



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 36 OF 2019

The State of Maharashtra,
Through Shri Satyawar Balbhim Puri,
Age : 65 years, Occu. : Hotel Worker, R/o.
Arali (B), Tq. Tuljapur, Dist. Osmanabad

... Applicant
(Orig. Complainant)

Versus

Santosh Murlidhar Wadkar,
Age : 37 years,
Occu. : Service (Private person in Setu),
Suvidha Kendra, Tuljapur, Dist. Osmanabad

... Respondent
(Orig. Accused)

...
Mr. S. M. Ganachari, APP for Appellant - State.
Mr. S. B. Choudhari, Advocate for respondent sole.

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 04 APRIL 2024

PRONOUNCED ON : 12 APRIL 2024

ORDER :

1. This is an application for leave to file appeal by State on account of acquittal of respondent from offence under section 8 of the Prevention of Corruption Act, 1988, vide judgment and order dated 17.02.2018 passed by Special/Additional Sessions Judge, Osmanabad.

2. Learned APP apprised this court about the background of the prosecution launched in trial court submitting that, one Satyawar Puri was in need of income certificate for his son and he

has duly applied and approached Setu Seva Kendra. There he came in contact with accused, who assured to manage income certificate, but demanded bribe of Rs.1,500/-. As complainant was not willing to pay bribe, he approached ACB authorities, who lodged complaint and thereafter said authorities planned and arranged trap.

3. It is further submitted that, complainant and panch witness were consistent about demand. Not once but thrice demand was made. That, tainted currency was accepted and accused was apprehended. However, learned trial court disbelieved prosecution case and acquitted the accused. There is improper reasoning and conclusion reached at by learned trial court is erroneous. That, there is good case on merits and other relevant points are also required to be dealt, which are ignored by learned trial Judge and hence he prays for leave.

4. In answer to above, learned counsel for accused would submit that, accused is not public servant and there is false implication. That, accused respondent was merely appointed as a Peon and it was his mere duty to carry papers from Setu Seva Kendra to Tahsil Office. He had no access to higher authorities so as to assure issuance of income certificate. According to him, there is suppression of material fact by complainant. That, as demand

and acceptance was not proved, it is his submission that, learned trial court has rightly acquitted the accused.

5. It seems that, initially charge was framed vide Exh.8 for offence punishable under sections 7, 13(1)(d) read with section 13(2) of P.C. Act and subsequently charge was altered and framed for offence under section 8 of P.C. Act. Prosecution seems to have examined in all six witnesses.

6. Heard both sides at considerable length. Judgment of acquittal is sought to be questioned and hence instant leave application. Case of prosecution is that, complainant was in need of income certificate and accused assured to arrange it on payment of bribe of Rs.1,500/-. Undisputed fact is that, income certificates are issued at Seva Kendra. Applications are received by said kendra and are further forwarded to Tahsil Authorities for issuance of required certificates and certificates are collected and brought back to Seva Kendra and thereafter issued. This is precisely the procedure, regarding which there is no dispute. Further, there is no dispute that present respondent was a Peon.

7. It seems that, contract has been awarded to one Rudrani Infotech Pvt. Ltd. company and there respondent accused

seems to have been working as a Peon. PW4 Mahesh, co-coordinator of the said Rudrani Infotech Pvt. Ltd. seems to have deposed that, they engaged private employees. He admitted that, no appointment letter was given to present accused. Therefore, apparently as submitted by learned counsel for respondent, accused was not in permanent employment or public servant. Even, PW3 Sunil Pawar, Naib Tahsildar deposed that, accused was employee of Setu Suvidha Kendra and is not a Government employee.

8. For attracting offence under section 8 of P.C. Act, with which respondent is charged, it is essential for prosecution to establish “(i) accused accepted or obtained, or agreed to accept, or attempted to obtain, from someone;

(ii) For himself or for some other person;

(iii) Any gratification;

(iv) As a motive or reward for inducing by corrupt or illegal means any “public servant” to do or forbear to do any official act or to show favour or render any service to any other persons specified in the section.”

Thus, essence of the above provision is that, there has to be bribe to a public servant.

9. Here, Naib Tahsildar has denied knowing respondent and further denied about respondent accused making any demand of bribe or accepted it. Therefore, there is no evidence about any public servant being attempted to make demand or accept bribe. Apparently there is no evidence about any attempt to influence for bribe by corrupt means by Naib Tahsildar or Tahsildar so as to attract rigors of section 8 of P.C. Act.

10. Even, main Investigating Officer Dy.S.P. Bhosale has not been examined. Moreover, role of respondent accused in the capacity of peon is to merely gather applications and forward it to the Tahsil authorities and further gathered documents from Tahsil office and bring it back to Setu Suvidha Kendra for issuance.

For all above reasons, with such evidence on record, in the considered opinion of this court, when the very essentials for attracting the charge of section 8 of P.C. are patently missing, no fruitful purpose would be served by granting leave as prayed. Hence I proceed to pass the following order :-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)