

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 77 OF 2022

The State of Maharashtra,
Through: Police Station Ambajogai City,
Tq. Ambajogai, District. Beed

.. Applicant

Versus

Shashikumar Baburao Pandit
Age : 56 years, Occu. : Service,
R/o. Sidhivinayak Colony, Chanai Road,
Ambajogai, Tq. Ambajogai,
District - Beed.

.. Respondent

Mr. S. R. Yadav-Lonikar, APP for the Applicant.
Mr. Akshay D. Kulkarni, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.

Date on which reserved for Judgment : 30th March, 2023.

Date on which judgment pronounced : 12th May, 2023.

JUDGMENT :-

. This is an application seeking leave to file an appeal against acquittal by the State challenging the judgment and order of acquittal dated 08.02.2022 passed by the learned Special Judge and Additional Sessions Judge, Ambajogai in Special Case ACB No. 09/2016. The learned Special Judge acquitted the respondent-accused from the offences punishable under Section 7, 13 (1) (d) r/w Section 13 (2) of the Prevention of Corruption Act.

2. The facts in short giving rise to the present application are that the informant i.e. PW-1 – Sachin Kendre was working as Talathi since 2010. Against him a false case was filed under the Prevention of Corruption Act and therefore in February, 2013 he was suspended. In January 2015 the Divisional Commissioner, Aurangabad directed to reinstate the informant. He was directed to be placed under Sub Divisional Officer, Ambajogai. The informant later on came to be acquitted from the offence on 12.02.2015. He thereafter approached the office of S.D.O. and requested him to give reinstatement order. In spite of making application twice he was not reinstated. On making further request, the S.D.O. Shri Suryawanshi told the informant to meet Naib Tahsildar Shri S. B. Pandit i.e. the present accused. It is alleged that, on meeting him he told that, since the original file of the informant was in Parli Sub Division office he cannot be reinstated in Sub Division, Ambajogai. On telling him about the order passed by the Divisional Commissioner it is alleged that, the accused told that the informant has to spend something for his transfer as per the direction of the S.D.O. He stated that, the S.D.O. asked to take Rs. 60,000/-. Thus, informant was told that unless the amount of Rs. 60,000/- is paid he will not be reinstated. The informant thus agreed to pay Rs. 50,000/- and also filed one more application on 11.03.2015. On that application he was reinstated.

3. It is further stated that, though the informant was reinstated, however, deliberately no order was passed in respect of the suspension period and departmental enquiry. The informant therefore again met accused on 19.03.2015 and filed an application. On that, again the accused demanded an amount. The informant thereafter brought the file from Parli Sub Division office and produced it to the office of S.D.O., Ambajogai. On that date, the accused told that since the informant has paid Rs. 10,000/- less of total Rs. 60,000/- his file still is not cleared. Since no order was passed on 07.10.2015 the informant met the S.D.O. Shri Suryawanshi. S.D.O. again directed the informant to meet the present accused. While dealing with the accused he told that, unless the remaining amount is paid of Rs. 10,000/- his work will not be done. Thus, the informant filed complaint against both the officers namely Shri Prashant Suryawanshi and Shri S. B. Pandit on 16.11.2015.

4. The A.C.B. on receiving this complaint decided to lay a trap. A demand verification panchanama was prepared. It was decided to first verify the demand. Panchas were called. The panch went along with informant to the office of S.D.O. They were even given a voice recorder with memory card of 4 GB capacity. The panch along with informant went to the office of S.D.O. and went to the chamber of Shri

Pandit. While dealing with the accused, the accused asked him Rs. 10,000/- and directed the informant to come along with amount at 3.00-4.00 p.m. On that day S.D.O. Shri Suryawanshi was on leave. The conversation recorded in the voice recorder was reduced in writing and on that panchanama was prepared.

5. Thereafter, pre-trap panchanama was prepared. The raiding party along with informant went to the office of the accused. At that time also conversation was recorded and panchanama was again prepared after conducting entire exercise. The proposal was sent for sanction to prosecute. On receiving sanction the accused was tried. After recording evidence the accused came to be acquitted. Challenging the acquittal the State has preferred this application.

