

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

CRIMINAL APPLICATION NO. 4735 OF 2015

The State of Maharashtra ...Applicant

VERSUS

Hiralal Daulat Chaudhari ...Respondent

Shri S.D.Ghayal, A.P.P. for State/applicant
Shri V.B.Patil, advocate for sole respondent

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CORAM : INDIRA K.JAIN, J.

DATED : 11th APRIL, 2016

ORDER :

By this application, State of Maharashtra seeks leave to appeal against the judgment and order, dated 30.6.2015, passed by the learned Additional Sessions Judge, Jalgaon, District Jalgaon in Special (A.C.B.) Case No. 21 of 2014 acquitting sole respondent of the offences punishable under Sections 7, 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 applicant/State and Shri V.B.Patil, learned counsel for sole respondent. Perused record.

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

(i) Complainant Shivaji Himmatrao Patil was resident of Tandulwadi, Taluka Bhadgaon, District Jalgaon. Accused was serving as Head Constable at Bhadgaon police station. Crime No. 18 of 2014 was

registered against complainant Shivaji in police station Bhadgaon alleging that at the time of renewal of loan standing in the name of mother of Shivaji he made false signatures of his sisters, sisters-in-law and executed consent deed. Investigation of the crime was entrusted to the accused. It is alleged that after completing investigation accused demanded Rs.5,000/- from the complainant towards expenditure of investigation and documents.

(ii) On 30.9.2014 Shivaji lodged complaint with Anti Corruption Bureau alleging demand of Rs.5,000/- as illegal gratification by accused. The demand was verified. Pre-trap panchanama was drawn. On 1.10.2014 trap was arranged and it was successful. Post-trap panchanama was drawn. Statements of witnesses were recorded. On completing investigation charge sheet was submitted to the Special Court.

4] Charge of the alleged offence was explained to the accused. He pleaded not guilty and claimed to be tried. According to the accused offence was registered against complainant Shivaji as per the direction of Judicial Magistrate, First Class, Bhadgaon. Investigation was entrusted to him. During investigation it was revealed that dispute was between Shivaji and his brother. He could not collect strong evidence during investigation. As he was to file charge sheet, Shivaji falsely implicated him.

5] Prosecution examined in all three witnesses, PW 1-Shivaji Patil Complainant; PW 2-Nitin Rane panch; and PW 3-investigating officer, P.I. U.S.Patil.

6] On going through the evidence of these three witnesses it can be seen that their evidence is inconsistent. It is stated by PW 2-Nitin Rane that on 24.9.2014 letter (Exh.20) was received by them to attend the office of A.C.B. Accordingly, he attended the office of A.C.B. He was instructed to remain present on 25.9.2014 in the morning. He stated that on 25.9.2014 on the basis of complaint of Shivaji Himmatrao Patil trap was arranged and accused was tried to be implicated in the trap. The evidence of Nitin Rane further shows that on 30.9.2014 complainant did not meet them in A.C.B. office Jalgaon. If the evidence of complainant and investigating officer is looked into it shows that on 30.9.2014 complaint was made and trap was arranged on 1.10.2014.

7] From the facts elicited in cross-examination of the investigating officer it is apparent that on 24.9.2014 both the panch witnesses were called to A.C.B. office. He also admits that on 30.9.2014 after complaint was lodged no letter was issued to panch witnesses to remain present for trap. If the evidence of panch witness and investigating officer is taken into consideration, prime question would arise regarding complaint lodged by Shivaji on 24.9.2014 or 25.9.2014. This complaint was not part of charge sheet. The complaint on the basis of which charge sheet has been filed is dated 30.9.2014. Regarding alleged threats verification panchanama is silent. In this background, view taken by Trial Court

is found to be a reasonable and possible view. No purpose would be served even if leave is granted. Hence the following order.

ORDER

Criminal Application No. 4735 of 2015 stands dismissed.

[INDIRA K.JAIN, J.]

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