunderao Anmole and, thereafter, due to the absence of the Senior Clerk. Though P.W. 2 has turned hostile to the prosecution case, it is found that the prosecution case itself that only two fingers of the respondent were seen smeared with anthracene powder and above all, the shirt pocket of the respondent was admittedly not tested positive as found by the panchanama at Exhibit 15.

11. Mr. Sharma further points that while there is no specific case as to when the advance of Rs. 25/- was paid. Further, it is not the prosecution case that it was agreed between the complainant and the respondent that the balance of the amount of Rs. 150/- would be paid on 14/6/1995 at a specific time. Further, the

prosecution case would show that infact, the raiding party was in search of the respondent i.e. first at his Office and then at his house and again at the Office. Further, the evidence of P.W. 2 would show that he was unable to hear the conversation between the complainant and the respondent and, therefore, he submits that the reasoning of the learned Special Judge cannot be faulted with.

12. Upon giving thoughtful consideration to the above material, in my view, the learned Special Judge has taken a reasonable and probable view. It is to be found that no date and time was fixed for acceptance of the amount. The raiding party was in search of the respondent at various places, as detailed supra. While only two fingers of the respondent were found positive of the application of anthracene powder, his shirt pocket where the alleged money was allegedly kept, was found negative for the same. P.W. 2 did not support the prosecution case wholehearted by deposing that he was unable to hear the conversation between the respondent and the complainant.

13. In that view of the matter, since the learned Special Judge has taken a reasonable and probable view of the material before him, in the present appeal against acquittal, no interference is warranted. In the result, the following order:--

The appeal is hereby dismissed. The bail bonds, if any of the respondent shall stand cancelled.