

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

APPLN. FOR LEAVE TO APPEAL BY STATE NO.4 OF 2022

THE STATE OF MAHARASHTRA
VERSUS
RAMESH DATTARAO BHARAD

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APP for Appellant : Mr. P G Borade
Advocate for Respondent : Mr. Shinde Bhagwat A.

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CORAM : SHRIKANT D. KULKARNI, J.
Dated : September 16, 2022

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PER COURT :-

1. It is an application seeking leave to file appeal by the State arising out of the Sessions Case No.ACP No. 8 of 2015 decided by the Sessions Judge, Parbhani.

2. Heard Mr. Borade, learned APP for the State and Mr. Shinde, learned counsel for respondent/original accused.

3. Mr. Borade, learned APP submitted that respondent/accused was put on trial for the offences punishable under section 7, 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988. The learned

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Sessions Judge was pleased to acquit him from all the charges.

4. Mr. Borade, learned APP for the State took me through the relevant paragraphs of the copy of the deposition of PW-1 first informant/Krushna Garud, PW-2 Sayyed Wasim Asadulla and the reasons given by the learned Sessions Judge in its judgment. The learned APP submitted that, the prosecution agency has succeeded in proving through the depositions of PW-1 and 2 that there was demand and acceptance of bribe at the hands of respondent/original accused. Both the witnesses have categorically stated that accused had demanded Rs.500/- for issuing 7/12 extract, land holding certificate and other documents. He was caught red handed after accepting the bribe, though, he had thrown away the bribe amount soon after the raiding party reached to the spot. He submitted that the learned Sessions Judge has not properly appreciated the evidence of above referred two witnesses in a proper way and arrived at incorrect conclusion that demand and

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acceptance of bribe at the hands of accused is not proved. He submitted that the finding recorded by the learned Sessions Judge to that effect is erroneous and perverse in view of the evidence on record referred above.

5. Learned APP further invited my attention to the finding recorded by the learned Sessions Judge, Parbhani in respect of sanction. He submitted that the prosecution Agency has examined the sanctioning authority as PW 4 Govind Ganpatrao Ranvirkar. PW 4 has categorically stated during his evidence that after perusing the papers and documents, it was revealed that accused has demanded money, which is illegal gratification from the first informant and accepted the same. Accordingly, he has given sanction order after applying his mind. As such, there was no legal defect. He is a competent authority to issue sanction order. Learned Sessions Judge has committed an error while appreciating the evidence of this witness/sanctioning authority and recorded an erroneous finding that

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sanction is mechanical one. He submitted that said finding is also perverse in view of the evidence of the sanctioning authority.

6. Learned APP submitted that, in view of the evidence of the above referred important witnesses, findings recorded by the learned Sessions Judge are not only erroneous, but perverse. It is a fit case to grant leave to file appeal to the State.

7. Per contra Mr. Shinde, learned counsel for the respondent/accused opposed to grant leave. He also invited my attention to the copies of the depositions of above referred three witnesses, so also relevant paragraphs of the judgment rendered by the Sessions Judge on the point of demand and acceptance of bribe and sanction. He submitted that, the learned Sessions Judge has recorded sound reasons while recording finding on the point of demand and acceptance of bribe and sanction. Both the findings are in tune with the evidence on record. There is no perversity as such.

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8. Mr. Shinde, learned counsel further submitted that, basic requirement for a case under the Prevention of Corruption Act is demand and acceptance of bribe. It is a *sine-qua-non*. Unless demand is made, acceptance so called is of no consequence. He submitted that, in view of the evidence of PW 1 and 2, it is clear that there was no demand and acceptance from the side of present accused/respondent. Learned Sessions Judge has rightly recorded the findings and there is no perversity. Learned counsel Mr. Shinde, has also placed his reliance on following citations in support of his submissions regarding the demand and acceptance of bribe.

- i. Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh reported in (1979) 4 Supreme Court Cases 172.
- ii. Rajesh Masjor Dpmgarde Vs/ State of Maharashtra in Criminal Appeal No.363 of 2002.
- iii. Vinod s/o Savalaram Kanadkhedkar Vs. The State of Maharashtra reported in 2016 ALL MR (Cri) 3697.
- iv. Sayaji Dashrath Kawade Vs. The State of Maharashtra in Criminal Appeal No.491 of 2005.

9. Mr. Shinde, further invited my attention to the evidence of sanctioning authority PW-4. He submitted

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that sanctioning authority has not applied his mind independently. There was no satisfaction from the sanctioning authority before according the sanction for prosecution. He invited my attention to the cross examination of the sanctioning authority-PW 4 and pointed out stock of admissions given by him. He submitted that, in view of legal position made clear by the Apex Court on the point of sanction, if the evidence of PW 4 sanctioning authority is assessed and sanction order is tested, it is nothing but a mechanical exercise. The Sessions Judge has rightly recorded the finding and there is no perversity.

