

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE NO.220 OF  
2019  
THE STATE OF MAHARASHTRA  
VS  
SHIVNATH UTTAMRAO WYAVHARE**

Mr. P. M. Kulkarni, APP for the applicant-State  
Mr. Joydeep Chaterji, Advocate for the respondent

**CORAM : KISHORE C. SANT, J.  
RESERVED ON : 26<sup>th</sup> APRIL, 2023  
PRONOUNCED ON : 07<sup>th</sup> JUNE, 2023**

**P. C.**

1. This application is filed by the State seeking leave to file an appeal against acquittal challenging the judgment and order passed by the learned Additional Sessions Judge, Jalna dated 21-06-2019 in Special Case (ACB) No. 19/2013. The respondent is acquitted of the offences punishable under Sections 7, 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. Case of the prosecution, in short, is that:

a] The accused was working as Police-Sub-Inspector at Police Station, Partur, Tq. Partur, Dist. Jalna. The complainant who had filed a complaint bearing Crime No. 76/2013 Tukaram Chavan approached the accused. He wanted the accused in the said crime be arrested, the accused for the said purpose demanded an amount of Rs.10,000/-. The complainant therefore approached the Anti Corruption Bureau, Jalna (hereinafter referred to as 'the ACB') and lodged the complaint on 26-06-2013 with Police Inspector Mr. S. M. Mhetre with the ACB. For verification of the demand the complainant came with panch Shri Shinde to the police station. On reaching the police station, they met the accused. The accused at that time demanded the amount by gesture.

b] Since prior demand was made it was decided to lay a trap. It is alleged that at the time of trap again the accused demanded amount by making gesture. After the trap the Investigating Officer carried the investigation, sought sanction

from the authority and filed a charge-sheet. The learned Special Judge on the basis of material framed charges for the offences punishable under Sections 7, 13 (1)(d) read with Section 13(2) of the Prevention of Corruption Act. After trial accused came to be acquitted by the learned Special Judge.

3. Since the accused is acquitted the State has filed this application. It is therefore, necessary to consider as to whether a case is made out to grant leave to file an appeal against acquittal. This court therefore, had called for R & P With the assistance of the learned APP and the advocate for the respondent this court has gone through the evidence.

4. Prosecution examined total six witnesses. PW-1-Bhagwan Shinde Panch No.1, PW-2- Meena Chavan who acted as Panch while taking voice sample of the accused, PW-3- Ritesh Kumar the Sanctioning authority, PW-4- Tukaram Chavan complainant, PW-5- Vishwanath Pawar an eye witness and PW-6 Sitaram Mhetre Investigating Officer.

5. PW-4 the complainant in his evidence stated that he had lodged the complaint in the year 2013 as he was assaulted by one Nathya Kale and others. He, therefore, filed a complaint bearing Crime No. 76/2013 in Partur Police Station. The PSI had not arrested accused in connection with the said crime. The complainant therefore met the accused he demanded an amount of Rs.10,000/-. The complainant therefore lodged the complaint on 26-06-2013 with the ACB. The Investigating Officer decided to verify the demand. The Investigating Officer therefore asked the complainant and panch Shinde to visit the police station. At the police station the accused demanded amount by making gesture. On verifying the demand the Investigating Officer decided to lay a trap. The witness stated that he gave twenty currency notes of Rs.500/- to the Investigating Officer. Those notes were seen under the ultra-violet lamp. No shining was seen. Then, anthracene powder was applied to the said currency notes and those were again checked under ultra-violet lamp that time those were shining in greenish color. Those notes were

to be given to the accused on demand. This witness further deposed that after this exercise they went to the police station alongwith currency notes. They were also given voice recording machine. On going to the police station accused again demanded money by making gesture. The complainant thereafter, handed over the amount to the accused and gave signal to the team. Team members came in the office immediately and apprehended the accused persons. In the cross-examination this witness deposed that he lodged the complaint after one and half month of demand by the accused. He accepted that he is involved in 6-7 crimes. Out of those crimes one is of assaulting the police officer. He specifically answered that he did not tell before police that accused demanded money by making gesture. He accepted that he was under impression there was delay in arresting the persons in crime No.76/2013.

6. PW-1-Bhagwan Shinde deposed that on 26-06-2013 he was called by the ACB at Jalna. The Investigating Officer decided to verify the demand and therefore, this panch and

complainant went to the police station. This complainant asked the accused as to how much amount he should bring. At that time accused answered 'as agreed'. Upon that the complainant again asked him whether he should bring of Rs.10,000/- and the accused replied in affirmative. The accused told the complainant to bring a cigarette packet and rim of paper and a ball pen refill. The complainant purchased the above material from one shop. The complainant thereafter telephoned the Investigating Officer and told him about the incident. From there they returned to the Sai Temple. The complainant handed over the voice recorder to the Investigating Officer. Conversation was heard. The incident was also narrated in panchama.

7. This panch further deposed that after verification actual trap was laid. The panch and complainant again were called to the police station. Raiding party waited at some distance. The complainant brought rim of papers and handed over the pen and cigarette packet to the accused. There were two persons alongwith accused. One of them was lady member

of the staff while another was male members of the staff. The accused asked the complainant whether he has brought the amount. It is upon that the complainant took amount of Rs. 10,000/- from his pocket and handed it over to the accused. Accused accepted the amount by his left hand. On that signal was given to the raiding party and the raiding party caught hold the accused. Further the panchanama was drawn.

