

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.61 OF 2016

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

SHAM PANDURANG POLEKAR AND ANR.)...RESPONDENTS

Ms.N.S.Jain, Advocate for the Applicant.

Mr.Shailesh Kharat, Advocate for Respondent Nos.1 and 2.

CORAM : A. M. BADAR, J.

DATE : 31st AUGUST 2017

P.C. :

1 This is an application by the State seeking leave to appeal against the acquittal of respondent / public servant of offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as P.C.Act) by the impugned judgment and order dated 17th November 2015 passed by the learned Special Judge, Pune, in Special Case No.35 of 2015.

2 Briefly stated, it is case of the prosecution that on 16th June 2014 complainant Datta Kobal, who used to reside with his maternal uncle Shripad More at Kasturba Gandhi Vasahat, Aundh, Pune, lodged a complaint with Anti Corruption Bureau (hereinafter referred to as ACB) Pune. In the said complaint, he alleged that one wall of his house was in dilapidated condition requiring repairs. He, therefore, contacted Sham Polekar and Nigde (respondents) at the office of the Municipal Corporation, Pune. But they told him that permission is not necessary. Hence, he started construction of that wall of the house of his maternal uncle Shripad More. Complainant Datta Kobal further alleged that on 13th June 2014 when the work of repairs of wall was going on, respondents /public servants namely Sham Polekar and Nigde came to the spot and informed him that the work is without permission. They further told him that they will demolish the work and asked him to come and meet them in the office. Complainant Datta Kobal further reported to the ACB, Pune, that on 16th June 2014 he met Sham Polekar and Nigde at Regional Office at Oundh. Polekar demanded an amount of Rs.15,000/- and

that demand was confirmed by Nigde. Subsequently, Polekar took cell phone number from complainant Datta Kobal and told him that he will inform the exact amount of illegal gratification. Complainant Datta Kobal further reported to the ACB that on 16th June 2014 itself at about 12.30 p.m., Polekar called him and demanded Rs.1,000/- from him and told him to give the same to Nigde. It was informed to him that Nigde will be send to the gate of Kasturba Gandhi Vasahat for collecting this amount.

3 The complaint lodged by Datta Kobal was recorded. Pre-trap panchnama was prepared on 16th June 2014 itself by summoning two panch witnesses. For the purpose of verification of demand, complainant Datta Kobal was asked to call Polekar on cell phone by keeping the cell phone on speaker phone mode. Panch Vijay Dudhe heard the conversation between complainant Datta Kobal and Polekar. Demand was confirmed and subsequently a trap was laid, but on that date, co-accused Nigde did not come to receive the illegal gratification. It is case of the prosecution that on the next day i.e. on 17th June 2014,

complainant Datta Kobal accompanied by shadow panch Vijay Dudhane as well as the raiding party of the ACB went to the office of accused persons and on that day, an amount of Rs.1,000/- towards illegal gratification was accepted by co-accused Nigde. Then, First Information Report (FIR) came to be lodged and ultimately accused persons namely accused no.1 Sham P. Polekar – Mukadam and accused no.2 Devram M. Nigde – Mistry, Slum Rehabilitation Authority, came to be prosecuted. This prosecution ultimately concluded in acquittal, which is impugned by the present applicant-State, being aggrieved.

4 Heard the learned APP appearing for the applicant-State. She read the FIR lodged by the Officer of the ACB so also the complaint lodged by Datta Kobal. She read some part of evidence of PW1 Datta Kobal and submitted that there was demand and acceptance.

5 I have heard the learned advocate appearing for respondents / original accused. He argued that, the fact that the

complainant had already received notice for demolition of unauthorized construction is conveniently suppressed by the complainant which shows that the complainant is unreliable as well as highly interested witness. The learned advocate further argued that evidence of the Investigating Officer is discrepant as at one moment he stated that conversation was recorded by using different memory cards but subsequently he disclosed that conversation was recorded by using only one memory card. The learned advocate further supported the impugned judgment and order of acquittal by contending that evidence of the prosecution is discrepant and lacunic to prove demand of illegal gratification by accused persons.

6 I have carefully considered the rival submissions and also perused the record made available including the complete set of charge-sheet as well as oral evidence and proved documents.

7 Evidence of PW1 Datta Kobal reflected that he lodged complaint with ACB on 16th June 2014 on the premise that

accused persons had assured him that no permission is required but on starting construction work, they came, threatened him of demolition of ongoing work and demanded illegal gratification. However, cross-examination of this witness reveals that even prior to lodging the complaint with the ACB, the Competent Authority had served notice of demolition of on going unauthorized construction. Evidence of this witness further reflected that one Kamath – Assistant Engineer was in-charge of this matter of removal of unauthorized construction and respondents / accused persons were in no way concerned with protection of this construction or taking action for its removal. Cross-examination of PW1 Datta Kobal reflects that both respondents / accused persons were having duty to report unauthorized constructions. Except this, they were not in any way concerned with the matter.

8 It is seen from cross-examination of PW1 Datta Kobal that his another maternal uncle Gajendra More is an active member of Bharatiya Janata Party and he had lodged similar complaint against Food Distribution Officer. This fact coupled

with the fact that complainant Datta Kobal had conveniently suppressed receipt of notice for removal of unauthorized construction giving three days time, makes his evidence highly interested requiring close scrutiny.

9 It is seen from cross-examination of PW1 Datta Kobal that at the time of demand verification, no demand of illegal gratification emanates from accused from accused no.1 Polekar as alleged by him in the chief examination. On the contrary, it is seen that it was PW1 Datta Kobal who was offering money to accused persons. This is an aspect which certainly casts shadow of doubt on the prosecution case.

10 Strangely enough, the complaint Exhibit 7 lodged by Datta Kobal reflects that an amount of Rs.15,000/- was demanded by respondents / accused persons. Complainant Datta Kobal did not negotiate. However, all of a sudden, the demand was scaled down to Rs.1,000/- from Rs.15,000/-, as stated by complainant Datta Kobal in his complaint Exhibit 7. No reason, whatsoever, is

reflected for scaling down the demand of alleged bribe. This makes evidence of the complainant highly artificial on the backdrop of the fact that near relative of the complainant had already resorted to lodging such complaint against another officer.

11 The position which boils down from evidence of prosecution is to the effect that relevant facts were conveniently suppressed by complainant / PW1 Datta Kobal. Accused persons were not having any power or authority to direct removal of unauthorized construction or to protect the ongoing construction. They were not in a position to do any favour to the complainant. Pre-trap panchnama made for verification of demand does not disclose the time of illegal gratification emanating from accused persons. With this, I find no infirmity with the finding of the learned trial court that the prosecution has failed to prove initial demand and therefore, accused persons deserve acquittal.

In the result, no case for grant of leave is made out. The application is rejected.

(A. M. BADAR, J.)