



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

Criminal Application (APPA) No. 1166 of 2023

in

Criminal Appeal No. 720 of 2023

[Jitendra S/o Ramesh Dorlikar (in jail) ..vs.. The State of Maharashtra thr. Dy.S.P, ACB, Chandrapur,
Tq. & Dist. Chandrapur]

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

Court's or Judge's orders

Mrs. Rohini Khapekar, Advocate for the applicant
Mrs. K. H. Bhondge, APP for the State/non-applicant

CORAM : ANIL L. PANSARE J.

DATED : 10-11-2023

The applicant original accused no. 3, who was working as Labour 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 Section 12 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 Labour. The other two accused who have been held guilty were working as clerk and Forest Guard. The grievance of the complainant was that the clerk 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. After completing the formalities, the trap was laid. The applicant, who was not in picture when the complaint was lodged, has suddenly been named by the complainant in his evidence by stating that when he approached the accused no.1 Forest Guard, the applicant (accused no.3) met him and demanded Rs.5,000/-, on behalf of the accused no. 1 – Forest Guard. The complainant insisted to meet the Forest Guard and ultimately succeeded in meeting him. The complainant deposed that the Forest Guard made a demand of Rs.5,000/- but he (complainant) paid him Rs.4,000/- and kept with him Rs.1,000/-, which he was to pay to the accused no.2. The complainant then deposed that the no objection certificate was handed over to him.

4. Learned counsel for the applicant has argued that this no objection certificate was not placed before the trial Court, which appears to be true because the learned A.P.P. could not point out that the said no objection certificate is part of the record of the trial Court.

5. Thus, the reason for demand was issuance of no objection certificate at the hands of the Forest Guard. The evidence indicates that the copy of the no objection certificate was handed over to the complainant on 17.11.2015. However, this no objection certificate is not placed on record.

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 Forest Guard. In any case, the applicant was Labour and was, in no way, connected with the issuance of no objection certificate.

7. It further 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.

8. In the light of the above, the discrepancies pointed out by the learned counsel for the applicant attain importance. Those are as under :

(a) In paragraph 39 of the judgment, the learned Special Judge in last four lines has held that though it is proved that the Range Forest Officer dispatched the

report (Exh.-52) on 10.09.2015, still it is not probable that on the day of demand i.e. on 17.11.2015, no work of complainant was pending. This inference is presumptive and suffers from conjunctures and surmises. It is well settled that the prosecution has to prove its case beyond reasonable doubt. In that sense, the prosecution was duty bound to prove that despite the report (Exh.-52) having been sent on 10.09.2015, the Forest Guard has some role to play in November, 2015. In absence of his role, it will be difficult to believe that the applicant will demand amount for the work which either was not assigned to him.

(b) As stated earlier, copy of the no objection certificate allegedly given by the Forest Guard to the complainant at the time of trap is not placed on record.

(c) The complainant in cross-examination has admitted that in his complaint as well as in his complaint before the Anti Corruption Bureau, he has not made reference of the work for which the applicant and accused no.1 made alleged demand to him.

(d) The evidence of the complainant that the Forest Guard/accused no.1, at the relevant time, was standing in front of the entrance door of his official residence and has told the complainant that the entire bribe amount of Rs.5,000/- is to be paid to him (applicant), is proved to be an omission. His further evidence that the applicant made a phone call to the accused no.2 to find out his whereabouts and upon which a phone call was made and the accused no.2 informed the applicant to instruct the

complainant to pay Rs.1,000/- to the applicant/accused no.3 on his behalf, is again proved as omission.

9. The learned A.P.P, though has opposed the application, could not show from the impugned judgment that the trial Court has satisfactorily dealt with these discrepancies, which go to the root of the case, for which the detailed scrutiny of evidence will be required. In other words, this Court will have to minutely revisit the entire evidence. The sentence imposed against Forest Guard is suspended by this Court vide order dated 1-11-2023 in Criminal Application (APPA) No. 1045/2023. The applicant has thus made out an arguable case. Hence, following order is passed.

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 Section 12 of the Prevention of Corruption Act, 1988 is suspended, pending appeal.
- (iii) Applicant – Jitendra S/o Ramesh Dorlikar, shall be released on bail on his furnishing P.R. 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.)

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