

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

CRIMINAL APPLICATION NO. 3697 OF 2015

The State of Maharashtra

... Applicant

VERSUS

Ananda s/o Narayan Gaikwad

... Respondent

.....
Mr S. P. Sonpawale, Advocate for applicant
Mr Prasad Kadam, Advocate h/f Mr Sudarshan J. Salunke,
Advocate for respondent.
.....

CORAM : INDIRA K. JAIN, J.

DATE : 27TH JANUARY, 2016.

PER COURT:

. This application under Section 378(1)(3) of the Code of Criminal Procedure is for leave to appeal against the judgment and order dated 13th April, 2015 passed by the learned Special Court (ACB), Gangakhed, Dist. Parbhani in Special Case (ACB) No. 1 of 2010 for the offences under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

2. Heard Mr S. P. Sonpawale, learned APP for applicant/State and Mr Prasad Kadam, learned counsel holding for Mr Sudarshan J. Salunke, learned counsel for respondent. Perused record.

3. The facts which are necessary to decide the present application may be stated in brief as under : -

Accused was serving as Talathi of village Sajja Makhni, Tq. Gangakhed, Dist. Parbhani. Complainant Amitkumar Digambarrao Katchwe approached accused on 26th May, 2008 with a copy of decree, death certificate of his grand-mother and legal heir certificate for effecting mutation entry in respect of agricultural land situated at village Makhni in the name of his father and uncles. It is alleged that accused demanded illegal gratification of Rs. 800/- for effecting mutation entry. After negotiation, amount was brought down to Rs. 400/-.

4. On 19th June, 2008 at 11:30 a.m. complainant approached accused again and inquired from him whether mutation entry has been effected in the name of his father and uncles. Accused told him that entry is effected. Complainant asked for a copy of mutation

entry. It is alleged that accused insisted the complainant to pay him Rs. 400/- as agreed and then he would get copy of mutation entry. It was decided between duo to meet again on 24th June, 2008. Complainant was not willing to pay bribe and so he reported the incident to Anti Corruption Bureau. Trap was arranged. Investigation was conducted. On completion of investigation, charge-sheet came to be filed before the Special Court.

5. Charge was framed against the accused. He pleaded not guilty and claimed to be tried. In his specific defence raised at Exh. 117, accused submitted that he had accepted amount of Rs. 400/- as per the request of uncle of complainant who asked the accused to deposit Rs. 325/- towards revenue charges for effecting mutation entry and to hand over the balance amount to him. According to accused he never demanded bribe nor it was so received by him.

6. Prosecution examined fourteen witnesses in support of its case. On going through the prosecution case and defence raised by accused, trial court came to the conclusion that sanction was not accorded by competent authority and the defence of accused appears to be probable. It was further held that prosecution has

failed to establish guilt of the accused beyond reasonable doubt and in consequence thereof, accused was acquitted. Being aggrieved applicant/State has approached this Court seeking leave to appeal against the judgment and order of acquittal.

7. Learned APP submitted that there is sufficient evidence to prove demand and acceptance. Since accused has clearly admitted acceptance of Rs. 400/-, it was for the accused to show that the said amount was not towards bribe but for depositing with the office towards revenue charges. Learned APP submitted that inconsistent stand has been taken by the defence, which is apparently false. Learned APP submits that evidence of prosecution witnesses is consistent throughout and there was no reason for the trial Court to disbelieve the evidence of prosecution witnesses.

8. Per contra, learned counsel for respondent vehemently contended that accused accepted the amount from the complainant at the request of uncle of complainant to deposit Rs. 325/- with the office and balance amount was to be returned to the complainant. Learned counsel submits that sanction was not accorded by the competent authority. There is no perversity or illegality in the judgment and order passed by the Special Court. According to

learned counsel, in this background it is not a fit case to grant leave to file an appeal.

9. This Court has gone through the evidence of prosecution witnesses and the defence raised. On going through the evidence of PW8 Milind Baviskar, Sub-Divisional Officer, Parbhani it can be seen that he issued sanction to prosecute the accused vide Exh. 72. He stated that vide letter dated 4th November, 2009, Anti Corruption Bureau, Parbhani submitted papers to him with a request to grant permission to prosecute accused. He studied the documents received along with the letter and granted permission to prosecute the accused. The evidence of PW8 has not been considered by the trial Court on the ground that he was not the competent authority to grant sanction. Learned APP referred to letter dated 5th August, 2009 sent to Collector, Parbhani by the Desk Officer of the concerned Department of Government of Maharashtra. In this letter it has been stated that Sub-Divisional Officer is the competent authority to prosecute the accused. It appears that this letter forwarded by the officer of the Government was not properly appreciated by the trial Court.

10. So far as merits of the case are concerned, there is an ample evidence on record to show that accused demanded and accepted an amount of Rs. 400/- as illegal gratification initially for effecting the Mutation Entry and when Mutation Entry was already taken, for issuing a copy of Mutation Entry. Once the accused admits acceptance of Rs. 400/-, it was for the accused to show that the same was towards revenue charges.

11. It is pertinent to note that, various revenue receipts have been produced on record along with list Exh. 119. Those receipts would indicate that in December 2007 amount of Rs. 325/- was recovered. If amount was already recovered in December, 2007, what was the need for the accused to accept the amount towards revenue charges in June 2008, is not explained.

12. Under these circumstances, this Court finds that there is an arguable case for the State. Hence the following order.

13. (i) Criminal Application No. 3697 of 2015 for leave to appeal is allowed.

(ii) Leave granted.

(iii) Appeal is admitted.

(iv) Action under Section 390 of the Code of Criminal Procedure.

[INDIRA K. JAIN, J.]

sgp