

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.85 OF 2022

The State of Maharashtra
Through Anti Corruption Bureau,
Beed

... APPLICANT

VERSUS

Anil Murlidhar Wethpathak,
Age : 52 years, Occu.: Service,
R/o.: Shiral Tq. Ashti, Dist. Beed,
Now at Samarth Nagar, Kaij,
Tal. Kaij, Dist. Beed

... RESPONDENT

A.P.P. for Applicant-State	...	: Mr. R. B. Bagul
Advocate for Respondent	...	: Mr. A. D. Kulkarni
		

**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 27/10/2023.**

P. C. :

1. The applicant / State- Anti Corruption Bureau, Beed, is seeking leave to challenge acquittal of the respondent / accused from offence punishable under Sections 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 recorded by the Special Judge & Additional Sessions Judge, Majalgaon, District : Beed (hereinafter referred to as 'the learned trial court') in Special Case ACB No.2 of 2013 vide judgment and order dated 28/02/2022.

2. The learned A.P.P. submits that the learned trial court has acquitted the respondent / accused from the aforesaid charges mainly on the ground that demand was not proved and the sanction for prosecution was not granted by the proper authority. However, he pointed out that the trap was successful and there is ample evidence on record to show that the respondent / accused had demanded bribe amount for taking entry of crop loan in the record of rights of the land of the complainant. He pointed out that there is also electronic evidence on record in form of memory card and transcript of the same which indicates that there was demand by the respondent / accused. He pointed out that the voice sample of the respondent / accused was found matching to his voice in demand verification transcript. He also pointed out that the said report of Scientific Officer of Regional Forensic Science Laboratory has been issued under Section 65(B) of the Indian Evidence Act and therefore, it is admissible in the evidence.

3. On the contrary, the learned counsel for the respondent / accused strongly opposed the submissions made by the learned APP. According to him, the learned trial court has rightly acquitted the respondent / accused, specially mentioning that the evidence on the point of the demand brought by the prosecution, was not at

all satisfactory and trustworthy. According to him, the learned trial court rightly pointed out the admissions given by the prosecution witnesses whereby it was disclosed that the respondent / accused was not having any reason to demand the bribe amount since he had already completed the work of complainant and also issued the 7/12 extract. According to him, the report of the Scientific Officer, Forensic Science Laboratory cannot be read in evidence specially when certificate under Section 65(B) of the Indian Evidence act in the required format is not attached to it. He relied on various judgments as follows :

- I) *State of Maharashtra vs. Dnyaneshwar Laxman Rao Wankhede, reported in MANU/SC/1339/2009;*
- II) *Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and others, reported in MANU/SC/0521/2020;*
- III) *Vinod vs. The State of Maharashtra, reported in MANU/MH/0485/2016;*
- IV) *V. Sejappa vs. State, reported in MANU/SC/0494/2016;*
- V) *The State of Maharashtra vs. Chandsaheb Silar, reported in MANU/MH/099/2020;*
- VI) *The State of Maharashtra vs. Ashok Balasaheb Nimbalkar, reported in MANU/MH/4708/2021;*

VII) The State of Maharashtra vs. Srirang Dagaduji Bale, reported in MANU/MH/1649/2021 AND

VIII) Judgment in Application for Leave to Appeal by State No.77 of 2022 (The State of Maharashtra vs. Shashikumar Baburao Pandit), of this Court, dated 12/05/2023.

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

5. Though certain contradictions are there in the evidence of the complainant and panch witnesses, but a transcript is there on record, which indicates that the respondent / accused had demanded the bribe amount. Though it is disputed as to whether the report of Scientific Officer, Forensic Science Laboratory, Aurangabad can be read in evidence in view of Section 65(B) of the Indian Evidence Act, but at the bottom of said report itself it has been mentioned that the same is issued as per Section 65(B) of the Act. Though the learned counsel for the respondent / accused relied on the judgments of the Hon'ble Apex Court in respect of the electronic evidence, but at this juncture only *prima facie* material is to be seen to check whether any arguable case is made out by the prosecution. Apparently, the evidence of the prosecution

witnesses is there in respect of demand. Moreover, the memory cards containing conversations between the complainant and the respondent / accused are also on record alongwith its transcript and the report of Scientific Officer. The judgments relied upon by the leaned counsel for the respondent / accused can be considered at the time of argument of the main appeal. At this juncture, what is apparent that the prosecution has made out arguable case and therefore, 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.)