

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.17 OF 2020**

The State of Maharashtra

Appellant

Versus

Namdeo Walmik Ahire

Respondent

Mr. K. B. Jadhavar, A.P.P. for the appellant
Mrs. S. K. Doke, advocate for the Respondent.

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 01st October, 2021.

PC :

Heard the learned A.P.P. for the State and the learned advocate for the Respondent.

2. By this appeal, the State challenges the judgment and order of acquittal passed in favour of Respondent-accused by the learned Additional Sessions Judge, Jalgaon, in Special (ACB) Case No.25 of 2014, thereby acquitting the accused of offences punishable under Sections 7, 13 (1) (2) read with Section 13 (2) of the Prevention of Corruption Act, 1988.

3. The prosecution case, in short, is that the complainant applied to the Maharashtra State Electricity Distribution Company Ltd.

(for short, “the MSEDCL”) for connection of new electricity meter. However, the connection was not provided for 7/8 days. The Respondent-accused – Assistant Lineman demanded Rs.500/- for providing the connection. He stated that without the said demand, connection would not be given. At the instance of complainant PW.1, verification of demand was conducted. Thereafter a trap was laid and the Respondent-accused was caught red handed accepting the bribe amount. After completing the investigation, charge sheet was filed and Respondent was charged under Sections 7, 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988. The prosecution led evidence of 4 witnesses PW1 – complainant, P.W.2- shadow *pancha* witness, P.W. 3 – Sub Divisional Engineer/sanctioning authority and P.W.4 – the Investigating Officer. The trial Court, after appreciating the evidence on record, acquitted the Respondent-accused. Hence, the present application seeking leave to file an appeal.

4. The evidence led by the prosecution on record reveals that vital admissions are given by the prosecution witnesses. The evidence of defacto complainant P.W.1 and shadow *Panch* witness P.W.2 is contradictory to each other. P.W.1 has admitted that the work of installation of meter at his residence was given to one Pappu Marathe, however, he was not coming to do the work and the complainant was insisting that the work should be given to someone else besides said Pappu. P.W.1 further admitted that Engineer Bornare, therefore, sent the

Respondent to do the work of P.W.1. This renders the initial demand made by Respondent – accused doubtful. P.W.1 has admitted that for doing the work along with Respondent-accused, one more person, namely Ramesh Chaudhary came to his house, who had come for climbing on the pole for connection and he was not an employee of MSEDCL. P.W.1 has further admitted that he was aware that separate charges of a person who climbs on the pole are required to be paid. P.W.2 has also admitted in his cross examination that the other person accompanied the Respondent-accused for the purpose of climbing on the pole as Respondent-accused was aged person and was not in a position to climb on the pole. Therefore, a discussion took place between P.W.1 and Respondent-accused that Respondent-accused being aged person, another man will help him and P.W.1 will have to pay that person Rs.500/-. This was stated in the MSEDCL office itself in the presence of Engineer Bornare, who did not object to the same. P.W.2 has further admitted that P.W.1 agreed to pay money to that person and apart from the money to be paid to that person, no other discussion took place between the accused and P.W.1 on demand of money. P.W.2 categorically admitted that Respondent-accused has not demanded money for himself and after money given by the complainant to the accused for that person, ACB staff caught the accused.

5. The above admissions, given by the prosecution witnesses, totally shatter the prosecution case. The prosecution has failed to bring

on record the memory card which contain the alleged conversation of demand of bribe recorded in the digital voice recorder.

6. In the light of above evidence, after hearing the learned A.P.P. and the learned advocate for the Respondent, this Court is of the considered view that the trial Court was justified in acquitting the respondent-accused. The view taken by the trial Court is the only possible view and the prosecution has failed to make out a case for grant of leave to file appeal against acquittal.

7. In view of the aforestated reasons, Application No.17 of 2020, seeking Leave to File Appeal against acquittal, is dismissed.

(NITIN B. SURYAWANSHI)
JUDGE