

(2013) 01 BOM CK 0032

In the Bombay High Court

Case No : Criminal Appeal No. 660 of 2012

The State of Maharashtra

APPELLANT

Vs

Shivlingappa Ramchandrapa Atanoor and Another

RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3607

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : D.V. Tele, app, for the Appellant; N.K. Kakade and Mr. D.R. Markad, for the Respondent

Judgement

T.V. Nalawade, J.—The appeal is filed against judgment and order of Special Case No. 16/2009, which was pending in the Court of Special Judge and Additional Sessions Judge, Ahmednagar. The respondents are acquitted of offences punishable u/s 8, 13(1)(d) r/w. 13(2) of Prevention of Corruption Act, 1988. Both the sides are heard. This Court has perused the original record.

2. In short, the facts leading to the institution of the appeal, can be stated as follows:-

At the relevant time accused No. 1 was working as Junior Engineer in Nighoj office of M.S.E.B. Accused No. 2 was working as Private Contractor, who was having licence in respect of installation of connections for M.S.E.B. The family of complainant Machindra wanted to take connection of electricity in their land Gat No. 907 from village Shirapur, Taluka Parner. They wanted to install motor pump on the well. The land was standing in the name of grandfather of the complainant. Father of complainant approached office of M.S.E.B. in January 2009 and gave application for getting connection. Accused No. 2 approached father of complainant and informed that it was necessary for them to pay Rs. 10,000/- as a bribe amount and only after giving this amount to accused No. 1, they would get connection. On the day on which receipt in respect of application

was given by the accused No. 2, father of complainant gave Rs. 6,000/-. The remaining amount of Rs. 4,000/- was to be given subsequently. The quotation in respect of connection was to be prepared and after handing over the quotation, the amount mentioned on the quotation was to be paid by the father of complainant and only after that the connection was to be given. The work of issuing quotation was expected to be done by accused No. 1 and accused No. 2 was to act as a middleman for accused No. 1.

3. On 16.3.2009 complainant and his father met accused No. 2 to make inquiry. Accused No. 2 showed a quotation to the complainant and his father and informed that it was necessary for them to deposit Rs. 5400/-. He refused to hand over the quotation by saying that the remaining amount of Rs. 4,000/- must be paid first. Accused No. 2 said to complainant and his father that they had taken atleast Rs. 16,000/- from others, but they were asking the family of the complainant to give only Rs. 10,000/-. The complainant had no intention to give the bribe and so he approached Anti Corruption Bureau (ACB).

4. On 17.3.2009 ACB received the complaint and prepared plan of action. The bribe amount was supplied by the complainant. After completing necessary formalities, complainant was sent to the office with one panch witness. The bribe amount was given to the complainant after applying anthracene powder to it. After 2.45 p.m. complainant and the panch witness reached the office. They entered the office and then they came out and stood under the Neem tree. Accused No. 2 came there. In the presence of panch witness, when the complainant made inquiry about his quotation, accused No. 2 asked about Rs. 4,000/- and he said that if the amount was brought, he would collect the quotation from accused No. 1 and he would hand it over to complainant. Complainant then handed over tainted money to accused No. 2. Accused No. 2 accepted the amount, counted it and kept it in the pocket of pant. Accused No. 2 then entered the office and went towards the table where accused No. 1 was sitting. Accused No. 2 said to accused No. 1 that their work was done and so the quotation could be handed over to the complainant. Accused No. 1 then handed over the quotation to the complainant. Complainant kept the quotation in the pocket of his shirt. When he was coming out from the office, pre-decided signal was given by the complainant and accused No. 2 was held in the premises of the office of M.S.E.B. by ACB Officers. Post trap panchanama was drawn. The entire incident narrated by panch witnesses came to be recorded in post trap panchanama. The tainted money came to be recovered from accused No. 2. The quotation also came to be recovered. The copy of quotation was taken over. Explanation of accused Nos. 1 and 2 was obtained. Accused No. 2 explained that the amount was accepted by him for accused No. 1. Accused No. 1 showed ignorance about the things done by the accused No. 2.

5. After completion of investigation, sanction was given by competent authority and the case came to be filed for aforesaid offences. Prosecution examined five witnesses to prove the charge for aforesaid offences. The defence examined one

contractor. The father of complainant turned hostile. The Trial Court has refused to believe the evidence of complainant and the panch witnesses due to inconsistent versions given by them and both the accused are acquitted.

