



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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 9 OF 2021

THE STATE OF MAHARASHTRA
VERSUS
BHIMRAO JYOTIBA KHANDARE

...
Mr. Rajdeep Raut, APP for Appellant
Mr. Azizoddin R. Syed, Advocate for Respondent
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 26th SEPTEMBER, 2024

PER COURT :

1. This application filed under Section 378 of Cr.P.C. by the applicant/State seeks leave to file appeal against judgment and order of acquittal dated 09/10/2020, passed by learned Assistant Sessions Judge, Hingoli, in Special Case (A.C.B.) No.04/2012.

2. The prosecution's case, in short, is that Shaikh Mobin Shaikh Hamid filed complaint with Anti-Corruption Bureau, Hingoli, stating that he is residing in newly constructed house at Narsi Namdev, under Indira Awas Yojana Gharkul. There was no electricity in his newly constructed house. Therefore, he applied to Junior Engineer, M.S.E.D.C.L., on 05/01/2012. Previously there was electricity meter on his father's name and amount of Rs.5,000/- was due. He deposited said amount on 06/01/2012. He deposited quotation on 07/01/2012 and got the receipt. On 08/01/2012 accused being lineman installed new electricity meter and

connected electricity. After two days of meter installation, accused demanded Rs.700/-. On frequent demands by accused and as new electricity meter was not sealed and security box was not installed, complainant negotiated and showed his willingness to pay Rs.500/- to accused. On 20/01/2012, again accused met complainant at Narsi Namdev and demanded Rs.500/-. Complainant assured that after collecting his wages from labour work he would pay the amount. Accused then called complainant on 22/01/2012 at Narsi Namdev bus stand. Complainant filed complaint on 21/01/2012 with A.C.B. Office. On the same day a phone-call was made to verify the demand but the phone of accused was out of coverage, therefore, on 22/01/2012, verification of demand was made on another phone number of accused. Thereafter pre-trap panchanama was prepared and complainant along with panchas and trap party proceeded to Narsi Namdev. The trap was arranged at bus stand near hotel of Maruti Kadam. Complainant gave signal and indicated that accused accepted bribe. Accordingly raid was effected and accused was caught red handed in the hotel. Accused has accepted bribe amount by right hand and counted it with both hands. Accused was found holding said amount in his hands. Anthracene powder was found on the fingers of both his hands. After conducting investigation, charge-sheet was filed and accused was charged for offence punishable under Sections 7, 13(1)(d), 13(2) of the Prevention of Corruption Act. In support of it's case prosecution has examined six

witnesses. Trial Court has acquitted accused. Hence, the present application.

3. Heard learned APP for applicant/State and learned advocate for respondent/accused. Perused the notes of evidence and other relevant documents made available by learned APP and the impugned judgment and order.

4. Record indicates that prosecution has failed to prove demand of bribe. On the date of alleged demand accused was on tour, which renders presence of accused at village Narsi Namdev doubtful. There is no material brought on record by prosecution to prove that there was any negotiation between complainant and accused in respect of demand of bribe.

5. Admittedly, voice recorder was used for recording the conversation of demand of bribe, but the same was not brought before the Trial Court. Prosecution relied upon the CD in which alleged conversation of demand was transferred from voice recorder, but no certificate under Section 65(B) of the Indian Evidence Act, was produced by the prosecution. Therefore, the Trial Court is justified in not relying upon the said CD. Defence has brought on record that previous meter of complainant was disconnected by vigilance team, of which accused was a member.

6. Shadow panch has not proved the demand at the time

of trap. In fact, record shows that the shadow panch was not with complainant at the time of trap and he was standing at some distance from complainant and accused. He has thus, not supported the prosecution's case in respect of demand at the time of trap.

7. In the light of above, it is clear that prosecution has failed to prove the charge levelled against accused. Trial Court has passed a well-reasoned judgment and has taken a possible view, which is not liable to be interfered with in the facts of the present case. Application being devoid of merit is rejected.

(NITIN B. SURYAWANSHI, J.)