



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 24 OF 2019

The State of Maharashtra,
Through :
Deogaon Rangari Police Station,
Tq. Kannad, Dist. Aurangabad.

... Applicant/
Appellant

Versus

1. Jagannath Bapurao Lokhande,
Age : 39 years, Occu. : Service Talathi,
Sajja Mategaon, Tq. Kannad,
Dist. Aurangabad
R/o. Flat No.I-3/5, Tarangan Kasliwal,
Mitmita, Aurangabad.

2. Kachru Baburao Sawai,
Age : 39 years, Occu. : Farming
R/o. Vitkheda, Tq. Kannad,
Dist. Aurangabad.

... Respondents
(Orig. Accused)

...
Mr. N. D. Batule, APP for Applicant/Appellant
Mr. Rajendraraa Deshmukh, Senior Counsel a/w Mr. Vishal A.
Chavan i/b. Devang R. Deshmukh for Respondent Nos.1 and 2
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 17th APRIL, 2024

PRONOUNCED ON : 22nd APRIL, 2024

ORDER :

1. On account of acquittal of respondents from charges under section 7 read with section 12 and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988, State is intending to file appeal and hence instant leave application.

2. Learned APP pointed out that, accused no.1 was a Talathi. Complainant had approached him for transfer of land in the name of his wife. That, accused initially demanded Rs.1,50,000/- bribe for the above work, but finally on negotiations, agreed to accept Rs.30,000/-. That, complaint was received by ACB authorities on behalf of PW2 Sanjay Shelar. Trap was planned and executed. That, there was demand and directions were given by accused no.1 to handover amount to accused no.2 his Assistant and he received the amount as such there is acceptance. That, evidence of complainant and shadow panch has remained unshaken. Sanction was after application of mind. That, in spite of such evidence, learned trial court acquitted the accused without assigning sound and proper reasons. Learned APP took this court through the testimony of complainant, shadow panch as well as sanctioning authority and even invited attention of this court to the reasoning assigned by trial Judge. According to him, there is erroneous approach. Therefore, State has a good case on merits in appeal and so he prays for leave.

3. Refuting the above submissions and supporting the judgment, learned Senior Counsel for respondents accused pointed out that, prosecution miserably failed to establish the charge of

demand as well as acceptance. He pointed out that, here, there is no cogent evidence about demand, and moreover, there is no acceptance by accused no.1. He pointed out that, evidence of complainant, panch witness and verification demand panchanama are not consistent. He pointed out that, after alleged apprehension of complainant, neither his hand nor his clothes were found to be carrying traces of powder. That, alleged transcription of alleged demand is inconsistent with prosecution version and as such for several reasons prosecution case has come under shadow of doubt.

4. He next submitted that, apart from above, accused no.1 apparently appointed by Collector, but here sanction has been obtained from Sub Divisional Officer (SDO), who admitted in cross that accused was appointed by Collector. Therefore, even sanction is invalid. Lastly, he submitted that, case of prosecution being patently weak and not being proved beyond reasonable doubt, learned trial Judge committed no error in refusing the case of prosecution and so he prays to refuse leave.

5. After hearing submissions of both sides and going through the papers, it transpires that, PW2 Sanjay informant had approached accused a Talathi with a request to transfer some portion of land Gut No.119 in the name of his wife, but for doing so

accused demanded Rs.1,50,000/-. Thereafter, he lodged report and ACB authorities planned and laid trap.

6. Papers show that, complainant had approached accused no.1 in August 2013 for above work and at that time accused no.1 allegedly made demand of Rs.1,50,000/- lakh. It further seems that after a year i.e. in August 2014, complainant approached accused second time, there were talks of Rs.50,000/-, but finally accused allegedly agreed to accept Rs.30,000/- and thereafter, complaint was lodged. Attempt has been made to record conversation pertaining to demand in a tape-recorder. Evidence shows that, complainant and shadow panch visited office of Talathi. According to prosecution, accused Talathi asked whether amount is brought and further directed complainant to pay amount to Accused no.2, who was said to be his Assistant and accordingly accused no.2 accepted the amount and he was first apprehended and subsequently ACB authorities approached accused no.1 in his office.

7. Evidence of complainant as well as shadow panch shows that, amount is not paid to accused no.1. Rather, amount is paid to accused no.2, who is said to be private assistant, but he is not shown to be a public servant. There is no material to show,

who exactly was accused no.2 and in what capacity he was working in Tahsil office.

8. It seems that, according to complainant, he paid currency to accused no.2, while he was in campus, but diametrically opposite version is given by shadow panch, who speaks about complainant given money to applicant no.2 while he was in the office. There is nothing to show that, accused no.2 was acting at the instance of accused no.1. Shadow panch seems to have admitted in cross that he did not directly hear the conversation between complainant and accused no.1. As pointed out that, there is no acceptance by accused no.1 and there were no traces of glittering to his hands.

9. Consequently, in trial court, evidence that has been adduced, does not cogently proved that accused no.1 demanded bribe. As stated above, initial meeting between accused no.1 and complainant is of August 2013 and at that time, demand was said to be made. But, no complaint was filed at that time. Second approach by complainant is after one year and that time it is alleged that, accused no.1 agreed to do the needful by negotiating amount from Rs.50,000/- to Rs.30,000/- and thereafter, complaint has been filed. Further amount agreed to be paid was Rs.30,000/-,

but Rs.22,000/- is said to be paid on demand. Therefore, the story of prosecution is obscure in nature.

10. After considering the submissions put-forth by learned APP that does not seem to be convincing ground to grant leave, more particularly, when there is no evidence to show that there is acceptance of amount by accused and no evidence to show that accused no.2 abetted and is involved with accused no.1 and he has received amount on instruction of accused no.1.

Resultantly, in the considering opinion of this court, no good ground is made out to grant leave. Hence, I proceed to pass the following order :-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)