

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

**935 APPLN. FOR LEAVE TO APPEAL BY STATE NO.131 OF
2019**

**THE STATE OF MAHARASHTRA
VERSUS
RAMKISAN KARBHARI MANTE**

Mr. G. O. Wattamwar, APP for the
applicant/State

Mr. S. J. Salunke, Advocate for the respondent

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 24th August, 2022

P. C.

1. It is an application moved by the State through Anti Corruption Bureau seeking leave of the court under Section 378 (4) of the Code of Criminal Procedure to file appeal.

2. Heard the Mr. Wattamwar, learned APP for the applicant and Mr. Salunke, Advocate for the respondent/original accused.

3. The learned APP took me through the

relevant part of the impugned judgment delivered by the Special Judge/Additional Sessions Judge, Jalna in Special Case (ACB) No. 04-2014 dated 08-03-2019. He pointed out that the observations made by the learned Additional Sessions Judge about inconsistency between the deposition of PW-1/complainant and PW-2 panch witness, is because of time duration. It is not a materiel inconsistency. He pointed out that the trap had been successful on 08-12-2013. The deposition of PW-1-Abdul Hakim-complainant was recorded on 17-11-2018 and deposition of PW-2-panch witness was recorded on 12-12-2018. The deposition of PW-3 was recorded on 03-01-2019 and the deposition of PW-4-Investigating Officer was recorded on 07-02-2019. There was gap of 5 years from the trap to recording of evidence as such, such minor inconsistency is there. He submitted that irrespective of that minor inconsistency demand and acceptance by

the accused is proved by the prosecution agency through the deposition of PW-1-complainant and PW-2-panch witness.

4. He took me through relevant part of the deposition of PW-1 and PW-2 and pointed out that demand and acceptance of bribe amount of Rs.25,000/- is proved by the prosecution though there is a little bit inconsistency about the mode of acceptance. But it is proved by the prosecution that the accused has accepted bribe amount of Rs.25,000/- and the same has been recovered from his purse which was kept in cupboard. He submitted that soon after successful trap, the accused was nabbed and he was asked about such Rs.25,000/- amount. He invited my attention to the explanation offered by the accused. He submitted that the accused has not offered any satisfactory explanation except denial. He pointed out that right hand

of the accused was smeared with Anthracene powder which indicates that he accepted the amount which was kept by him in the purse. He submitted that the initial demand of bribe was also proved. The prosecution agency has produced sufficient evidence and proved the offence of bribe against the accused beyond reasonable doubt.

5. The learned APP submitted that the learned trial judge has committed an error in making observations about inconsistency between the PW-1 and PW-2, when the demand and acceptance of bribe is proved by the prosecution. He submits that presumption under Section 20 of the Prevention of Corruption Act is completely overlooked by the trial court while delivering the judgment which has resulted in acquittal. It has caused serious prejudice to the rights and interests of

prosecution agency. He submitted that it is necessary to grant leave, having regard to the above factual scenario and evidence referred by him.

6. Per contra, the learned counsel for the respondent/original accused submitted that the demand and acceptance of bribe by the respondent/accused is not proved according to the provision of the Prevention of Corruption Act. He submitted that it is the basic requirement to prove the demand and acceptance of bribe then only presumption can be invoked. He also took me through relevant part of the deposition of PW-1 and PW-2 as well as observations made by the trial court. He submitted that there is inconsistency between the PW-1 and PW-2 regarding acceptance of bribe amount by the accused. PW-1 has stated that bribe was accepted by accused by showing

gesture, whereas PW-2 has stated that accused has accepted the bribe amount by using words and not by way of gesture. He has submitted that in view of the material discrepancy, the trial court has observed that demand and acceptance of bribe is not proved by the prosecution according to the provisions of the Prevention of Corruption Act. He submitted that even at the time of initial demand, it is nowhere stated by the PW-1 that accused had demanded bribe by way of gesture. As such, the prosecution has miserably failed to prove the basic requirement of demand and acceptance of bribe amount. The learned trial court has rightly considered all these aspects and acquitted the respondent/accused. No case is made out to grant leave.

7. I have gone through the submissions of both the sides. Perused the depositions of PW-1

to PW-4. According to the provision of the Prevention of Corruption Act demand and acceptance of bribe plays very much important role. On going through the evidence of PW-1, it prima-facie appears that at the relevant point of time the respondent/accused was conducting investigation of crime registered against the complainant and his family members under Section 498-A coupled with other offences. He was Investigating Officer. The complainant has obtained anticipatory bail for him and his family members and in that way had been to the accused. By that time respondent/accused alleged to have demanded bribe amount of Rs.26,000/- and it was agreed between complainant and accused to pay Rs.25,000/- to the accused. This was initial talk between the complainant and accused as appearing from the evidence of PW-1.

8. It further appears from the evidence of PW-2 that on the very next day PW-1 had been to the office of Anti Corruption Bureau and as per instructions of Anti Corruption Bureau, it was decided to verify the demand of money. It seems that PW-1 contacted with the respondent on mobile and as per the instructions went to the place. Voice recorder was planted with PW-1. It appears from the evidence of PW-1 that accused had asked about amount of Rs.25,000/- by gesture and thereafter he returned back alongwith panch witness. This is the scenario which seems to have been recorded in the voice recorder.

9. On going through the evidence of PW-1 regarding the trap, it seems that PW-1 along with PW-2 went to the outpost. At that time respondent/ accused alleged to have asked him by finger whether he brought amount and in

response, PW-1 answered in the affirmative. PW-1 handed over the amount to the accused by his right hand of the accused and subsequently accused kept that amount in his purse which was kept in the cupboard. Thereafter, signal was given. Raiding team rushed there and accused was caughthold.

10. In the above context, evidence of PW-2 also perused. He has stated that accused asked to the complainant, whether he brought amount and PW-1 complainant replied in the affirmative and thereafter bribe was given by the complainant to the accused and accused accepted the amount by left hand and kept in his cupboard even in red colour bag.

11. Even though there is discrepancy as noticed above in the deposition of PW-1 and PW-2, the time duration needs to be considered.

The trap was laid on 08-12-2013 and the evidence of PW-1 was recorded on 17-11-2018 and the evidence of PW-2 was recorded on 12-12-2018. This aspect needs to be considered which is focused by learned APP.

12. Another important point is about explanation given by the respondent soon after the trap. It appears from the statement given by the respondent by way of offering the explanation that no satisfactory explanation is given as to how, he possessed Rs.25,000/- in his purse. He has not even denied how his right hand was with anthracene powder. This aspect plays important role which indirectly touching to the acceptance of bribe.

13. On going through the impugned judgment it is noticed that certain important aspects as noticed above, seems to have been overlooked by

the Additional Sessions Judge and given unnecessary importance to the minor inconsistency between the evidence of PW-1 and PW-2. At this stage, it may not be proper to touch the merits of the matter, but the prosecution has made out the case to grant leave. Hence, the following order:-

ORDER

- a] The application is allowed.

- b] Leave is granted to prefer the appeal. The Registry is directed to register the appeal as per the scrutiny and thereafter, it be numbered.

- c] After registration of the appeal, issue notice to the respondent/accused, returnable on 19-10-2022.

(12)

apln131.19:

d] Action under Section 390 of the
Code of Criminal Procedure to follow.

[SHRIKANT D. KULKARNI, J.]

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