

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APPA) NO. 737 OF 2019

State of Maharashtra through A.C.B., Bhandara

...Versus...

Dilip Ratiram Gaidhane and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri S.D. Sirpurkar, Advocate for the applicant
Shri P.S. Chauhan, Advocate for non-applicants

CORAM : N.B.SURYAWANSHI, J.
DATE : 28/06/2021

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this application filed under Section 378(3) of the Criminal Procedure Code, the prosecution seeks leave to file appeal against the judgment of acquittal in Spl. Cri. (ACB) Case No. 21/2015, passed by the Special Court (under Prevention of Corruption Act), Bhandara.

3. Both the respondents were prosecuted for offences punishable under Sections 7, 12, and 13 (1) (d) r/w 13(2) of the Prevention of Corruption Act. In short the prosecution case is that Smt Usha Nagdeve resident of Kothurna, District Bhandara was running a

fair price shop under the license issued by the Government from last fifteen years. She was a widow and was suffering from illness. Therefore the informant Narendra Gharde was running the shop under the authority from his sister Usha. Accused No.1 and sarpanch accused No.2 made a complaint to the District Supply Officer, Bhandara about the said fair price shop. The license of the shop was cancelled and it was given to one Marbate resident of Khairi, District Bhandara in the month of February 2002 and he was running the shop. Usha Nagdeve filed an application on 13/04/2015 for re-grant of license to run the shop. On meeting the Nayab Tahsilda, Usha was informed that the president of Tantamukti Samitee and sarpanch of Village Kothurna were frequently complaining against the shop run by the sister of the complainant. The Tahasildar therefore demanded recommendation letter of those persons.

4. On 07/05/2015, complainant gave application to sarpanch respondent No.1 and endorsement on that application was made and the complainant was assured that he would give recommendation to the District Supply Officer, Bhandara. He allegedly demanded Rs.20,000/- for it and threatened that unless the said amount is given to him he will not sent recommendation to the District

Supply Officer on 07/05/2015. The complainant went to the Anti Corruption Bureau Office and gave complaint that the accused No.1 was demanding bribe amount of Rs.20,000/-.

5. In pursuance of the complaint, trap was laid. During trap, accused No.1 accepted the bribe amount and handed it over to accused No.2. After completing the investigation charge-sheet came to be filed and the accused-respondents were charged for the offence punishable under Section Prevention of Corruption Act, 1988.

6. The Trial Court after considering the evidence led by the prosecution acquitted the accused - respondents of all the charges. Hence the present appeal.

7. Heard the learned Additional Public Prosecutor and the learned Advocate for the respondents. Perused the record with the assistance of the learned Additional Public Prosecutor. I have gone through the notes of evidence filed on record and the impugned judgment.

8. In support of its case the prosecution has examined four witnesses including the complainant-PW1, shadow panch witness- PW.2 on the point of verification of the demand and acceptance of the

bribe, PW3 Usha sister of the complainant and PW4 Ishwar Parvate, Investigating Officer.

9. PW1 has admitted in his cross-examination that he was not knowing as to whether appeal against the order of suspension of license of fair price shop was preferred before the Commissioner, Nagpur. He was not aware for what reason the license of the shop was suspended. The Tahasildar, Bhandara did not issue written order for bringing no objection certificate from the Sarpanch. The Sarpanch (accused No.1) had not given any complaint for suspension of the fair price shop. PW1 went to the A.C.B. office on 07/05/2015 at 11.00 a.m. and he claimed that he met the accused at Kothurna at 12.00 noon. The Trial Court has observed that within such short span of time it was not possible. In the complaint it is not stated that PW1 requested accused No.1 to give recommendation letter. The panchas were present even before lodging of the complaint. PW1 further admitted that he was not shown the demonstration of voice recording. According to him talks between him and accused No.1 lasted for half an hour. However, the transcript brought on record by the prosecution does not show that it lasted for such a long period. PW1 in cross-examination admitted that he brought the bribe amount of Rs.20,000/- from his friend but the

Investigating Officer PW4 stated that the amount was brought by PW1 from his own account through ATM. No documentary evidence in this behalf was brought on record. The trial Court did not believe that immediately after lodging of the complaint a trap was successfully laid.

10. The Trial Court has come to the conclusion that evidence of prosecution witnesses does not inspire confidence. It was not the duty of accused No.1 to give recommendation letter or no objection certificate to the complainant as it was not required by law. In absence of legal duty of the accused No.1 the demand of bribe itself is doubtful. Allegedly the demand was made on 29/04/2015 however the complaint is belatedly lodged, which further renders the prosecution case doubtful.

11. There is no sanction obtained by prosecution as the accused are not public servants. Thus the prosecution of the accused under the Prevention of Corruption Act was unsustainable.

12. The trial Court has properly appreciated the evidence and has given convincing reasons while acquitting the accused/respondents. The trial Court has taken a possible view and no case is made out by the prosecution to interfere in the acquittal recorded

by the trial Court. There is no merit in the matter, hence leave is refused to file appeal against the judgment in Special Criminal (A.C.B.) Case No. 21/2015 passed by the Special Court under Prevention of Corruption Act, Bhandara. Criminal Application (APPA) No. 737/2019 is dismissed

JUDGE

J.Pethe