6. Sopan (PW 3), father of complainant, has given evidence that he had approached Supekar, accused No. 2, as he thought that Supekar was working as wireman in M.S.E.B. He has given evidence that Supekar had told him that it was necessary for him to give Rs. 10,000/- for installation of connection and electric motor. He has given evidence that he gave Rs. 6,000/- to accused No. 2 in his house when Supekar visited his house. He has given evidence that the amount of Rs. 4,000/- was to be given only after giving of connection and installation of motor. He was cross examined by the learned APP in view of the nature of evidence given by him. But, nothing could be brought on record to create probability that the amount of Rs. 10,000/- was demanded by accused No. 2 as a bribe amount from PW 3. He has given specific evidence that the amount was to be given to Supekar for doing the entire work of installation of electric motor by obtaining electric motor, purchasing wires, panel box and the other required material for such installation. This entire work was expected to be done by accused No. 2 - Supekar.

7. In the background of aforesaid evidence given by PW 3, evidence of Machindra (PW 2), complainant, needs to be considered. It can be said that it is evasive in nature. In the cross examination, he has admitted that he was not sure that Supekar was demanding the amount as a bribe amount and as he had suspicion, he has approached A.C.B. His cross examination shows that he had no personal knowledge about giving of Rs. 6,000/- by his father to Supekar. He has expressed ignorance as to whether the total cost of material required for installation was around Rs. 10,000/- and it included the quotation price also. His evidence shows that Supekar had shown him quotation on 16.3.2009. PW 3, father of complainant, has not given evidence that on 16.3.209 there was demand of any bribe from Supekar. Thus, the evidence on previous demand is not there as PW 3 turned hostile and PW 3 is not supporting the complainant in respect of the demand made on 16.3.2009.

8. Machindra (PW 2) has given evidence that on the day of trap under Neem tree the demand of Rs. 4,000/- was made by Supekar by saying that he would give the amount to accused No. 1 Atnoor and then get the quotation from him. Chandrakant (PW 4), the panch witness, has given evidence that Supekar asked the complainant about Rs. 4,000/- and said that he would give the quotation immediately after making of the payment. Thus, panch witness has not made reference to accused No. 1.

9. Evidence is given by PW 2 and 4 that after accepting the tainted money, accused No. 2 entered the office. PW 4 has given evidence that accused No. 2 went to accused No. 1 and they had conversation in which accused No. 2 said that their work was done and so the quotation can be given to the complainant. He has given evidence that Supekar had taken out quotation from the drawer of

the table of accused No. 1 and when he was coming out, Officers held Supekar. Though there is such mention in the panchanama, also in the cross examination PW 4 has admitted that after accepting the tainted money, Supekar asked complainant and panch witnesses to stay there, he entered the office and when Supekar was coming out, signal was given and Supekar was held. Thus, in cross examination he has admitted that he and complainant stayed under the Neem tree, when Supekar entered the office after accepting tainted money.

10. The aforesaid admission in cross examination of PW 4 is important as the post trap panchanama does not show that quotation was examined in ultra violet light. Similarly the examination of the drawer of the table of the accused No. 1 was not made. If accused No. 2 had counted the money by two hands, then the traces of anthracene powder would have been detected on the quotation form and also on the drawer. Absence of such examination creates doubt about the entire case. When there is the evidence that on 16th the quotation form was shown by the accused No. 2 to complainant, it does not look probable that the quotation form was again returned back to accused No. 1.

11. The evidence of PW 1, Sanctioning Authority shows that it is the Assistant Engineer, who issues orders in respect of the quotation form. The order was issued on 3rd itself and there is mention of such date on the form. This form was shown to complainant on 16th. In view of these circumstances, the story given by the panch witnesses in examination in chief that accused No. 2 had talk with accused No. 1 does not appear to be true and probable. It can be said that the investigating agency ought to have done something more like confirming that the accused No. 1 was also involved in the demand.

12. In view of the story given by the father of the complainant that the amount was given for the work like installation and purchase of material, the evidence has creates other probability in favour of accused. In view of these circumstances, conviction in such a serious case cannot be given to both accused Nos. 1 and 2. Thus, the view taken by the trial Court is a possible view.

13. For respondent No. 1 cases reported as State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede, and The State of Maharashtra Vs. Baburao Sakharam Gawai, were cited. In both the cases the powers of the appellate Court are discussed. It is observed that when two views are possible, one view in favour of the accused should prevail. Section 20 of the Prevention of Corruption Act is also discussed by the Apex Court There cannot be dispute over this proposition. This Court holds that interference is not possible. So, the appeal stands dismissed.