
(2013) 06 BOM CK 0158
In the Bombay High Court
Case No : Criminal Appeal No. 357 of 2003

The State of Maharashtra

APPELLANT

Vs

Ramesh Chhabulal Borse

RESPONDENT

Date of Decision : 21-06-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3450

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

Bench : Single Bench

Advocate : D.V. Tele, AGP, for the Appellant; B.P. Suryawanshi, Advocate h/f. Mr. Nitin B. Suryawanshi, for the Respondent

Judgement

M.T. Joshi, J.—Heard both sides. The present appeal is preferred by the State aggrieved by the acquittal of the present respondent of the offences punishable u/s 7, 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act.

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

That the complainant P.W. 1 Bhagwat is resident of Kekat Nimbhora. He has electric connection from the Maharashtra State Electricity. It was in the name of his father. Since the electric meter was faulty, the electric bill always used to be on higher side. Bill dated 30.11.1998 was for Rs. 743/-. His father had got corrected the same from the Jamner Office of the M.S.E.B. to Rs. 515/- and the said amount was paid. Next of the bill dated 28.02.1999 was for Rs. 474/-, which according to the complainant was also on higher side. Therefore, the complainant, made an application in the name of his father to Mr. Firke (One of the officer, disclosed to be the Deputy Engineer later-on). Thereafter, the complainant went for pursuing the matter to Mr. Firke on 13.30.1999. Mr. Firke was not present. When he made enquiry with one wireman Mr. Sapkale, he told that his application is forwarded to Jamner officer and thereat, he should meet the present respondent/accused Mr. Borse. When the complainant met the present respondent, at that time, he asked him to meet the concerned wireman.

Upon that, the complainant questioned as to why he was being made to shuttle between the offices and since it was within the power of the respondent-accused to reduce the bill, he should do the same and need not give further trouble to him. Upon that the respondent questioned as to whether the bill would be reduced without spending anything. Thereupon, respondent made a demand of Rs. 300/- for reducing the bill. The complainant, however, told that he would ask his father and thereafter tell him. On 01.04.1999, the complainant again met the respondent, at that time, the complainant stated that the amount of Rs. 300/- would be very higher. Eventually, the respondent reduced the same to Rs. 200/-. However, upon further negotiations, the same was reduced to Rs. 150/-. The complainant told that after receipt of the salary on 3.4.1999 by noon, he would pay the amount. The respondent stated that only upon payment of the money, he would reduce the bill. In the circumstances, the compliant came to be filed with the Anti Corruption Bureau on 3.4.1999.

3. Upon receipt of the complaint, Investigating Officer i.e. P.W. 4 P.I. Babruwahan Ambegaonkar started the investigation. He collected two panch witnesses from Zilla Parishad. Regular exercise of pre-trap was conducted in the Office. Pre-trap panchanama was prepared, decoy money was smeared with anthracene powder during the said exercise and the smeared currency note was kept in the left side shirt pocket of the complainant. P.W. 2 i.e. one of the panchas was directed to accompany the complainant to watch as to what transaction would take place and what dialogue would be there between the complainant and the respondent. The complainant was instructed that if the amount is demanded and received by the respondent, he should give the pre-determined signal by moving his hand on his head.

4. In the circumstances, the trap party proceeded to Jamner at 11.00 a.m. Ultimately, the meeting took place between the complainant and the respondent wherein panch No. 1/P.W. 2 was present. They came out of the office. They had come together. They had tea together. The panch was introduced as the cousin brother of the complainant. When the complainant asked about his work, the respondent asked as to whether he had brought the money, upon that, when the complainant answered in the affirmative, the respondent handed over him the corrected bill. Upon that the complainant handed over smeared money to the respondent. He accepted the same and kept the currency note in the left side pocket of the shirt. Upon that the complainant gave the pre-determined signal. Thereafter, the trap party caught the respondent and the regular exercise of testing the hands, clothes, other documents found on the person of the respondent was carried. Ultimately, the sanction was obtained to prosecute the respondent from P.W. 3, the then Superintending Engineer of M.S.E.B. Mr. Sopan Namdeo Savadkar at Exhibit 19, Thereafter, the charge-sheet came to be filed.

5. Before the learned Special Judge, in all four (4) witnesses were examined. P.W. 1 is the complainant himself. P.W. 2 is panch witness Dinesh Lokhande who has accompanied the complainant at the time of making demand and acceptance

of the money. P.W. 3 is the sanctioning authority while P.W. 4 is the Investigating Officer, as detailed supra.

