



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

**APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 87 OF
2019**

The State of Maharashtra
Through Police Station Officer,
City Police Station, Ambajogai (City)
District Beed.

...Appellant
(Original Complainant)

VERSUS

Mohan s/o Bhanudas Andhale,
Age; 47 years, Occ; Police Naik,
B. No. 1202, Ambajogai City Police
Station, R/o. Police Colony,
Ambajogai.

...Respondent
(Original Accused)

...
APP for Appellant-State : Mr. N. D. Batule
Advocate for Respondent : Mr. S.S. Thombre h/f Mr. Kuldeep
R. Chaudhari
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved Date : 03.04.2024
Pronouncement Date : 22.04.2024

ORDER :

1. On account of acquittal of the Respondent from offence under Sections 7, 13(1)(d) read with Section 13 (2) the Prevention of Corruption Act, vide judgment and order dated

22.02.2018 passed by the learned Additional Sessions Judge, Ambajogai, the State intends to prefer an appeal. Hence this leave application.

2. Learned APP apprised this Court about the prosecution launched against the present respondent, submitting that one Yuvraj Mule, who was working as driver in Ambajogai Division of MSRTC, lodged a complaint with Ambajogai City Police Station regarding beating to him by unknown persons. It is the case of prosecution that, in connection with the said incident, present complainant Gajanan, who was working as driver at MSRTC Beed, received a phone call from the accused inquiring about the occurrence. It is alleged that the accused, who was Police Naik, demanded Rs. 25,000/- to not to implicate the complainant in the said complaint filed by Yuvraj Mule. After bargain, accused brought down the figure of demand to Rs. 5,000/- each from both, the complainant and one Anil Galphade. As the complainant was not willing to pay bribe, he approached the Anti Corruption Bureau Office, Latur, (for short "ACB") and lodged report Exhibit 16.

3. Learned APP submits that after receipt of the complaint, ACB authorities summoned the complainant and shadow pancha. Both, the Complainant and the shadow pancha, were appraised about the procedure of application of anthracene powder and planned trap. Thereafter, both approached the accused. There was demand of bribe as well as acceptance. The evidence of the Complainant and shadow pancha was consistent. There was proper sanction, but still the learned trial Court failed to appreciate the evidence on record in correct perspective and acquitted the accused on the ground that, the testimonies of complainant and shadow pancha are not consistent with each other and that there is non-application of mind by the sanctioning authority. In fact, according to learned APP, a formidable case was made out by the prosecution, still there is acquittal. The evidence on record has not been properly appreciated by the trial Judge and therefore, there being a good case on merit for appeal, the learned APP seeks leave to file the appeal.

4. The above application is opposed by learned counsel for the accused. He pointed out that prosecution failed to

establish its case beyond reasonable doubt. Moreover, according to him, complainant himself has not supported the prosecution. He submits that there was no corroboration by the shadow pancha to the evidence of complainant. That, there are material contradictions and variances in their evidence. Even the sanctioning authority has not applied its mind before according sanction. Therefore, learned trial court has rightly acquitted the accused. According to the him, the judgment of the trial Court is perfect and valid as per law and hence he prays for refusing the leave.

5. Heard both the sides. Perused the papers.

6. It seems that the case of the prosecution is based on evidence of in all five witnesses i.e. PW-1 complainant Gajanan, PW-2 shadow pancha Vishwanath, PW-3 sanctioning authority, PW-4 Police Officer and PW-5 Investigating Officer.

7. It is emerging that a complaint was allegedly filed by Yuvraj Mule for alleged beating to him at the hands of

unknown persons. According to the complainant, he received a phone call from the present accused summoning him in view of the above complaint. Complainant has reproduced a phone number alleged to be of the accused. It is the case of the prosecution that complainant and Anil Galphade, who were both drivers, approached the Ambajogai City Police Station and they met the accused, who allegedly told them that, to avoid any action against them, they would have to pay Rs. 25,000/- to him. According to them, they both have denied their involvement in the offence and even denied their capacity to pay that much amount to him. It seems that two days thereafter, complainant and said Anil Galphade themselves approached the accused with a request to reduce the amount of bribe. According to complainant, accused reduced the amount of bribe to Rs. 5,000/- each. Initially, demand of Rs. 5,000/- was decided to be met on 26.03.2014 and remaining amount of Rs. 5,000/- was decided to be paid on next month's salary. However, complainant was not willing to pay bribe and hence he lodged complaint with ACB on 26.03.2014.

8. Record shows that while in witness box, after deposing that he and pancha Khose returned to the Rest House, i.e. after recording the demand, the complainant has refused to adduce the evidence. Subsequently after almost four months, his remaining examination-in-chief has been recorded, wherein, he narrated about the verification of demand and pre-trap panchanama and about the he himself, pancha and Anil Galphade going to Rajdhani Hotel, accused demanding money and it being paid.

9. Even pancha witness speaks about accompanying the complainant initially at the Guest House for verification of demand and subsequently accompanying the complainant to the hotel and on demand, the amount being paid and thereafter raid being carried out and concluded.

10. It seems that the Investigating Officer has not got it cross-checked whether the instrument allegedly received from the accused was in fact a mobile, owned and possessed by the accused. Secondly, the prosecution seems to have failed to exhibit the voice recording panchnama and no certificate

under Section 65B of the Evidence Act is placed on record. Thirdly, when the pancha and complainant are deposing about the amount being demanded and paid while taking tea, the containers used for tea are apparently not seized which must be carrying the anthracene powder.

11. Admittedly, complainant states that a complaint lodged by Yuvraj Mule regarding to beating to him by unknown persons was there, but said Yuvraj happens to be in MSRTC, Ambajogai. Therefore, when said Yuvraj has not specifically named present complainant and Anil Galphade to have beaten him, the question that arises is, why would a specific call be made to the complainant. From complainant's evidence, it is seen that on the date when alleged call was received from the accused, Anil Galphade was with him. He was also accompanying complainant at the time of trap. However, said Anil Galphade is not examined by the prosecution. Therefore, there is serious doubt about the prosecution version. When the complainant himself has not supported, the case of prosecution apparently rendered weak.

12. The investigating machinery has apparently failed to gather the crucial evidence and moreover, failed to identify that it is accused alone who had made phone call and put up the demand of bribe. Prosecution also does not seem to have examined said Yuvraj Mule who filed complaint about beating, nor the alleged complaint at his instance is got exhibited. Therefore, on various grounds, prosecution story is weak.

13. There was heavy burden on the prosecution to establish the charges. However, evidence of prosecution was apparently not convincing. No good ground is made out before this Court to grant leave. No case being made out, I proceed to pass following order :

ORDER

The application is rejected.

[ABHAY S. WAGHWASE, J.]