IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE : 107 OF 2018

The State of Maharashtra,
Through Police Inspector,
C.I.D., Nashik **... Applicant**
(Ori. Complainant)

VERSUS

1. Santoshkumar Avtarkrushna Kaul,
Age : 40 years ; Occu. Executive Engineer,
Zilla Parishad, Jalgaon.

2. B. D. Shimpi,
Age major, occu. Deputy Engineer,

3. H.R. Zope,
Age major, Occu. Branch Engineer,

4. Kamlakar Avdhut Patil,
Age major, Occu. Junior Engineer,
Nos. 3 to 6 R/o Jalgaon, Tq. & Dist. Jalgaon. **... Non-Applicant/ Respondents**
(Ori. Accused Nos. 3 to 6)

...

APP for the Applicant – State :- Mr. R. D. Sanap

...

CORAM : SMT. VIBHA V. KANKANWADI &
Y. G. KHOBRAGADE, JJ.

DATE : 10TH APRIL, 2023.

...

ORDER : (Per : Y. G. Khobragade, J.)

01. By the present application under Section 378(1)(b) of the Code of Criminal Procedure, the prosecution seeks leave to appeal to

challenge judgment and order dated 30.01.2018 passed by the learned Special Court, Jalgaon under the Prevention of Corruption Act in Special (ACB) Case No. 13/1996, thereby acquitting the non-applicants/accused for the offences punishable under Sections 120-B, 109, 406, 408, 409, 467, 468, 471, 477-A read with Section 34, Section 409 read with Section 511 of Indian Penal Code and under Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

02. With the help of learned APP Mr. R. D. Sanap, we have considered the evidence which was before the learned trial Court on the point, whether leave can be granted to file the appeal against the order of acquittal.

03. At the outset, it is submitted that initially total nine accused were charge-sheeted, however, during the pendency of trial, accused No. 1 -Akhtar Ali Tafazul Ali Kazi, accused No. 2 -Ashok Rameshwar Agrawal, accused No. 7 -D.D. Rajput, accused No. 8- R.D. Kandharkar and acccused No. 9 – P. S. Rao expired. Therefore, the trial against these accused has abated.

04. In nut-shell, it is the case of prosecution that the informant P.W.1 Vijay Pandhare lodged the F.I.R. (Exhibit 74) on 12.08.1991 stating that he was working as Executive Engineer of Water and

Irrigation Department No.1 of Zilla Parishad, Jalgaon. Accused No.1 Akhtar Ali Kazi was the Chairman of Construction Committee and Vice President of Zilla Parishad, Jalgaon during the period 1979 to 1990. The accused No.1 was empowered to give administrative sanction for schemes of Zilla Parishad. The monitory limit for one-time sanction was up to Rs. 2,00,000/-. Additional water supply work was to be undertaken in villages Ahire Budruk. Ahire Khurd, Dahidula, Varad of Erandol Taluka. However, accused No.3 Santoshkumar A. Kaul, accused No. 8 R.D.Kandharkar, accused No. 4 -B.D. Shimpi, accused No. 9 P.S.Rao, accused No.5 H.R. Zope, accused No. 6 Kamlakar Avdhut Patil, accused No. 7 D.D.Rajput, who were office bearers of Zilla Parishad at the relevant time conspired with accused No.1, accused No.2 Ashok Rameshwar Agrawal and got the contract in the name of one U.M. Pathak, was a fictitious person. Intentionally the work was allotted in such parts, so that the amount of each part of the work should not cross the limit of Rs. 2,00,000/-. Further whenever that amount was more than Rs. 2,00,000/- , then sanction was given only up to Rs.2,00,000/-. Thus, there was misappropriation and cheating of the Zilla Parishad in a designed manner.

05. It further alleged that respondent No.3 Shri Santoshkumar A. Kaul, the then Executive Engineer, Zilla Parishad, Jalgaon in

furtherance of his common intention had divided the works in parts, without obtaining sanction from the competent authority. Accused No.1. Mr. Akhtar Ali Kazi had approved the said work beyond the limit of his financial powers. Administrative sanction was obtained without information to the audit and financial department as well as from the Chief Executive Officer. Accused No. 3 did not issue notice /tenders even after administrative approval and allotted the contract to accused No.1 -Ashok Agrawal without recommendation of finance department, though in case of tender price more than Rs.50,000/- such publication of tender was must. There were monthly meeting of members of Construction Committee, but approval to the tender works were granted only after two years. Accused No. 5 H. R. Zope and accused No. 9 P. S. Rao did not carry measurement of the actual works in connivance with other accused and showed false measurement up to the sanction amount. Similarly, accused Nos. 4, 5, 6 and 9 in connivance with the other accused have not audited the bills of actual construction work and approved the same. Accused No.7 D.D.Rajput sanctioned the payment of such bills and misappropriated huge public amount by forging the documents with criminal conspiracy.

