



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.9 OF 2018

The State of Maharashtra
Anti Corruption Bureau,
through Police Inspector,
Anti Corruption Bureau,
Jalgaon, District Jalgaon.

...APPLICANT

VERSUS

Sudhakar Ganpat Kharche,
Age : 57 years,
R/o : Shanti Nagar, Bhusawal,
District Jalgaon.

...RESPONDENT

...

APP for the Applicant – State : Mr. S. M. Ganachari
Advocate for Respondent : Mr. S. S. Panale

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 30th JANUARY, 2024
PRONOUNCED ON : 01st FEBRUARY, 2024

ORDER :

1. State has preferred instant leave application praying to grant leave to file appeal against judgment and order dated 05.10.2017 passed by the learned Special Judge, Bhusawal, District Jalgaon in Special (ACB) Case No. 10/2014 thereby acquitting present respondent from offence under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act.

2. Learned APP submitted that prosecution was launched against present respondent, who was working as a Circle Officer for demanding illegal bribe / gratification of Rs.20,000/- for carrying out entries in the revenue record. That, he negotiated and brought down the bribe figure to Rs. 15,000/-. Finally complaint was lodged, trap was arranged and verification panchanama was drawn regarding demand on the strength of complaint lodged by informant. That, trap was successful and accused was apprehended with tainted currencies and therefore learned APP submits that offence was clearly made out. However, learned trial Judge has acquitted the accused without assigning proper reasons and so he seeks leave.

3. Learned counsel for the respondent, on the other hand, would submit that there was no demand. Rather complainant himself had taken steps to deliberately trap the accused. Complainant had called accused at his own house. It is pointed out that there was no convincing evidence. Demand was not proved and even there was no proper sanction and hence, according to him, learned trial Judge committed no error and so he prays for dismissing the leave application.

4. After considering the submissions of both the sides and on going through the papers, it seems that present respondent accused was officiating as a Circle Officer. Informant filed complaint alleging that after transaction of sale-deed, he had approached accused, who was a Circle Officer, for entering the transaction in the revenue record and for that bribe was demanded. So he lodged complaint on 12.01.2012 and ACB authorities arranged trap by arranging panchas.

5. It transpires that accused was apprehended on 17.01.2012 after accepting bribe amount and therefore he was arrested, charge-sheeted and tried. Upon trial, he seems to be acquitted by the Special Judge and hence this leave application.

6. It seems that acquittal is on the ground of failure to prove demand and for want of proper sanction.

7. *Prima-facie*, on going through the judgment, it seems that in all five witnesses were examined by the prosecution. The crucial evidence is of complainant and shadow pancha. Complainant is examined as P.W. 1 and he has deposed about Rs.20,000/- demanded by accused for taking entry of sale

transaction on record and therefore, P.W.1 lodged complaint Exhibit 18. He claims that he and shadow pancha Nimbhore together went to comply the demand and paid the amount which was accepted.

His cross shows that it is the complainant who went to the house of accused. He further admitted that in the house of accused he did not talk to him and merely kept the money on the swing.

8. P.W.2 - shadow pancha also deposed about accompanying complainant to the house of accused. But in chief itself he has stated that when raiding party came running after receiving signal, accused threw the currency notes outside the compound of the house.

While under cross, he has admitted that he was not party to the conversation of demand of bribe. He has also not heard conversation on voice recorder. He denied that complainant making any call to the accused. He also answered that there were talks only between accused and complainant and he himself did not have any talk with accused. His cross also shows that this witness was party to the Departmental Enquiry against the accused.

9. Resultantly, it is emerging that alleged conversation of demand has not been proved. CDR / SDR is also not before the Court. Therefore, very crucial aspect of demand has not been cogently proved.

10. As pointed out, sanction also is not in accordance with law and therefore, there are material shortfalls in the case of prosecution which has resulted in acquittal. No good ground is made so as to grant leave. How the impugned judgment is perverse or illegal is also not pointed out and therefore no fruitful purpose would be served by granting leave. No case made out on merit to grant leave, I proceed to pass the following order :-

O R D E R

Application is hereby rejected.

(ABHAY S. WAGHWASE, J.)

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