

BDP-SPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 39 OF 2018
(For leave to Appeal)**

The State of Maharashtra

..... Applicant
(Orig. Complainant)

V/s

Dilipkumar Dnyandev Magdum
and Ors.

..... Respondents
(Orig. Accused Nos. 1 & 2)

Mr. R. M. Pethe, APP for the State.

Mr. Anand Patil i/b Anand Patil & Associates for Respondent Nos. 1
and 2.

CORAM: NITIN W. SAMBRE, J.

DATE: NOVEMBER 8, 2019

P.C.:-

1] Complainant Mahesh Magdum entered into altercation with Yellappa Mang, resulting into registration of CR No.12 of 2012 under Money Lending Act, as the hand loan advanced by Mahesh claimed to have been not refunded by Yellappa. Yellappa lodged a complaint with outpost Halkarni which was manned by accused No.1 – ASI Dilip Magdum in the capacity of SHO, who was assisted by accused No.2 Mahadev Magdum as Police Naik. Since the complainant Yellappa in CR No. 12 o 2012 is from the Reserved Category has threatened of

invoking the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (For short "Atrocities Act"). It is claimed that the accused has demanded bribe of Rs 30,000/- so that the sister of the complainant Mahesh will not be arrested in the same crime and the provisions of the Atrocities Act will not be invoked against them.

2] In the aforesaid backdrop, complainant Mahesh approached Anti Corruption Bureau, resulting in registration of CR No.13 of 2012 against the accused for the offence punishable under Sections 7, 13(1) (d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 r/w Section 34 of the Indian Penal Code.

3] In CR No.13 of 2012 referred to above, charge came to be framed against the accused vide Exhibit-4.

4] So as to prove the guilt of the accused, complainant Mahesh examined himself at Exhibit-13, Laxman Akulwar, a panch witness to the trap panchanama, was examined at Exhibit-15, DIG Vijay Jadhav, who accorded sanction for prosecution, was examined at Exhibit-21

and IO Koli came to be examined at Exhibit-25.

5] Complaint-Exhibit-14, FIR-Exhibit-54, demand verification panchanama-Exhibit-16, voice samples panchanama-Exhibit-16-A, pre-trap panchanama Exhibit-17, success trap panchanama-Exhibit-18, seal opening panchanama-Exhibit-19, seizure panchanama-Exhibit-34, letter for drawing map of the spot of incident-Exhibit-33, letter to CA for sending CDs of intercepted conversation-Exhibit-30, CA Report of voice sample of accused No.1 Dilip-Exhibit-55 and other articles which were seized were produced during the course of evidence.

6] The learned Special Court acquitted the accused of the charge under the Prevention of Corruption Act. As such, this application for grant of leave to appeal.

7] Mr. Pethe, learned APP, would strenuously urge that the case of the prosecution needs to be inferred to have been proved based on the appropriate appreciation of the oral evidence. He would try to assist this court by reading evidence of complainant Mahesh and Investigating Officer Mr. Koli, so as to establish guilt of the accused,

whereas Mr. Patil, learned Counsel for the accused, would oppose the claim of the prosecution.

8] Having perused the evidence which is produced on record, what can be noticed is, the first demand made by accused Dilip was not proved, particularly in the backdrop of the fact that at the relevant time, Shivshankar, the friend of complainant who was accompanying him, was not examined. Apart from above, admission is given by P.W. 2 – Akulwar that he signed all the panchanamas after completion of trap panchanama in the Police Station. P.W. 2 also admitted that no anthracene powder was noticed on the hands of the accused No.2 from whom the amount involved in the offence in question claim to have been recovered

9] No evidence is adduced, so as to establish and prove the spot of the incident. The CDR details of the accused and complainant also were not produced on record.

10] The Investigating Officer Mr. Koli has admitted that no anthracene powder was noticed on the fingers or hands of the panch

witness Pratidnya Sutar, who has taken out bribe amount from the back pocket of the pants of accused No.2. He has also admitted that statements of the other eye witnesses to the trap viz xerox centre owner and hotel owner were not recorded. CDs, containing conversation between the accused and the complainant were kept by him in his custody for no good reasons from 15/06/2012 to 20/06/2012. As such, the very piece of evidence loses its genuineness and serious doubt is created about the sanctity of the said piece of evidence.

11] Apart from above, this Court cannot be oblivious to the fact that complainant Dilip was facing various offences for sale of illicit liquor.

12] In the aforesaid backdrop, the order of acquittal appears to be just and proper. As such leave stands refused.

(NITIN W. SAMBRE, J.)