

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.618 OF 2015.

The State of Mah. Through the Dy.Superintendent of Police, A.C.B.Wardha.

..VS..

Ramdas Bhagwan Shahale.

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr.S.S.Doifode, APP for the applicant/State.
Mr.P.P.Kotwal, Advocate for the respondent.

CORAM : V.M.DESHPANDE, J.
DATE : JUNE 15, 2016.

1. This is an application filed by the State for leave to file an appeal against the judgment of acquittal passed by learned Additional Sessions Judge, Wardha on 16th of June, 2015 in Special (ACB) Case No.2 of 2004.

2. Heard Shri S.S.Doifode, the learned Additional Public Prosecutor for the State. He submitted that the Court below has not appreciated the prosecution case in its true perspective. It is further submitted by him that it is an admitted position on record that the respondent has accepted Rs.1000/- and therefore, in his submission, the Court below ought to have convicted the respondent.

3. PW 2 Surendra is having a shop to repair watches.

He became member of Industrial Multipurpose Rural Co-operative Society, Arvi, (*hereinafter referred to as 'said Society' for the sake of brevity*) of which the respondent was working as a Secretary. According to the prosecution, complainant was desirous of expanding his business therefore he approached to the said Society for obtaining loan. He became member of the said Society. He made an application for obtaining loan of Rs.15000/- and it was informed to him by the respondent that loan was sanctioned but subsidy was not received. According to the prosecution, in the month of April, 2003 complainant again met the respondent in his office in respect of the loan, that time the respondent demanded Rs.2000/- for delivering the cheque towards loan amount. It is also stated in the prosecution case that on 7th of April, 2003 complainant again met the respondent at his office, that time he took the complainant outside his office and near Post Office informed him that unless the amount is paid to him, cheque will not be handed over to him. According to the prosecution, the complainant was called with Rs.1000/- on 8th of April, 2003. Since the complainant was not ready to pay the bribe amount, he approached to the Anti Corruption Bureau and lodged the complaint (Exh.58).

4. After recording of the complaint, the officials of the Anti Corruption Bureau decided to arrange the trap on

the respondent and according to the prosecution, the trap was successful.

5. With the assistance of the learned Additional Public Prosecutor, I have gone through the evidence of prosecution witnesses, seven in number, and also perused the various documents.

6. When the complainant was examined as prosecution witness no.2, from the witness box he stated that for the first time he met the respondent in his office in April, 2003 and that time the bribe amount was demanded by the respondent. However, perusal of the complaint (Exh.58) and formal report (Exh.85) shows that the bribe amount was demanded by the respondent in the month of March, 2003. That shows that there was a material discrepancy in respect of the date and month when the respondent has actually made the initial demand. Further, in my view, the learned Judge of the Court below has rightly appreciated the fact that when the demand was made in the month of March, 2003 then why till 7th of April, 2003 the complainant made a wait to lodge complaint (Exh.58) with the Anti Corruption Bureau. The learned Judge of the Court below also noticed that there is an improvement that the complainant intimated to the respondent that he could afford to pay only Rs.400/- to Rs.500/-. The learned Judge

of the Court below, in my view, after appreciating the evidence rightly came to the conclusion that the prosecution has proved the initial demand of bribe by the respondent.

7. The respondent has admitted that he has received amount from PW 2 – complainant and that it was recovered from him. In that context, it is the specific defence of the respondent that on 2nd of April, 2003 PW 2 complainant made an application (Exh.69) for purchasing a Showcase/Cupboard which was being sold in the office of the Society and after scrutinizing the application the respondent has made an endorsement on it to accept an amount of Rs.1000/- as an advance money and issued said Showcase. It is also established on record that on 2nd of April, 2003 the said amount of Rs.1000/- was not paid but it was paid on 8th of April, 2003 i.e. on the day of the incident and in that behalf the respondent has issued receipt to the complainant.

The learned judge of the Court below has correctly appreciated the conduct of the complainant that he suppressed the fact of moving an application (Exh.69) on 2nd of April, 2003 during his examination-in-chief. He in his cross-examination admitted the said fact. In that behalf, even the evidence of PW 7 Suresh Mahale, the Investigating Officer, shows that the defence of the respondent is more probable since he admitted that while searching the

document in the office of the respondent he could notice the application of complainant. He has also admitted that he has seen the receipt issued by the respondent to the complainant. In spite of that he did not seize the application or the receipt book. According to the panch witness PW 1 Shridhar Thool the said application and receipt book were seized from the office of the respondent, however, in the seizure memo those are not mentioned. Therefore, in my view, the learned Judge of the Court below has rightly drawn adverse inference against the prosecution. Further there is nothing available on record to show that the respondent was empowered to handover the cheque towards loan amount. Further, there is nothing on record to show that on the day of the incident the cheque towards loan amount was ready for the delivery. The Investigating Officer candidly admits that cheque was not seized during the course of the investigation.

8. By now, it is well established that when the appellate Court should interfere with the judgment of acquittal. Merely because another view is possible that cannot be the criteria for the appellate Court to set aside the order of acquittal. The appellate Court will step into only when the approach of the Trial Court is perverse and the view taken by the Trial Court is impossible on the basis of the available evidence and material on record.

9. As discussed in the foregoing paragraphs and after scanning minutely judgment of the learned judge of the court below, I am of the view that there is no perversity in the judgment nor it could be said that the view taken by the learned judge is impossible on the basis of material available on record. Therefore, no case is made out. Hence, the leave is refused to file the appeal. The application and Appeal is therefore dismissed.

JUDGE

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