

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

CRIMINAL APPLICATION NO. 1728 OF 2016

The State of Maharashtra
Through Dy. Superintendent of Police
(ACB) Ahmednagar

...APPLICANT
(Ori. Complainant)

versus

Subhash Deoram Kashikar,
Age: 48 years, Occu: Service,
of Caretaker of Record in the office
of the Dy. Superintendent of
Land Records, Rahuri,
R/o Mehkari Tq. Nagar,
District Ahmednagar,

...RESPONDENT
(Ori. Accused)

.....

Mr. B.A. Shinde, APP for applicant -State
Mr. K.J. Tandale, Advocate for Respondent

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CORAM : K.K. SONAWANE, J.

RESERVED ON : 24th JULY, 2017.
PRONOUNCED ON : 11th AUGUST, 2017.

Order :-

1. The prosecution preferred present application seeking leave under section 378(1)(3) of the Criminal Procedure Code (for short "Cr.P.C.") to present appeal against the impugned judgment and order of acquittal of respondent-accused passed by the Special Judge, Ahmednagar in Special Case (ACP) No. 02 of 2014 for the offence punishable under sections 7 and 3(1) (d) r. w. 13 (2) of Prevention of Corruption Act, 1988.

2. It has been alleged that respondent-accused at the relevant time was employed as Record Keeper in the office of Deputy Superintendent of Land Record, tahsil Rahuri District Ahmednagar. The complainant was President of "*Maruti Dev Trust, Dawangaon.*" He was looking after immovable property of the Trust. It has been contended that there was agricultural land of the Trust bearing Gut No. 280 at village Dawangaon. There was no fencing to the land, therefore, villagers/adjoining land owners used to graze their cattle in the field. They were also used to tie their cattle in the land of the Trust bearing Gut No. 280. Therefore, the complainant being President of the Trust had desired to ascertain the boundary line of the Gut No. 280. He approached to the Office of accused for getting the map of land Gut No. 280. At the relevant time, the accused was working as Record Keeper in the office of Land Records. The complainant met with an accused for supply of map of land Gut No. 280. The accused demanded bribe of Rs.500/- to the complainant. But, the complainant was not inclined to pay bribe amount of Rs. 500/- for the reason that he was aware that amount of Rs.150/- is required to be paid towards copying charges. However, respondent - accused demanded Rs.500/-. Therefore, he approached to the ACB office and filed complaint. The presence of the *panchas* were procured. They verified the grievance of the complaint. Thereafter, a trap was laid and during the course of

trap accused was caught red handed while accepting bribe amount. The Police Personnels filed FIR and set the criminal law in motion. Investigating Officer recorded the statements of witnesses acquainted with the facts of the case as well collected the documents. After completing investigation, I.O. preferred the charge-sheet against accused for the charges of bribery as envisaged under the provisions of Prevention of Corruption Act.

3. The learned Special Judge framed the charge against accused, to which the accused pleaded not guilty and claimed for Trial. Prosecution examined in all four witnesses to prove the charges levelled against accused. The learned Trial Court recorded statement of accused under section 313 of the Cr.P.C. After appreciation of the entire evidence on record, learned Trial Court arrived at the conclusion that prosecution failed to prove the charge of bribery against accused beyond reasonable doubt. Therefore, the learned Trial Court acquitted the accused and passed the impugned judgment and order, which is the subject-matter of the present application.

4. The learned APP vehemently submitted that the prosecution has proved the circumstances of demand and acceptance of bribe amount by the respondent - accused. The learned Trial Court did not appreciate the circumstances in its proper perspective and committed error while acquitting the accused in this case.

According to learned Prosecutor, there was demand of Rs. 500/-. P.W. 3 Panch witness corroborates testimony of complainant on the aspect of demand and acceptance of tainted currency notes by the accused. The prosecution sanction given by P.W.1 was legal and valid in this case. The learned Trial Court did not appreciate the circumstances that Prosecution has proved the case beyond reasonable doubt. Therefore, learned APP requested to grant leave for presentation of appeal against the impugned judgment and order of acquittal of respondent-accused recorded by the learned Trial Court in this case.

