

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

40 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.100 OF 2019

THE STATE OF MAHARASHTRA

VERSUS

GANESH DNYANESHWAR INGALE

...

Mr. S.P. Deshmukh, APP for the applicant

Mr. N.S. Ghanekar, Advocate for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04th JULY, 2022

ORDER :

1 Present application has been filed by the prosecution seeking leave to file appeal to challenge the acquittal of the respondent in Special Case (ACB) No.5/2015 by learned Special Judge, under Anti-Corruption Act, Bhusawal on 30.01.2019, 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 as Police Sub Inspector at Police Station, Savda, Tq. Raver, Dist. Jalgaon. The respondent is a public servant.

3 Prosecution has come with a case that informant – Ravindra Ramesh Wani was prosecuted in Raver Court in respect of offence of dishonour of cheque. In that case, Court had issued arrest warrant against him. Later on, he appeared in the Court and got the arrest warrant cancelled. He received warrant cancellation letter. Thereafter, he approached Savda Police Station to submit that warrant cancellation letter. He delivered that letter in Police Station, Savda. Thereafter, police official Mr. Aliyar Khan met him in Police Station, Savda and stated the informant to meet accused in Police Station, Savda. Said Mr. Aliyar Khan also stated the informant about payment of amount. Therefore, informant met accused at a garage near Jafar Lawns. Accused then demanded amount of Rs.5,000/- as bribe for cancellation of warrant and not to arrest the complainant in future. Complainant was not willing to give that amount and therefore filed complainant on 09.03.2015 with Anti-Corruption Bureau, Jalgaon.

4 After the complaint was lodged, two panchas were arranged from 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. The informant presented cash of Rs.5,000/- containing ten currency notes of Rs.500/- each. Anthracene powder was applied on those currency notes. The pre-trap panchnama was prepared in presence of panch witness and informant. All numbers of ten currency notes of Rs.500/- were noted down in that panchnama.

5 It is the further prosecution story that complainant and panch No.1 met accused at a garage near Jafar Lawns. At that time also voice recorder was in working condition and it was kept with the complainant. The conversation between complainant and accused was recorded in that voice recorder. Accused and complainant talked about the task of cancellation of warrant and thereafter accused demanded bribe of Rs.5,000/- to the complainant, which was an illegal gratification. After demand of amount, the informant paid cash of Rs.5,000/- to accused and accused counted it by his both hands and kept that amount in his pant's pocket. Complainant gave signal to raiding party. After the raid was completed, panchnama was carried out. The accused was found with the tainted money. ACB officer Mr. Jagdish Pawar lodged complaint against the accused on behalf of State and carried out further investigation.

6 During the course of the investigation the statements of witnesses were recorded, accused came to be arrested, sanction was obtained and after the completion of investigation charge sheet was filed.

7 After the accused had appeared before the Special Judge, charge was framed against the accused. The contents of the charge were read over and explained to him in vernacular. He pleaded not guilty and his trial has been conducted. In all four 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.

8 Heard learned APP S.P. Deshmukh for the applicant and learned Advocate Mr. N.S. Ghanekar for the respondent. Perused the paper book and evidence.

9 Learned APP has submitted that learned Special Judge has not appreciated the evidence properly. The evidence of the prosecution witnesses was corroborating each other. Prosecution had examined four witnesses i.e. original informant, panch No.1, sanctioning authority and investigating officer. The demand was proved through PW 1 Ravindra and PW 2 Vishal. PW 2 was the independent witness, who was the Government servant. When

initially the informant had gone alone when his warrant was cancelled by the competent Court and to tender the cancellation letter to the Police Station at that time, the Police Officer Aliyar Khan had asked him to meet the accused and, therefore, the complainant had met the accused at one garage near Jafar Lawns. According to the complainant, the accused had demanded amount from him. It was amount of Rs.5,000/- and the complainant was not liable to pay any amount to the accused. Therefore, that amount which was demanded from the complainant was illegal gratification. Complainant had no intention to give the bribe amount and, therefore, he lodged the complaint. The verification of the demand has been done by sending the complainant and PW 2 Vishal. It was recorded and then the trap was conducted. The tainted amount was found from the pocket of the pant of the accused. The accused has not given any kind of explanation for the same and, therefore, presumption ought to have been invoked by the learned Special Judge. The sanction has been accorded after considering all the documents and application of mind. Therefore, the offence was proved beyond reasonable doubt; yet, the trial Court has picked up some irrelevant points to acquit the accused and, therefore, the appeal needs to be admitted.

