

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

911 CRIMINAL APPLICATION NO.6497 OF 2017

**THE STATE OF MAHARASHTRA
VERSUS
RAMRAO S/O. KHEMAJI TARDE AND ANR**

Mr.R.D. Sanap, APP for the applicant/State.

Mr.G.K. Naik-Thigle, Advocate for respondent Nos.1 and 2.

**CORAM : ANIL L. PANSARE, J.
DATED : 22.07.2022**

PC :-

01. By present application the applicant – the State of Maharashtra through City Police Station, Parali-Vaijnath, Dist. Beed is seeking leave under section 378(1)(b) of the Criminal Procedure Code, to file appeal against the judgment dated 08.09.2017 passed by the Special Judge, Anti-corruption in Case No.5 of 2014, whereby the respondents were acquitted. Respondent No.1 was then PSI and respondent No.2 was a Constable.

02. The original complainant lodged a complaint with Anti-corruption Department that respondent Nos.1 and 2 – original accused, made a demand of Rs.50,000/- for not implicating the complainant in the case/FIR lodged against the friends of the complainant for the offence punishable under

section 399 of the Indian Penal Code [IPC]. For the sake of convenience, the respondent Nos.1 and 2 will be referred to as accused Nos.1 and 2. The prosecution came up with a case that a trap was laid pursuant to such demand and accused No.2 accepted the amount on behalf of accused No.1 in a police jeep. The trap was laid on or about 25.09.2012.

03. Above theory putforth by the prosecution has been disbelieved by the learned Special Judge on multiple counts. The evidence led by the prosecution has been tested and analyzed on the basis of certain crucial facts. They are as under :-

04. Three friends of the complainant were arrested on or about 21.05.2009 by accused No.1 for the offence punishable under section 399 of the IPC. The complainant and his friend Arunacharan Rode met these three friends in the Civil Hospital. One of the three friends informed the complainant that Arunacharan and complainant have been shown as absconding accused in the said crime and that the accused No.1 may arrest them.

05. Thus, on 21.05.2012 Arunacharan and the complainant came to know that they were shown absconding. The complainant enquired with his advocate and requested him to seek bail in this crime. His advocate, after examining the papers of the crime, informed him (the complainant) that his name is not mentioned in the FIR and therefore there is no need of seeking anticipatory bail. Thereafter, the charge-sheet came to be filed on 12.08.2012. On 09.09.2012, the complainant received phone call from accused No.1. The said call was made from the mobile of Arunacharan. Accused No.1 threatened complainant that if he does not meet his demand, he (complainant) will be arrayed as an accused in the charge-sheet.

06. It is worth mentioning here that the story of the prosecution is that on 21.05.2012 Arunacharan and complainant were informed that they were shown as absconding accused. The story putforth by the prosecution would also indicate that the demand of bribe was made prior to lodging charge-sheet. The demand was not met. Despite, charge-sheet came to be filed on 12.08.2012 against other accused but not against complainant, so also Arunacharan. Surprisingly, subsequent to filing the charge-sheet, accused No.1 met Arunacharan on 09.09.2012, but instead of arresting him, he made

a phone call from the mobile of Arunacharan to the complainant that if he (complainant) does not pay bribe amount, he will be made accused. Nobody knows what had happened to Arunacharan thereafter. He had been left as it is.

07. After the threat and demand, the complainant again enquired with his advocate to which the advocate said that the charge-sheet has been filed, the name of the complainant is not mentioned in the charge-sheet and therefore there may not be any apprehension of arrest. The record and evidence led before the Special Court would show that there are as many as 10 cases pending against the complainant. Most of these cases were investigated by accused No.1. In one of the cases instituted by accused No.1, the complainant has been convicted on 16.09.2012. The present complaint has been filed by the complainant against accused No.1 on 18.09.2012 i.e. immediately after order of conviction.

08. The Trial Court having analyzed the evidence in the aforesaid backdrop, doubted the trustworthiness of PW-1 (complainant). The credibility of PW-4 Dy. S.P, who is first Investigating Officer in the case is also doubtful.

The evidence led before the District Judge would show that PW-1, the complainant, has categorically deposed that one Mr. Anand Bansode is a policeman, who was with accused No.1 in the jeep at the time when successful trap was laid. He then deposed that the Anti-corruption Bureau failed to file charge-sheet against Anand Bansode. PW-4 Shingade asked the complainant not to take name of Anand Bansode. The defence has brought on record the station diary entry dated 25.09.2012. It was confronted with the prosecution witnesses. It has been disclosed through the station diary entry that PC Bansode was present in the police jeep with the accused persons. PW-1 complainant then deposed that Anand Bansode was arrested by PW-4 but was released without any orders from the Court. The charge-sheet is not filed against Bansode. Accordingly, the testimony of PW-4 is found to be untrustworthy.

09. The prosecution does not have any other evidence except version of PW-1 and PW-4. Panch witness PW-2 turned hostile and despite cautioned by the Court, he did not support the prosecution case.

10. It further appears from the impugned judgment that the

prosecution has alleged that there were multiple calls made by accused No.1 to the complainant. The mobile numbers which were allegedly used, do not belong to the accused No.1. Thus, the sim cards were in the name of different persons. None of these persons were examined before the Special Court. In addition, Arunacharan was also not examined. The basic theory of demand through the conversation made on mobile phones has not been proved. The testimony of PW-1 and PW-4 was found to be doubtful, on the basis of earlier episode. In the circumstances, the view taken by the learned Special Judge in acquitting accused Nos.1 and 2, prima facie and for the purpose of deciding present application, appears to be a possible view.

11. In the circumstances, the leave sought to challenge the judgment of acquittal is devoid of merits. The applicant – prosecution failed to make out a case in its favour. The application is accordingly rejected.

[ANIL L. PANSARE,J.]