

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

CRIMINAL APPLICATION NO. 3807 OF 2015

The State of Maharashtra

...Applicant

VERSUS

Sudarshan Suryaji Gaikwad and anr.

...Respondents

.....
Shri S.D.Ghayal, A.P.P. for applicant

Shri Rajendra Deshmukh, advocate h/f

Shri M.P.Bhaskar, advocate for respondent nos. 1 and 2

.....

CORAM : INDIRA K.JAIN, J.

DATED : 13th APRIL, 2016

ORDER :

By this application, State of Maharashtra seeks leave to appeal against the judgment and order, dated 29.4.2015 passed by learned Special Judge (A.C.B.) Ahmednagar in Special Case No. 2 of 2013. By the said judgment and order, accused were acquitted of the offences punishable under Sections 7, 12, 13(1)(d) r/w 13 (2) of the Prevention of Corruption Act, 1988.

2] Heard Shri S.D.Ghayal, learned A.P.P. for the applicant/State and Shri Rajendra Deshmukh, learned counsel holding for Shri M.P.Bhaskar, advocate for respondents.

3] Prosecution case, in brief, is as under.

- (i) Accused no.1 was working as Sub-Divisional Officer, Karjat Division, Karjat, District Ahmednagar. Accused no.2 was working as driver in the same office.

(ii) On 8.4.2011 complaint was lodged to Anti Corruption Bureau office by Sharad Sopan Sodanawar. According to complainant, contract of excavation of sand at Nandini river, Akhoni village was allotted to him in auction. On 30.3.2011 he was preparing approach way to the bank of river. He engaged two trucks and three poke land machines for the said purpose. Accused no.1 visited the spot and seized those vehicles through Tahsildar, Karjat. It is alleged that accused no.1 demanded bribe of Rs.Two Lacs to release those vehicles. Since complainant was not willing to pay bribe he reported the incident to Anti Corruption Bureau office. The demand was verified. Verification panchanama was drawn in the presence of panch witnesses. A trap was arranged. It was successful. Amount was accepted by accused no.1 through accused no.2. After completing investigation, charge sheet came to be filed before the Special Court.

4] Charge of the alleged offence was explained to the accused. They pleaded not guilty and claimed to be tried. Their defence was of total denial and false implication.

5] Prosecution examined in all six witnesses in support of its case. Considering the evidence of complainant, panch witness and partner of complainant, Trial Court found that alleged demand of bribe was not proved and in absence of cogent evidence on demand accused were acquitted.

6] This Court has gone through the evidence of complainant

PW 2-Sharad, panch witness PW 3-Narendra Ingle and PW 5-Mahadeo More partner of complainant who accompanied him at the time of demand. Prosecution has also placed reliance on verification panchanama Exh.38. It can be seen from this panchanama that conversation with accused no.1 was recorded in voice recorder. At the time of verification of demand voice recorder was with complainant. A cassette was prepared. Prosecution did not produce voice recorder before the Court. In the absence of voice recorder, script reproduced in verification panchanama (Exh.38) would not be admissible in evidence and the Trial Court has rightly ignored the script reproduced in verification panchanama (Exh.38).

7] Further it can be seen from the evidence of panch Ingle and partner More that there was no demand of bribe by accused no.1 as alleged by complainant. According to complainant he called accused no.1 on phone. CDR (Exh.44) shows that no call was made to accused no.1 as alleged by complainant. The evidence of complainant on demand is not corroborated by independent witnesses.

8] In such a situation, even if leave is granted, no purpose would be served. Hence the following order.

ORDER

Criminal Application No. 3807 of 2015 stands dismissed.

[INDIRA K.JAIN, J.]