



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.19 OF 2020

. The State of Maharashtra,
Through Police Station Officer,
City Police Station, Beed,
Taluka and District Beed. Applicant

Versus

- 1) Dattatraya S/o. Mahipatrao Kulkarni
Age: 55 years, Occu.: Service,
Talathi, Sajja Shidod, R/o.Beed,
Taluka Beed, District Beed.
- 2) Kalyan s/o Bhagwan Ghodake
Age: 55 years, Occu.: Agriculture,
R/o.Beed, Taluka Beed, District Beed. Respondents
(Org. Accused)

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Mr.V.S.Badakh, APP for Applicant.
Mr.Mrighesh D.Narwadkar, Advocate for Respondents.
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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 01 SEPTEMBER, 2026
PRONOUNCED ON : 02 SEPTEMBER, 2026

ORDER :

1. Instant application for leave to file appeal is on behalf of State getting dissatisfied by the judgment and order of acquittal dated 26-10-2018 passed by learned Special Judge, Beed in Special (ACB) Case No.1 of 2013 acquitting the respondents from charges under

Sections 7, 12, 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 (PC Act).

2. Prosecution was launched against respondents on receipt of complaint from PW1 complainant that, when he approached accused No.1 for mutating his name in 7/12 extract so as to enable him to avail crop loan, it is alleged that demand of Rs.2,000/- was made. Part payment of Rs.500/- was made and thereafter, PW1 complainant approached Anti Corruption Bureau (ACB), gave a complaint of demand of bribe. In consequence to it, ACB authorities arranged panchas, planned trap, undertook exercise of verification of demand and finally, laid trap and apprehended accused no.1, who was Talathi and accused no.2, who was his Assistant. Both accused were chargesheeted, tried, but finally acquitted by learned Special Judge, Beed. Hence, leave application to file appeal by State.

3. According to learned APP, accused no.1 was Talathi whereas accused no.2 was his Assistant. That, on receipt of complaint from PW1 complainant regarding demand of bribe of Rs.2,000/- for mutating his name in 7/12 extract, ACB authorities summoned

independent witnesses, necessary instructions were given to both complainant and shadow pancha and initially, demand verification was got done by sending both of them to accused no.1 with voice recorder. That, accused no.1 raised demand of bribe while complainant and shadow pancha were together. Thereafter, main trap was laid. That, even during main trap, there was demand by accused no.1, but he directed bribe to be paid to accused no.2, who accepted the bribe. Therefore, offence of demand and acceptance was complete and it was duly proved by prosecution. However, according to him, evidence of complainant and shadow pancha has not been correctly appreciated. He pointed out that, even learned trial Court held that, there was invalid sanction even when witness was examined to that extent. Resultantly, he submits that, prosecution has a good case in appeal and therefore, he urges to grant leave.

4. Per contra, learned counsel for respondents/accused would submit that, here, prosecution has miserably failed to prove demand. That, accused no.1 had not made any demand and it is also admitted by prosecution witnesses i.e. complainant as well as shadow pancha. That, there was said to be mere gestures of which no specific

meaning could be gathered. That, moreover there is nothing to connect accused no.2 to accused no.1 and there is no evidence to that extent. It is pointed out that, complainant has deposed that, amount was directed to be paid to unknown person and therefore, case of prosecution being not proved beyond reasonable doubt, he justifies the order of acquittal passed by learned trial Court and prays to refuse leave.

5. Heard. Perused the record.

6. In view of the nature of the charge, admittedly, it is incumbent upon prosecution to first prove that there was demand. Establishment of demand is *sine qua non*. If demand is not proved beyond reasonable doubt, case of prosecution itself is rendered doubtful.

7. **PW1** Mahendra Chintaman Kale, complainant, who has deposed at exh.29, in paragraph 4 of the examination-in-chief stated that, on 11-07-2012, when he approached with documents, accused no.1 allegedly said to him that, he has to pay fees and further said

that, Government work is not done free of cost and said that complainant will have to pay Rs.2,000/-. Rs.500/- were said to be paid as part consideration, but admittedly, there is no corroboration to such initial demand.

In paragraph Nos.9 and 10 of the examination-in-chief, he deposed about approaching accused No.1 while in company of PW2 shadow pancha and carrying voice recorder to record conversation of demand, but that day accused was not available and thereafter, he and shadow pancha again visited the office of accused and events to that extent are deposed in paragraph 14. But, here, he stated that, accused No.1 said to him to pay bribe amount to unknown person by pointing out to him and so he took out the bribe amount and paid to unknown person, who accepted Rs.1,500/-.

While under **cross-examination**, in paragraph 27, he answered that, he is unable to remember whether he stated in the complaint that when he approached accused No.1 after two days, accused No.1 told him that documents are not yet ready and to come later and he further said that, he should come with Rs.1,500/- to get the documents.

8. **PW2** Amit Choukhe, shadow pancha, is examined at exh.43. In paragraph 4 of his examination-in-chief he stated about the events in ACB office after introduction of complainant and hearing his complaint, they both carrying voice recorder, visiting the office of accused, but on not finding him there, they returning and panchanama being drawn.

In paragraph 5 of his examination-in-chief he stated that he and complainant entered the Talathi office, talks took place between complainant and accused No.1 and complainant asked accused whether his work is completed, but accused No.1 told him to go to his Assistant and Assistant again told him to go to Talathi and further Assistant told that, Circle Inspector had not arrived and thereafter, he was told to prepare affidavit and again complainant came to accused No.1, who asked to show the register and cause signature, after which accused No.1 asked whether work of money is completed. Again he asked complainant about the money after which complainant told that his father is coming and his father would pay the money.

In paragraph 7 of his examination-in-chief, he stated that, they again went to office of accused No.1 where accused No.1 and complainant had talks and accused No.1 asked who was

accompanying complainant and thereafter, accused No.1 made gestures by hand to a person, who was standing there.

Thus, as submitted, even during main trap, there was no verbal demand and gestures are said to be made. As submitted, there is nothing on record to show that accused no.2 was acting at the instance of accused no.1. Mere gestures of pointing out are taken as demand.

9. As submitted by learned counsel for respondents, sanction is also held to be not valid. **PW3** Ganesh Keshav Nirhale, is the S.D.M., Beed and though he claimed to have empowered to appoint Talathi and remove him and there being Government Resolution to that effect dated 14-06-1984, while under **cross-examination**, he admitted that photocopies were produced before him and he admitted that, in the investigation papers perused by him, date of demand of bribe was not reflected.

10. Consequently, here, demand is not cogently proved. PW1 complainant does not attribute demand to accused No.1. PW2 shadow pancha deposes about accused No.1 making gestures.

Hence, *sine qua non* like demand is not proved beyond reasonable doubt. As stated above, sanction is also not after due application of mind. There is nothing on record to connect accused Nos.1 and 2. When complainant himself in examination-in-chief stated that, he paid money to unknown person, case of prosecution collapses.

Therefore, with such quality of evidence and primarily demand not being proved, coupled with aspect of sanction to be invalid, learned trial Court committed no error in acquitting the respondents/accused. As no good ground is made out to accord leave, application deserves to be rejected. Accordingly, following order is passed :

ORDER

The application is rejected.

**(ABHAY S. WAGHWASE)
JUDGE**