

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.150 OF 2019**

The State of Maharashtra,
Through the Police Inspector,
Anti Corruption Bureau, Jalgaon

...APPLICANT

VERSUS

- 1) Ganesh Tukaram Pachpohe,
Age-47 years, Occu:Service,
R/o-Plot No.5, Prabhat Nagar,
Deopur, Dhule,
- 2) Rajendra Shankarlal Kabra,
Age-57 years, Occu:Service,
R/o-2, Vyankatesh Apartment,
Ajay Colony, Ring Road,
Jalgaon.

...RESPONDENTS

...
Mr.R.B. Bagul, A.P.P. for Applicant - State.
Mr.Joydeep Chatterji Advocate for Respondent Nos. 1 and 2.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 17th JUNE, 2022

ORDER :

1. Present application has been filed by the prosecution seeking leave to file appeal to challenge the acquittal of the

respondents in Special ACB Case No.9 of 2017 by learned Special Judge under Prevention of Corruption Act on 25th March 2019, thereby acquitting him from the offences punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. Present respondent No.1 was serving as Executive Engineer in M. S. E. D. C. Ltd. Accused No.2 was also serving in the same department. They both are public servants.

3. Original complainant Suresh Wankhede was working as Additional Executive Engineer with the same department. He retired on 31st May 2016. However, prior to that he was posted at Amalner on 24th February 2016.

4. Prosecution has come with a case that accused No.1 had issued two letters to complainant calling upon his explanation for not submitting the list of beneficiaries under one *Jawahar Vihir Yojna* and causing loss to the Company to the tune of 15%. Complainant had submitted his explanation on 20th May 2016. Complainant was expecting that the said matter would be

disposed of before his retirement. He was hoping that accused No.1 would give 'No-objection Certificate'. However, accused No.1 did not issue the same in time, resulting in complainant not getting amount of gratuity. Complainant therefore, approached accused No.1 with the request to clear the said matter and issuance of the certificate. Accused No.1 then demanded amount of Rs.30,000/- as bribe for the said work. Complainant was not willing to give that amount and therefore filed complainant on 5th July 2016 with Anti-Corruption Bureau, Jalgaon.

5. 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. Recording of the conversation has been done. It is the prosecution story that accused No.1 had called accused No.2. Accused No.2 had demanded 2% of the amount of gratuity Rs.15,00,000/- i.e. Rs.30,000/- should be paid. However, the amount was ultimately settled at Rs.25,000/-. Complainant told that he would bring that much amount. After the verification was done, it was decided to carry out raid. ACB officer explained the entire procedure, as to how the raid would be carried out, gave instructions to

complainant and both the panchas. It was also explained to them, as to how the anthracene powder applied on the amount brought by the complainant would act and demonstration was shown. Pre-trap panchnama was carried out.

6. It is the further prosecution story that after the complainant went along with panch No.1 to the office of Superintendent Engineer, Jalgaon, there was conversation between complainant and accused No.2. Accused No.2 accepted the amount, which was an illegal gratification for issuing 'No-objection Certificate' after clearing the notices issued to the complainant. Complainant gave signal to the raiding party. After the raid was completed, panchnama was carried out. Accused No. 2 was found with the tainted money. ACB officer Mr. Narke lodged complaint against the accused on behalf of the State and carried out further investigation.

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

8. After the accused had appeared before the Special Judge, charge was framed at Exh.10 against the accused. The contents of the charge were read over and explained to them in vernacular. They pleaded not guilty and their trial has been conducted. In all six witnesses have been examined. After considering the evidence on record and hearing both sides the present respondents - original accused came to be acquitted. The said acquittal is under challenge in this appeal.

9. Heard learned APP Mr. Bagul for appellant - State and learned Advocate Mr. Joydeep Chatterji for respondents - accused. Perused the paper book and evidence.

10. It has been vehemently submitted by the learned APP, that learned Trial Judge has not appreciated the evidence properly. The demand and acceptance of the amount, which was definitely an illegal gratification, was proved by the prosecution beyond reasonable doubt. The learned Special Judge has taken a very practical view and did not consider the material pieces of evidence. All the three persons i.e. complainant and both the

accused were from the same department. There was no private money transaction between them. The tainted money was found with accused No.2. He was only the Assistant Engineer. He has not come with a case that any amount was outstanding from complainant to him. The testimony of PW-1 Suresh stands corroborated with PW-2 Chetan and PW-4 API Narke. Accused No. 1 was bound to clear the file of complainant before his retirement, but he had intentionally kept it pending. Complainant could not get his due amount of gratuity. Complainant had therefore gone to accused No. 1 to demand the certificate. The amount demanded by him was nothing but illegal gratification. After due verification, the raid was conducted. The sanction that has been accorded for prosecuting both the accused is legal and valid and has been proved through PW-3 Ankush Nale. The learned Trial Judge has failed in appreciating evidence in proper manner and given importance to those trifle admissions. Therefore, the acquittal of the accused is wrong and illegal, it deserves to be set aside. The learned APP prayed for admitting the appeal.

11. Per contra, the learned Advocate for respondents supported the reasons given by the learned Judge while

acquitting the accused persons and further submitted, that there was delay in lodging the complaint with the ACB by the complainant. There was clear admission of the complainant that he was having grudge against accused No. 1 as amount of more than Rs.1,00,000/- was deducted from his payment. Further evidence of PW-2 Chetan, panch witness would show, that he was not completely supporting the complainant's story. It appears that by any means Anti-Corruption Officer wanted to show that the raid was successful. Even if we accept that the tainted currency was found in the hands of accused No. 2, that by itself will not prove the offence against both the accused persons beyond reasonable doubt. There is absolutely no necessity to interfere with the Judgment and order passed by the learned Special Judge. He prayed for the dismissal of the application.

12. The scrutiny of the evidence of the prosecution witnesses would show that the prosecution has examined the sanctioning authority to prove the sanction order. The objection that has been raised on behalf of accused persons is regarding non-application of mind and not in respect of capacity or authority of the said authority to accord sanction. Secondly, the tainted

currency notes were found in possession of accused No.2 and as per the contention of the prosecution he had accepted the said amount for and on behalf of accused No. 1. Accused No. 1 was admittedly the superior of complainant as well as accused No. 2. Prosecution states that the testimony of Complainant as well as Panch No. 1 is corroborating on the point of demand and acceptance. Nothing was due from complainant either to accused No. 1 or No. 2. Whether the learned Special Judge could have come to conclusion that due to grudge against accused No. 1, he had lodged false complaint, was correct or not, will have to be gone into; when complainant had no grudge against accused No. 2 and he was found possessing the tainted amount.

13. This Court is not supposed to undertake a close scrutiny of the evidence at this stage. It can be seen that various authorities were relied upon on behalf of both the accused before the learned Special Judge. Whether those citations have been properly considered or not is also required to be considered. In absence of proof of electronic evidence in proper way, whether there was sufficient evidence, independently available before the Trial Court to prove the guilt of the accused? Under such circumstance, the application deserves to be allowed and leave

to file appeal deserves to be granted. Accordingly, following order is passed.

ORDER

- (I) Application stands allowed.
- (II) Leave is granted to the prosecution to file Appeal.
- (III) Registry to register the Appeal.
- (IV) Appeal stands **admitted**.
- (V) Call record and proceeding.
- (VI) Compliance under Section 390 of Code of Criminal Procedure be made before learned Special Judge, Jalgaon. Respondents be released on bail till the conclusion of present appeal upon such terms and conditions as be deemed fit by the concern Trial Judge.

[SMT. VIBHA KANKANWADI , J.]