

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 23 OF 2023

The State of Maharashtra,
Through Anti Corruption Bureau,
Beed, Dist. Beed

... Applicant
(Ori. Complainant)

VERSUS

Ramkisan Bapurao Panhalkar,
Age : 62 years, Occ. : Service (A.P.I. Police
Station Kaij, Addl. Charge of Dharur
Police Station, Tq. Dharur, Dist. Beed

... Respondent
(Ori. Accused)

...

Mr. R.B. Bagul – APP for Applicant, State
Mr. V.S. Kadam – Advocate for Respondent

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CORAM : SANDIPKUMAR C. MORE, J.
DATE : 15th September, 2023

ORDER :

1. Under this application, the applicant – State of Maharashtra through Anti Corruption Bureau, Beed is seeking leave to challenge the judgment and order dated 30th September, 2019 passed by the learned Special Judge and Additional Sessions Judge at Majalgaon, Dist. Beed (hereinafter referred to as “*learned Trial Court*”) in Special Case (A.C.B.) No.2 of 2012, whereby the respondent – original accused has been acquitted.

2. It is the case of applicant – State that, the present respondent being the A.P.I. of Kaij Police Station had demanded bribe amount of Rs.5,000/- from the original complainant – Bhagwat Babasaheb Warat for not to file chapter case against him. However, after negotiation the bribe amount was settled to Rs.3,000/-. Then the said complainant lodged the complaint to applicant – State and accordingly the trap was set up and the respondent – accused was caught, while accepting the bribe amount. After complete investigation the respondent – accused was prosecuted for the offence punishable under Sections 7, 13 (1)(d) read with 13(2) of Prevention of Corruption Act, 1988. However, the learned Trial Court after conducting the trial acquitted the present respondent of those charges. Hence, this application.

3. Learned A.P.P. submits that, there is ample evidence on record in respect of demand made by the respondent – accused. Moreover, trap against respondent - accused was also successful and the bribe amount was also recovered. Further, the test of anthracene powder was also positive in respect of respondent – accused and, therefore, the acquittal recorded by the learned Trial Court is not at all proper.

4. On the contrary, learned Counsel for respondent - accused

strongly opposed the submissions of learned A.P.P. According to him, vital ingredients namely demand and acceptance are not at all proved in this case. On the contrary, there was admission on the part of prosecution witnesses that the respondent – accused never demanded any bribe amount. Further, the punch witness who was supposed to accompany with complainant was not present at the time of said alleged demand and acceptance. The most important admission has come from the complainant himself whereby he has stated that, he thrust the bribe amount in the pocket of respondent – accused. Learned Counsel for respondent – accused also pointed out that, the recovery of alleged bribe amount was not from the complainant, but it was from open place i.e. from mudguard of old vehicle kept in the premises of Police Station. As such, he prayed for rejection of the application by contending that the learned Trial Court rightly acquitted the respondent – accused.

5. Heard rival submissions and also perused the documents on record alongwith the copies of deposition as well as copy of impugned judgment.

6. There is no dispute that the respondent – accused was then A.P.I. of Kaij Police Station, Dist. Beed though it is contended by the

prosecution that the respondent – accused demanded amount of Rs.5,000/- for not to file chapter case against the complainant but it was reduced to Rs.3,000/- after negotiation and after that trap was set up. Though the complainant (P.W. – 1) and the punch witness (P.W. – 2) have deposed according to the prosecution story about the demand and acceptance of the bribe amount by the respondent – accused, but in the cross-examination they have given vital admissions, which create suspicion about the entire prosecution story as regards the trap being successful.

7. On perusal of cross-examination of P.W. – 1, the complainant it was evident that, when he went inside to Dharur Police Station, Dist. Beed to respondent – accused, the punch witness No.1 i.e. P.W. – 2 and his son were standing outside the compound wall of Police Station. Moreover, the complainant himself has admitted in the cross-examination that, since the respondent – accused having doubt that he on his own thrust the bribe amount by his right hand into left hand pocket of pants' of accused. Thus, the acceptance as per prosecution story is not at all proved. Moreover, the punch witness No.1 i.e. P.W. – 2 during his cross-examination clearly admitted that, there was no talk between the complainant and

respondent – accused on account of work or the bribe amount. Further, P.W. – 2 has also stated that, they could only see the faces of complainant and the respondent – accused due to height of compound wall of Police Station, when the complainant and respondent – accused came outside the cabin of respondent – accused.

8. Further, the recovery of amount has also created serious doubt about the entire prosecution story. According to P.W. – 2 he had seen the complainant going towards the Southern side of Police Station, where the old vehicles were parked. Accordingly, the bribe amount was not recovered from the person of respondent – accused but it was recovered from mudguard of old vehicle parked in the Police Station. If it is the case that, he saw the complainant going towards the said vehicles then it is highly impossible to believe that, the respondent – accused had in fact accepted the bribe amount and kept the same on that mudguard of old vehicle. It is not the case of prosecution that, the accused was found going towards the old vehicles from where the bribe amount was recovered. It is also highly impossible to believe that, after thrusting the bribe amount into the pocket of pants' of accused, how it was found in mudguard of old

vehicle. Moreover, had it been the case that the complainant thrust the bribe amount into pocket of pants' of accused then there would not have been any traces of anthracene powder on the fingers of respondent – accused. Therefore, considering these facts it is clearly evident that, the prosecution had failed to establish the most vital aspects namely demand and acceptance, which are required for constituting the offence punishable under Sections 7 and 13 (2) of Prevention of Corruption Act, 1988. Therefore, it is apparent from the record that, the learned Trial Court has rightly acquitted the respondent – accused and, therefore, I am not inclined to grant leave to challenge such acquittal. Accordingly, the application stands rejected.

[SANDIPKUMAR C. MORE]
JUDGE