

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

CRIMINAL APPLICATION NO. 3905 OF 2015

The State of Maharashtra .. Applicant
Through PSO Pimpalner Police Station,
Tq. Sakri, Dist. Dhule.

Versus

Santosh Kisan Savakare & Anr. .. Respondents

Mr.S.P. Sonpawale, A.P.P. for applicant/State.
Mr.S.N. Rodge h/f. Mr. N.L. Choudhari, Advocate for the
respondents.

**CORAM : INDIRA K.JAIN, J.
DATED : 3rd FEBRUARY, 2016.**

P.C. :-

1. Heard Mr.S.P. Sonpawale learned A.P.P. for the State
and Mr. S.N. Rodge, learned Counsel for the respondents. Perused
record.

2. Here is an application for leave to appeal against
judgment and order dated 13.04.2015 passed by the learned Special

Judge, Dhule in Special Case No. 104 of 2013, acquitting accused No.1 of the offence under sections 7,13 (1) (d) and 13 (2) and accused No.2 of the offence under sections 12 r/w 7, 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988.

3. The prosecution case in brief is as under :-

. The incident occurred on 23.05.2013 at around 2.15 p.m. near Samode crossing within the jurisdiction of Pimpalner Police Station, Taluka Sakri, District Dhule. Accused No.1 Santosh Savakare was working as Extension Officer in Panchayat Samiti, Sakri. Accused No.2 was Rojgar Sevak (Employment Servant).

. P.W.1-Karbhari Bedase is complainant. Proposal for sinking well in the land of complainant situated at Kakani village was sanctioned under Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS). The work was undertaken. Two installments of subsidy under the scheme were paid to complainant, but 3rd, 4th and 5th installments were not paid. Complainant met Gram-sevak - Patil. Gram-sevak - Patil informed the complainant that measurement book and muster roll were with accused No.1. Then complainant met accused No.1. It is alleged that accused No.1 made a demand of Rs.7000/- and told him that measurement book

and muster roll would be returned after getting Rs.7000/-.

4. As complainant was not willing to pay bribe, he approached the Anti-corruption Bureau and lodged complaint. Trap was arranged. It was successful. After conducting investigation, charge-sheet was submitted to the Special Court.

5. Charge of the alleged offences was explained to the accused. They pleaded not guilty and claimed to be tried. During trial, prosecution examined in all five witnesses. Considering the evidence of prosecution witnesses, Trial Court came to the conclusion that prosecution has failed to bring home guilt of the accused beyond reasonable doubt and consequently passed order of acquittal. Being aggrieved by the judgment and order of the acquittal, present application for leave to appeal has been filed by the State.

6. Learned A.P.P. vehemently contended that there is ample evidence on record to prove demand and acceptance of bribe by accused No.1 through accused No.2. Learned A.P.P. placed reliance on the evidence of Panch Witness P.W.3-Thakur and evidence of expert witness P.W.5 Scientific Officer - Nilesh Patil, to

prove auditory analysis in respect of voice of accused No.1, as compared to his sample voice. Learned A.P.P. further submitted that findings recorded by the Trial Court are not in consonance with the evidence on record and seeks leave to appeal against both the accused.

7. Per contra, learned Counsel for respondents strongly objected the application. It is submitted that no perversity or illegality can be seen from the findings recorded by the Trial Court and urges to refuse the leave sought.

8. With the assistance of learned Counsel for the parties, this Court has gone through the evidence adduced by the prosecution. P.W.1-Karbhari Bedase is the complainant. In his examination-in-chief, he supported the prosecution. The evidence of complainant came to be completely shaken in cross-examination and he has gone to the extent of admitting that he was not aware of the contents of complaint and complaint was lodged at the instance of Dy. Sarpanch of village. In view of admissions elicited in cross-examination of complainant evidence of complainant was found doubtful and unbelievable.

9. So far as P.W.2-Chief Executive Officer, Zilla Parishad - Anil Landge is concerned, he was the Competent Authority to accord sanction. There is no serious dispute so far as sanction is concerned.

10. Next important witness is panch witness - Sandip Thakur. He fully supports the trap and panchanama Exh.25. Certain contradictions were brought in the cross-examination of this witness. On the basis of those contradictions Trial Court observed that evidence of panch witness is not cogent and it would not be safe to rely upon the same.

11. Prosecution also wants to place reliance on the voice recorder evidence. Needless to state that evidence of an expert is weak type of evidence. It needs corroboration. Complainant P.W.1-Karbhari Bedase had refused to identify tape recorded voice of the accused. It is pertinent to note that despite the inconsistent evidence prosecution in its wisdom did not think it proper to declare the complainant hostile. The evidence of complainant in-fact had demolished the edifice of prosecution case.

12. Thus on careful examination of evidence vis-a-vis

findings recorded by the Trial Court, this Court is of the opinion that prosecution has no arguable case against the accused. Leave sought is to be refused. Hence, the following order:-

. Criminal Application No. 3905 of 2015 stands rejected.

[INDIRA K.JAIN,J.]

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