

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

CRIMINAL APPLICATION NO. 6124 OF 2017

The State of Maharashtra
Through the Police Inspector

.. Applicant

Versus

Pandit Vanaji Sonawane

.. Respondent

Mr. P. K. Lakhotiya, APP for the Applicant.
Mr. G. D. Kale, Advocate for sole Respondent.

CORAM : ANIL L. PANSARE, J.

DATED : 22nd JULY, 2022.

PER COURT:-

1. Heard.
2. By present application, the applicant is seeking leave to file appeal challenging the impugned judgment passed by the learned Additional Sessions Judge, Aurangabad, in Special Case No. 17/2009 dated 10.07.2017.
3. Though learned A.G.P. made an attempt to convince the Court that though the discrepancy in the evidence of PW-1 and PW-2 on the point of exact amount of demand is writ large, if the entire evidence is considered, there is arguable case for the prosecution if leave to appeal is granted.

4. The learned advocate for respondent/accused has pointed out that the discrepancy is such that the testimony of PW-1 and PW-2 can be said to be untrustworthy and is accordingly held to be untrustworthy by the learned Special Judge. In addition, the sanction order issued in this case by the Deputy Superintendent of Police is held to be invalid. The learned Special Judge has held that the Superintendent of Police or Commissioner of Police is the appointing authority for Head Constable and in the present case, the Deputy Superintendent of Police has accorded the sanction. To this finding, the learned APP would contend that at the time of according sanction, the Deputy Superintendent of Police or Deputy Commissioner of Police was empowered to remove Head Constable and therefore, was entitled to accord sanction.

5. Having gone through the evidence, on the point of sanction, even if it is to be held that the Deputy Superintendent of Police had authority to accord sanction, the sanction order at Exhibit - 65 itself does not support the case of prosecution. The evidence of PW-3, the sanctioning authority would show that the sanction was accorded to prosecute Mr. Sk. Ajim Sk. Bashir of Begum Pura Police Station in crime No. 1024/2008 with the allegation that the accused sought illegal gratification of Rs. 1000/- or Rs. 2000/-. In fact, the name of accused in the present case is Mr. Pandit Sonawane and that the alleged amount

demanded is Rs. 3000/-, which has been allegedly accepted on 26.03.2009. The sanction order at Exhibit - 65 is not clear as to whether it is issued to prosecute the present accused or one Mr. Sk. Ajim Sk. Bashir. The crime number recorded is different, the amount of gratification is different, the date of acceptance is different. Such a sanction order cannot be therefore held to be valid.

6. The view taken by the learned Special Judge, appears to be a possible view.

7. The applicant, therefore, failed to make out a case. The application is rejected.

(ANIL L. PANSARE)
JUDGE

PS.B.