06. On the basis of said report, a crime No. 132/1992 was registered with Dharangaon Police Station against the accused persons for the

offences punishable under Sections 406, 408, 409, 467, 468, 471, 477-A, 120-B, 109, read with Section 34, and under Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act.

07. The Investigation Officer P.W. 14 -Madhukar Pawar conducted investigation and recorded statements of witnesses. He has seized various documents. On completion of investigation, a charge-sheet was filed against the accused persons.

08. The learned trial Court framed charge against the accused persons, however, they pleaded not guilty and claimed for trial.

09. In order to prove the charges, the prosecution examined in all total 14 witnesses. The statement of accused persons is recorded under Section 313 of the Code of Criminal Procedure and pointed out incriminating evidence. The defence of accused is that because they have been falsely implicated in crime of political pressure. Accused No. 3 -Santoshkumar stats that all the works were carried out as per the procedure laid in government resolutions.

10. Learned trial Court passed impugned judgment and order on 30.01.2018, and acquitted accused No.3 – Santoshkumar Avtarkrushna Kaul, accused No. 4 – B. D. Shimpi, accused No. 5 - H.R.Zope and accused No.6 Kamlakar Avdhut Patil for the offences punishable under Sections 120-B, 109, 406, 408, 409, 467, 468, 471,

477-A read with Section 34, Section 409 read with Section 511 of Indian Penal Code and under Sections 13(1)(d) read with Section 13(2) of Prevention of Corruption Act.

11. The prosecution examined P.W. 1 Vijay Pandhare and proved report (Exhibit 74), he gave letter dated 09.11.1994 (Exhibit 75), letter dated 05.01.1990 (Exhibit 76), office note (Exhibit 77), Government Resolution (Exhibit 78). It is not in dispute that P.W. 2 Ramesh Patil was Junior Clerk in Audit Section of Z. P., the P.W. 3 Prakash, who was the Banking Officer of Jalgaon District Central Co-operative (J.D.C.C.) Bank in the year 1987, P.W. 4 Dhanraj Patil was Gramsevak of Ahire Budruk village in 1986.

12. P.W. 5 Maharu Salunke, is the witness to the seizure panchanama Exhibit Nos. 86, 87, 90 and 91. P.W. 10 Nandkishor Wani, is the clerk of Mehrun Branch of United Western Bank before whom the cheques muddemal articles 37 to 40 in the names of J.R. Sapkale and U.M. Pathak and pay-in-slips of cheques articles 41 to 44 were seized.

13. P.W.7 Vishwanath Kale and P.W. 8 -Satish Kale proved estimate of works in village Ahire Budruk, Ahire Khurd, Varad and Dahidule at articles 1/1 to 1/3, 2/1 to 2/3, 3/1 to 3/5 and 4/1 to 4/3. P.W.9 - Govinda Chaudhari, the Senior Assistant of Irrigation and Water

Supply Department of Zilla Parishad, Jalgaon proved seizure panchanama (Exhibit 96) in respect of seizure of files Article 5 to Article 22, seizure memo (Exhibit 97), Bills Article 23 to 28, measurement books 2296 and 2192 -Article 29 and Article 30.

14. P.W.11 -Arun Jain, the tracer of Zilla Parishad, Jalgaon proved seizure memo Exhibit 105 about seizure of articles 45 to 60 i.e. false administrative orders. The prosecution proved hand-writing expert report (Exhibit 122). But the hand-writing expert has not opined about writing of accused No.3 S.A. Kaul and K.A. Patil and accused No. 2 Ashok Agrawal on bank documents of witness P.W. 12 Borse. The hand-writing of specimen and questioned documents of accused No. 4 B. D.Shimpi matched like remaining accused (except S.A. Kaul and K.A. Patil).

15. It is the cardinal principle of law that the burden to prove the guilt of the accused lies on the prosecution and the degree of such burden is ‘beyond reasonable doubt’. There is no dispute that deceased accused No.7 D. D. Rajput was the Chief Accountant and Finance Officer of Zilla Parishad, Jalgaon. It is evident that two cheques article 37 and 38 were signed by accused No. 7 on behalf of Zilla Parishad, Jalgaon. However, none of the prosecution witnesses deposed that the money from the account of Zilla Parishad, Jalgaon was entrusted to the accused No.7 who was having domain over the

said account. It is not in dispute that Zilla Parishad, Jalgaon is a local body and its business are being conducted as per the Rules and Regulations. Giving authority to accused No. 7 to sign the cheques does not amount to domain over the account. By which resolution or order the said authority was given to him and what were the rules for the issuance of cheques, who was the controlling authority, etc. should also be brought on record. However, the prosecution has not brought any corroborative piece of evidence to prove about the exclusive entrustment of property or dominion over the amount of Rs. 4,98,709/-.