6. It is necessary to consider as to whether the prosecution has proved the case and as to whether a case is made out that no two views were possible than to accept the guilt of the accused. The case of the prosecution mainly is that the learned Special Judge has failed to appreciate the evidence. There is sufficient evidence so as to come to conclusion that the accused has demanded the bribe amount. The voice in the recorder is proved to be of the accused with the help of scientist officer. The positive evidence of demand and acceptance is not considered by the learned Special Court. The learned Special Court has

also not considered the presumption under Section 20 of the Prevention of Corruption Act. It is therefore necessary to consider the evidence of the prosecution.

7. The first is the evidence of Shri Sachin Kendre – PW- 1 i.e. the informant. In his evidence he deposed that, he had been to the office of S.D.O., Ambajogai on various occasions with a request to reinstate him pursuant to the order passed by the Divisional Commissioner. However, he was not reinstated. There was a demand of Rs. 60,000/- which was settled to Rs. 50,000/-. On payment of Rs. 50,000/- he was reinstated, however, no order in respect of suspension period was passed and therefore, he was again required to meet the accused person. He deposed that, as per the direction of his superior namely Shri Suryawanshi the informant has to pay remaining Rs. 10,000/-. He deposed about the pre-trap panchanama. He submitted that, he and panch No. 1 had been to the office of the accused. He asked the accused as to what has happened to his work, however, he did not respond initially and thereafter by whispering he asked about the remaining amount. On that, the informant told him that he would come at 3.00-4.00 p.m. and went back. On that day Mr. Suryawanshi was not in the office. The I.O. asked as to whether they should wait till the next date, however, the informant insisted to go on for the trap on

the day itself.

8. The raiding party went to the office of the accused. On going to the office this informant found that the accused is talking to someone at the door of his chamber. The accused asked the informant as to whether he has brought the amount. The informant only gave the nod of having brought the amount. The accused asked him to come out and told him to pay the amount in the office premises. On that the informant took the amount i.e. 20 notes of denomination of Rs. 500/- each from his right side pocket of the back side of pant. The accused took the amount and kept it in his pocket. On that the informant gave the signal to the trap party. The trap party came and caught the accused red handed.

9. PW-2 i.e. Ashok Abuj, the panch deposed before the Court about the pre-trap panchanama. In the discussion between the informant and the accused he came to know that there are arrears of two years of salary of the informant. The accused told the informant that his file was pending with one Swami Madam i.e clerk in that office and told informant to bring the file from her. After that the informant told the accused that he would come with the amount of Rs. 10,000/-. After coming back to the A.C.B. office again instructions were given about the actual trap. The raiding party went to the S.D.O. office. The

informant was given new voice recorder tied on the neck of the informant. At around 1.30 p.m. they again visited Mr. Pandit in his chamber. Two-three persons were sitting in the chamber. The accused and the informant came outside the cabin in Varanda and went to nearby one corner in the premises. He deposed that, informant took out the amount from his pant and held it before the accused. The accused counted the amount and kept the same in his watch pocket and started coming back to the cabin. At that time, raiding party members came inside the cabin and caught the accused red handed. The hands were found having anthracene powder under the ultra violate lamp. One expert was called for collecting CCTV footage. Currency notes were collected by the PI. and then numbers were verified.

10. PW-3 - Sunildatta Patankar working as Secretary in Revenue Department – a sanctioning authority deposed that, on receipt of the proposal and the documents he scrutinized the same and sent the proposal to the State Minister of Revenue Department and thereafter sanction was given. He proved his signature on the sanction order and proved the contents of the order.

11. Fourth witness is the I.O. who deposed about the entire process from receiving of the complaint till making the trap successful and

filing of the charge-sheet.

12. The last witness is the scientist officer in regional science forensic lab who proved the report of the voice. He deposed that voice in both the voice samples is of one and the same person.

