

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4915 OF 2015

The State of Maharashtra
through Police Station Officer,
Shivoor, Tq. Vaijapur,
District Aurangabad

APPLICANT

VERSUS

Bhimrao s/o Ganpat Wevhal,
Age : 45 years, Occu. Service,
R/o Mauli Nagar, Deolai Parisar,
Behind Surya Lawns, Beed Bypass,
Aurangabad

RESPONDENT

Mr. N.T. Bhagat, A.P.P. for the applicant/State
Mr. R.S. Deshmukh, Advocate for the respondent

CORAM : M.T. JOSHI, J.

DATE : 16/02/2016

ORAL ORDER :

1. Heard both sides.
2. Aggrieved by the acquittal of the respondent from the offence punishable under section 7 of the Prevention of Corruption Act, by the learned Special Judge, Vaijapur, District Aurangabad, vide his judgement and order dated 6th July, 2015, passed in Special Case No. 10/2012, the State wants to prefer an appeal and

therefore, the present application for grant of leave to file appeal is filed.

3. The prosecution case would reveal that the present respondent was Assistant Police Inspector, stationed at Shivoor. A crime was registered against complainant Rustum Kale and his family members for the offence punishable under section 326 of the Indian Penal Code. The complainant and his wife had obtained anticipatory bail from the Sessions Court. The order appears to be conditional one whereunder both of them were directed to attend the police station. He was required to execute P.R. bond. At that time, present respondent told that an amount of Rs. 15,000/- will have to be paid. The complainant told that since he had already paid Rs. 10,000/- and has already expended for securing anticipatory bail, he had no money. Ultimately, it was agreed that an amount of Rs. 8000/- should be paid. Accordingly, the complaint with the Anti Corruption Bureau was filed.

4. On 17th January, 2010 at about 4 p.m., the respondent again telephonically asked the complainant for money. It was agreed between them that atleast

Rs. 5000/- would be paid on 18th January, 2010 and therefore, the complaint came to be filed.

5. The investigating officer decided to first have verification of the demand. Therefore, the shadow panch witness and complainant were sent to meet the respondent. On 18th January, 2010, they met him at Shivoor Bungalow. There, the respondent again made demand of Rs. 5000/-. It was told during the said exercise that the money was kept with the wife of the complainant and within 15 to 20 minutes, the same would be paid. Thereafter, shadow panch witness, wife of the complainant and the complainant himself went to the police station where they met the respondent. There, in low voice, the respondent again asked for money. However, finding the shadow panch witness with the complainant, he became suspicious and without asking for money, he went away.

6. Before the learned Special Judge, all these relevant witnesses were examined. The learned Special Judge, however, found variations in the prosecution case and therefore, the respondent came to be acquitted by giving benefit of doubt. Hence, the present application.

7. Upon hearing both sides, in my view, no fault can be found with the reasoning of the learned Special Judge.

. According to the prosecution case, the investigating officer had offered a voice recorder to the complainant during both the exercises, but the complainant refused for the same on the ground that he would not be able to operate the same. Further, as regards the verification exercise, the complainant – PW1 Bhujang deposed that the shadow panch witness was 3 to 4 feet away from him and the respondent, the respondent made demand of Rs. 5000/- in low voice. As against this, the shadow panch witness PW2 Sheshrao Sable deposed that he was around 10 to 12 feet away from both of them and they were talking in low tone and therefore, he could not hear the talk properly.

8. As regards next of the episode at the police station, again according to the shadow panch witness – PW2 Sheshrao, he could not hear the talk between the respondent and the complainant as they were talking in low voice and he was away from them on a bench. In the

circumstances, the learned Special Judge has come to the conclusion that a reasonable doubt has arisen regarding all these occurrences. Besides this, the learned Special Judge has observed that the sanction granted by the sanctioning authority is invalid.

9. In that view of the matter, since the learned Special Judge has taken reasonable and probable view of the facts placed before him, in my view, grant of leave to file appeal would be an exercise in futility. The present application is, therefore, dismissed.

[M.T. JOSHI]
JUDGE

npj/criapln4915-2015