

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.11 OF 2017

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

DEEPAK BHANUDAS MOHITE)...RESPONDENT

Mr.P.H.Gaikwad-Patil, APP for the Applicant – State.

Mr.Milind Deshmukh, Advocate for the Respondent.

CORAM : A. M. BADAR, J.

DATE : 14th MARCH 2017.

P.C. :

1 This is an application for leave to appeal by the State for seeking challenge to the judgment and order dated 20th June 2015 recorded by the learned Special Judge, (Anti Corruption), Pune, in Special Case No.24 of 2014, thereby acquitting the respondent / accused for offences punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

2 Heard the learned APP appearing for the State. He argued that the prosecution has proved the demand as well as verification of demand and acceptance of illegal gratification by the respondent / accused. The learned APP placed reliance on the deposition of PW1 Vishnu Tathe, shadow panch, as well as that of PW2 Vinod Satav, Investigating Officer, and demand verification panchnama. He argued that the panch witness had heard the conversation on the cell phone which was on the speaker mode.

3 As against this, the learned advocate appearing for the respondent / accused supported the impugned judgment by arguing that neither first demand was proved nor the verification of demand was proved by the prosecution.

4 I have carefully considered the rival submissions and also perused the impugned judgment and order as well as deposition of witnesses examined by the prosecution.

5 According to the prosecution case, complainant Khangar Choudhary, a petty vendor, was contacted by the respondent / accused on 9th February 2014 and had demanded illegal gratification of Rs.10,000/- from him, by threatening him that he will plant *gutkha* pouch in his bag and will implicate him in a false case. Then, on 9th February 2014 itself, in the evening hours, the respondent / accused made a call to complainant Khangar Choudhary questioning him as to why he had not contacted, as agreed. Thereafter, again on 10th February 2014, according to the prosecution case, the respondent / accused called the complainant on cell phone and made a demand. Therefore, the complainant lodged complaint with Anti Corruption Bureau (ACB) on 10th February 2014 itself which ultimately resulted in laying down the trap and apprehending the respondent / accused with the tainted currency notes.

6 It is seen that the prosecution has not examined complainant Khangar Choudhary nor proved the initial as well as subsequent demand. PW1 Vishnu Tathe acted as a shadow panch

and he has deposed about the proceedings regarding the trap and post trap panchnama, apart from demand of illegal gratification, allegedly by making gestures by the respondent / accused at the time of the trap.

7 The learned trial court, on appreciation of evidence, has held that the prosecution has failed to prove initial as well as subsequent demand, and therefore concluded that unless the demand is proved, so also the acceptance, the accused cannot be held guilty of the offence punishable under Section 7 of the Prevention of Corruption Act.

8 I have carefully perused the entire evidence adduced by the prosecution. Because of non-examination of complainant Khangar Choudhary, initial demand of illegal gratification remained unproved. Shadow panch Vishnu Tathe has also not proved either initial or subsequent demand. He had spoken about hearing the telephonic conversation between the complainant and allegedly the accused. However, the shadow panch has not spoken

about any meeting between the complainant or the accused near Ram temple and demand of amount of Rs.7,000/- after negotiation. This assumes importance because initial demand is stated to be of Rs.10,000/- and subsequent demand allegedly made to the complainant on cell phone is stated to be Rs.6,000/-. However, subsequently, according to the prosecution case, the demand was for Rs.7,000/-. These facts are not proved during the evidence adduced by the prosecution.

9 At this juncture, paragraph 23 of the impugned judgment and order needs to be reproduced and it reads thus :

“23 Both the witnesses were subjected to the detail searching cross-examination, however, nothing could be brought on record to disbelieve their testimony. But, fact remains that, neither initial nor second demand is proved by the prosecution. I have already mentioned that shadow witness did not speak regarding the meeting between the complainant and accused near Ram Temple and demanding an amount of Rs.7,000/- after negotiation. Now it is well settled that, in order to bring the offence under the purview of

Sec. 7 of the P.C.Act, prosecution has to prove that, accused has demanded the bribe and accepted the same. If either of the above ingredient is missing, accused cannot be held guilty for the offence punishable under Sec. 7 of the P.C.Act. Prosecution failed to satisfy the twin test of demand and acceptance. Mere recovery of amount from the possession of the accused itself is not sufficient to connect him with the offence punishable under Sec. 7 of the P.C.Act. If any authority is required we may have a reference of 'C.M.Girish Babu Vs. C.B.I. (2009) 3 S.C.C. 779' and 'Banarasi Das Vs. State of Haryana (2010) S.C.C. 450'.

10 In this view of the matter, it cannot be said that plausible view of the matter is not taken by the learned trial court, while acquitting the respondent / accused.

11 In the result, no case for leave is made out.

12 The application is rejected.

(A. M. BADAR, J.)