

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 5442 OF 2015

THE STATE OF MAHARASHTRA
VERSUS
MURLIDHAR KESHAVRAO NADE

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APP for Applicant : Mrs. R. K. Ladda.

Advocate for Respondents : Mr. Rajendra S. Deshmukh.

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CORAM : **INDIRA K. JAIN, J.**

DATE : 05th April, 2016.

P.C.:

. By this application under Section 378 (1) (3) of the Code of Criminal Procedure State of Maharashtra seeks leave to appeal against the judgment and order dated 6th August, 2015 passed by learned Special Judge (P.C. Act), Aurangabad in Special Case No.9 of 2009 acquitting the sole Accused / Respondent.

2 Heard the learned counsel for parties. Perused record.

3 Complainant Bhausaheb Dadapatil Bhere was resident of Mukundwadi, Aurangabad. He had two brothers. There was a dispute regarding agricultural land between Complainant and his brothers.

4 On 11th August, 2008 Complainant had been to his field. He was abused and threatened by his brothers. So he went to Karmad

Police Station and lodged report.

5 Accused was attached to Karmad Police Station as Assistant Sub-Inspector of Police. On 28th August, 2008 Complainant met Accused in connection with his complaint against his brothers. He was informed that In-charge of Police Station was not available and he would be called later.

6 On 3rd September, 2008 Accused sent message to Complainant. So Complainant came to Police Station. He met Accused. It is alleged that Accused demanded Rs.15,000/- from Complainant towards illegal gratification. When Complainant had expressed his inability to pay the huge amount there was negotiation and after negotiation it was decided to pay Rs.10,000/- to Accused.

7 On 4th September, 2008 Complainant approached ACB office and lodged report. A trap was arranged. At the time of trap Accused took Complainant to a hotel in the premises of Police Station and accepted the amount in the presence of Panch witnesses. Accused was apprehended. Pre and post trap Panchanamas were drawn. On completing investigation charge-sheet came to be submitted to the Special Court.

8 During trial prosecution examined three witnesses viz PW-1 Complainant Bhausahab, PW-2 Panch Saheb Chavan and PW-3 Investigating Officer Sangram Sangale. Considering the evidence of prosecution witnesses Trial Court in para No.25 of judgment observed thus:

- 1) Work of complainant was not assigned to the accused nor it was pending with him
- 2) There was no complaint as such filed by the complainant on 03.09.2008.
- 3) Demand is not proved.
- 4) There is no (any) consistency found in the evidence of P.W.1 and 2. The evidence of P.W.1 and 2 does not inspire confidence. They are not reliable.
- 5) Effect of anthracene powder not found on the hands and clothes of the accused.”

9 This Court has gone through the evidence of Complainant and other witnesses. It can be seen from FIR Exhibit 9 that alleged demand was made on 3rd September, 2008. There is no whisper in the evidence of Complainant that demand was made on 3rd September, 2008. According to Complainant demand was made on 28th August,

2008. No report was lodged regarding alleged demand on 28th August, 2008. Evidence of Complainant was thus contrary to the report lodged on 4th September, 2008.

10 Besides evidence of Complainant, vehement reliance was placed on the evidence of Panch witness PW-2 Saheb Chavan. According to PW-1 Complainant Bhausahab, he gave Rs.10,000/- to Accused and requested him that amount was huge so Accused reduced Rs.2,000/- and accepted Rs.8,000/-. PW-2 says that Complainant had given Rs.8,000/- to Accused and retained Rs.2,000/- with him. This is the material inconsistency. Evidence of Panch witness would otherwise not help the prosecution in proving demand. As indicated above, on demand, evidence of Complainant is self conflicting and no reliance can be placed on such testimony.

11 The most serious infirmity noticed from the evidence of prosecution witnesses is the absence of effect of anthracene powder on the hands and clothes of Accused. This falsifies the allegations of acceptance of amount as alleged by Complainant and Panch witness.

12 In the above premise this Court finds that the reasons recorded by Trial Court are in consonance with the record and even if leave is granted no purpose would be served. Hence the following

order –

ORDER

Criminal Application No.5442 of 2015 stands dismissed.

[INDIRA K. JAIN, J.]

ndm