

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.5 OF 2020

THE STATE OF MAHARASHTRA
VERSUS
YADAV TUKARAM BIRHADE

...
Mr. S. P. Sonpawale, APP for the applicant – State.
Mr. K. C. Sant, Advocate for the respondent.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 08.06.2022

ORDER :-

. Present application has been filed by the prosecution seeking leave to file appeal to challenge the acquittal of the respondent in Special (ACB) Case No.01 of 2013 by learned Special Judge, under Anti-Corruption Act, Amalner, Dist. Jalgaon on 27.09.2019, thereby acquitting him from the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as, "P.C. Act").

2. The present respondent was serving in the office of Panchayat Samiti, Amalner as Civil Engineering Assistant. The respondent is a public servant.

3. Prosecution has come with a case that complainant Shaligram Vitthal Bagle (Chambhar) lodged complaint in Anti-Corruption Bureau, Jalgaon alleging therein that he was the beneficiary under the Ramai Indira Awas Yojana, Nagaon-Budruk, Tq. Amalner for the year 2011-2012. His name was included in the list of beneficiaries, who are 'below poverty line'. He was having property No.259/1. For the purpose of construction of house (Gharkul), the Government had sanctioned amount of Rs.68,000/- to the respondent. Out of the said amount, he received Rs.25,000/- on 31.01.2012 and again Rs.25,000/- on 05.03.2012. After inspection of the construction of his house by the respondent – accused, who was working as Civil Engineering Assistant in the office of Panchayat Samiti, Amalner, the above-said amount of Rs.50,000/- was deposited in the account of complainant in Jalgaon District Central Cooperative Bank Ltd., Patonda Branch. It is the further prosecution story that for the purpose of depositing the cheque of the said amount in the account of complainant, the accused demanded and accepted Rs.500/- from him. The complainant exhausted the amount of Rs.50,000/- for the construction of his house. The construction of his house was completed and its inspection was done by the accused and Gramsevak Desle. The Gramsevak Desle gave certificate to the accused about completion of construction of the house of the complainant and

for the purpose of preparing bill of remaining amount of Rs.18,000/- said Gramsevak Desle asked the complainant to go the accused and meet him. Accordingly, on 22.05.2012 the complainant went to the office of Panchayat Samiti, Amalner. He met the accused and asked him to prepare the bill of remaining amount of Rs.18,000/- and send it to the Branch Engineer. At that time, the accused told him that he would require Rs.1,500/ for preparing and sending the bill to the Branch Engineer and without accepting the said amount he would not prepare the said bill. The complainant told him that he is a poor person, he is not having that much amount, however, he would send Rs.500/- at the hands of his niece Kalpanabai. Accordingly, he went to the house and sent Rs.500/- through Kalpana to the accused. Accused accepted the said amount of Rs.500/- from Kalpana and told her that he would prepare the bill and it would be sent to the Branch Engineer on 24.05.2012. Thereafter also the accused did not prepare the bill and therefore, on 28.05.2012, the complainant made enquiry with the accused on phone about the bill, at that time, the accused informed him that bill was not prepared and he asked the complainant to give Rs.1,000/- otherwise he would not prepare and submit the bill to the Branch Engineer. The complainant was not ready to give the bribe, therefore, he approached to the office of Anti-Corruption Bureau,

Jalgaon and lodged report.

4. After the complaint was lodged, two panchas were arranged from another Government Department and in presence of Panch No.1, verification of alleged demand was done and panchnama to that effect was carried out. The recording of the conversation has been done. It was found in the verification that accused allegedly made demand of bribe amount. Thereafter, Anti Corruption Bureau decided to lay a trap. Pre-trap formalities were completed. Accordingly, the complainant and panch No.1 proceeded to the office of the accused. The trap was successfully laid. Accused was caught red-handed after accepting bribe amount. Necessary panchnama was drawn.

5. Accused was brought to the office of Anti-Corruption Bureau and was arrested. The remaining investigation was completed. During the course of the investigation the statements of witnesses were recorded. Proposal for obtaining sanction was sent to the competent authority and after obtaining sanction, charge-sheet came to be filed against accused for the aforesaid offences before the Special Court.

6. After the accused had appeared before the Special Judge, charge was framed at Exh.15 against the accused. The contents of the charge were read over and explained to the accused in vernacular. He pleaded

not guilty and claimed to be tried. In all five witnesses have been examined. After considering the evidence on record and hearing both sides the present respondent – original accused came to be acquitted. The said acquittal is under challenge in this appeal.

