



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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 71 OF 2018

The State of Maharashtra
Through : Police Station,
Kranti Chowk, Aurangabad.

..Applicant

Versus

Kailas Dattatraya Aute
Age: 35 years, Occu.: Service,
(Construction Department)
under Pradhanmantri Gramsadak
Yojana, Karyalaya Chelipura High School,
Zilla Parishad, Aurangabad.

..Respondent

...

APP for Applicant-State : Mr.S.M.Ganachari
Advocate for Respondent : Mr.Rajendrerraa Deshmukkha, Senior
Counsel a/w. Mr.V.A.Chavan i/b. Mr.D.R.Deshmukh

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 23 JANUARY, 2024

PRONOUNCED ON : 29 JANUARY, 2024

ORDER :

1 This is an application on behalf of State, thereby seeking leave to file appeal against judgment and order dated 12-12-2017 passed by the Special Judge-3, Aurangabad in Special (ACB) Case No.23 of 2009 acquitting respondent from offence punishable under Sections

7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act (for short “the PC Act”).

2. According to learned APP, accused, who was a Clerk in Zilla Parishad, Aurangabad has demanded Rs.10,000/- for clearing the bill of the complainant. That finally deal was stuck at Rs.5,000/-. Trap was laid, it was successful. Shadow pancha and complainant have both consistently deposed. That even sanctioning authority i.e. Chief Executive Officer has been examined. However, learned trial Court acquitted the accused on sole ground of no verification panchanama by Investigating Officer and there is non-application of mind by sanctioning authority while according sanction. He submits that there is overwhelming evidence, but the same has not been considered. That prosecution has a good case in appeal and therefore, he seeks leave to file appeal.

3. In answer to above, learned Senior Counsel for the respondent submits that prosecution has miserably failed to establish charges. According to him, there was no verification panchanama. He invited attention of this Court to the cross of shadow pancha, more particularly, para 4 and submitted that his testimony is of no avail to

the prosecution. That further prosecution is failed to prove that sanctioning authority, only on application of its mind, has accorded sanction, therefore, there were fatal lacunas, which were going to the root of the prosecution case and hence, learned trial Court has rightly acquitted the accused. Hence, he opposed leave to file appeal for all above reasons.

4. After considering the submissions and on going through the papers, it seems that on the basis of complaint launched by PW1 Ratnakar Dinkar Patil, alleging demand of bribe being raised by accused, PW4 Chopde seems to have laid trap.

In support of its case, apart from testimony of complainant at exh.24, evidence of pancha witness PW2 Dhansing Gunjale is also adduced by prosecution.

PW3 Vijay Balkrishna Waghmare seems to be the sanctioning authority. On going through the papers and impugned judgment as well as on going through the cross-examination of complainant and shadow pancha witness PW2 Gunjale, more particularly, para 4, said testimony cannot be relied. Admittedly, Investigating Officer has not drawn verification panchanama. Taking such testimony and answers in cross-examination into consideration, even sanctioning authority

prima facie seems to have not applied its mind before according sanction. Therefore, learned trial Judge has extended benefit of doubt. Prosecution has failed to prove its case beyond reasonable doubt. No valid point is brought to the notice of this Court, which is worth consideration for granting relief. Therefore, no case being made out, leave to appeal deserves to be rejected. Accordingly, I proceed to pass following order :

ORDER

Application for Leave to Appeal by State No.71 of 2018 stands rejected.

(ABHAY S. WAGHWASE)
JUDGE