

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

987 APPLN. FOR LEAVE TO APPEAL BY STATE NO.144 OF 2019

The State of Maharashtra
 Through Police Inspector,
 Pathardi Police Station, Tq. Pathardi,
 Dist. Ahmednagar

.. Applicant

Versus

Annasaheb Kundlik Sonawane
 Age : 34 years, R/o. Flat No.234,
 Saisagar Nagar – Kalyan Road,
 Ahmednagar

.. Respondent

...

Mr. S.P. Sonpawale, APP for Applicant – State

Mr. Rajendra Deshmukh, Senior Advocate a/w. Mr. Jay Veer
 i/by. Mr. D.R. Korade, Advocate for Respondent

...

CORAM : R. M. JOSHI, J.

DATE : 13th JULY, 2023

PER COURT :

1. Mr. Deshmukh, learned Senior Counsel states that he has instructions to appear along with Mr. Jay Veer and Mr. D.R. Korade, learned Counsels for respondent.

2. Heard.

3. This is application for leave to appeal against the

judgment dated 26.02.2019 passed in Special Case No.04/2015 for the offences punishable under Section 7, 13 (1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988. Respondent - accused is charged for demanding bribe for not arresting complainant in the crime No.I-76/2014 wherein brother of complainant was arrested by present accused. It is contention of complainant that for the purpose of not arresting him an amount of ₹ 5,000/- was demanded. He further claims that there was a verification of the said demand in presence of panch witness and said demand was duly recorded in the voice recorder. He further contends that accused had asked him whether he had brought amount. It is contended by him that thereafter he took out the tainted notes and held it in front of the accused which amount accused accepted and kept in his pants pocket. As against this, evidence of panch witness shows that at the time of trap, no verbal communication was made by the accused but, he made gestures showing the demand of bribe. This evidence is completely inconsistent to the statement made by complainant.

4. Apart from this, perusal of cross-examination of complainant indicates that he had made an attempt to give amount to police personnel - Barhate who had recorded his statement, but he has not accepted the amount and therefore he decided to

give amount to accused. It is suggested during cross-examination to complainant that as he was having grudge for arrest of his brother, accused is falsely implicated in this crime. Though the suggestion is denied, admittedly, respondent had arrested him. Moreover, complainant himself has admitted that at the relevant time he had no apprehension of arrest.

5. Perusal of the impugned order shows that acquittal has not been granted merely for the reason that there was no anthracene powder found on the key which was there in the pocket of the accused, but finding is recorded by the learned Special Court to the effect that the demand has not been proved. In the light of the aforesaid evidence, the said findings cannot be called as perverse.

6. There is presumption that every accused is innocent till the offence is proved against him. The said presumption of innocence has been confirmed with the acquittal of accused. In such circumstances, unless there is overwhelming evidence which was ignored by learned trial Court while acquitting the accused is found, interference in such order of acquittal is not permissible. More particularly from the contradictions in the evidence of complainant and panch witness, it cannot be held conclusively that there was a demand of bribe and acceptance thereof. Hence, no case

is made out for leave to appeal against acquittal. In the result, the application is dismissed.

[R. M. JOSHI]
JUDGE

GGP