8. In his cross-examination this witness deposed that the complainant was specifically instructed not to speak anything about money unless the accused makes a clear demand. He accepted the documents Exh.27 & 31. There is no mention of demand by the accused that how much amount is to be given. He could not give the reason why the conversation is not recorded.

9. About actual time of trap he submits that there were 10 to 12 members of the raiding party and they were waiting at some distance. The persons in the office and raiding party

persons could see each other.

10. Next witness is PW-2-Meena Chavan working as Talathi who acted as panch. On 01-07-2013 she was called by the ACB. In her presence voice of the accused was recorded for sampling. On that Panchanama was drawn. Conversation was transcribed in her presence. In the cross she deposed that the police did not take written consent of the accused in her presence before taking voice sample. The accused has also not given any consent to give voice sample.

11. PW-3-Riteshkumar is the sanctioning authority. He was working as Additional Director General of Police, Maharashtra State. He deposed that he had authority to remove the accused from his services. He received a letter requesting for sanction to prosecute the accused. On going through the documents, he formed an opinion that sufficient evidence is available against the accused for grant of sanction.

12. In the cross-examination he could not give exact words in which accused demanded the amount at the time of trap.

13. PW-5-Vishwanath Pawar is said to be an eye witness who was present at the time of trap in the police station as this witness was working as police constable in the police station. He deposed that the panch and the complainant came to the office at 01.30 pm on 26-06-2013. The accused asked to bring the rim of paper. The complainant accordingly went out and brought rim of papers. After half an hour he again came there. Accused and complainant had some talk in low voice. Thereafter, one of the members of the ACB caught hold the hands of the accused. Currency notes were found in the hands of the accused. This witness is not cross-examined.

14. Last witness PW-6-Sitaram Mehetre is the Investigating Officer who deposed that on 26-06-2013 he received a complaint and on that day he decided to lay the trap after

verifying the demand. In his cross-examination no questions are asked to him except two formal questions.

15. On the oral evidence the learned trial judge found that no sufficient material is brought on record to convict the accused. The court further held that the prosecution has failed to prove the demand by the accused. There is no specific demand. There are contradictions in the evidence of PW-1 and PW-4-complainant about manner in which amount is demanded. The court has also held that sanctioning authority was not a proper authority to grant sanction and Inspector General of Police is the highest authority. Thus, the court came to the conclusion that he was not proper authority to grant sanction.

16. On going through the evidence this court finds that the demand itself is not proved by the prosecution. The complainant in his deposition deposed that at the time of demand verification as well as actual trap alleged demand was made only by gesture i.e. by signaling. This cannot be said to be

demand. Panch witness deposed that it is the complainant who asked the accused about the bribe amount when he was specifically instructed not to pay the amount unless there is specific demand by the accused. Thus, there is variance between the evidence. Though the conversation is recorded there is no evidence on record to show that said recorder was produced before the court or transcription was proved.

17. Next point needs to be considered about sanction. From the evidence of sanctioning authority it is not sufficiently reflected that the authority had applied its mind. The prosecution could not place anything on record to show as to what material exactly was placed before the sanctioning authority. The Hon'ble Apex Court in the case of CBI Vs Ashok Kumar Aggrawal reported in (2007) 10 SCC 736 has clearly held that it is necessary for the prosecution to prove that the entire material was placed before the sanctioning authority and that sanctioning authority has applied its mind. Even on count of application of mind this court finds that sanction is not valid

sanction.

18. Learned advocate for the respondent submits that the prosecution in this case has utterly failed to prove the demand. Demand, even as per the allegation, is by signaling and same cannot be taken as demand. About panch witness his evidence does not tally with the evidence of the complainant. He submits that view taken by the learned trial court cannot be said to be perverse. No case is made out by the prosecution to show that no other view is possible to hold the accused guilty and therefore, prays for rejection.

19. Learned advocate for the respondent relied upon the latest judgment of the Hon'ble Apex Court in Criminal appeal No. 2136/2010 in the case of Jagtar Singh Vs State of Punjab. In that case the accused had challenged the conviction under the Prevention of Corruption Act. The Hon'ble Apex Court by considering the judgment in the case of Neeraj Datta Vs State (Government of NCT of Delhi) reported in (2022) SCC Online

SC 1724 that demand and recovery both must be proved to sustain conviction under the Act. He submits that in present case also demand is not proved. Since the demand is not proved alleged acceptance cannot be said to be an acceptance and therefore, there is no question of presumption under Section 20.

20. Learned APP has tried to canvass the court that there is presumption under section 20 of the Act. He further submits that the recovery of amount from accused is not disputed at all. Therefore, the prosecution has clearly established the case. He submits that sanctioning authority has clearly stated that he is the authority to remove the accused and therefore, he is appropriate authority to grant sanction.

21. The prosecution could not show that the view taken by the learned Sessions Court is totally perverse and was not possible.

22. Considering the judgment in the case of Jagtar Singh

(supra) this court finds that no case is made out to grant leave to file an appeal against acquittal and the application deserves to be dismissed.

23. In view of above, the application stands dismissed.

**[KISHORE C. SANT, J.]**

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