

1) The State has filed present application seeking leave under section 378(1)(3) of the Code of Criminal Procedure to file an appeal against judgment and order dated 30.03.2015 passed by the learned Additional Sessions Judge, Jalgaon in Special (A.C.B.) Case No. 13/2013, whereby the learned trial Court has acquitted the accused therein of the offences under sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

2) Shri V.S.Badakh the learned APP submitted that in spite of the sufficient evidence being brought on record proving the guilt of the accused i.e. Respondent herein beyond reasonable doubt the learned trial Court has acquitted the accused on untenable grounds. Learned APP further submitted that the learned trial Judge seems to have been swayed by the so called admissions allegedly given by the original complainant that the accused did not personally demand and accept the bribe amount. Learned APP taking me through the evidence on record submitted that, the conclusion so recorded by the learned trial Judge is factually incorrect. Learned APP brought to my notice pre-trap tape-recorded conversation between the original complainant and the accused. Learned APP further submitted that, the bribe amount can also be demanded and accepted through any subordinate officer or by any other person and merely because one stray admission is given by the original complainant, at some point of time in his cross examination, no such conclusion can be drawn that the accused is totally innocent. Learned APP further submitted that, there is no inconsistency in the evidence of PW.1 and PW.2. On the contrary, PW.2 has corroborated the evidence of PW.1 on all material aspects. Learned APP

submitted that by drawing some far fetched inference, the trial Court has recorded acquittal of the accused, and as such the leave needs to be granted for filing an appeal against the impugned judgment.

3) Shri P.S.Paranjape, the learned Counsel appearing for the respondent vehemently opposed the submissions made by the learned APP. Learned Counsel submitted that the trial Court has recorded unambiguous finding that the prosecution has failed in bringing on record any clinching evidence so as to prove the guilt of the accused. Learned Counsel invited my attention to para 33, 39, 40 and 41 of the impugned judgment. Learned Counsel brought to my notice that, the learned trial Court has recorded a clear finding that the evidence given by de facto complainant in his examination-in-chief is of such a nature that de facto complainant cannot be believed and from the admission given by him, it becomes clear that de facto complainant has tried to implicate the accused in the trap. Learned Counsel submitted that, in view of such clear finding recorded by the trial Court, no case is made out by the State for grant of leave to appeal. He therefore, prayed for rejecting the application.

4) I have carefully considered the submissions advanced by the learned APP and the learned Counsel appearing for the respondent. I have gone through the impugned judgment and evidence adduced before the trial Court as well as the documents placed on record. Perusal of the record shows that charge was leveled against the respondent that for cancellation of membership of some of the members of *Bhoiraj Matsya Vyavasaik Sahakari Sanstha*, she had demanded and accepted Rs.5,000/- from Bhika Shankar Bhoi who at the relevant time was the Chairman of the said Sahakari Sanstha. The record further shows that, the complaint was made by the said Bhika Shankar Bhoi with the Anti Corruption Bureau, whereupon the further actions were initiated. The record further shows that, earlier two attempts of laying trap against the accused i.e. the present respondent first on 02.11.2012, and second on 03.11.2012 had failed and ultimately on 06.11.2012 the trap was allegedly laid and according to the prosecution it succeeded and the accused was found to have accepted the bribe amount from the complainant. As against this, it is the specific defence raised by the accused i.e. the respondent herein that, she never demanded or

accepted any such amount and the amount of Rs.5,000/- allegedly recovered from the drawer of her table was thrust in the said drawer by the complainant so as to falsely implicate her in the alleged crime.

5) In order to prove the guilt of the accused, the prosecution has examined total four witnesses i.e. complainant, one panch witness, the sanctioning authority and the investigating officer. On perusal of the evidence of complainant (PW.1) and the panch witness (PW.2), it is apparently revealed that on the most material aspect of the case that of alleged acceptance of the bribe amount by the accused, contradictory version has come on record of PW.1 and PW.2. As admitted by PW.1 in his cross examination, when he dropped the amount of Rs.5,000/- in the drawer of the table of accused, panch (PW.2) was seating in the hall and not in the cabin of the accused. Whereas, PW.2 has deposed that in his presence the accused open the right side drawer of her table and pointed out the complainant to drop the amount in the said drawer and accordingly the complainant (PW.1) dropped the said amount.

6) Similarly, as about the tape-recording of the conversation between the complainant and the accused,

the evidence which has come of record is not dependable. As has been rightly observed by the learned trial Court, the evidence about the use of voice recorders given by the prosecution witnesses is contradictory in nature. The complainant has deposed before the Court that two voice recorders were used for bribe demand verification. Whereas, the I.O. has denied the fact of the use of two voice recorders. Further, the tape-recorded conversation has not been dependably proved. Though, the voice sample of the accused was obtained, nothing has been brought on record by the prosecution to show that the voice sample of the accused so obtained was tallied with the alleged tape-recorded conversation with the assistance of any expert in the field. Nothing has come on record even through the evidence of the investigation officer showing that the voice of the accused in the alleged tape-recorded conversation had tallied with the voice sample so obtained of the accused. It is further significant to note that, the complainant in his cross-examination has candidly admitted that accused had never demanded any amount from him and that all talks in this regard had taken place between him and one Mr. Goyar.

7) Having regard to the evidence as aforesaid, it does not appear to me that, any other conclusion than recorded by the learned trial Court that 'the prosecution has failed in proving the demand', could have been recorded. Thus, no sufficient evidence has come on record either about the demand of the bribe amount by the accused or about the acceptance of the said amount by the accused. Having regard to the several weaknesses noticed in the prosecution evidence, it appears to me that granting of leave to appeal against the judgment of the trial Court will be an exercise in futility. I am, therefore, not inclined to allow the application. Hence, following order:

ORDER

a) The Criminal Application is rejected.

(P.R. BORA, J.)

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S.P.Rane