



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 42 OF 2025

The State of Maharashtra,
Through Deputy Superintendent of
Police, Anti Corruption Bureau,
(ACB), Latur, District Latur.

..Applicant

Versus

1. Suresh Shivraj Shetkar
Age: 50 years, Occu.: Police Inspector,
R/o. : Ahmedpur, Tq.Ahmedpur,
District Latur.
2. Vijay @ Chotu Prataprao Gadkari
Age: 53 years, Occu.: Driving School Owner,
R/o. Datta Naar, Ausa Road, Latur.

..Respondent
(Original Accused)

.....

Mr. V. S. Badakh, APP for Applicant.
Mr. Joydeep Chatterji, Advocate for Respondent No.1.
Ms. Monica Rohit Dahat, Advocate for Respondent No.2.

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 05 OCTOBER, 2026

PRONOUNCED ON : 06 OCTOBER, 2026

ORDER :

1. Instant application for leave to file appeal by State is in consequence to the judgment and order of acquittal dated 25.10.2024 passed by the learned Special Judge, Latur in Special Case (ACB) No.02 of 2019, thereby acquitting the present

respondents from offence under Sections 7, 12 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

2. Learned APP pointed out that accused No.1, a public servant, demanded bribe from PW1 *de facto* complainant, who was working as a Motor Vehicle Inspector, Regional Transport Office, Latur, to settle the complaint received against *de facto* complainant from private travel bus owner. Message of demand was passed to *de facto* complainant through accused No.2. On receipt of complaint from *de facto* complainant, ACB authorities planned trap. Learned APP pointed out that demand verification was done by recording the conversation on voice recorder. Report to that extent is positive. The authority, who analyzed the voice recorder, has been examined by prosecution and thus, according to learned APP, after due verification, main trap was planned. It was also successfully executed. Learned APP further pointed out that in support of its case, prosecution has adduced evidence of in all 10 witnesses. That, evidence of *de facto* complainant found support from the evidence of PW5 and PW7 Investigating Officer. Demand as well as acceptance was duly proved by prosecution in Trial Court, but learned Trial Court failed to consider and appreciate the said evidence and erred in acquitting the accused by refusing to accept the case of prosecution. He would

submit that prosecution has good case on merits in appeal and therefore, he urges for grant of leave.

3. Learned Counsel Mr. Chatterji and Ms. Dahat, appearing for respondent Nos.1 and 2 i.e. accused Nos.1 and 2 respectively, supported the judgment and order of acquittal. They both emphatically submitted that prosecution had miserably failed to bring home the guilt of accused. They pointed out that, though accused No.1 was undoubtedly a public servant, the entire demand was attributed to accused No.2, who was not a public servant. That, there was no material on record to establish any connection between accused Nos.1 and 2. According to them, there was no demand at all and prosecution witnesses i.e. PW1 *de facto* complainant and PW2 shadow panch and evidence of prosecution witnesses is silent about very crucial aspect of demand. Thus, according to them, mere recovery is of no consequence and they took this Court through the cross-examination of above witnesses and also through the judgment of the learned Trial Court and ultimately, prayed to maintain the said judgment by refusing leave for want of merits.

4. Heard. Perused the papers. In the present case, the prosecution has adduced the evidence of **PW1**, the *de facto* complainant, at Exhibit-50; **PW2**, the shadow panch, at Exhibit-55; **PW3**, the panch

witness to the voice recorder and panchnamas at Exhibits 64 and 65, at Exhibit-61; **PW4**, the Scientific Officer, who analysed the voice samples; **PW5**, the Watchman of the Government Rest House; **PW6**, the Director General of Police, who accorded the sanction; **PW7**, the Investigating Officer; **PW8** and **PW9**, the Nodal Officers, who gathered the details of the call records; and **PW10**, who is another Investigating Officer.

5. In view of the nature of the charges, it is incumbent upon the prosecution to establish that there was a demand followed by acceptance. These are the sine qua non for attracting the aforesaid charges. In the present case, testimonies of **PW1**, the *de facto* complainant, **PW2** the shadow panch, and **PW5** are crucial and significant on the aspects of demand as well as acceptance.

