



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 54 OF 2023

The State of Maharashtra
Through Police Station In-charge,
Kadim Jalna, Tq.Jalna,
District Jalna.

....Applicant

Versus

Sandu Yeshwant Dongre
Age: 48 years, Occu.: Service,
R/o. Govt. Quarter No.36/218,
Anandnagar Kotala Colony,
Aurangabad.

.....Respondent
(Accused)

.....

Shri V.S.Badakh, APP for Applicant.
Shri Rajendrraa Deshmukh, Senior Counsel a/w. Ms.Rakshanda
R.Jaiswal i/by. Mr.Devang R. Deshmukh, Advocates for Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 22 SEPTEMBER, 2026

PRONOUNCED ON : 23 SEPTEMBER, 2026

ORDER :

1. Vide instant leave application, State seeks permission to question Judgment and order of acquittal dated 05-01-2023 passed by learned Judge, Special Court, Jalna in Special Case (PCA) No.15 of 2017 acquitting the accused from charges under Sections 7, 13(1) (d), 13(2) of the PC Act.

2. Learned APP would point out that, respondent/original accused was working as a Clerk in the Office of Assistant Charity Commissioner. That, for registering society of complainant, he demanded bribe of Rs.1,000/-, of which complaint was received and entertained by Anti Corruption Bureau (ACB) authorities. According to learned counsel, thereafter, independent panchas were summoned and introduced to complainant and after giving necessary instructions, exercise of verification of demand was got done in which both complainant and shadow pancha were asked to go together to meet accused by carrying voice recorder. It is pointed out that, in presence of shadow pancha, accused has raised demand. That, after hearing the conversation recorded in the voice recorder, main trap was laid. He further pointed out that, during the main trap also, both complainant and shadow pancha are consistent about demand of bribe. That, accused was found in possession of tainted currency and as such, there was acceptance. Consequently, it is submitted that, there is both demand as well as acceptance. That, even sanctioning authority has been examined and therefore, prosecution case was full-proof, but learned trial Court misread and mis-appreciated the evidence and acquitted the accused. Thus, according to him, State has a good case in appeal and so he seeks

leave to file appeal.

3. Per contra, learned Senior Counsel appearing for respondent would point out that, prosecution has miserably failed to prove essentials like demand and acceptance. He pointed out that, according to complainant, initial demand was through Advocate and he has learnt about demand from said Advocate, but said Advocate is not examined. He pointed out that, even very hand written complaint of complainant is silent about demand of Rs.1,000/-. He further pointed out that, witnesses i.e. complainant and shadow pancha both speak about demand by gestures and there was no verbal demand. Learned Senior Counsel took this Court through cross-examination faced by complainant as well as shadow pancha and would point out that, there are material admissions rendering the case of prosecution doubtful i.e. on the point of demand. Consequently, he justifies the Judgment and order of acquittal and prays to refuse leave.

4. After hearing above submissions, evidence placed on record is put to scrutiny. It appears that **PW2** Santosh Tarachand Yadav is complainant, **PW1** Dadarao Kamluba Tangde is Shadow pancha and

PW3 Adinath Vitthalrao Kashid is the Investigating Officer.

5. In his testimony at Exhibit 45, complainant **PW2** Santosh, deposed that, he moved an application before the Office of Assistant Charity Commissioner, Jalna, for registration of Uday Bahuuddeshiya Sanstha and accused, who was a Clerk, was not inclined to register and was rather expecting bribe from him. He deposed that, accused demanded Rs.1,500/- for registration, but after negotiation, accused agreed to accept Rs.1,000/- and therefore, as he was not willing to pay bribe, he lodged complaint Exhibit 46 .

In paragraph 3, he narrated the events which took place during verification of demand i.e. he and shadow pancha going to office of accused. He deposed that, accused pressed his thumb on the index finger and asked him about money. Thus, there is no oral or verbal demand and there is mere gestures.

He further deposed that, when he and shadow pancha witness returned and the Investigating Officer heard the conversation recorded on voice recorder, it was not clear and therefore, they again approached accused, but that time accused was not in his office and rather was sitting in canteen. According to complainant, they had

tea with accused and he himself said to accused that he can pay only Rs.300/- and accused agreed to accept Rs.300/-. Therefore, apparently during the second visit at the canteen of which conversation is recorded and clear, there is direct offer without any demand in the canteen by accused.

In **cross-examination**, complainant has admitted that, he had engaged an Advocate for the purpose of registration and accused demanded bribe through his Advocate first. Admittedly, said Advocate is not examined by prosecution to prove that there was demand. Apparently complainant has learnt about initial demand through his Advocate and there was no personal demand to complainant. In further cross-examination, he has admitted that, his hand written report Exhibit 46 is silent on the demand of bribe of Rs.1,000/-.

6. If we examine the evidence of shadow pancha PW1 Dadarao, he also in his examination-in-chief has stated that, when he and complainant went to verify demand by carrying voice recorder, at that time, accused made gestures by pressing his thumb on the index finger. Thus, even according to this witness, there are mere gestures and no oral demand. This witness has stated what is not stated by

complainant i.e. after seeing the gestures of accused, *de facto* complainant said that amount can't be so much. There is no reference of amount. Even this witness has stated that during first verification of demand, conversation was not clear.

In paragraph 3, he deposed about second visit for verification of demand that, *de facto* complainant asked accused what happened about his work and accused asked *de facto* complainant to give Rs.1,000/-, but complainant said that, he would give Rs.300/- and accused nodded. In paragraph 5, he narrated about main trap and here also he stated about accused pressing his thumb on the index finger and demanding money.

While under **cross-examination**, shadow pancha has admitted in paragraph 8 that, demand of bribe was not clear during first verification and he further candidly admitted that, *de facto* complainant on his own has said to accused that he would give Rs.300/- and not Rs.1,000/-. He also admitted that, in the script Exhibit 37, accused had asked complainant to leave aside the subject of money. He further admitted in paragraph 9 of cross-examination that, *de facto* complainant himself has asked accused at the time of main trap whether he should give money.

7. Thus apparently there is no demand and there are mere gestures. Further during the main trap, prosecution own witnesses admit in cross-examination that, *de facto* complainant himself offered money without any demand raised by accused. Therefore, such evidence hits the prosecution story on the point of demand at the bottom itself. When once demand is not proved beyond reasonable doubt, entire prosecution story collapses. Therefore, application deserves to be rejected. Accordingly, following order is passed :

ORDER

The application is rejected.

(ABHAY S. WAGHWASE)
JUDGE