



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Application (APPA) No. 1178 of 2023

in

Criminal Appeal No. 731 of 2023

[Yashwant S/o Tryambak Gaurshettiwar ..vs.. State of Maharashtra thr. Dy.S.P, ACB, Chandrapur,
Tah. & Dist. Chandrapur]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Anil Mardikar, Senior Advocate a/w Mr. S. K. Bhandarkar, Advocate
for the applicant
Mrs. M. H. Deshmukh, APP for the State/non-applicant

CORAM : ANIL L. PANSARE J.

DATED : 4-12-2023

The applicant original accused no. 2, who was working as Clerk in the office of Range Forest Officer at the relevant time, has been convicted by the learned Special Judge (ACB), Chandrapur in Special (ACB) Case No. 9/2016 for the offences punishable under Sections 7 and 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988.

2. PW1 – complainant, who was a contractor, had made an application to the District Collector, Chandrapur seeking permission to excavate Murum and Metal. The Collector sought no objection certificate/report from the Forest Department. The applicant was working as Clerk. The other two accused who have been held guilty were working as Forest Guard and Labour. The grievance of the complainant was that the applicant made a demand of Rs.5,000/- for the no objection certificate. This demand was made on behalf of the Forest Guard. Accordingly, on 17.11.2015, the complainant lodged

report with Anti Corruption Department (Exh.-48) stating therein that for issuance of no objection certificate, the Forest Guard and the Clerk have demanded Rs. 5,000/- as bribe.

3. This Court has occasion to decide the applications of co-accused viz. Forest Guard and Labour. The sentence has been suspended *inter alia* on the ground put forth in paragraph no. 6 of order dated 1-11-2023 passed in Criminal Application (APPA) No. 1045/2023 filed by accused no. 1, Forest Guard. Paragraph no. 6 reads thus :

“6. That apart, the learned counsel for the applicant has invited my attention to the report Exh.-52. This report is dated 10.09.2015 (two months prior to the date of trap) issued by the Range Forest Officer, Talodhi to the Deputy Conservator of Forest, Brahmapuri, stating therein that if permission is granted for excavation of the land under question, the provisions of the Forest (Conservation) Act, 1980 will not be breached and no interference will be caused in the movement of the wildlife. The question, therefore, arises is, when this report was given to the Deputy Conservator of Forest on 10.09.2015, what remained to be done by the applicant, who was Forest Guard and who was, in no way, connected with the issuance of no objection certificate. It appears from the record that it is not the case of the prosecution that for filing report, the Range Forest Officer would require no objection certificate from the Forest Guard. Further, I did not come across any communication or evidence to suggest that such a no objection certificate was sought by the Collector or Deputy Conservator of Forest or the Range Forest Officer from the office of the Forest Guard i.e. the applicant.”

4. The case against the applicant is that he was working as Clerk in the office of the Range Forest Officer. The complainant met the applicant. He demanded amount of Rs. 14,000/-. The applicant asked complainant to pay Rs. 2,000/- for accused no. 1 and Rs. 10,000/- for Range Forest Officer and he kept Rs. 2,000/- for himself. The complainant said that he had paid Rs. 14,000/- to the applicant but he did not issue no objection certificate. Thereafter the applicant is said to have made further demand of Rs. 5,000/-. The applicant informed the complainant that the work is now pending with accused no. 1 and will arrange meeting with him (accused no. 1). The complainant was not inclined to pay additional amount and, therefore, lodged report. The trap was laid on 17-11-2015. The complainant deposed that he received phone call from the applicant. The CDR details, however, have been not placed on record. The applicant informed the complainant on phone that accused no. 1 is present in the office. Accordingly, the complainant approached the Anti Corruption Bureau. The trap was led after completing formalities. The complainant and panch witness went to the office of accused no. 1. The complainant then deposed that he met accused no. 1 who demanded Rs. 5,000/-. The complainant paid to him Rs. 4,000/- and kept with him Rs. 1,000/- to be paid to the applicant. The complainant then deposed that no objection certificate was handed over to him. This no objection certificate was, however, not placed on record before the trial Court. The complainant then deposed

that he had paid Rs. 1,000/- to accused no. 3 but on behalf of the applicant.

5. Thus, the applicant was not present when the trap was led. There is no evidence on the point of payment of Rs. 14,000/- to the applicant. In the circumstances and for the reasons set out in the order dated 1-11-2023 coupled with the facts noted above, the applicant is entitled for the benefit granted to the co-accused. Hence, following order.

ORDER

- (i) The application is allowed.
- (ii) The execution of sentence imposed upon the applicant by Special Judge, Chandrapur, by judgment and order dated 16.09.2023 in Special (ACB) Case No.9/2016, for the offences punishable under Sections 7 and 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 is suspended, pending appeal.
- (iii) Applicant – Yashwant S/o Tryambak Gaurshettiwar, shall be released on bail on his furnishing PR. bond in the sum of Rs.25,000/- with one or two sureties in the like amount before the trial Court.
- (iv) The applicant shall remain present before this Court at the time of final hearing of the appeal.

The application is disposed of.

Registry to process the appeal for final hearing as per the rules.

(Anil L. Pansare, J.)