



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 30 OF 2023

The State of Maharashtra
Through Anti Corruption Bureau,
Aurangabad.

... Applicant

Versus

1. Milind Shantaram Shinde,
Age : 47 years, Occu. Service,
R/o House No. 562, Somnath Nagar,
Wadgaon Sheri, Pune.

2. Kiran s/o Prabhat Chavan,
Age : 32 years, Occu. Service,
R/o. House No. 3-8-50, Sanjay Nagar,
Samshan Maroti Road, Aurangabad.

... Respondents

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Mr. S. M. Ganachari, APP for the Applicant-State.

Mr. V. D. Sapkal, Senior Advocate i/by Mr. S. R. Sapkal, Advocate for
Respondent No.1.

Mr. D. S. Ingole h/f Mr. N. S. Ghanekar, Advocate for Respondent
No.2.

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WITH

CRIMINAL APPEAL NO. 653 OF 2022

Vasant s/o Subhash Bagade,
Age 46 years, Occu. Service,
R/o House No. E/1/RC/47,
Mathura Nagar, CIDCO,
N-6, Aurangabad.

... Appellant
[Orig. Complainant]

Versus

1. The State of Maharashtra
Through Police Inspector,
Anti-Corruption Bureau,
Aurangabad,
Taluka and District Aurangabad.

2. Milind S/o Shantaram Shinde
Age 54 years, Occ: Service as Manager,
Government Printing Press,
51, Gangapuri, Rastewada,
Wai, Taluka Wai, District Satara.

3. Kiran S/o Prabhat Chavan
Age 39 years, Occ: Service,
R/o. House No. 3-8-50,
Sanjay Nagar, Smashan Maroti Road,
Aurangabad, Tq. & Dist. Aurangabad.

... respondents
[R.2 & 3 ori. Accused]

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Mr. Abhay G. Deshmukh and Mr. B. S. Phad, Advocates for the Appellant.

Mr. S. M. Ganachari, APP for Respondent No.1 State.

Mr. V. D. Sapkal, Senior Advocate i/by Mr. S. R. Sapkal, Advocate for Respondent No.2.

Mr. D. S. Ingole h/f Mr. N. S. Ghanekar, Advocate for Respondent No.3.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 31.01.2024

Pronounced on : 08.02.2024

JUDGMENT :

1. Aggrieved by the judgment and order of acquittal of respondents from the offence punishable under Sections 7, 13 (1)(d) r/w 13 (2) and Section 12 of the Prevention of Corruption of Act, 1988 [PC Act] respectively, State has pressed instant leave application thereby seeking leave to question the above judgment and order dated 05.04.2022 by filing appeal, as well as complainant has also preferred separate appeal.

2. Learned APP pointed out that accused no.1 had assured complainant to fix job in the binding department of Government Press, but only on payment of Rs.5,00,000/-. Believing accused, complainant had even made part payments. That, complainant already got selected on merit but accused threatened to take action if amount as agreed and demanded is not paid. Learned APP pointed out that there was cogent and reliable evidence on behalf of prosecution. All necessary formalities of lodging complaint, verification, laying trap, recording conversation of demand were done by investigating machinery, however there is acquittal on sole ground of want of proper sanction. There is also improper appreciation and therefore, it is submitted that, State has a good case in appeal and so he prays to grant leave.

3. Learned counsel Mr. Abhay G. Deshmukh and Mr. B. S. Phad for the appellant in Criminal Appeal No. 653 of 2022, i.e. original complainant, while adopting the above submissions, would add that here, crucial aspect of demand and acceptance is proved by way of cogent and reliable evidence. Trial Court has not properly appreciated the same and therefore the impugned judgment cannot be allowed to be sustained being bad in the eyes of law.

4. In answer to above, both learned counsel for respective respondents-accused would point out that prosecution has miserably failed to establish the foundational facts as well as demand and acceptance. They submit that at the first count, it has not been shown that accused persons had any authority to arrange the job. They pointed out that accused no.1 was mere member of a specially constituted committee and as such, he alone was not authorized to grant appointment. That, moreover, complainant was on leave on 07.05.2014 and therefore claim of the prosecution that on 07.05.2014 he was called upon in the chamber by accused no.1, as alleged in the complaint, comes under the shadow of doubt. Even it is doubtful whether complainant and pancha had approached accused in the office. There is no independent evidence to that extent and as such, when very transaction has not been proved, they submit that learned trial court has committed no error. It is further pointed out that it being a Government press, there are registers, CCTV but none of the above is gathered by the Investigating Officer regarding which there is admission.

5. It is further submitted that no role is attributed to accused no.2 whatsoever and further, the Investigating Officer has fairly conceded that accused no.2 was not having any knowledge about the alleged

agreement and understanding amongst the complainant and accused no.1. Therefore, there is absolutely no evidence against accused no.2, who was allegedly caught red handed while accepting the amount.

6. Consequently, it is submitted that finding such weak and fragile evidence on record, learned trial Judge has correctly acquitted both accused and so they submit that no purpose would be served by granting leave and thus pray to dismiss the leave application.

7. After considering the submissions of both sides and on going through the record, it seems that prosecution was launched against present respondents by ACB, Aurangabad alleging commission of offence under Sections 7, 13 (1)(d) r/w 13 (2) and Section 12 of the PC Act, respectively. It seems that in support of its case, prosecution had adduced evidence of in all five witnesses i.e. PW1 sanctioning authority, PW2 complainant, PW3 pancha, PW4 and PW5 Investigating Officers.

8. On hearing each of the side and on going through the record, it seems that complainant had applied for the post of Binding Axillary and coincidentally he came in contact with accused no.1 and according to complainant, accused no.1 posed himself as Manager

and further assured to fix job, but on payment of Rs.5,00,000/-. Complainant claims that on two occasions he paid Rs.40,000/- and Rs. 18,000/- respectively. He further claims that he was selected on his own merits and even joined the duty after the above amount was paid. However it is his further case that for remaining amount, accused no. 1 was harassing him and threatening to suspend him and therefore, he seems to have lodged complaint with ACB authorities. It prima facie appears that since coming in contact with accused, complaint is lodged almost after a year or so.

9. Specific accusation is that remaining demand was raised on 07.05.2014 and finally on 09.05.2014 amount was paid to accused no.2 but on behalf of accused no.1. However, as pointed out by learned counsel for respondent, answers given in the cross of complainant show that complainant had paid visits to the chamber of accused on two occasions i.e. at 09.45 a.m. and second one at 10.45 a.m., but shadow pancha PW3 does not seem to have corroborated and supported complainant. Rather it is emerging that complainant himself was on leave on the day of alleged demand dated 07.05.2015. It is also emerging that complainant had forced his entry in the chamber of accused no.1 whereas shadow pancha was asked to stay out of the chamber. Therefore, prima facie, except complainant's

version regarding conversation about remaining demand, there is no other evidence. In cases of such nature, law is clear that complainant is looked upon as a accomplice and therefore, corroboration is insisted for. Secondly, as pointed out, there is issue about exact conversation because shadow pancha admitted that he did not hear the exact conversation between complainant and accused. Therefore, with such material on record, case of prosecution was apparently weak on its presentation and hence, learned trial Judge has acquitted accused. Learned APP as well as learned counsel for the complainant could not point out patent perversity or illegality in the appreciation at the hands of learned trial Judge. Hence, I proceed to pass the following order:

ORDER

- I. The Application for Leave to Appeal by State no. 30 of 2023 is rejected.
- II. The Criminal Appeal No. 653 of 2022 is dismissed.

[ABHAY S. WAGHWASE, J.]