

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.114 OF 2020

The State of Maharashtra APPLICANT

VERSUS

Narayan s/o Nathuji Dhandar,
Age : 55 years, Occu.: Nil,
R/o.: A-10, Disha Gharkul Deolai,
Deolai Road, Aurangabad. ... RESPONDENT
(Orig. Accused)

....
APP for the Applicant-State : Mr. R. D. Sanap
Advocate for the Respondent : Mr. C. P. Shengaonkar &
Mr. R. N. Chavan
....

**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 12/09/2023.**

P. C. :

1. The applicant / State under this application, is seeking leave to file an appeal against the acquittal of present respondent / accused from the charges under Section 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 under the judgment and order dated 29/02/2020 passed by the Additional Sessions Judge and Special Judge under PC Act, Aurangabad (hereinafter referred to as 'the learned trial court) in Special (ACB) Case No.39 of 2016.

2. The learned APP submits that there was clear evidence on record brought by the prosecution through complainant - Anjali

Bhalerao i.e. the President of Asha Mahila Jankalyan Pratishan, Bidkin that the respondent / accused made demand of bribe of Rs.5,000/- which was settled to Rs.3,500/- after negotiations for handing over a cheque of grant of Rs.25,000/- allotted to her Pratisthan. The learned APP further submits that the respondent / accused was working as a Sport Officer and the evidence on record clearly indicated that he demanded the aforesaid bribe amount and also accepted the same.

3. On the contrary, the learned counsel for the respondent / accused strongly supported the judgment and order of learned trial court, whereby the respondent / accused has been acquitted. According to him, there was no reliable and satisfactory evidence on record about the initial demand of alleged bribe amount by the respondent / accused. Moreover, there are material discrepancies and contradictions between the versions of complainant and panch witness, who accompanied her at the time of alleged demand and acceptance of bribe amount. He pointed out that the respondent / accused was not having any authority of issuing the cheque of grant. With these submissions, he prayed for rejection of the application.

4. Heard rival submissions and also perused documentary evidence on record.

5. From the judgment itself it is evident that the complainant Anjali Bhalerao, who is PW-1 was alleging that for getting the

cheque of grant of Rs.25,000/-, the respondent / accused demanded an amount of Rs.5,000/- initially but after negotiations, settled it to Rs.3,500/-. However, on going through the judgment itself and transcription recorded in respect of conversation between PW-1 Anjali and the respondent / accused, it appears that it was not free from doubt and there were chances of manipulation or tampering. Further, the evidence of actual demand and acceptance indicates that PW-1 Anjali had accompanied with PW-3 Hajare i.e. panch No.1. According to the complainant - Anjali when they went to the office of the respondent / accused, the respondent / accused asked whether she had brought the amount and thereafter she took out the amount from her purse and gave the same in the hands of respondent / accused. However, she has clearly admitted in his cross-examination that she did not give the bribe amount in the hand of respondent / accused but instead she had put the said amount on the table and went out side to give signal and at that time the respondent / accused had also called 'O madam' while she was going out side.

6. On the contrary, PW-3 Hajare, who had accompanied her at the relevant time, has come out with different story. According to him, PW-1 Anjali took out Rs.3,500/- from her purse and gave it to respondent / accused by her right hand and it was accepted by the respondent / accused and thereafter, he put in the right pocket of his pant. Then they came out of the office and made pre-determined signal. On this aspect PW-4 Anita Warade i.e. investigating officer has testified differently. According to her, after receiving signal, she alongwith other members of squad went inside

the office of the respondent / accused and PW-3 Hajare told her by pointing to the respondent / accused that respondent / accused had accepted the amount by right hand and counted by both the hands and put it in right side pocket of his trouser. However, anthracine powder test in respect of trouser of the accused is negative and there are discrepancies in the evidence of PW-1, PW-3 and PW-4 on the material aspect of demand and acceptance. Most surprisingly PW-1 had given explanation in her cross-examination that she had not given the complaint in writing as her right hand was fractured and it was tied. Thus, this explanation has falsified the entire prosecution story including story of PW-3 Hajare that the complainant had taken out the amount by her right hand from the purse and gave it in the hand of respondent / accused.

7. Further, it has also come on record that the respondent / accused was not assigned with any duty of issuing the cheque of grant of amount. Instead of that it has come in the evidence that the cheque of grant of subsidy was to be granted and signed by District Sport Officer - Smt. Morale Madam. Moreover, the learned counsel for the respondent / accused heavily relied on the judgment in *(2015) 10 SCC 152 in the case of P. Satyanarayana Murthy vs. District Inspector of Police, State of Andhra Pradesh and another*, wherein it is observed that mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, *dehors* the proof of demand, *ipso facto*, reiterated, would not be sufficient to bring home the charge under Sections 7 and 13 of 1988 Act. Therefore, considering the various contradictions and discrepancies in the evidence of PW-1, PW-3 and PW-4 it is highly

difficult to digest that the prosecution had in fact established the fact of demand and acceptance. On the contrary, the demand and acceptance as alleged by the prosecution are itself clouded with doubtful circumstances. Therefore, no apparent perversity can be seen in the judgment of the learned trial court. As such, I am not inclined to grant any leave as prayed for filing an appeal against the impugned judgment and order. In the result, the application for leave to appeal stands dismissed and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)