16. As per the testimony of prosecution witness P.W. 1 Vijay Pandhare, the actual valuation of public work carried out was worth of Rs. 11,78,379/-. The case of prosecution about issuance of cheque of Rs. 4,68,266/- which was encashed by the accused persons. In order to prove misappropriation of amount of Rs. 11,07,709/- and Rs. 4,68,266/- which were drawn by cheque in favour of U. M. Pathak, a fictitious contractor, the law required specific evidence. The prosecution has brought two cheques article Nos. 37 and 38 for amounts of Rs. 7,65,922/- and Rs. 3,19,633/- respectively on record. The amounts do not match. How it was ensured that said U. M. Pathak is a fictitious person, has not been stated. What inquiry was made, whether details of his bank account was taken and then

inquiry was made, has not come on record.

17. As per the testimony of P.W. 5 -Maharu Sitaram Salunke, he was peon and P.W.10 -Nandkishor Dwarkadas Wani was the clerk Mehrun Branch of United Western Bank. The prosecution alleged that account was opened in the name of U. M. Pathak and some money was withdrawn by him. If we consider that amount of Rs. 10,85,555/- was paid in the name of Shri U. M. Pathak, but said amount is less than the actual valuation of work, which was quantified to the tune of Rs. 11,78,379/- Though the prosecution alleged about committing criminal breach of trust to the tune of Rs. 4,98,709/-, but the Investigation Officer failed to seize the cheque or said amount.

18. It is not in dispute that accused Nos. 1, 3 to 7 were the public servants, but the evidence of prosecution witnesses is lacking to show that except the Chief Accountant and Finance Officer, the other accused persons were entrusted with the property exclusively. Though the prosecution alleged about hatching up a conspiracy with the common intention along with accused No. 7 D. D. Rajput and misappropriation of public fund of Zilla Parishad to the tune of Rs. 14,30,330/-, but the prosecution failed to bring substantial evidence to that effect.

19. The accused persons are charge-sheeted for fabricating of documents and preparing of false documents on which basis the public funds misappropriated. The prosecution examined P.W. 9 Govinda Chaudhari, who proved files article 5 to 22 in respect of villages in which work was allegedly executed and the bills article 23 to 28 seized under panchanama Exhibit 97. The Investigation Officer P.W. 14 seized measurement books Article 29 and 30, however, P.W. 9 admitted about putting his signature at end of seized documents in the beginning. P.W. 9 admitted about not having personal knowledge in respect of contents of files. As per hand writing expert report, hand writing of accused No. 4 D. D. Shimpi and accused No. 1 Akhtar Ali Kazi matched. However, the prosecution failed to prove signatures of the accused persons on the concerned documents.

20. As per the testimony of P.W. 1 Vijay Pandhare, he joined at Zilla Parishad in the year 1991 and alleged misappropriation of public fund was prior to his joining. P.W. 1 admitted that he was not having personal knowledge. He admitted that the inspection of all the executed work was carried out by Shri Ramdas Karhe, the then Executive Engineer and other Deputy Engineers. The prosecution failed to examine Ramdas and other Deputy Engineers, whose evidence appears to be relevant to prove the misappropriation of Zilla Parishad fund. Therefore, in absence of substantial evidence certainly,

it will not be possible to conclude as to whether actual work of up to Rs. 11,07,709/- was carried out, the work of up to Rs. 31,00,000/- was approved and then the bills for the work up to Rs. 31,00,000/- were presented.

21. Further, though P.W. 1 Vijay Pandhare deposed about requirement of publication of tender for the works which estimated more than Rs. 50,000/-. However, the prosecution only produced original documents, but not examined any witness to prove the contents of documents.

22. On face of record, it appears that, the prosecution proved about payment of Rs.10,85,555/- in favour of U.M. Pathak allegedly fictitious contractor. The P.W. 12 Rajendra Borse deposed about obtaining signature of Shri U.M. Pathak under the threat of Mr. B.D. Shimpi. However, P.W. 12 admitted that signatures of U.M. Pathak were taken for the purpose of submitting post office form and he was employee of accused No.2 deceased Ashok Ramdas Agrawal. It is not in dispute that the signatures of accused No.2 Ashok Agrawal appearing on cheques encashed from United Western Bank, Mehrun Branch. At the cost of repetition, we would say that bank documents have not been got proved which would have included account opening form, photographs, etc. It would have been easy to conclude as to whether said person is fictitious. Therefore, in absence of cogent evidence, it

cannot be concluded that the accused were part of conspiracy and they misappropriated such amount.

23. Learned trial Court passed impugned judgment and order on 30.01.2018, after considering the material available on record and acquitted the respondents-accused Nos.3, 4, 5 and 6 from the charges under Sections 120-B, 109, 406, 408, 409, 467, 468, 471, 477-A read with Section 34, Section 409 read with Section 511 of Indian Penal Code and under Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act. The said judgment and order do not warrant interference at the hands of this Court as it does not suffer from perversity or illegality.

24. In view of the above discussion, we are not inclined to grant present application and proceed to pass the following order :

ORDER

Application stands dismissed.

(Y. G. KHOBRAGADE, J.) **(SMT. VIBHA V. KANKANWADI, J.)**

shp/-