13. In the cross-examination, PW-1 accepted that he himself was facing prosecution for corruption and in that connection he was placed under suspension. He had written the complaint at his house and thereafter he typed the same. His complaint was again typed written after the staff of A.C.B. came to Ambajogai. He accepted that, in the year 2006 he had filed an application for mutual transfer to Ambajogai college when he was taking education and that time he had filed one complaint against one Anil Kulkarni to A.C.B. office for payment of bribe amount. In the said case, he has not deposed that whether the accused is acquitted. He accepted that the accused had directed to initiate enquiry against the informant in respect of case of theft of sand. In that case, he had intimated the accused that because of notice issued by the accused without proper verification, he had suffered mental harassment and he would make agitation against the said notice before Collector, Beed, Divisional Commissioner and Mantralaya. He accepted the copy of said show cause notice. He came to know to the fact that on 29.10.2015 the Sub Divisional Magistrate has issued letter to one

Mr. Bhise, enquiry officer to conclude the departmental enquiry as early as possible and therefore date was fixed in departmental enquiry as 07.12.2015. He further accepted that, the police has recorded his statement on 17.11.2015 in which he has stated to the Police that he had visited the S.D.O. Shri Suryawanshi and requested him to regularize his service during the period of suspension and to pass necessary orders for arrears of salary. However, these statements are not found in his statement recorded before the Police.

14. About the cross-examination of PW-2 he accepted that before the date of incident he had never visited Ambajogai.

15. So far as main evidence of the sanctioning authority is concerned, in cross-examination he accepted that there was allegation against S.D.O. Shri Suryawanshi, however, there was no incriminating evidence found in the documents. He accepted that, it is the S.D.O. who has the authority to draw the arrears of salary of the complainant. A specific question was asked that as per G. R. dated 03.04.2000 in case of the employee drawing the salary above Rs. 10,650/- it is the Chief Minister who is sanctioning authority. He answered that, figure is of basic salary and the accused is working as Nayab Tahsildar and the sanctioning authority of the accused is State Minister, Revenue Department. He accepted that, along with sanction he had not sent

necessary documents to the State Minister.

16. PW-4 in his cross-examination accepted the suggestion that after return of panch – Ashok Abuj from alleged verification of demand they intimated all the facts happened with the accused and the informant. Certain omissions are brought on record in his evidence from the statements.

17. Learned A.P.P. submits that, the entire evidence was before the learned Special Court. The evidence is duly corroborated and established before the learned Special Court and still the learned Special Court has acquitted the accused. The case of the prosecution was clearly proved and there was no other option to hold the accused guilty of the offence.

18. As against that, learned advocate for respondent-accused submits that the learned Special Court has rightly considered the evidence and has rightly recorded that the sanction is without authority. No demand and acceptance is proved. The view taken by the learned Special Court is totally consistent with the facts and the evidence in the case and no interference is required.

19. On going through the judgment, it is found that the learned Special Court has mainly considered the admitted facts. In this case,

the informant himself was suspended from the service because of the criminal case under the Prevention of Corruption Act. In the case under the Prevention of Corruption Act the demand of illegal gratification is must and that needs to be proved. The learned Special Court has also considered that, for presumption under Section 20 of the Prevention of Corruption Act the foundational facts must be established by the prosecution.

20. The learned Special Court considered the conversation recorded and has recorded a clear finding that from the entire conversation there is no word uttered by the accused showing that he has demanded the amount. The learned Special Court considered that is contradiction in the evidence of the informant and the panch witness. The informant deposed that, after verification of demand they reached at a place namely water tank. The Police were standing there and confirmed about the conversation in voice recorder. He thereafter left for other village for visit whereas, the panch witness deposed that when they came back from the demand verification the voice recorder was taken out by one of the Police Constable and switched off and complainant was directed to put it aside and it is thereafter the panch with P.I. Shri Gondkar listened the conversation on the voice recorder and thereafter, pre-trap panchnama was prepared.

21. The learned Special Court considered that, in fact, the complaint was against two persons namely Shri Suryawanshi and the present accused of demand of bribe. However, Shri Suryawanshi, S.D.O. is not shown as accused. The charge-sheet is totally silent about Shri Suryawanshi. The I.O. also admitted the cross-examination that at the relevant time Shri Suryawanshi was working as S.D.O., however, he did not feel it necessary to verify the demand of bribe from Shri Suryawanshi. The learned Special Court considered this lacuna in the case of prosecution that goes to the root of the case. So far as point of sanction is concerned, the learned Special Court has concluded that the sanctioning authority had no power to grant sanction to prosecute as the power was only with the State Government. The learned Special Court held that the sanctioning authority of the accused was the Chief Minister through the Minister of Revenue Department and therefore, the sanction accorded by Joint Secretary is bad in law. It is also seen from the evidence that the sanctioning authority had not sent all the documents to the concerned Minister.