6. Defence of the respondent is of denial. According to him, enraged by the billing, the bribe amount was thrust in his pocket by the complainant at the time of the alleged trap. The bills used to be prepared at the Jalgaon office through the computer. The respondent was merely a Lower Division Clerk at the Branch Office. He was not at all connected with preparation of the bills. In case any bill was to be reduced, then the application was required to be made in the name of Deputy Executive Engineer. The same was processed by Upper Division Clerk and after processing the same, the Deputy Executive Engineer, i.e. Mr. Badhe used to pass an order and only after sanctioning of reduction, the corrected bill used to be passed. The respondent being the Lower Division Clerk has nothing to do about the same. In fact, the bill in dispute was not unreasonable. The complainant, however, wanted that the same should be reduced and had quarreled with the respondent. Ultimately, the respondent told that he should make the necessary complaint to the senior officers. However, enraged by all this, at the time of the trap, the complainant had thrust the money in his pocket. Hence, he claimed acquittal.

7. Learned A.P.P. submits that the learned Special Judge has taken into consideration the minor contradictions and omissions in the deposition of the witnesses. He submits that the learned Special Judge had wrongly observed that the sanction given to the prosecution was mechanical one, merely because, the sanctioning authority was unable to tell as to which specific correction was made by him at the time of sending of the sanction order to the draft order forwarded by the Investigating Officer.

8. On the other hand, learned counsel for the respondent Mr. Suryawanshi submits that the learned Special Judge has taken pains to appreciate all the evidence on record. Vital and material contradictions in the prosecution case were taken into consideration. Not only this, the evidence of the sanctioning authority itself would show that the respondent was not competent to grant any reduction in the bill, still, the sanctioning authority did not take any pains to find out as to whether any note was prepared to be placed before the Senior Officer and as to whether any sanction was there. In the circumstances, he submits that when a reasonable and probable view of the matter is taken by the learned Special Judge, there is no need to interfere in the said order.

9. On the basis of this material, following point arises for my determination:-

I) Whether the prosecution has proved that on 03.04.1999, when the respondent was serving as a Clerk in the M.S.E.B. Office at Jamner, he had obtained an amount of Rs. 150/- for himself, for doing the official act and as to whether he had obtained the said amount in exercise of his official function for achieving the pecuniary advantage and thus committed misconduct?

My answer to the said point is in the negative for the reasons to follow.

REASONS

10. It is not in dispute that father of the complainant had earlier got the bill reduced from the concerned Officer. Thereafter the complainant took upon the work of getting the bill reduced. According to the complainant, earlier the bill of Rs. 743/- was reduced to Rs. 515/- and the next bill was only of Rs. 474/-. In the circumstances, observing that the alleged illicit demand was of Rs. 300/-, which according to the complainant was reduced to Rs. 150/-, the learned Special Judge has observed that this purpose of demanding the bribe appears to be surprising one.

11. Further, the learned Special Judge has taken into consideration the vital contradictions in the oral evidence of the complainant P.W. 1 and panch witness P.W. 2. There is contradiction as to whether specific demand of money was made. Further, it is the defence version that the money was thrust in his pocket. While the complainant deposed that at that time the respondent had counted the money, the panch witness deposed that money was not counted by the respondent. Further, while the panch witness has deposed that he himself alongwith the complainant was with the respondent in the Office of the M.S.E.B. for about 15-20 minutes, the Investigating Officer Mr. Ambegaonkar stated that they remained in the office for two minutes. Further, there is contradiction as to who has given the pre-determined signal. While the I.O. deposed that the complainant has given the signal, according to the complainant, it was panch witness, who had given the predetermined signal. A contradiction as to whether money was transferred before taking tea or after taking tea is also there between the testimony of the complainant and P.W. No. 1. Though, the contradiction appears to be minor one, it is in fact a vital contradiction since that would also throw some light on the time spent by the parties, presence of anthracene powder on the cup or saucer etc. The most damaging admission of the sanctioning authority is that the respondent being the Lower Division Clerk was not accountable for reduction in the bills, that job was of the Deputy Engineer. Despite this, no investigation on this line was made. Further, the evidence on record would show that though the prosecution case is that respondent has signed the bill after correction, in fact, the same was signed by the Deputy Engineer. All these facts, not only create a reasonable doubt but also would go to show that the sanctioning authority has not applied its mind at the time of grant of sanction.

12. In the circumstances, in addition to the reasons forwarded by the learned Special Judge, I am of the considered view that these facts would also show that the sanctioning authority failed to apply its mind as to whether a prima facie case exist against the present respondent. In view of this matter, when a reasonable and probable view is taken by the learned Special Judge in the present Appeal against acquittal, no interference in the reasoning and final conclusion is warranted. In the circumstances, the Appeal is dismissed. Bail bonds of the respondent stand cancelled.