

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.42 OF 2020

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

... APPLICANT

VERSUS

1. Satyajeet Shantaram Pawar
Police Constable, B. No. 1720,
Osmanpura Police Station,
Aurangabad.

2. Amol Shantaram Pawar,
Private person.
R/o.: Shrikrishna Nagar,
HUDCO, Aurangabad.

... RESPONDENTS

...
A.P.P. for Applicant-State : Mr. P. M. Kulkarni
Advocate for Respondents : Mr. S. N. Lale Yelwatkar
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**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 30/10/2023.**

P. C. :

1. The applicant / State- Anti Corruption Bureau, Aurangabad, is seeking leave to challenge the acquittal of the respondents / accused recorded by the Special Judge (ACB), Aurangabad (hereinafter referred to as 'the learned trial court') in Special Case (ACB) No.22 of 2009 vide judgment and order dated 23/10/2019.

2. According to the learned APP, the prosecution has brought ample evidence on record to show that the bribe amount of Rs.5,000/- was demanded by respondent No.1 / accused No.1 and accepted thereafter and then he himself handed it over to his brother i.e. respondent No.2 / accused No.2. He pointed out that the learned trial court wrongly observed that sanction was accorded by wrong authority. He pointed out that there was delegation of powers on PW-3 - Sanctioning Authority under a resolution and therefore, the same is valid.

3. On the contrary, the learned counsel for the respondents / accused supported the acquittal of the respondents / accused. According to him, the prosecution did not produce on record any order copy or the resolution about alleged delegation of powers to PW-3 - Sanctioning Authority. He further pointed out that the demand was not proved and mere acceptance in absence of demand is not sufficient to convict the respondents / accused persons in anti-corruption cases.

4. Heard rival submissions. Also perused entire documents on record including the impugned judgment and order.

5. It appears that the learned trial court has acquitted the respondents / accused mainly on the ground that the demand of bribe amount was not proved and the sanction was not from proper authority. On going through the impugned judgment, it is evident that the learned trial court has observed that PW-2 i.e. panch witness, who accompanied the complainant at the time of demand verification and trap, admitted that he did not hear the conversation between the complainant and respondent No.1 / accused No.1 about the alleged demand. However, though such admission is thereon record, but the demand verification panchnama Exhibit-33, which is reproduced in the judgment itself, indicates that respondent No.1 / accused No.1 had in fact demanded the amount. Moreover, the learned trial court disbelieved the evidence of PW-2 merely because he had acted as a panch witness in other 2-3 cases, which he initially suppressed. Further, at the time of trap also conversation took place between the complainant and respondents, which is mentioned in the spot panchanama, according to which respondent No.1 / accused No.1 had asked the complainant "Tera Kam Ho Gaya, Tune Mera Kam Kiya Kya." Though the learned trial court has observed that no specific amount was demanded by respondent No.1 / accused No.1 by saying so but if the statement is read in the background of

earlier conversation mentioned in demand verification panchanama, then it appears that respondent No.1 / accused No.1 had asked about certain amount. Moreover, it was disclosed in the evidence that respondent No.1 / accused No.1 after accepting the bribe amount, has handed it over to respondent No.2 / accused No.2. Though this fact is mentioned by the learned trial court, but it is further stated that this fact was not sufficient for participation of respondent No.2 / accused No.2 in the commission of offence as an abettor.

6. So far as sanction is concerned, admittedly PW-3 was a Deputy Commissioner of Police, who had accorded the sanction that means he was not a Commissioner of Police or Superintendent of Police, who can be treated as an Appointing Authority of respondent No.1 / accused No.1. However, the learned APP pointed out that there was a resolution about delegation of powers upon PW-3 by the Commissioner of Police, Aurangabad at the relevant time. Though the said resolution is not placed on record, but considering the earlier aspect as regards the demand, the applicant - State at least has made out arguable case. Therefore, considering these aspects, leave as prayed by the applicant - State can be granted. In view of the same, following order is passed.

ORDER

- I) The application is hereby allowed.
- II) The appeal of the appellant-State be registered after removal of office objection, if any.
- III) The application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)