

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

918 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.73 OF 2021

THE STATE OF MAHARASHTRA

VERSUS

DNYANESHWAR NANA MADHURKAR AND ANOTHER

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

Mr. A.R. Avachat and Mr. P.D. Jarare, Advocates for respondent Nos.1 and 2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 30th 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 Case (ACB) No.13/2015 by learned Special Judge, under Anti-Corruption Act, Ahmednagar on 27.07.2021, thereby acquitting them from the offences punishable under Section 7, 12 and 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 Nos.1 and 2 were serving in the office of Taluka Inspector of Land Records at Shevgaon as Maintenance Surveyor and

Peon respectively. They both are public servants.

3 Prosecution has come with a case that complainant Yogesh Abasaheb Jadhav had purchased CTS No.5, House property No.153 admeasuring 3 sq.mtrs. along with vacant space from Chandrakant Laxmansingh Pardeshi by registered sale deed on 12.08.2014. According to him, on the basis of this transaction, he had applied T.I.L.R., Shevgaon to record his name to the said property and issue extract of mutation. On his application, accused No.1 had given him notice in Form No.9 and asked for an amount of Rs.1,000/-, however, the complainant was not ready to give the bribe, therefore, he approached to the office of Anti-Corruption Bureau, Ahmednagar 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 of Rs.750/-. 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 T.I.L.R. The trap was successfully laid. Accused were caught raid handed after accepting bribe of Rs.750/-. Necessary panchnama was

drawn.

5 Accused were brought to the office of Anti-Corruption Bureau and were 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.7 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 four 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.

7 Heard learned APP for the applicant and learned Advocate for respondent Nos.1 and 2. Perused the paper book and evidence.

8 Learned APP submitted that the Trial Court has not appreciated the evidence properly and had come to the conclusion that the sanctioning authority had not applied its mind, demand and acceptance has not been

proved. The prosecution had come with a case that amount of Rs.1,000/- was demanded by the accused for carrying the mutation entry, however, after settlement, that amount was reduced to Rs.750/-. The verification of the demand has been done in presence of PW 3 Bhimraj – panch witness. It has been wrongly held that the recorded conversation was not admissible, as certificate under Section 65-B of the Indian Evidence Act was not produced. It has been wrongly observed that there is variance and omission in the evidence of PW 2 Yogesh – the complainant and PW 3 Bhimraj in respect of pre-trap panchnama and post trap panchnama has lost its value. Unnecessarily objection has been taken as regards PW 4 Sawant, who was the Investigating Officer and also the person who was present at the time of trap. The investigation that has been done is fair and no points of possibility of bias or predetermined conclusion were pointed out by the accused in his cross. The learned Special Judge ought to have convicted the respondents.

9 The learned Advocate for respondents supported the reasons given by the learned Special Judge and submitted that since there is no legal compliance made in the case in respect of the sanction order as well as proof of demand and acceptance and also the certificate under Section 65-B of the Indian Penal Code, the acquittal of the accused persons is proper.

10 Taking into consideration the above submissions, following point

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

POINT

Whether the prosecution has proved that the accused being the public servants working as Maintenance Surveyor and Peon respectively, by corrupt and illegal means and by abusing their position as public servants demanded Rs.1,000/- as a gratification other than legal remuneration and after negotiation was ready to accept Rs.750/- from complainant for recording his name and issuing extract of mutation, as a motive or reward for doing the said work in the exercise of their official function and accepted Rs.750/- from him and thereby committed offence punishable under Sections 7, 12 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act ?

FINDINGS

In the negative.

REASONS

11 According to the prosecution, accused No.1 had demanded the bribe of Rs.1,000/- from PW 2 Yogesh for issuing mutation extract, when he had filed the application for the mutation. He has stated that he has purchased a plot through registered sale deed dated 12.08.2014 and, therefore, was desirous of mutating his name to the revenue record. Accused

No.2 i.e. respondent No.2 comes in picture as abettor, as it is stated that he had accepted amount of Rs.100/- out of bribe amount of Rs.750/-.

12 The first and the foremost fact that has come on record is that the application for mutation (Exh.28) was given by PW 2 Yogesh on 24.11.2014. His name was sanctioned on 16.12.2014 by order of Taluka Inspector of Land Records (Exh.17) and the trap was laid on 03.01.2015. That means, after the mutation was sanctioned, how there could have been possibility of demand of bribe by the accused persons, was a question. PW 4 – the Investigating Officer appears to have not addressed this issue. So also, PW 1 Hiralal More – the sanctioning authority has also not considered this fact and, therefore, the learned Special Judge has rightly held that he had not applied his mind before according sanction (Exh.15). Note of Section 19 of the Prevention of Corruption Act has been taken and also the object behind the same. The said section has been enacted to safeguard innocent Government employees and the possibility of involving them in false cases when a favourable order is not given. The role of the sanctioning authority is vital, because he has to protect the interest of the Government employees also. When order of sanctioning of the mutation entry (Exh.17) was also given to him for his perusal before according sanction and if he has ignored that, then, it clearly shows that he had not applied his mind before according

sanction. On this count itself it can be said that the acquittal of the respondents is justified.

13 Another fact which emerges from the evidence, copies of which have been produced on record, would show that when PW 2 Yogesh had gone alone, it is stated that there was demand of Rs.1,000/- as bribe and then it was settled for Rs.750/-. PW 3 Bhimraj – panch No.1, who was sent along with the complainant for the verification of the demand, deposes that there was demand of Rs.1,000/- on 03.01.2015 itself and then it was reduced to Rs.750/-. In fact, accused No.2 was a Peon working in the office of Taluka Inspector of Land Records, why he should demand the amount, is a question. But then it has been stated by PW 3 – Bhimraj that after complainant had given amount of Rs.750/- to accused No.1, out of that, accused No.1 gave two currency notes of Rs.50/- to accused No.2 and remaining amount was kept by accused No.1 in his pocket. If this is to be accepted, then, how accused No.2 can be said to be as “abettor”. He has not done any active part in either demand or acceptance. The panch witness states that accused No.1 had given two currency notes out of tainted notes to accused No.2. It cannot be said that, that amount for accused No.2 was illegal gratification or bribe. Accused No.2 was not supposed to do any favourable act for the complainant. How there is variance and omission in the evidence of PW 2 Yogesh and PW 3

Bhimraj has been clearly stated by the learned Special Judge in the Judgment. Under such circumstance, the acquittal of the respondents was legal and correct. It does not require any interference by this Court. Hence, the application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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