



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.36 OF 2023

The State of Maharashtra
Through the Police Station Officer,
City Chowk Police Station, Aurangabad.

.. Appellant

Versus

Vitthal Sitaram Sulane
Age: 49 years, Occu.: Service,
R/o. Shrikrishna Nagar, Beed Bypass
Road, Deolai, Aurangabad.

.. Respondent

...
Ms. Chaitali Chaudhari Kutti, APP for appellant/State.
Mr. Nitin K. Chaudhari, Advocate for respondent.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved On : 18.08.2026

Pronounced On : 19.08.2026

ORDER :-

1. Feeling aggrieved by the judgment and order of acquittal dated 08.11.2022 passed by learned Special Judge (PC Act), Aurangabad in Special (ACB) Case No.4 of 2011, as State is desirous of filing appeal, instant application for leave to file appeal has been pressed into service.

2. Prosecution was lodged against present respondent on the premise that he was working as Superintendent in the Government

Adult Disabled Training Institute. Informant P.W.2, after her transfer to the said institute, had tendered her LPC and had requested to draw her salary. According to prosecution, to do so, accused demanded Rs.3,000/- and finally, on negotiations, brought down the figure to Rs.1,500/-. P.W.2 as was not ready to give bribe, approached Anti Corruption Bureau (ACB) office, who planned and executed trap by following due procedure. After the trap, accused was apprehended on report of P.W.4. Complaint was lodged, which was investigated and after gathering sufficient evidence, accused came to be charge-sheeted and tried. Ultimately, the trial ended in acquittal. Hence, the application for leave to appeal.

3. Learned APP reiterated the prosecution case and submitted that there is no dispute or denial that complainant as well as accused were both public servants. That, there is no further dispute that they work in the same institute at relevant time and accused being Superintendent was responsible for drawing salary. That, complainant, who was recently transferred from Ashti, Beed, had tendered her last drawn salary certificate and had requested accused to draw her salary. However, to do the needful, he demanded bribe.

. She further pointed out that on receipt of complaint from P.W.2 regarding demand of illegal gratification, ACB authorities planned

trap by engaging independent shadow panch i.e. P.W.3 and necessary instructions were given to both complainant as well as panch. She next submitted that prior to the main trap, demand verification was done and in presence of shadow panch, accused had raised demand and, therefore, only on getting confirmed, main trap was laid and even during it, there was again demand as well as acceptance. Thus, according to her prosecution had proved essentials like demand and acceptance before the learned Trial Court, however, according to her, there is incorrect appreciation of evidence.

. She further submitted that, before filing charge-sheet against the accused, sanction as required was obtained from P.W.1, who, upon due application of mind, had granted sanction. Thus, according to her, there was clinching evidence regarding demand followed by acceptance and due sanction had also been obtained, however, the learned Trial Court misread the evidence and erred in acquitting the accused. According to her, the prosecution has a good case in appeal, and, therefore, she urged that leave to file the appeal be granted.

4. In answer to above, learned Counsel for respondent pointed out that prosecution has miserably failed to prove demand or acceptance of bribe. According to him, there are material variances, contradictions and omissions in the testimony of prosecution

witnesses, more particularly, complainant, who had given different version than what is reflected in the panchanamas i.e. pre-trap panchanama and post-trap panchanama. According to him, the amount of demand has not been stated by complainant and, therefore, case of prosecution was itself rendered doubtful on the point of demand.

. After taking this Court through the observations of the learned Trial Court in the judgment, he submitted that the learned Trial Court has considered and appreciated the evidence in entirety and has meticulously dealt with each and every aspect and rightly held that prosecution has failed to bring home the charges and acquitted the accused. Thus, according to him, there being no good case with the prosecution on merits, he urges to refuse leave.

5. Heard. Perused the papers under the impugned judgment. Admittedly, complainant was working as Senior Clerk and accused was working as Superintendent in the Government Adult Disabled Training Institute. It appears that complainant was transferred from Ashti, Beed to the said institute and she was further deputed in Zilla Parishad. Complainant claims that she has tendered last drawn salary certificate and had requested accused to draw her salary, but according to her, accused demanded bribe of Rs.3,000/- for drawing

her salary and, on negotiations, the figure was brought down to Rs.1,500/- and, therefore, she approached the ACB office.

6. Complainant is examined as P.W.2, who testified at Exhibit-32 and narrated in paragraph No.3 of the examination-in-chief that, her salary was due since 2009 and she has requested accused to draw her salary, but he raised demand of Rs.3,000/- and finally settled the amount at Rs.1,500/-. Her evidence shows that, upon receipt of the written complaint, the ACB authorities initially decided to verify the demand made by accused. P.W.3, the shadow panch, was directed to accompany her. Regarding demand verification, she has deposed in paragraph No.8 and regarding main trap, she has deposed in paragraph No.10 of her examination-in-chief.

7. P.W.3, the shadow panch, in her evidence at Exhibit-50, has deposed in paragraph Nos.2, 3 and 4 of her examination-in-chief regarding verification of demand. She too stated that, in her presence, the accused questioned P.W.2 as to whether she had brought the money. In paragraph Nos.9 and 10 of her examination-in-chief, she has deposed about the main trap, during which there was again a demand followed by acceptance.

8. Therefore, *prima facie*, essentials like demand and acceptance are forthcoming from the testimony of complainant as well as shadow

panch i.e. independent witness.

9. From the testimony of P.W.1 Exhibit-26, it is revealed that after studying investigation papers and on application of mind, sanction has been accorded, which is identified at Exhibit-27. Therefore, all the essential ingredients for attracting the charges are *prima facie* available in the evidence adduced before the learned Trial Court.

10. Perused the judgment sought to be impugned. The reasoning part commences from paragraph No.15 onwards. The learned Trial Court seems to have answered point No.1 on the point of sanction in affirmative. However, while answering point Nos.2 and 3, on the point of demand and acceptance, learned Trial Court has recorded its conclusion from paragraph No.25 onwards. Much of the judgment seems to be devoted on documentary evidence. Learned Trial Court seems to have held that there is variance in the testimony of the complainant and the panchanama of demand verification. It appears that there are traces of anthracene powder suggesting acceptance. In paragraph No.54 of the judgment, the finding has been recorded that complainant has admitted that she hurriedly went after keeping the bribe amount on the table, however, she again corrected herself and stated that she gave the bribe amount to accused. Precisely, such evidence has been doubted. Therefore, there is point to dealt, but in

appeal. Therefore, in the light of above discussion, prayers raised by State deserves consideration. Hence, the following order is passed :-

ORDER

- I. The Application stands allowed.
- II. Leave is granted to the prosecution to file Appeal.
- III. Registry to register the Appeal.
- IV. Appeal stands admitted.
- V. Call record and proceedings.
- VI. Action under Section 390 of the Code of Criminal Procedure be taken against the respondent to the satisfaction of the Trial Court.

[ABHAY S. WAGHWASE, J.]