

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

CRIMINAL REVISION APPLICATION NO.257 OF 2005

Surendra s/o. Anantrao Kulkarni,
Age: 39 Yrs. Occ.Business,
r/o. Swami Samarth Kendra,
Sanghvi Colony, Pachora,
District Jalgaon. **.. APPLICANT**

VERSUS

The State of Maharashtra **.. RESPONDENT**

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Mr.A.P.Basarkar, Additional Public Prosecutor
for the respondent – State.

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CORAM: V.M.DESHPANDE, J.

DATE : 28.03.2019

ORAL JUDGMENT:

1] By the present Revision Application,
the applicant is challenging the order dated
16.07.2005, passed below Exh.1 in Special
Case No.06/2003, along with show cause notice
dated 28.03.2005 issued under Section 344 (1)
of the Code of Criminal Procedure.

2] Applicant and his counsel remained absent when the present Revision Application is taken up for final hearing. Shri A.P.Basarkar, learned Additional Public Prosecutor for the respondent – State has supported the impugned notice and the order.

3] The learned Special Judge, Jalgaon, on 28th March, 2005, issued a show cause notice under Section 344 (1) of the Code of Criminal Procedure in Special Case No.06 of 2003 to the present applicant. The said show cause notice can conveniently be reproduced herein below:

“ With reference to the subject noted above, the following show-cause notice is issued to you as under:

- 1) That, on 17-6-2003 you lodged a complaint with ACB, Jalgaon against accused Shamkant Vasudeo Kulkarni alleging that he demanded Rs.1000 from you in order to connive your luxury*

bus No. MH-20/F-9054 from taking any legal action for contravening the provisions of Motor Vehicles Act.

- 2) That, on your complaint, Anti Corruption Bureau, Jalgaon arranged a trap against the accused – Shamkant Vasudeo Kulkarni and apprehended him while accepting the bribe amount of Rs.1000 from you at S.T. Stand, Jalgaon on 18-6-2003. Thereafter, on completion of investigation, the Investigating Officer, PI Mukund Mahajan, submitted chargesheet in the court which was registered as Special Case No. 6/2003.
- 3) That, in pursuance of service of summons you appeared before me as a witness on 6-10-2004 and your evidence was recorded. During examination-in-chief you have fully supported to your complaint (exh.14) as well as categorically stated that the accused demanded bribe amount of Rs.1000/-. However, during cross-examination you have made self-contradictory statement. At one place you have denied the suggestion of the accused that you paid Rs. 1000 to the accused for depositing penalty regarding a memo issued by the R.T.O. authority. At the other place, you accepted the suggestion of accused that you paid Rs. 1000

to the accused towards depositing penalty amount in respect of memo issued by the R.T.O. authority.

Therefore, in my opinion, you have knowingly and wilfully tendered false evidence with intention that such evidence should be used in that proceeding so as to secure acquittal of the accused in that case. Hence, I am satisfied that it is expedient and in the interest of justice and for eradication of evil of perjury and fabrication of false evidence, that you should be tried summarily for giving such false evidence before the court."

4] The said show cause notice was duly replied by the present applicant. The learned Special Judge, vide order dated 16th July, 2005, did not accept the explanation and took a cognizance of the offence under Section 344 (1) of the Code of Criminal Procedure and ordered that the complainant-present applicant was liable to be tried summarily for the said offence.

5] From the impugned order, it is clear that one Shamkant Vasudeo Kulkarni faced trial for the offence under Sections 7, 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act and was tried for the said offence under Special Case No.06/2003. The present applicant was one of the witness. The impugned order shows that the Court below found the accused Shamkant Vasudeo Kulkarni guilty and has passed the judgment of conviction against him.

6] Be that as it may, according to the learned Judge of the Court below the present applicant, a witness, has taken contradictory stand and has, therefore, branded him as a person, who has adduced false evidence.

7] It is to be noted from the contents of the show cause notice itself that he has fully supported Anti Corruption Bureau. At no

point of time he was declared hostile. Though certain admissions were elicited by the learned defence counsel during his cross examination, no efforts were taken by the prosecutor, incharge of the brief, for his re-examination. Merely because due to the skill of the learned defence counsel, certain admissions are given, that cannot be termed as 'evidence', which could be stated to be false one, especially when the witness was never declared hostile by the prosecution.

8] Even the admission given by the witness – the present applicant as stated in the show cause notice, in my view, falls within the arena of appreciation of the evidence and it cannot be branded that the applicant has misled the Court. Consequently, I pass the following order:

ORDER

i] The Criminal Revision Application is allowed.

ii] The show cause notice dated 28th March, 2005 [Exhibit-A], along with order dated 16th July, 2005, passed below Exh.1, by the Special Judge & Additional Sessions Judge, Jalgaon in Special Case No.06 of 2003, is hereby quashed and set aside.

iii] Rule is made absolute on above terms. The Criminal Revision Application is disposed of, accordingly.

[V.M.DESHPANDE]
JUDGE

DDC