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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION FOR LEAVE TO APPEAL (ALS) NO. 3 OF 2023

The State of Maharashtra

...Applicant
(Original Complainant)

vs.

1. Amrut Malkari Natekar
Age : 36 Years, Occu. : Govt. Service,
R/o. : Chandrama Apartment,
Hotgi Road, Solapur.

2. Suyoug Subhash Deshmukh
Age : 36 Years, Occu. : Govt. Service,
R/o. : 18-A, Sinhagadh Apartment,
Hotgi Road, Solapur.

...Respondents
(Original Accused)

Mr. H. J. Dedhia – APP for Applicant – State.

Mr.Imtiyaz Patel a/w Mr.Abdul Latif Shaikh – Advocates for
Respondent No.1.

Mr.Ritesh Thobde – Advocate for Respondent No.2.

CORAM : S. M. MODAK, J.

RESERVED ON : 6TH JULY, 2023

PRONOUNCED ON : 8TH AUGUST, 2023

JUDGMENT :

1. The Court of Special Judge – Solapur as per the judgment dated 22nd February, 2019 acquitted these Respondents for the offence punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 [“PC Act”]. The State is not

happy about the said judgment and hence, want to challenge it. They are seeking leave to prefer an Appeal as contemplated under the provisions of Section 378(1)(b) of the Code of Criminal Procedure, 1973 [“Cr.PC.”].

2. So, the question is whether to grant leave to prefer an Appeal or to refuse it. It is true that the scope of an enquiry is very limited. This Court is supposed to look at the findings at a prima facie stage and to consider whether further hearing by this Court is required by granting a leave.

3. The order granting or refusing leave has to be reasoned order. To buttress his submission, learned Advocate Shri.Thobde for Respondent No.2 relied upon the following judgments :-

- (a) State of Haryana V/s. Surjit Singh¹
- (b) State of Rajasthan V/s. Sohan Lal and others²

4. In case of ***State of Haryana V/s. Surjit Singh*** (supra), the High Court has summarily dismissed the Application by observing “*Leave to appeal declined*”. The said order was set aside by the Supreme Court. Failure “*to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at.*”

¹ AIR 2009 Supreme Court 1480

² 2004 CRI. L. J. 3842

Reasons substitute subjectivity by objectivity". Whereas, in case of ***Sohan Lal and others*** (supra), the order of High Court says "*I do not find any error in the judgment impugned. No case for grant of leave is made out. Leave to Appeal is hereby rejected*". (Para 1). While emphasizing the nature of enquiry contemplated, it was observed :-

"The fact that the entertaining of an appeal at the instance of the State against an order of acquittal for an effective consideration of the same on merits is made subject to the preliminary exercise of obtaining of leave to appeal from the High Court, is no reason to consider it as an appeal of any inferior quality or grade, when it has been specifically and statutorily provided for or sufficient to obviate and dispense with the obvious necessity to record reasons".
(Para 3).

5. Considering the ratio laid down in above judgments, I have heard learned APP and learned Advocate Shri.Patel for Respondent No.1 and learned Advocate Shri.Thobde for Respondent No.2.

6. It is true that the scope of an enquiry at the time of admission and scope of an enquiry while hearing an Appeal finally is different. As such, detailed enquiry is not contemplated. At the same time, this Court cannot forget the principles laid down in various

judgments on the point of scope of an Appeal preferred against the judgment of acquittal.

7. Mr. Patel relied upon the following judgments :-

- (a) Chandigarh Administration, Chandigarh V/s. Dharma Singh³
- (b) Golam Mahmood A. Malek V/s. The State of Gujarat⁴

8. In case of ***Dharma Singh*** (supra), there was an offence for murder. There was several weaknesses in the prosecution evidence. It has simply created a doubt and it could not overcome the test of reliability and as such, leave was refused. It was confirmed by the Apex Court. It was in case of ***Dharma Singh***. Whereas, in case of ***Golam Mahmood A. Malek*** (supra), there has to be sufficient grounds for holding that appreciation of evidence by the trial Court is unsupportable then only order of acquittal can be reversed.

9. It is no doubt true that just because “*the Appellate Court feels that the view taken by the trial Court is not proper and another view is possible*”, is no ground to interfere in the judgment of acquittal. Only when the findings are perverse, judgment of acquittal can be interfered with. What can be perverse is a question of fact. If a particular evidence is not at all considered or considered by neglecting the provisions of the law, it can be treated as perverse.

