

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.243 OF 2019

The State of Maharashtra .. Applicant

Versus

Devidas Uttamrao Tangade .. Respondent

Mr.S.R. Yadav-Lonikar, Advocate for the applicant.

Mr.Kishor Gadhave Patil, Advocate for sole respondent.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	10.02.2023
PRONOUNCED ON	:	09.03.2023

ORDER :-

01. This is an application seeking leave to file an appeal by the State being aggrieved by the judgment and order passed by the learned Special Judge, Aurangabad dated 29.06.2019 in Special Case (PC Act) No.15 of 2009, whereby the respondent-accused came to be acquitted from the offences punishable under sections 7,13 (1)(d) r/w 13(2) of the Prevention of Corruption Act.

02. The case of the prosecution in short is that when the respondent was working as a Police Head Constable in Begumpura Police Station,

Aurangabad. The complainant came to know that a complaint was filed against brother of the complainant. The complainant in this case, therefore went to the police station and met the accused and requested not to arrest his brother, namely, Shaikh Aziz, in the said case. In the enquiry, the accused told that he will register offence against the brother by stating that a complaint has been filed by grand-father of Shaikh Aziz in respect of house property. The complainant, however, told the accused that that case is false case and requested not to register offence and not to arrest his brother. On that, it is alleged that the accused demanded a bribe for not registering complaint and for not arresting his brother. The complainant, thereafter, lodged a complaint with the Anti-Corruption Bureau. On the basis of complaint, the ACB decided to lay a trap. A trap was then led on 03.01.2009. On the date of trap, the Inspector Sangale took the raiding party, where the informant/complainant was called by the respondent for accepting the amount. The raid is reported to be successful and on that basis an offence came to be registered against the respondent. The prosecution examined five witnesses in support of case of the prosecution. After trial, the learned Special Judge held that the prosecution has failed to prove guilt of the accused and acquitted the accused. The Trial Court considered that there is variance between the evidence of PW-

1 and PW-2 - who happens to be panch witness. Further, it is held that even sanction was not validly granted, by considering the evidence of PW-3, who was then the Commissioner of Police. The learned APP vehemently argued the matter stating that the prosecution in this case has duly proved the fact of demand of bribe coupled with acceptance by the respondent accused. He further submits that there is also recovery and in view of section 20 of the Act, presumption ought to have been considered by the learned Trial Court.

03. The learned Advocate for the respondent, however, submits that it was necessary for the prosecution to specifically prove the demand at the hands of the accused. However, there is no material to show that there was demand by the accused person. There is also no proof of acceptance of the amount. He submits that the learned Trial Court has rightly acquitted the accused and no interference is required.

04. Thus, it is necessary to see the evidence. In the evidence of PW-1 Shaikh Sami Shaikh Bashir, he deposed about lodging of the complaint with the ACB Office giving all the instructions by the Investigating Officer and about the alleged demand etc. At the time of trap, the accused had called the

complainant at TV center. There they met the accused. By taking instructions, the raiding party left the office of ACB and went near TV center at about 4-5 p.m. and stopped near the police station. The accused came there. The complainant, PW-2 panch and the accused went to one Suhas Juice Center near the police station. There the accused asked as to whether the complainant has brought Rs.1000/-, on which the complainant stated that he has brought the amount. The accused, thereafter, told to hand over the amount. The complainant thus handed over the amount of Rs.1000/-, which was kept in his right side pocket of the pant. He took out the amount by his right hand and handed over the same to the accused. The accused kept that amount in the pocket of his shirt. Immediately, on this the complainant gave signal to the raiding party and the raiding party immediately came and carried out further procedure.

05. PW-2 Radhakishan Satpute, a panch gave details in his deposition about the incident as that the raiding party went to TV center police station. The complainant, accused and himself went to Juice Center as told by the accused, where they were followed by the raiding party. The accused asked "*Paiseka Kya huwa*". On that the complainant told that he has brought

Rs.1000/- and took out the notes and handed over it to the accused. The accused took the amount and kept it in shirt pocket. PW-2 immediately gave signal to the raiding party. On that the raiding party came and further procedure was carried out.

06. PW-3 Shriprakash Waghmare is the sanctioning authority, who was then Dy. Commissioner of Police at Aurangabad. He stated about receiving of investigation papers and by applying his mind and studying the case, came to the conclusion that it was a case for grant of sanction and accordingly granted a sanction.

07. PW-4 is Sangram Sangle, who was then working as Dy. Superintendent of Police, ACB, Aurangabad, who conducted investigation. In his deposition he deposed about receiving of the complaint and thereafter about the procedure of conducting raid, drawing of panchanama and filing of charge-sheet after obtaining sanction.

08. PW-5 Nandkumar Patil in his deposition stated about recording of the statements and carrying out of the investigation.

