

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Application for Leave to Appeal by State (ALS) No. 154 / 2022

The State of Maharashtra,

Copy to be served on Public Prosecutor

High Court of Judicature at Bombay,

Bench at Aurangabad.

...Applicant

Versus

Hanumant Gangadharrao Panchal,

Age 41 years, Occu. A.P.I.,

R/o. Rahi, Tq. Naigaon,

District Nanded.

Now in front of Dnyaneshwar School,

Jintur, Tq. Jintur, District. Parbhani.

...Respondent

Mr. S.R. Yadav-Lonikar, APP for the Applicant/State.

Mr. H.I. Pathan, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 27th MARCH, 2023.

PRONOUNCED ON : 4th MAY, 2023.

JUDGMENT :

1. This is an application seeking leave to file an appeal against

acquittal challenging the judgment and order dated 27.01.2022 passed in Special (ACB) Case No.02/2019 by the learned Additional Sessions Judge/ Special Judge, Parbhani acquitting respondent from the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

2. The story of the prosecution in short is that the complainant, who was examined as PW-1 namely Gajanan s/o Lala Zodpe, lodged the complaint that he cut off trees of Anjan and sold the same to a Merchant. The accused who was working as A.P.I, stopped the tractor, in which Merchant was carrying out the said trees. The accused and Merchant had some talks on that Merchant paid some amount to the respondent and the respondent allowed his tractor to go. The accused thereafter insisted upon the informant to pay amount, for not taking action as the informant was not ready to give the amount, he lodged the complaint with the ACB. The ACB on receiving a complaint, laid a trap. It is alleged that the trap was

successful and the respondent was apprehended red-handed.

3. After that, prosecution was launched by the State by obtaining sanction. The Court found that the demand and acceptance, both are not proved. Merely a pre-decided signal was given to the raiding party could not be taken as acceptance of the amount. Though antheracene powder was found on the clothes and the hands of the accused, it was held that no offence is proved as the acceptance of amount is not proved. The said evidence is not sufficient to hold the accused guilty as the PW-1 has not stated in his deposition anything about acceptance of the bribe amount. The evidence of PW-2 was also considered by the Court, who stated that he was standing out wherein the amount was allegedly accepted.

4. As this being the criminal application seeking leave, the evidence needs to be seen carefully to find out as to whether the conclusion arrived at by the learned trial Court is totally perverse or is illegal.

5. There are four witnesses examined by the prosecution. The first witness is the complainant namely Gajanan Lala Zodpe. He deposed that he cut the trees and sold out to Merchant. When the Merchant was taking the wood in the tractor, at that time he was stopped by the accused, on that Merchant paid him some amount. The accused thereafter demand amount from the complainant, for not taking action against him. The demand was Rs.20,000/-, which was later on settled to Rs.10,000/-. On the date of incident, this witness went to the office of the accused, he met with the accused at Bamni Police Station and the accused asked him as to whether he brought the cash? Upon which he answered in affirmative and accused demanded Rs.10,000/-. The informant told that he has brought only Rs.7000/- and gave the same to the accused. Immediately on giving amount, complainant gave signal to the members of the raiding party. They came there and snapped video shooting by using mobile phone.

6. In the cross-examination, this witness accepted that till lodging of the complaint, there was no demand of the bribe of Rs.7000/-. He further stated in the cross that he did not remember as to when he reached Bamni Police Station. He accepted that the accused did not demand Rs.7000/-. He accepted that since the ACB Officer was having cash of Rs.7000/-, therefore the trap was arranged for the said amount. He further accepted that though he denied the suggestion that he himself put the bribe amount in the drawer of computer table. He accepted that the work of typing of panchnama was not done at Bamni Police Station, but was done in the Jintur Police Station.

7. To appreciate the evidence of complainant from the point of demand and acceptance, it needs to see evidence of PW-2 namely Shivaji Buchale, who was working as Technical Assistant in District Animal Husbandry Office, Parbhani. He deposed that he was requested from ACB Officer to act as panch. He was explained

procedure of the trap. The raiding party went to the Bamni Police Station and this witness and the complainant proceeded towards the said police station. However they were stopped by one police officer in the police station, asking as to what was in the police station, the informant told him that he had to see police Sub-Inspector by telling that this witness was his uncle. This witness was asked to stop outside the police station. The informant alone went in the police station and he came back after five to 20 minutes. This witness and complainant came near the raiding party and switched on the voice recorder and listen to recorded conversation with the help of Laptop. On hearing the conversation recorded between the informant and the accused, it transpired that the Police Sub-Inspector demanded bribe. It is thereafter antheracene powder was applied to the currency notes brought by the informant. The informant and this witness thereafter again marched towards police station. The informant met the accused and both went inside in the police station by asking this witness to stay outside. After sometime,

informant came out of the police station and gave signal of acceptance of amount. On receiving signal, this witness gave signal to the raiding party. When the raiding party went in the police station, they found that informant told that the bribe amount was accepted and was kept in the drawer of keyboard by the accused. The currency notes, hands of accused and of the informant were examined under the light of ultra-violet lamp, which shown glittered greenish. Thereafter the said amount was seized and further procedure was followed. Informant deposed that since there was no compute facility available at Bamni Police Station, the Officer decided to go to Jintur Police Station and there panchanama was prepared on the computer. He identified the verification panchnama and the transcription of the conversation recorded in the voice recorder. This witness thereafter returned back to Parbhani on 27.12.2017. He was called again in ACB Office, Parbhani. There he made signature on panchnama. At this stage, this witness was declared as hostile and permission was granted to

the PP to cross-examine this witness. However from cross by PP, nothing came out.