³ AIR 1985 SUPREME COURT 1671

⁴ 1980 CRI. L. J. 1096

These are the principles laid down by the Hon'ble Supreme Court. It is a cardinal principle of criminal jurisprudence that Accused is presumed to be innocent unless an offence is proved. This presumption of innocence exists during the trial and it is reinforced when there is a judgment of acquittal.

10. Mr.Thobde relied upon a judgment in case of ***Muralidhar Alias Gidda and Another V/s. State of Karnataka***⁵. In para No.10, the observations by Lord Russeel are reproduced. The High Court should consider ;

- (a) the view of the trial Judge as to the credibility of the witnesses ;
- (b) the presumption of innocence. Such presumption not weakened due to the acquittal by the trial Court;
- (c) right of the accused to ask for benefit of doubt
- (d) slowness of an appellate court in disturbing the finding of fact arrived at by a Judge, had the advantage of seeing the witnesses.

11. When it will be justified to interfere in the judgment of acquittal, Mr. Patel relied upon the following judgments :-

- (a) Satvir Singh V/s. State of Delhi thru. CBI⁶
- (b) C. Antony V/s. K.G. Raghavan Nair⁷
- (c) State of Rajasthan V/s. Rajaram⁸

12. It is no doubt true that this Court is not deciding the

⁵ (2014) 5 Supreme Court Cases 730

⁶ AIR 2014 SUPREME COURT 3798

⁷ AIR 2003 SUPREME COURT 182

⁸ AIR 2003 SUPREME COURT 3601

Appeal finally. But, at the same time, the principles laid down by Hon'ble Supreme Court which are required to be considered at the time of final appreciation cannot be totally overlooked while deciding the issue of grant of a leave.

13. If the judgment of trial Court is perused, we may find that it is based on following reasons :-

- (a) There is no reason to disbelieve and discard the evidence of PW No.5 – Atul Kshirsagar who is a surveyor who has drawn the map in respect of location of the spot in Administrative Building – Solapur. His evidence was relied upon. (Para 42).
- (b) C. A. Reports at Exhibit – 103 and Exhibit – 105 show that voice speaker and samples speech with probable identification either of Accused Nos. 1 and 2. These reports are sent by scientific expert. No infirmity is pointed out. Hence, they are reliable (Para 47 and 48).
- (c) There were following CDRs :-
 - (i) In respect of mobile No.8888057300 of *defacto* Complainant–PW No.1 and mobile No.9689693178 belonging to Respondent No.2.
 - (ii) There were CDRs in between mobile No.9860336637 of PW No.1 and 9422616033 of Respondent No.1 – Accused No.1. (Para 49). Accused has not explained for what purpose they have been in touch with the Complainant on

- phone. CDR reports support the Prosecution case. (Para 52).
- (iii) There was a delay in lodging the FIR. A demand was made firstly on 24th November, 2010. Whereas, FIR is lodged on 6th December, 2010. There was an inordinate delay of 12 days. Ultimately, benefit of doubt goes to Accused. (Para 53).
- (iv) Pre-trap panchnama commenced by 6.00 a.m., to 7.30 a.m. (Exhibit-31). Whereas, PW No.1 *defacto* Complainant and PW No.2 – Trap panch appeared in the Office of Anti Corruption Bureau at 6.45 a.m., on 7th December, 2010. These facts create doubt about story of Prosecution and evidence of witnesses. (Para 58).
- (v) Pre-trap panchnama Exhibit-31 dated 7th December, 2010 shows that the Complainant has produced tainted currency notes to the tune of Rs.26,000/-. However, PW No.1, PW No.2 and PW No.4 are silent on this aspect. None of them have clarified on which date, the amount was produced for the purpose of trap. These facts also create doubt about story of Prosecution. (Para 59).
- (vi) The money was ready in the pocket of Complainant. Accused No.1 was not having any difficulty to pay the amount of Rs.15,000/- to the Accused No.2 in his Office. ACB officials have not given any instruction to the Complainant to return back at vehicle after demand of money. In absence of any instructions or difficulty to pay the money, the Complainant has not paid money to the

Accused.

- (vii) The Complainant falsely stated that he was not possessing the money and he will bring the same from his brother. There is no explanation given by the Complainant for raising such false plea.
- (viii) No any satisfactory explanation given on behalf of Prosecution to excuse said conduct of Complainant. It creates doubt about the case of Prosecution. (Para 62).
- (ix) The contention about non verifying the demand was not accepted. It is not mandatory. It does not vitiate the proceedings nor makes the successful trap panchnama as illegal automatically. (Para 64, 65).
- (x) The witnesses Muddasar Iliyas and Ashok Karyakarte were not examined. However, the trial Court finds that their non examination do not affect the case of Prosecution and as such, no disadvantage can be taken by the Accused. (Para 67 and 68).
- (xi) Presumption under Section 20 of the PC Act cannot be drawn in favour of the Prosecution in view of the defects. (Para 71).

