

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

CRIMINAL APPLICATION NO. 5693 OF 2015

State of Maharashtra

..APPLICANT

VERSUS

Yogeshwar Bhagwan Nannaware

..RESPONDENT

Mrs. R.K, Ladda, APP for applicant.

Mr. Joydeep Chatterji, Advocate for respondent.

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CORAM : INDIRA K. JAIN, J.
DATED : 30th MARCH, 2016

ORDER :

1. Here is an application under Section 378(1)(3) of the Code of Criminal Procedure for leave to appeal against the judgment and order dated 29.08.2015 passed by learned Additional Sessions Judge, Jalgaon in Special (ACB) Case No. 1 of 2015. By the said judgment and order learned Additional Sessions Judge acquitted sole accused of the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. Heard Mrs. Ladda, learned APP for State and Mr. Chatterji, learned Counsel for respondent. Perused record.

3. Prosecution case in brief is as under:

Respondent was working as Circle Officer of Revenue Circle, Bhokar. De facto Complainant Mohanchand Narayan Sonawane resides at village Karanj, Taluka and District Jalgaon. Agricultural land situated at village Karanj was in the name of father of Complainant. The land was under cultivation and having standing teak trees. Complainant sought permission to cut the trees. Sub-Divisional Officer forwarded the proposal to Tahsildar Chalisgaon for detailed report. Complainant enquired with Tahsildar in respect of the proposal and came to know that proposal was forwarded to Respondent for further enquiry. Complainant met the Respondent and asked about proposal. On 06.06.2014, Complainant forwarded xerox copies of the documents to Respondent by Registered Post.

4. According to Complainant on 27.06.2014, he met the Respondent at Tahasil Office. That time Respondent demanded Rs.5,000/- for sending the report in favour of Complainant to Tahasil Office. Complainant stated that he was informed by Accused that in case amount is not paid, he would not send the proposal to Tahasildar.

5. On 02.07.2014 complaint was submitted to Anti Corruption Bureau Office. A trap was arranged. It was successful. Panchnama of trap was drawn in the presence of panch witnesses. After completing investigation charge sheet was submitted to Special Court at Jalgaon.

6. Learned Special Judge framed charge against Accused vide Exhibit 7. He pleaded not guilty and claimed to be tried. Prosecution examined in all three witnesses to substantiate the guilt of accused. Considering the evidence of prosecution witnesses and the facts revealed during cross examination regarding suppression of material facts, learned Special Judge came to the conclusion that guilt of Accused was not brought at home beyond reasonable doubt and consequent thereof passed order of acquittal. Being aggrieved thereof State has come up with this application for leave to appeal.

7. With the assistance of learned Counsel for the parties this Court has gone through the evidence of prosecution witnesses and elaborate reasonings recorded by Trial Court in its judgment. From the facts elicited in cross examination of complainant, panch witnesses and investigation officer it could be revealed that trap was conducted in Tahasil Office. According to Complainant and panch witnesses accused met them in Varandha outside Talathi Office and trap was in Varandha of Talathi Office. It further appears from admissions elicited in cross examination of Complainant, panch witnesses and investigating officer that place of scene of occurrence was changed.

8. Another serious drawback in prosecution case was suppression of two complaints submitted to Anti Corruption Bureau Office on 26.06.2014 and 27.06.2014. Those complaints were not the part of charge sheet. During cross examination of Complainant Accused could bring it on record that such complaints were filed on earlier occasions. No plausible explanation could be

given by investigating officer for not placing these two complaints submitted on 26.06.2014 and 27.06.2014 before Court.

9. From the evidence of investigating officer PW 3 Neeta Kayte it is apparent that on 01.07.2014 Dy.S.P. Gaware has sent a letter to Deputy Sales Tax Commissioner (WAT) Administration Jalgaon requesting to send two employees to his office for secret action. Accordingly two employees of Sales Tax Office viz. Yogesh Patil and Vijay Chavan came to ACB office on 01.07.2014 at about 11.00 a.m. Investigating Officer further says that on 01.07.2014 it was decided that those two employees should act as panchas in the case. Third complaint was in fact filed on 02.07.2014. So on 01.07.2014 whatever complaints were with ACB Office were complaints dated 26.06.2014 and 27.06.2014. If the prosecution wanted to suggest that based on those two complaints in respect of which trap arranged earlier had already failed, the action continued and on 01.07.2014 panch witnesses were called then it was incumbent on prosecution to place those two earlier complaints on record. The suppression of these two complaints had not only caused serious prejudice to the accused but it is fatal to prosecution case and demolishes the entire edifice of prosecution case regarding the demand and acceptance of bribe by Respondent as alleged in third complaint dated 02.07.2014.

10. Besides the above said serious infirmities, there were material contradictions and omissions in the evidence of Complainant and panch witness. Trial Court had discussed the contradictions affecting the credibility

of these two material witnesses. In this premise even if leave is granted, appeal is not going to succeed. Hence the following order:

ORDER

- I) Criminal Application No. 5693 of 2015 stands dismissed.
- II) Leave refused.

(INDIRA K. JAIN, J.)