10 Per contra, the learned Advocate appearing for the accused-respondent supported the reasons given by the Special Judge. Testimony of

PW 3 Jaijeetsingh Bhagatsingh – the sanctioning authority would show that he was working as Inspector General of Police, Nashik Range, Nashik in 2015 and he had given sanction Exh.40. In his cross-examination, he had stated that his superior authority is Director General of Police. According to him, the orders of Government in respect of their Department are being issued in the name of Director General of Police. He had made inquiry in respect of initial appointment of accused. The appointment of accused was in the name of Director General of Police. He has specifically stated that in the letter dated 16.03.2015 it was mentioned that the Director General of Police is the appointing authority of the accused and he is also the removing authority for the accused. Under such circumstance, the sanction Exh.40 given by him in the capacity as Inspector General of Police was illegal. Learned APP has placed reliance on the decision in **The State of Maharashtra (Through A.C.B. B.M.U) vs. Ajay Ratansingh Parmar** decided by this Court at Principal seat in **Criminal Appeal No.73 of 2012** on 09.03.2022, wherein it has been held that - *Police Commissioner, who is below the rank of Director General of Police being not an appointing authority is not competent to accord the sanction.* Therefore, when the sanction itself is illegal the acquittal will have to be upheld.

arise for determination, findings and reasons for the same are as follows.

POINT

Whether the prosecution has proved that the accused being the public servant, working as a Police Sub Inspector in Police Station, Savda, Tq. Raver, Dist. Jalgaon, by corrupt and illegal means and by abusing his position as public servant, demanded Rs.5,000/- from complainant, as a gratification other than legal remuneration, for cancellation of warrant and not to arrest the complainant in future, as a motive or reward for doing the said work in the exercise of his official function and accepted Rs.5,000/- from him and thereby committed offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act ?

FINDINGS

In the negative.

REASONS

12 Perusal of the complaint and the testimonies of four witnesses as well as the other documents such as – panchnamas, would clear that PW 1 Ravindra Wani was facing several cases in respect of offence of dishonour of cheque. In the past, several times arrest warrant was issued against him by various Courts and many times the accused was the person who had executed

those warrants, thereby he had arrested PW 1 Ravindra. Then, the question arises, as to why on this occasion the accused will demand money from PW 1 Ravindra ? The fact that the complainant is facing many problems and several times warrants were executed by the accused carries importance. Another fact to be noted is that it has come on record that on 09.03.2015 there was no warrant pending against PW 1 Ravindra in the said Police Station, to which the accused was attached. If the cancellation of warrant order was passed by the concerned Court, then, unless the Court permits to give the intimation letter to the concerned Police Station, the accused would not have been given the copy of such letter for tendering it to the Police Station and it could have been tendered to the person who was present in the Police Station. There was no question to meet the accused thereafter. Here, in this case, Police Officer Mr. Aliyar Khan has not been examined by the prosecution for the reasons best known to it. His non examination by the prosecution could not have been in anticipation that he would not have supported the prosecution. Further, what was the reason for PW 1 Ravindra to meet accused in a garage near Jafar Lawns, is a question. Definitely, a possibility has been created that since the accused was executing warrant against PW 1 when he might be having grudge against the accused in his mind and would have decided to trap him. It is admitted that when the accused was caught he was telling that the amount has been thrust in his

pocket of the pant. That possibility has not been ruled out. The voice recorded was not played in the Court. Mere producing the transcript will not be then sufficient compliance.

13 Turning towards the sanction, certainly there is force in the say of learned Advocate for the accused-respondent. PW 3 Jaijeetsingh cannot be said to be a competent authority to accord sanction to prosecute accused whose appointment he has accepted was made by the Director General of Police. In the letter dated 16.03.2015 when those things were made clear that the Director General of Police is the appointing and removing authority for the accused, PW 3 Jaijeetsingh should not have accorded sanction. When the sanction goes nothing remains in this case. The acquittal of the respondent by the learned Special Judge is legal and correct. It requires no interference. The application stands rejected.

(Smt. Vibha Kankanwadi, J.)