14. According to learned APP, the above findings are incorrect. Whereas, they are supported by learned Advocate for Respondents.

15. On the point of electronic evidence without certificate under section 65(B) of Evidence Act, Mr.Thobde relied upon the

following judgments on the point of voice identification :-

- (a) Nilesch Dinkar Paradkar V/s. State of Maharsashtra⁹
- (b) The State of Maharashtra V/s. Suresh Baliram Rane¹⁰ (on the point of necessity of certificate under Section 65-B of Indian Evidence Act, 1872.
- (c) Anvar P. V. V/s. P. K. Basheer and Others¹¹

16. Whereas, Mr.Patel relied upon the judgment in case of :-

- (a) Ashish Kumar Dubey V/s. State Thr. C.B.I.¹²

17. On the point of delay in lodging the FIR in anti corruption case, Mr.Patel relied upon the following judgments :-

- (a) P. Parasurami Reddy V/s. State of A.P.¹³
- (b) V. Venkata Subbarao V/s. State represented by Inspector of Police, A.P.¹⁴
- (c) Puroshottam Vasant Joshi V/s. The State of Maharashtra¹⁵
- (d) The State of Maharashtra V/s. Ramrao Marotrao Khawale¹⁶
- (e) State of Maharashtra V/s. Kashinath Shridhar Wani¹⁷

18. In above judgments, delay in lodging the complaint with Anti Corruption Bureau from the date of first demand was considered as fatal to the Prosecution case. The complaint was

⁹ (2011) 4 Supreme Court Cases 143

¹⁰ Criminal Appeal No. 570 of 2012 : 11th January, 2021 : Bombay High Court

¹¹ (2014) 10 Supreme Court Cases 473

¹² CRL.A.No.124 of 2008 : 4th April, 2014 : High Court of New Delhi

¹³ 2011 ALL MR (Cri) 2952 (S.C.)

¹⁴ 2007 ALL MR (Cri) 1201 (S.C.)

¹⁵ 2016 ALL MR (Cri) 665

¹⁶ 2017 ALL MR (Cri) 3269

¹⁷ 2010 ALL MR (Cri) 139.

lodged after three days. There was no satisfactory explanation for delay. An inordinate delay occurred in approaching Anti Corruption Bureau – Amaravati was indicative of the fact that there was something more in the whole case than what met the eye. The possibility of fabrication or concoction or exaggeration being made was not ruled out. (Para 11 of ***Ramrao Marotrao Khawale***'s case). So, even in cases under Prevention of Corruption Act, instant lodging of complaint with Anti Corruption Bureau is welcomed.

19. Mr. Patel relied upon the observations in case of ***Jaysing Nayrana Bidgar V/s. The State of Maharashtra***¹⁸ on the point of not immediately offering the illegal gratification even though the amount was available.

20. On this background, the Prosecution evidence needs to be considered. The facts emerge from the Prosecution evidence is as follows :-

(A) The Respondent No.1 – Mr.Amrut Natekar was working as a Deputy Collector (Special Land Acquisition Officer) at Solapur. Whereas, Respondent No.2 – Suyoug Deshmukh was working as Clerk in his Office. Earlier to him, one Mr.Karyakarte was the Clerk. *De facto* Complainant was having some interaction with said Karyakarte when he was deputed in the Office prior to his transfer. Mr.Karyakarte is

18 2016 ALL MR (Cri) 2079

neither Accused nor a witness. Whereas, the *de facto* Complainant was co-owner in respect of a land and the land was acquired and he was about to get compensation from the Government. The amount of an illegal gratification was demanded for the purpose of issuing cheque for the compensation amount of Rs.3,95,544/-.

21. The following are the relevant dates which emerges from the evidence :-

- (a) 22nd November, 2010 – The Complainant Sushant Kashid went to the Office to inquire and met Shri.Karyakarte who asked him to come on 24th November, 2010.
- (b) 24th November, 2010 – Again he met Shri.Karyakarte and then to Shri.Amrut Natekar – Respondent No.2.
- (c) Mr.Karyakarte asked Mr. Kashid to provide some documents. They were supplied. Mr.Natekar asked Mr.Karyakarte to remove certain differences and assured that cheque will be prepared within two days.
- (d) Mr.Natekar demanded Rs.40,000/- for that work and at least, he will take Rs.25,000/-. There was a request to reduce the amount by Mr.Kashid.
- (e) Mr.Karyakarte demanded Rs.1000/-.
- (f) Mr.Karyakarte advised him to come on Monday along with money. Gave his mobile number as 9423067324.
- (g) 26th November, 2010 – Mr.Kashid called Mr.Karyakarte. Mr.Kashid was asked to come on 29th November, 2010 along with the amount.

