

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

CRIMINAL APPLICATION NO. 2031 OF 2016

The State of Maharashtra,
Through the Dy. Superintendent of Police,
Anti Corruption Bureau, Aurangabad.

.... Petitioner.
(Ori. Complainant)

Versus

Nandkishor Pannala Agrawal,
Age : 65 Years, Occ. Nil
R/o. Bansilalnagar, Aurangabad.

... Respondent.
(Ori. Accused)

....
Mr. V.S. Badakh, Addl. Public Prosecutor for Applicant.
Mr.C.P. Sengaonkar, Advocate for the respondent.

...

CORAM : A. M. DHAVALÉ, J.
DATE : 30th NOVEMBER, 2017

ORAL ORDER :-

1. This is an application filed by the State/applicant for preferring appeal against the acquittal of the respondent under Sections 7 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.
2. The complainant had submitted a tender to the CIDCO,

Aurangabad, which was lowest one, but since it was lowest by minus 24.13%, the accused who was Superintending Engineer in CIDCO Aurangabad, raised some objections. It is alleged that that accused demanded Rs. 10,000/- for acceptance of the tender. Then there was verification of the allegations and trap was arranged. At the time of trap, accused accepted Rs. 10,000/-.

3. The learned Trial Judge, after recording evidence, came to the conclusion that, there was no proper sanction and the demand itself was not proved. Trial Court did not record any finding, whether bribe amount of Rs. 10,000/- was accepted by the accused or not.

4. After hearing Mr. V.S. Badakh, the learned A.P.P for the State and Mr. C.P. Sengaonkar appearing for the Respondent, I find that the evidence shows that there was anthrasene powder on the hands of the accused though same was not traced on the Key of the accused and pant pocket. There is arguable material to prove the acceptance of Rs. 10,000/-.

5. However, I agree with the submissions that there was no proper sanction at all. Mr. Vinay Mohan Lal, (P.W. No.1) the Managing Director of CIDCO, has given admission that he has granted sanction without going through the papers and his sanction order is identical to draft sanction order provided by the department. Thus, there is absence of proper application of mind before going sanction.

6. Section 19(3)(a) of the Act lays down that no finding sentence or order passed by a Special Judge, shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub- section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby. Trial Court therefore, found that, sanction order was passed without application of the mind. The same won't apply in appeal against acquittal. I find that, view of the trial Court was proper.

7. Secondly, after going through the evidence, I find that there is no proper evidence relating to demand by the accused. It was the

duty of the complainant to go and make enquiry about his work for sanction of his tender. The accused has allegedly tried to raise objection so as to prevent the grant of acceptance of tender, then the complainant should have made enquiry, to the executive engineer, as to why, objections were raised and as to why they are not removed. No such talk took place between the accused and the complainant. There is vague evidence regarding some talk about money, but the evidence is not clear that objections were raised by the accused, so as to extract bribe from the complainant, and there was specific demand of rupees ten thousand for removing the said objections.

8. There is no tape recorded conversation. There was no specific talk at the time of verification panchnama of the complaint and making verification panchnama (practice of holding verification panchnama, on the basis of circular of Anti Corruption Bureau seems to be not proper. The Apex Court has merely held that there should be preliminary enquiry and not that there should be verification of the demand). Be that as it may, there is no proper material about the enquiry by the complainant about his work and demand of money by

accused for removing the objections by the accused. At the time of actual trap, panch witness No.1 was made to stand outside the Cabin. In fact, at the time of verification only the accused who has objected to his presence. It was necessary that the department should have made arrangement of the tap recording, which is not done.

9. It is alleged that the accused, had given ring to the wife of the informant and conversation shows that accused made several calls to the wife of informant, but no call details are brought on record. Considering all these facts, the view taken by the learned trial judge, giving benefit of doubt to the accused, appears to be reasonable and probable view and, therefore, it is not a fit case for entertaining appeal against acquittal of the accused. Hence the order.

ORDER

Criminal Application No. 2031 OF 2016 stands rejected.

[A. M. DHAVAL, J.]