

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

APPLICATION FOR LEAVE TO APPEAL(STATE) NO.4 OF 2015

The State of Maharashtra ... **Applicant**
V/s.
Arvind Dhondiba Ingale ... **Respondent**

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Mr. Deepak Thakre, APP for the Respondent/State.
Mr. H. E. Palwe, Advocate for the Respondent No.1.

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CORAM : ABHAY M. THIPSAY J.

DATED : 3RD FEBRUARY, 2015

P.C.

1. As by this application, the State of Maharashtra is seeking leave to file an appeal from the order of acquittal dated 12th February, 2014 passed by the learned Additional Session Judge, Pandharpur in Special Case No. 15 of 2010 acquitting the respondent, who was accused in the said case, of the offences punishable under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

2. I have heard Mr.Thakre, the learned Additional Public Prosecutor for the applicant/State. I have heard Mr.Palwe, the learned counsel for the respondent. I have gone through the application and the annexures thereto, which include the

impugned judgment and also the notes of evidence that was adduced during the trial.

3. The respondent, at the material time, was working as Assistant Engineer in the MSEB Office at Pandharpur. The prosecution case, as put forth before the trial Court, was that, the *de-facto* complainant – Dattatraya Waghmare wanted electricity connection and had met the respondent in that connection. That, in order to do the needful, the respondent allegedly demanded an amount on 6th July, 2009 in his house, where the *de-facto* complainant was asked to come by him. As the respondent did not want to pay the amount of bribe, he reported the matter to the Anti Corruption Bureau, pursuant to which the trap was laid. The case of the prosecution is that the respondent was apprehended after he had accepted the tainted money.

4. A perusal of the impugned judgment shows that the learned trial Judge doubted the truth of the prosecution version for a number of reasons. The learned Judge observed that the initial demand on 6th July, 2009 had not been satisfactorily established. It appears that this disbelief was formed because in his evidence, the *de-facto* complainant stated that the demand had been made by the respondent in his office, whereas the initial case was that it had been made in the house of respondent. The doubt was also felt because in the cross-examination, the *de-facto* complainant had admitted that before 7th July, 2009, which was

the date on which the *de-facto* complainant had submitted report to the MSEB office by collecting it from one Shri.Waghmare, nobody had demanded any bribe from him. The learned Judge, therefore, doubted the theory of the respondent having demanded bribe on 6th July, 2009.

5. It was also revealed in the cross-examination of the complainant that he was acquainted with the Deputy Superintendent of Police, ACB and was in contact with him before the trap. It was also revealed that in the month of April, 2009, the officers of the MSEB had raided the *de-facto* complainant's village and had found that the *de-facto* complainant was committing theft of electricity. The *de-facto* complainant further admitted that he was imposed a penalty by the MSEB.

6. It also appears that the conversation immediately before the bribe amount was handed over to the respondent was recorded. It is undisputed that the conversation is not audible. In spite of this, the Investigating Officer in his evidence, claimed to have heard it and stated about of his being satisfied 'after hearing the same' that the demand had, in fact, been made.

7. The learned trial Judge also doubted the version of the *de-facto* complainant that the tainted amount was accepted by the respondent and was kept in the left pocket of his shirt as the traces of Anthracene powder were not seen on the left pocket of the respondent's shirt.

8. Considering all the relevant aspects of the matter, the learned trial Judge thought it to be a fit case where the benefit of the reasonable doubt, which arose about the truth of the prosecution case, should be given to the respondent.

9. Though it is not possible to agree with the entire reasoning of the learned Trial Judge, certainly, the view of the evidence, as taken by him, is a possible view.

10. It is well settled that while considering the question of grant of leave, the principles on which an order of acquittal can be disturbed in appeal, need to be kept in mind. It is well settled that when two views of evidence adduced before the trial Court are possible, and the trial Court has taken one of them leading to acquittal, the finding of the trial Court is not liable to be interfered with in an appeal against acquittal.

11. This is a case where grant of leave to appeal would be futile.

12. Leave refused.

13. The application is rejected.

(ABHAY M. THIPSAY J.)