- (h) 29th November, 2010 – Mr. Kashid telephoned Mr. Karyakarte and prayed for two days as the amount is not ready.
- (i) 6th December, 2010 – He went to the Office of Anti Corruption Bureau – Pune and lodged the complaint.

22. These are the events which took place prior to lodging of complaint with Anti Corruption Bureau. It is true that even though the trap was to be led at Solapur, complaint was lodged with Anti Corruption Bureau at Pune.

23. After lodging of complaint on 6/12/2010, following are the important dates :-

- (a) 7th December, 2010 – Mr. Kashid and panchas came to the Office. Mr. Kashid produced 26 currency notes of Rs.1000/- denomination. Pre-trap formalities were completed.
- (b) 7th December, 2010 at 7.45 a.m., all left Office and proceeded towards Solapur. Reached at Solapur at about 13.40 hours.
- (c) Mr. Kashid was provided voice recorder. Mr. Kashid and panch Mr. Chavan went towards the Office of Deputy Collector and returned back as Mr. Natekar was not found.
- (d) 7th December, 2010 at 15.24 – Again Mr. Kashid and Mr. Chavan went to the Office of Mr. Natekar along with voice recorder.
- (e) Respondent No.1–Mr. Natekar demanded Rs.15,000/- and asked Mr. Kashid to collect the cheque and hand the amount to Mr. Deshmukh.

- (f) At 4.00 p.m., Mr.Kashid came back and voice recorder was played and transcript panchnama was prepared.
- (g) Then Mr.Kashid and panch witness along with voice recorder went to the Office of Mr.Natekar situated on the first floor of Administration Building. Met Mr.Natekar but Mr.Deshmukh was not there. Mr.Natekar called Mr.Deshmukh. Mr.Kashid and panch Mr.Chavan came down and waited near tamarind tree.
- (h) Mr.Kashid called Mr.Deshmukh on mobile No.9860336637.
- (i) At 5.45 p.m., Accused Deshmukh came. On the request of Mr.Deshmukh, they went in a small hotel by name hotel Panchali for getting of a tea. Mr.Deshmukh inquired about the money. Mr.Deshmukh told Mr.Kashid to pay Rs.16,000/- as discussed with earlier clerk Mr.Karyakarte.
- (j) Then Mr.Deshmukh called Mr.Karyakarte and told that he has brought Rs.15,000/- only. Mr.Karyakarte took out the amount of Rs.15,000/- and gave it to Mr.Deshmukh. It was counted by Mr.Deshmukh.
- (k) Thereafter, all went upstairs. Mr.Deshmukh took out a cheque. Obtained signature of Mr.Kashid and issued a cheque for Rs.3,95,554/-. Mr.Kashid gave a prearrange signal by calling the Officer Mr.Kadam. Officer Shri.Kadam came in the Office and searched Mr.Deshmukh. Then all went to the Office of Mr.Natekar. He was present. He has denied about giving instructions to Mr.Deshmukh to accept the amount.

24. The Prosecution in all examined 8 witnesses. They are as follows :-

- (a) PW No.4 – Mr.Ajay Kadam – ACB Officer who lodged FIR and PW No.9 – Shankar Chavan – Investigating Officers.
- (b) PW No.7 – Vasant Jadhav - Representative from BSNL who has called details report of mobile No.9423067324. An information about cell No.94202616033 is not provided as it was wrong mobile.
- (c) PW No.6 – Sanjiv Potnis who was a carrier to take the muddemal to Forensic Laboratory.
- (d) PW No.5 – Atul Kshirsagar is a surveyor who prepared a map about the spot which was mentioned Administration Building and Panchali Hotel.
- (e) PW No.3 – Santosh Gavade – Sanctioning Authority for both the Respondents.
- (f) PW No.2 – Dharmanand Chavan – Trap panch and
- (g) PW No.1 – Sushant Kashid – defacto Complainant.

25. According to learned APP, the trial Court erred in believing the evidence of *de facto* Complainant and panch witness Mr.Chavan. He also submitted that in fact, the digital evidence was considered in favour of the Prosecution. He prayed for grant of leave. Whereas, both the learned Advocates for Respondents submitted that not only the digital evidence lacks necessary precautionary elements but the evidence on the point of demand and acceptance is not

reliable. They supported the findings.