5. Per contra, learned counsel for the respondent-accused vehemently opposed the contentions propounded on behalf of prosecution and submitted that learned Trial Court has appreciated the entire evidence adduced on record in its proper manner. There is no imperfection, illegality or perversity in the impugned judgment and order of acquittal of the learned trial Court. According to learned counsel, there are discrepancies in the evidence of P.W. 2-Complainant and P.W.3-Panch on the vital aspects of demand and acceptance of bribe by the respondent - accused. The learned Counsel drawn attention of this Court towards conversation of both accused and complainant at the time of trap recorded by the Police Personnels. The evidence of voice recorded at the relevant time indicate that there was no

demand of bribe on the part of accused. The learned Counsel explained that complainant wanted to have a copy of Jumbo Xerox of the map of land Gut No. 280 in this case. The Jumbo Xerox Machine was not available in the office of land Record, tahsil Rahuri. Therefore, accused had to obtain copy of Jumbo Xerox of the documents from the outside source. He accepted the amount of Rs. 500/- from the accused for procuring the Jumbo Xerox copy of the documents. This explanation demonstrate innocence of the accused while accepting Rs. 500/- from the complainant. Therefore, learned counsel requested not to nod in favour of prosecution for granting leave for presentation of appeal. The learned counsel for respondent explained the evidence of voice recorded and other circumstances in detail and submits that application be rejected.

6. I have given anxious consideration to the arguments advanced on behalf of both sides. I have also delved into record and proceedings of the Special Case No. 2 of 2014. The minute scrutiny of the entire oral and circumstantial evidence adduced on record reflects that the argument advanced on behalf of learned Public Prosecutor appears to be just proper and reasonable one to grant leave to present appeal in this case. Admittedly, there is no infirmity in regard to *locus standi* of the Deputy Director of Land Record, Nashik Region, Nashik to accord

prosecution sanction in this case being competent authority to appoint and remove the accused, who was employed as Record Keeper in the Office of Land Record, tahsil Rahuri. The learned Trial Court rejected the evidence of P.W. 1 – Mr. Hiralal More, Sanctioning Authority in this case on the ground that Sanctioning Authority did not apply mind for prosecution sanction against accused. I am of the opinion that these findings of the learned trial Court are related with the merits of matter. Therefore, it necessary to consider this aspect on the anvil of merit. It is the rule of law that Sanctioning Authority has to see circumstances *prima facie* in nature pertains to accusation of the accused and not to evaluate entire evidence of proposed witnesses of the prosecution by going deep for examination of all ramification of the crime for conclusive findings. However, it is matter of reappraisal during the course of hearing of the appeal filed on behalf of prosecution.

7. Moreover, learned Trial Court elaborately discussed about conversation recorded in between Complainant and accused at the time of trap. The conversation was recorded in the device of voice recorder. Prosecution adduced evidence of voice recorder in this matter. There is no doubt that accused placed demand of Rs. 500/- to the Complainant before issuance of the map of land Gut No. 280 of village Dawangaon in favour of complainant.

According to prosecution, accused made demand of bribe to show favour to the Complainant whereas accused came forward with specific pleading that the Complainant was in need of copy of Jumbo Xerox of the concerned map of land Gut No. 280. The machine of Jumbo Xerox was not the available in the Office of Land Record. Therefore, accused asked the complainant to pay charges of the Jumbo Xerox of the map of land Gut No. 280 from the out source. The amount demanded was not the amount of bribe but it was towards charges of Jumbo Xerox of the Map. Therefore, learned counsel for respondent-accused fervidly contends that as there is no demand of bribe and accused be absolved from the charges pitted against him. The learned Trial Court as mentioned supra elaborately considered the evidence of conversation in between the complainant and accused and arrived at the conclusion that there was no demand of the bribe on the part of accused, but it was demand towards costs of the Jumbo Xerox of the map.

8. It is to be noted that all these circumstances of innocence of accused on the basis of conversation is required to be tested on re-appraisal of evidence of prosecution witnesses minutely to draw inference as to whether there was demand of bribery for issuance of copy of jumbo xerox of the map of land gut No. 280 by the accused or whether amount of Rs. 500/- was demanded

towards costs of Jumbo Xerox map of land Gut No. 280. Thus, the re-appreciation of entire circumstances are imperative in detail hearing of the appeal to be filed on behalf of the prosecution. Therefore, a reasonable opportunity is essential to be given to the prosecution to ventilate its grievance before the Appellate Forum. In case, leave is not granted to the prosecution for opportunity of redressal of grievance, it would cause injustice and prejudice to the complainant. There are issues arguable in nature in this case. The demand and acceptance of amount as bribe and the evidence of voice recorder are essential to be appreciated in the appeal. Therefore, leave to present appeal is hereby accorded in the interest of justice. It would not cause any prejudice or injustice to the accused. Accordingly, leave is granted. Registry to take requisite steps for further process.

9. After compliance of all formalities, list the appeal for hearing on merits in due course.

10. The Criminal application stands disposed of accordingly.

[K. K. SONAWANE]
JUDGE

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