10. Mr. Shinde has placed his reliance on a decision in case of **Mohd Iqbal Ahmed Vs. State of Andhra Pradesh** reported in (1979) 4 SCC 172 on the point of sanction.

11. I have considered the submissions of both sides. I have also studied the findings and reasons recorded by the Sessions Judge while rendering the judgment in Sessions Case ACP 8 of 2015. The learned Sessions
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Judge was pleased to acquit the accused/respondent mainly on following two grounds :-

- i] Failure of the prosecution to prove demand and acceptance of bribe.
- ii] Invalid sanction.

12. On going through the copy of the deposition of PW 1, who is first informant, more particularly, paragraph no.4, it throws light that there was no demand from the accused. On the contrary, it throws light that when he was on the way, first informant met him, and handed over the amount to him. Accused accepted the amount and kept in the pant pocket. Thereafter, raiding party came there and caught him. Thereafter, he removed the said amount from his pant pocket and thrown the amount of bribe on road. There was no demand as such as contemplated under the PC Act. Apart from that, while facing cross-examination, first informant/PW 1 in paragraph no.22 has given candid admission. He has admitted that respondent/accused has demanded dues of Rs.500/- to him on 16.4.2015 and accordingly, he has accepted the dues from him. It is, therefore, clear that

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there is no demand and acceptance of bribe in view of deposition of PW 1 first informant.

13. Now coming to PW-2, who is panch witness, allegedly accompanying with the first informant at the time of trap. While examination-in-chief, he has somehow supported the prosecution case by stating that on the way respondent/accused met to the first informant and asked whether he brought money and, accordingly, first informant handed over the money to the respondent/accused and accepted the same and thereafter signal was given to the raiding party and respondent was caught red handed after accepting bribe and thereafter accused has thrown the amount on the road. While facing cross-examination, PW 2 has given candid admission. He has admitted that there was no demand or communication between first informant Mr. Garud and accused Talathi regarding the amount prior to handing over the documents.

14. Having regard to the above quality of evidence of PW-1 and 2, prosecution has failed to prove the basic

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legal requirement of demand and acceptance of bribe in the eyes of law. A useful reference can be made in case of **M.R. Purushottam Vs. State of Karnataka** reported in **(2015) 3 SCC 247** wherein, it is held by the Hon'ble Supreme Court that when demand of bribe is not proved by the prosecution, mere possession and recovery of currency notes from the accused without proof of demand do not constitute offence under section 13(1)(d) read with section 13 (2) of the Act.

15. It is, therefore, clear that demand is *sine qua non* in a case under Prevention of Corruption Act, 1988. The learned Sessions Judge has recorded sound reasons regarding failure on the part of the prosecution to prove basic legal requirement of demand and acceptance of bribe. The finding recorded by the learned Sessions Judge cannot be said to be erroneous and perverse in view of above quality of evidence of two important witnesses whereupon the prosecution building was standing. In view of such quality of evidence, ultimately, building is collapsed.

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16. Now coming to according sanction for the prosecution. In the context of argument advanced by both sides, I have gone through the evidence of PW-4 sanctioning authority. The question comes whether the Collector is appointing and removal authority or the S.D.O. is having such power. While facing cross-examination, this witness PW-4 has admitted that the Collector is appointing authority and he deposes Talathi at respective postings. As such, there is basic defect in giving sanction for prosecution.

17. Apart from that, it is to be seen whether sanction accorded by the Authority is proper, valid and legal in the eyes of law. On going through the evidence of this witness PW-4, it would be very clear that the sanctioning authority without going through the relevant documents seem to have accorded the sanction. The Subordinate officers of the Sanctioning Authority seems to have put up note-sheet, which is approved by him and subsequently, sanction order is issued, which is nothing but mechanical sanction in the eye of law. It

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cannot be said to be a sanction order, which is contemplated under the PC Act, 1988. As held in **Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh** (supra), it is incumbent on the prosecution to prove that a valid sanction has been granted by the sanctioning authority in two ways i] by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction or ii] by adducing evidence to show that the facts were placed before the Sanctioning Authority and the satisfaction arrived at by it. The Sanctioning Authority PW-4 has admitted while facing cross-examination that he has not recorded any reasons in the sanction order for arriving such satisfaction. Certainly, the finding recorded by the learned Sessions Judge cannot be said to be defective.

18. Having regard to the above reasons and discussion and in view of the legal position referred above, the view taken by the learned Single Judge while acquitting the respondent/accused cannot be said to be erroneous. The findings have been recorded after careful scrutiny of

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the evidence with sound reasons. No case is made out to accord leave.

O R D E R

1. Leave is refused.
2. Application stands disposed off.

(SHRIKANT D. KULKARNI, J.)

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