26. Respondent No.1 Mr.Natekar demanded illegal gratification and it was accepted by respondent No.2 Mr. Deshmukh. Whereas Mr. Karyakarte who also demanded illegal gratification is not joined as an accused. There is oral evidence coupled by documentary evidence and electronic evidence. It is undisputed fact the electronic evidence is not backed by certificate by concerned persons. Whereas the oral evidence in the form of testimony of defacto complainant is shrouded with suspicious circumstances. It is difficult to discard them. Even if the appeal is admitted just because another view is possible, what I find is that at the final hearing stage also it will be difficult to overcome them. If it is so then no purpose will be served by granting leave. Hence, no case for grant of leave is made out. I will give the reasons :-

- (a) No doubt, the transcription evidence is there in the form of Investigating Officer Shri.Ajay Kadam and panch witness. What is transcribed is the conversation in between Mr.Kashid and Mr.Natekar. It is on the basis of recording in audio cassette.
- (b) There was recording on two occasions. First time, Mr.Natekar has not met and second time, when he made a demand of Rs.15,000/-.
- (c) There has to be a certificate issued under Section 65-B of

Indian Evidence Act. This is an observation in case of ***Suresh Baliram Rane*** (Para 7). Sound stored in C.D., is an electronic record and in fact, it is a secondary evidence.

- (d) What is primary evidence is the voice stored in that electronic device. The principle is that primary evidence should be adduced. Secondary evidence can be addressed only if certain conditions are fulfilled.
- (e) In this case, certificate under Section 65-B(4) of Indian Evidence Act is required. Ultimately, even if the Appeal is admitted, the evidence in the form of transcription and positive opinion about voice samples will fail for want of this defect. This is not an opinion on the basis of favouring one view as against another view. This lacuna goes to the root of that evidence. Hence, I have expressed that opinion.
- (f) About the sole testimony of the First-Informant, what I find is that his evidence is not reliable and trustworthy. No doubt, it falls within a realm of appreciation of evidence. Ultimately, after final appreciation, if the case is not going to stand, no purpose will be served by granting a leave. Because, the Appeal will remain pending for years. I say so for following reasons :-
 - (i) Even though demand was made on 24th November, 2010 by Respondent No.1 – Mr.Natekar, he approached the Anti Corruption Bureau on 6th December, 2010. There was a gap of 12 days. No explanation is offered.
 - (ii) There is variance in timing of arrival at the Office on 7th

December, 2010. As per the pre-trap panchnama it is 6.00 a.m., to 7.30 a.m. Whereas as per the witness Nos.1 and 2, they came to the Office at 6.45 a.m.

- (iii) Mr.Kashid offered Rs.26,000/- (26 notes of Rs.1000/- denomination). Whereas, money offered is Rs.15,000/-. The fact that on that time also Mr. Kashid bargained for reducing the amount of illegal gratification is also suspicious.
- (iv) It is true that Mr.Natekar demanded Rs.15,000/- and Mr.Kashid was having Rs.15,000/- with him. However, he gave an explanation that he was not having the money and he came after one hour.
- (v) No explanation is offered why the money was not offered at that time. The trial Court was right. Normally at the time of demand verification panchanama, the *defacto* complainant is generally not accompanied by the tainted currency notes. It is not objectionable. But the fact, Mr. Kashid was having tainted currency notes, he has decided not to offer them. It creates doubt about his bonafides.
- (vi) There is one more reason. When the tainted currency notes were offered in the Panchali Hotel, why the respondent no. 2 was not immediately searched but they waited till all raiding party members along with the respondent no.2 went upstairs. Then cheque is handed over to Mr. Kashid and then missed call was given. Finally all went to the office of respondent no. 1.

27. For the above discussion, I feel that at the time of final

appreciation of evidence, there is unlikelihood that judgment of acquittal will be reversed. It is a settled law that just because another view is possible, the appellate court will not be justified in taking another view. The Appellate Court should be slow in reversing it. The reasons given by the trial Court are convincing. In fact, it is a good case wherein view can be taken different from that of trial Court. But ultimately, it is not a whim of the Appellate Court. But the decision should be supported by reasons. The Appellate Court has to consider on what basis, that view is taken by the trial Court. If it is possible view, then no case for interference.

28. Hence, I am not inclined to grant a leave to prefer an Appeal against both the respondents. Leave is refused accordingly. Appeal stands disposed of.

[S. M. MODAK, J.]