

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

CRIMINAL APPLICATION NO. 5754 OF 2015

State of Maharashtra

..APPLICANT

VERSUS

Wasudeo Appa Satpute

..RESPONDENT

....
Mr. S.D. Ghayal, APP for applicant.

Mr. Joydeep Chatterji, Advocate for respondent.
....

CORAM : INDIRA K. JAIN, J.

DATED : 6th APRIL, 2016

ORDER :

. This application under Section 378(1)(3) of the Code of Criminal Procedure is for leave to appeal against the judgment and order dated 30.07.2015 passed by the learned Special Judge (ACB), Jalgaon in Special Case No. 13/2014 acquitting the sole respondent of the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

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

3. It is the case of prosecution that complainant Raghunath Rama Sapkal a blind person was running grocery shop at Kurhe

Panache, Taluka Bhusawal, District Jalgaon. He was in need of loan for grocery shop. As per the Government scheme loan of Rs.1,00,000/- was sanctioned to him by the Disabled Persons Finance and Development Corporation Office, Jalgaon.

4. Accused was serving as Manager of OBC and Disabled Persons Finance and Development Corporation Office, Jalgaon. Complainant approached accused in connection with disbursement of loan. It is alleged that accused demanded Rs.5,000/- as illegal gratification for disbursement of loan to complainant. A complaint was made to Anti Corruption Bureau, Jalgaon. Trap was arranged. It was successful. Sanction was accorded by Competent Authority. On completing investigation charge-sheet was submitted to Special Court.

5. Prosecution examined in all four witnesses i.e. P.W. 1 complainant Raghunath Sapkale, P.W. 2 shadow panch Niraj Kongle, P.W.3 investigating officer D.D. Gaware and P.W.4 sanctioning authority Sharad Londhe. Considering the evidence of sanctioning authority Trial Court came to the conclusion that in view of admission in the cross-examination he was not the competent authority to accord sanction to prosecute accused.

6. On merits, Trial Court found that complainant has suppressed the material fact. Primary evidence in the form of C.D. containing conversation regarding verification was not brought on record before the Court. There were inconsistencies in the evidence of panch witness and complainant. On overall scrutiny of the material Trial Court held that guilt of accused was not proved beyond reasonable doubt.

7. With the assistance of learned Counsel for parties this Court has gone through the evidence of prosecution witnesses. So far as sanction is concerned it can be seen from evidence of P.W.4 Sharad Londhe that he was Managing Director of Maharashtra State OBC Finance Corporation, Mumbai. Accused was serving as District Manager with the office of said corporation at Jalgaon. So far as according sanction to prosecute accused is concerned it appears that accused was holding additional charge of the work relating to sanction of loan by Finance Development Corporation and since P.W.4 was not concerned with the proposal of loans he stated that he was not the competent authority to accord sanction. Witness however volunteered that original appointment of accused was with his office and so sanction was accorded by him. Even if it is assumed that sanction order was issued by competent authority, still next question would follow whether sanction order was legal and valid.

8. It is apparent from the evidence of P.W.4 that audio recording was not made available to him by Anti Corruption Bureau office. He was unable to state about the details of bribe demand and those details were not stated in sanction order Exhibit 36. There were many typographical mistakes in sanction order which were not corrected by sanctioning authority. From the admissions elicited in cross-examination of sanctioning authority one thing is clear that the entire material was not placed before P.W.4 Sharad Londhe and he on his own did not ask Anti Corruption Bureau Office to produce the C.Ds. of audio recording. This would indicate that there was no application of mind and sanction order Exhibit 36 would get vitiated for non application of mind.

9. On merits it can be seen that one Pandhari Nagpure was the care taker who accompanied complainant at the time of verification of demand. Panch witness stated that care taker was with complainant. Complainant denied presence of care taker. Names of Pandhari Nagpure, Dilip Ingle and Shantaram Patil auto rickshaw driver were not disclosed by complainant. This would amount to suppression of material fact and Trial Court has rightly observed that complainant is not coming with true facts before the Court.

10. Another drawback in the case of prosecution is that entire material was not placed before the Court along with the charge-sheet.

Prosecution was duty bound to produce primary evidence in respect of conversation which took place at the time of verification panchnama. Absence of primary evidence creates doubt regarding reliability of verification panchnama itself. If Verification Panchanama Exhibit 25 is minutely looked into it can be seen that script of conversation is reproduced in this panchnama. There is no whisper regarding alleged demand of Rs.5,000/- by accused in the script reproduced in Verification Panchnama Exhibit 25.

11. All these facts if taken together would indicate that prosecution has suppressed the material facts. Evidence is not sufficient to bring home guilt of the accused. In such a situation even if leave is granted, no purpose would be served. Hence the following order:-

ORDER

- I) Leave refused.
- II) Criminal Application No. 5754 of 2015 stands dismissed.

(INDIRA K. JAIN, J.)