09. All these witnesses were cross-examined. PW-1 in his cross-examination accepted that though the Investigating Officer had told him to provide him tape recorder at the time of trap, however, he did not use the tape recorder after demand verification is over. He accepted that in the demand verification panchanama, he had not stated about demand of Rs.1000/-. He accepted that there is no mention that the accused demanded Rs.1000/- for the work in demand verification panchanama. He further accepted that he had also not stated in the demand verification panchanama that the accused gave him his mobile number. He accepted that the spot of incident and the spot of panchanama was in open space, from where they could see raiding party members. He also accepted that he was knowing that there was no crime registered against his brother and the police cannot arrest a person without registering a crime.

10. PW-2 in his cross examination accepted that on the complaint the signature of the complainant is not seen. He accepted that though demo of the tape-recorder was given to the complainant, however, the complainant refused to use tape recorder. From his evidence omission is taken on record

about demand by the accused as “*Paise ka kya huwa*”. He accepted that there is no mention of this fact either in his statement or even in the spot panchanama. He also accepted that in his statement, it is not recorded that he gave signal to the raiding party. His variance in the cross-examination is in contradiction with the version of the complainant as regards the spot of panchanama. He clearly stated that on the spot, there was rush of public. He submits that the pre-trap panchanama, demand panchanama and spot panchanama were drawn in the office of ACB after the accused was taken into office.

11. From the cross-examination of PW-3, no material is brought on record so as to challenge the validity or illegality of the sanction order.

12. In the cross-examination of PW-4 – Investigating Officer, nothing much is brought on record. In cross-examination it is stated that accused was caught in the open space. He accepted that in the panchanama it is not recorded that he himself and other raiding party members saw the accused accepting the bribe amount.

13. In the cross-examination of PW-5 nothing is brought on record.

14. The learned Court below after going through the evidence clearly came to the conclusion that the fact of demand itself is not proved by the prosecution, by considering the variance in the versions of PW-1 and PW-2. The complaint was not signed by the complainant. The complainant could not state specifically as to whether he had given complaint in his own handwriting or he had given the same orally and someone else had written the same or whether it was typed on the computer, therefore the learned Trial Court has rightly held that his evidence does not inspire confidence. So far as evidence of PW-2 is concerned, the Trial Court considered variance about Exh.30-complaint and who exactly directed the contents and who has taken it down. Thus, not having signature of the complainant on the complaint is fatal to the prosecution case. About first demand of the bribe on 01.01.2009, it was done near a spot, namely, Jubilee Park area. The complainant offered accused a tea. About the evidence about the demand verification, the Trial Court considered that again there is variance between the evidence of PW-1 and PW-2. PW-2 told that the complainant gave accused one complaint requesting him to withdraw the said complaint on which accused made demand, where

upon the complainant told the accused that he will arrange for the amount within 2-4 days. It is absent in the evidence of PW-1. Considering the evidence of PW-1 and PW-2 about demand verification with demand verification panchanama, does not tally with each other.

15. About actual demand and acceptance, the Trial Court considered that whether the prosecution proved that there was reason for the accused to demand a bribe. The Trial Court rightly considered that there was no complaint filed against brother of the complainant and there was no question of making any demand for not arresting his brother. Further variance is also recorded by the Trial Court about giving of the signal to the raiding party as PW-1 and PW-2 both have stated that it is that particular witness who gave signal to the raiding party.

16. The Trial Court accepted the defence version that the amount was thrust in the shirt pocket of the accused, in view of the admission by PW-2, where he submitted that pre-trap panchanama demand panchanama as well spot panchanama were drawn in the office of ACB after the accused was taken in the office of ACB. Thus, the foundational fact of demand by accused itself

is not proved by the prosecution. There is also doubt created about the demand verification etc. Even about the actual incident, there is variance between the evidence of PW-1 and PW-2.

17. Taking into consideration all these aspects this Court finds that the Trial Court has rightly appreciated the facts and the evidence, and rightly accepted the defence of the accused. The Court has to keep in mind that this is an appeal against acquittal. Very strong case is required to set aside the judgment of an acquittal. In this case, this Court finds that there is lack of evidence on material aspects. The prosecution could not point out any perversity in the judgment by the Special Court. There is no case made out to show that the view taken by the Trial Court is totally incorrect or that there is no other view possible, than to hold accused guilty of the offence. The Hon'ble Apex Court held in various cases that appeal against acquittal is not to be lightly entertained. The Hon'ble Apex Court in the judgment reported in **Dhanna Vs. State of A.P. reported in AIR 1996 SC 2478** held that unless there is absolute assurance of guilt, the judgment of acquittal cannot be reversed.

18. Considering the above, this Court finds that no case is made out

by the prosecution to call for interference in the impugned judgment and order. There is no merit in the appeal. This Court, therefore finds that no case made out to grant leave to file appeal against acquittal.

19. Hence, leave to appeal is refused. The Criminal Application is dismissed.

[KISHORE C. SANT, J.]