8. In the cross-examination of this witness, he answered that at the time of acceptance, informant alone went in the police station and this witness was standing outside. It is only after the complainant came out after 15 to 20 minutes, he came to know about the acceptance of amount. He was not aware as to who was the accused. He also could not tell as to how much was the bribe amount.

9. The next witness (PW-3) is the Sanctioning Authority namely Subodh Jaiswal, who proved the sanction order.

. In the cross-examination, he accepted that he did not mention the queries made in the sanction order. He could not tell whether he perused the footage of CCTV cameras in the police station and could not answer about the further details.

10. The next witness is the Investigating Officer (PW-4) namely Vivekanand Bharti. In his examination-in-chief, he gave all the details about taking complaint, calling panch witnesses, arranging and laying of the trap and executing panchnama. In the cross-examination, he accepted that he has no documentary evidence to show that the complainant arrived in his office on 26.12.2017. He did not make enquiry as to from whom, message was received by the complainant to meet accused in the police station. He did not make any enquiry about time at which the said message was received. He accepted that prior to the incident, the work of the complainant was not pending with the accused. He accepted that there was no any entry taken in the office record, when the raiding party left for pre-trap by stating that to maintain confidentially, no such entry is made. He again accepted that specifically in paragraph no.32 that there was no work pending of the complainant with the accused explaining that the bribe was asked for not registering the crime. He accepted that in this case, pre-trap panchnama and post-

trap panchnama is not recorded separately as both the incidents occurred successively. Even the demonstration of antheracene powder was not done in the ACB office. He could not state that as to whether there was demand by the accused during the course of conversation between the complainant and accused in the police station. He also accepted that at the time of verification of the bribe amount and at the time of pre-trap panchnama panch no.1 was standing out side the police station.

11. The learned Court below by observing that in the complainant and in the panchanama, no amount was found with him as the case of the complainant was that he had taken Rs.10,000/- from the person who was alongwith him, out of which he had handed over Rs.7000/- to the ACB Officer, so the remaining amount should have been on the person of the complainant. Even on the point of demand of Rs.20,000/-, PW-1 deposed that he did not recall that the accused told the date and place where the amount was to be paid

and the accused demand amount of Rs.10,000/- till lodging of the complaint. Thus the fact of earlier demand itself is not proved. The panch witness was standing outside the police station, when the incident took place and thus he had no reason to know about the demand and acceptance at the time of trap. There is no explanation as to why in the complaint, demand is stated Rs.20,000/-. When the complainant and the panch went to the police station, there were 5 to 6 persons standing near police station. Thus the Court has not believed and came to conclusion that the demand of the bribe and acceptance of bribe is not proved.

12. On going through the evidence and judgment, this Court finds that the basic story of the prosecution was that the demand of the bribe was made by the accused as the complainant had cut the trees standing in the land of the complainant. This very fact is not verified by the sanctioning authority. The sanctioning authority could not depose as to when amount was demanded. He could not

tell as to whether what work of the complainant was pending with the accused. He could not tell as to whether the statements of person, who cut the trees, were recorded.

13. The learned Advocate for the respondent relied upon the judgment in the case of **Pramod s/o Namdeo Choudhary Vs. The State of Maharashtra**, reported in 2017 ALL MR (Cri) 57, which was considered by the learned Sessions Judge. It was found that the complainant had kept money on table. This fact shows that the accused had not accepted the amount. Merely giving of pre-arranged signal to raiding party does not mean that accused accepted amount. Mere reflection of anthracene powder on clothes and hands of accused is not sufficient to prove the guilt.

. He further relied upon the judgment of this Court at Principal Seat at Mumbai in Criminal Appeal No.570/2012 in the case of **State of Maharashtra Vs. Suresh Baliram Rane**. In the said case, conversation between the complainant and accused was not heard

by the panch witness. It was held that thus the prosecution has not proved the demand by the accused.

14. On recording this evidence, the learned Sessions Judge acquitted the accused respondents. The learned Court recorded that the prosecution has failed to prove the demand by the accused of the bribe. He also concluded that the acceptance is also not proved by the prosecution from the evidence. The Court had come to conclusion that when the alleged incident occurred of giving bribe to the accused, Panch witness no.1 was standing out of the police station and had not witnessed the alleged incident.

15. Looking to the facts of this case, it is seen that the panch was standing outside when the incident allegedly took place in the police station. Secondly even on the point of sanction, the trial Court has concluded that there is lack of application of mind by the Sanction Authority. This Court finds that this appeal being an appeal against acquittal, the scope to interfere with the judgment is very limited.

Prosecution must establish that the view taken by the learned trial Court is totally perverse or illegal and there is no another view possible but to accept the case of the prosecution. In view of this, this Court finds that no case is made out to grant leave to file against acquittal and there is no merit in the application, therefore it needs to be dismissed. Hence the following order.

ORDER

- (i) The Criminal Application (ALS) No.154/2022 is dismissed.

[KISHORE C. SANT, J.]

NAJEEB..