6. On going through the evidence of **PW1**, it is noticed that he himself was working as a Motor Vehicle Inspector in the Regional Transport Office, Latur. In his evidence at Exhibit-50, he deposed that he knew accused No.2, Gadkari, who made a telephone call to him suggesting that he meet him, as there was some urgent work. Accordingly, the *de facto* complainant claims to have gone to the Government Rest House, Latur, on 04.08.2017, where he claims that accused No.2 told him to settle the complaint received from a travel

bus owner against him with the ACB office. Accused No.2 further suggested to the *de facto* complainant to pay Rs.3,00,000/- to accused No.1 for settling the complaint. However, as pointed out by the learned Counsel for the respondents, the aforesaid narrative deposed by the *de facto* complainant in his evidence is missing from the written complaint at Exhibit-51 submitted by him to the ACB authorities. Similarly, though he deposed in his evidence about approaching the DIG at Mumbai and handing over the CDR of the conversation with accused No.2, which was thereafter played, the complaint at Exhibit-51 is also silent on this aspect. Apparently, as submitted, on 03.08.2017, there was only meeting between PW1 *de facto* complainant and accused No.2 and after their conversation, accused No.2 had left the Government Rest House. At that point of time, accused No.1 had not come there and, therefore, there was no meeting between PW1 *de facto* complainant and accused No.1. Further, the *de facto* complainant has stated that, as instructed by the Investigating Officer, he went inside the office of accused No.2, handed over the packet containing the tainted currency, came out, and gave the signal. However, he does not speak about any demand being made even by accused No.2.

7. Again, as pointed out, while PW1 *de facto* complainant was in the witness box, the learned Trial Court noted his conduct when he was asked by the learned Prosecutor as to what happened after accused No.2 was caught by the ACB. He answered that it merely happened that much.

8. **PW2** deposed that PW1 got a phone call of accused No.2 and the call was recorded on voice recorder and conversation between *de facto* complainant and accused No.2 on mobile was recorded and during such conversation, accused No.2 had asked *de facto* complainant questioning him whether there was any conversation between him and accused No.1 regarding money. Thereafter, PW1 told accused No.2 that he would not be able to pay amount of Rs.1,00,000/-.However, the testimony of PW1 is silent about any such conversation with accused No.2. Furthermore, it appears that the alleged conversation was not played before the Court by the prosecution. PW2 also deposed that *de facto* complainant got phone call from accused No.1, who allegedly told him that he had not forwarded the complaint to superiors and not to worry. Even so called conversation on telephone was not played before the trial Court.

9. Resultantly, the crucial aspect of demand itself is not coming on record. Apparently, there is nothing to connect accused No.1 and accused No.2, except alleged several calls between them. To connect them and to show that accused No.2 was acting at the instance of accused No.1, there has to be convincing evidence, which is missing in the present case. Hence, when demand itself is not proved, mere acceptance or possession of the currency, that too from accused No.2 alone, in the absence of any evidence connecting accused Nos.1 and 2, is of no significance.

10. Case of prosecution is that complainant had met accused Nos.1 and 2 at Government Rest House. **PW5** seems to be examined in that backdrop and he deposed that on 04.08.2017, while he was on duty, around 10.30 to 11.30 a.m. accused No.2 came at Government Rest House along with two unknown persons, sat for 10-15 minutes in a room and had tea. According to him, when he went to clean the other room and returned, by that time, those persons had left. He identifies accused No.2 only and not accused No.1. Therefore, again prosecution evidence points to the involvement of accused No.2 only.

11. What emerges from the evidence available on record is that the prosecution story that accused No.1 demanded a bribe through accused No.2 has not been substantiated beyond reasonable doubt.

At the threshold, there is no iota of evidence, except the telephonic call records, to establish that accused Nos.1 and 2 were acting in connivance with each other or had acted together. Admittedly, accused No.1 did not accept any bribe. There is also no convincing evidence to establish that accused No.1 had demanded a bribe from the *de facto* complainant.

12. With above quality of evidence, this Court does not find that any fruitful purpose would be served by according leave. Hence, leave refused. Hence, the following order is passed :-

ORDER

. Application is rejected.

**(ABHAY S. WAGHWASE)
JUDGE**