22. This Court has considered the evidence. In this case, the transcription is produced by the prosecution and there is no dispute about the said transcription. It would be necessary to see as to whether there is any demand made by the accused as alleged. From the entire

conversation as recorded there is no word showing that there was specific demand by the accused. From the conversation what appears is that the informant has told the accused about the difficulty faced by him as he was not paid salary for two years. Thereafter, the conversation was not clearly audible. The transcription recording is of four pages, however, at no point of time, there is any specific demand in the pre verification panchanama. Even at the time of actual trap a recording was made and transcription was prepared. In this conversation also no specific demand is appearing.

23. So far as sanctioning authority is concerned, the G.R./circular dated 03.04.2000 is seen from which it is clear that the power to grant sanction to prosecute under the Prevention of Corruption Act is with the Minister, Revenue Department. Admittedly, the sanctioning authority who has accorded sanction in this case was working as Joint Secretary. The learned Special Court has therefore rightly concluded that the sanction in this case is bad in law. It is further needs to be considered that, though immediate explanation was offered by the accused, still the same is not produced on record. This fact also needs to be considered.

24. Thus, looking to the evidence this Court finds that, a view taken by the learned Special Court cannot be faulted with. The learned

Special Court has rightly drawn the conclusion. Since this is an application seeking leave to file appeal against acquittal, a case needs to be made out by the prosecution to show that there is no any other conclusion possible than to hold the accused guilty of the offence. No such case is made out.

25. Learned advocate for respondent relied upon the judgment of the Hon'ble Apex Court in the case of C.B.I. Vs. Ashok Kumar Aggarwal reported in AIR 2014 SC 827 to submit that the sanction needs to be strictly proved in the corruption cases.

26. He further relied upon the judgment of the Hon'ble Apex Court in the case of State of Maharashtra Vs. Dnyaneshwar Laxman Rao Wankhede reported in (2009) 15 SCC 200. The Hon'ble Apex Court has held that when the accused is acquitted of the offence, the presumption of innocence is reinforced. In the said case, though the pre-trap panchanama was proved, still it was held that at the time of actual incident there has to be again demand by the accused. The Hon'ble Apex Court further considered that, the sanction granted in that case was not proper and has dismissed the appeal filed by the State.

27. Next judgment relied upon is the judgment of the Hon'ble Apex Court in the case of V. Sejappa Vs. State reported in AIR 2016 SC 2045.

The said case was also preferred by the State against the order of acquittal. The High Court reversed the finding of the learned Trial Court and held that the sanction was valid and that the offence is proved. The Hon'ble Apex Court held that mere recovery of amount is not sufficient in the cases of corruption unless there is specific proof of demand and acceptance of illegal gratification is proved. About the sanction it was held that the sanction was granted by the Under Secretary to the Government, Public Works Department. The learned Trial Court had held that the sanction was not valid on two counts that, (i) for the lack of authority and (ii) there was no reference to the documents referred to by the authority to show application of mind. It is observed that, it is well established that the initial burden of proving the fact of acceptance of the amount is upon the prosecution and mere recovery is not enough for the purpose of Section 20 of the Prevention of Corruption Act . The Hon'ble Apex Court thus was pleased to allow the appeal of the accused.

28. Last judgment relied upon is the judgment of this Court at the Principal Seat at Bombay in the case of **State of Maharashtra Vs. Srirang Dagaduji Bale** in Criminal Appeal No. 1073/2007 in which earlier judgment in the case of **V. Sejappa Vs. State** is considered and the appeal against acquittal is dismissed.

29. In the case in hand as already discussed, this Court finds that, the prosecution has failed to prove the demand and acceptance and secondly, the prosecution also failed to prove that the authority which granted sanction had power to grant sanction. The learned A.P.P. could not point out any perversity in the findings recorded by the learned Special Judge. It is also not shown as to how the view taken by the learned Special Judge is not at all possible.

30. This Court therefore finds that, no illegality is committed by the learned Special Court. No case is made out to call interference in the impugned judgment.

31. The application is therefore dismissed.

(KISHORE C. SANT, J.)

PS.B.