7. Heard learned APP for the applicant and learned Advocate for the respondent. Perused the paper book and evidence.

8. Learned APP has strongly submitted that the learned Trial Court has not appreciated the evidence properly and has, on some unnecessary/irrelevant material, found out the discrepancies. Every minute discrepancy is not required to be considered. When two persons are deposing in respect of the same incident, yet there is bound to be difference in their narration. What is required to be considered is the material omission or improvement, which goes to the root of the case. P.W.1 – Shaligram, P.W.2 – Dhanraj Ganurkar and even the Investigating Officer have stated that initially he had paid amount of Rs.500/- through his niece to the accused and, thereafter, at the time of preparation and sending of the bill for passing, amount of Rs.1,500/- was demanded. The demand was made by gesture and it could not have been caught by any audio device. On that point, there should not have been doubt over the prosecution story. It has been wrongly held that there was no demand by the accused and it has been accepted that the

accused had told the informant that he can give whatever he want. In fact, that would also amount to “demand” as contemplated under the PC. Act. Further, the learned Trial Judge has unnecessarily raised doubt over the sanction order and came to the conclusion that the order has been issued by PW.3 without application of mind. All the evidence needs to be gone into thoroughly and, therefore, leave deserves to be granted.

9. Per contra, the learned Advocate appearing for the respondent has supported the reasons given by the learned Trial Judge. It was submitted that a detailed judgment has been passed, which requires no interference at all.

10. At the outset, it is to be noted that there is no dispute about the fact that accused is the Government Servant and he was working as Civil Engineering Assistant in the office of Panchayat Samiti, Amalner on the date of raid. It is also not in dispute that the complainant was the beneficiary under Ramai Indira Awas Yojana. According to him, the amount of Rs.2,000/- was, in all, demanded as bribe for preparation of bill. Important point to be noted is that in his complaint itself, it is stated that when he had met accused on 22.05.2012 and he had asked the accused to prepare his bill of the remaining amount of Rs.18,000/- and send it to the Branch Engineer, at that time, the accused asked him

to pay Rs.1,500/- for the said work. Complainant told him that he is a poor person and was not having amount and, therefore, he would send amount of Rs.500/- at the hands of his niece Kalpanabai and accordingly, he says that he had given that much amount to his niece and it was then given to accused. Here, it is to be noted that the prosecution has not examined said Kalpanabai to prove the said thing. Then, if we accept that amount of Rs.1,500/- was demanded and Kalpanabai had given Rs.500/-, at the most amount of Rs.1,000/- would remain. But then the testimony of the complainant, PW.2 – Ganurkar and Investigating Officer would show that by showing gesture of Rs.1,000/- in twice, the demand was made. That means, it amounts to then Rs.2,000/- and not as Rs.1,500/-.

11. The further fact that has come on record is that on the day of raid, no work was remaining with accused. According to him and it has been proved that the bill was already prepared. However, since the Branch Engineer was on leave, he could not send it. Therefore, the obvious question would be when he had already prepared the bill, where was the question of demand of money.

12. Taking into consideration the testimonies of these three witnesses as well as transcript of the recording, the learned Trial Judge has rightly arrived at the conclusion that there was no specific demand by the

accused, but it was invited by the complainant. Question is also properly raised as to why recording in the voice recorder was given up, though it has been stated that the voice recorder got hanged. It was decided to record the conversation in mobile. But then whose mobile was used, is a question. No doubt, it was not necessary that the mobile should have been seized, but the process by which that conversation was recorded, got transferred from the mobile to pen drive, would be a question. It was not accompanied with the certificate under Section 65-B of the Indian Evidence Act.

13. As regards the sanction order is concerned, it has to be seen that P.W.3 has admitted that the recording was not sent to her by the Investigating Officer. Further, she was expected to know the procedure that is followed with her own office or department. When entire work which was to be done by the accused was over and nothing was remaining, whether there could have been a demand by the accused, was the question she ought to have posed and could have sought clarification in that respect. In clear term, she has stated that she does not remember whether she had verified the procedure, which was required to be complied with under the scheme under which the complainant had made the application. This shows the total lack of application of mind by the sanctioning authority.

14. When all these lacunas have been left by the prosecution while leading evidence, the learned Trial Court was justified in acquitting the accused. No case is made out for grant of leave. Application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm