



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 89 OF 2023

The State of Maharashtra
Through N. G. Ankushkar,
Deputy Superintendent of Police,
(Anti-Corruption Bureau, Latur)

... Applicant

Versus

1. Kailas s/o Ganpatrao Datkhil,
Age 38 years, Occu. Service,
R/o. Saidapur, Taluka Georai,
District Beed.
2. Sudhakar s/o Tukaram Pethe,
Age 61 years, Occu. Retired Supdt.,
R/o. Thergaon, Taluka Shirur Anantpal,
District Latur.

... Respondents
[Orig. Accused]

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Mr. N. D. Batule, APP for Applicant-State.
Mr. Rajendra Deshmukh, Senior Advocate i/by Mr. Devang R.
Deshmukh, Advocate for Respondent Nos. 1 and 2.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 04.04.2024

Pronounced on : 12.04.2024

ORDER :

1. The State is intending to challenge the judgment and order of

acquittal of respondents from offence under Sections 7, 12, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 [PC Act].

2. Learned APP pointed out that one Nivrutti Pandurang Nagmode lodged complaint that he was intending to establish English School and therefore, he had tendered proposal with Education Officer (Primary), Zilla Parishad, Latur. Accused, who was Education Officer, demanded Rs.1,00,000/- for issuing no objection. Therefore, complaint was lodged. ACB authorities planned and laid trap. Pre-trap panchanama was drawn. That, on 06.01.2014, complainant and shadow pancha approached accused. Accused demanded bribe and also accepted it and therefore pre-determined signal was given and raiding party apprehended accused. Therefore, learned APP submitted that, essential ingredients for attracting the provisions of PC Act were available. The sanctioning authority, who accorded sanction, is also examined. Evidence of complainant and pancha witness is consistent. However, learned trial court, in spite of availability of such overwhelming evidence, acquitted accused disbelieving the prosecution evidence and erred in accepting the defence. According to learned APP, there is improper appreciation. Accused were apprehended with bribe amount. There is good case on merits in appeal, and hence learned APP seeks permission.

3. In answer to above, learned senior counsel for the accused would point out that prosecution has miserably failed to establish the charge. There was no convincing evidence. Here, according to him, two persons were arrayed as accused. At the outset, learned senior counsel pointed out that accused was not at all in-charge or authorized to issue no objection. That, in fact no objection ought to have been issued by Secondary Department and not Primary Department in which accused was posted. That, there are Government Resolutions in that regard. He pointed out that even prosecution failed to establish very demand and on this count, he took this Court through the evidence of PW2.

4. Further, he pointed out that voice in the so called voice recorded is also not demonstrated to be of only and only accused. He further pointed out that even otherwise, amount was not accepted by accused no.1 and that itself is evident from prosecution witnesses. According to learned senior counsel, it is a case of planting the thrusting for deliberate implication. Accused had adduced evidence of defence witness whose testimony was worthy of credence.

5. He lastly submitted that even sanctioning authority had not applied its mind which is essential requirement before granting sanction. Details of the documents which were said to be put to scrutiny are not stated by the sanctioning authority in the witness box. Therefore, on various grounds, case of prosecution was shrouded with doubts and hence learned trial court committed no error whatsoever in acquitting accused and hence he prays that, there being no merit in the application, the same be dismissed.

6. Heard. Perused the evidence and the impugned judgment.

7. Gist of the complaint at the instance of PW1 Nivrutti is that, he was intending to start English School and therefore tendered proposal for getting no objection with the office of Education Officer (Primary) at Zilla Parishad, Latur. According to him, present respondent, who was Education Officer, agreed to issue no objection certificate, but on payment of bribe of Rs.1,00,000/- and therefore, complaint was lodged with ACB Exhibit 53.

8. **PW1** complainant Nivrutti in his evidence at Exhibit 52 deposed that upon receiving complaint, ACB authorities summoned pancha. He and pancha were explained the procedure. That, verification of

demand was got done by recording voice of accused in a voice recorded. Demand made was recorded and finally trap was planned. He and pancha went to the office of accused. He asked accused about no objection certificate, but accused asked him about payment of Rs.1,00,000/- and finally, after bargain, the amount was brought down to Rs.60,000/-. Tainted currency was carried. On approaching accused, accused made gestures by hand as to whether amount has been brought. When complainant removed the amount, accused no.1 indicated him to pay the amount to accused no.2, who accepted the cash, after which signal was given and accused were apprehended.

9. **PW2** Dr. Patil, who acted as pancha, in his evidence at Exhibit 54 deposed that at ACB office, he was introduced to complainant and appraised about the complaint. He accompanied complainant and in his presence when complainant asked about his file, there was conversation between complainant and accused no.1 and thereafter some conversation between accused no.2 also. Accused no.2 accepted the cash of Rs.60,000/- and after signal being given, ACB authorities entered and caught accused persons.

10. **PW3** Ashwini Bhide was the sanctioning authority, who identified sanction order Exhibit 69.

11. **PW4** Satish Kamble, Scientific Officer at Regional Forensic Laboratory Aurangabad, who issued voice analysis report Exhibit 83.

12. **PW5** Narsing Ankushkar, Dy.S.P. at ACB, Latur, was the Investigating Officer.

13. **PW6** Shankar Waghmare is the retired Deputy Education Officer.

14. Accused No.2 Sudhakar Pethe, who is retired Superintendent, Education Department, has also adduced evidence by stepping into the witness box.

15. With a limited purpose of ascertaining as to whether a good ground exists to grant leave, perused the above evidence and cross faced by above witnesses. In the line of arguments advanced, it seems to be the case of prosecution that accused no.1, Education Officer (Primary), had demanded Rs.1,00,000/- for issuing no objection and therefore, on complaint trap was planned and laid. According to complainant, amount of Rs.1,00,000/- was finally brought down to Rs.60,000/-. Evidence of complainant shows that accused allegedly

put up demand by making gestures and directed amount to be paid to accused no.2. Secondly, as pointed out, accused no.1 has not accepted currency. However, in para 8, complainant speaks about asking accused about the proposal of his school, upon which accused allegedly stated that he perused the file and said that he will tell after going through the file and to come on Monday. Therefore, apparently, evidence of complainant does not show that any demand was raised during said initial meeting.

16. PW2 shadow pancha also, in examination-in-chief para 8 seems to have deposed that the only conversation he heard between complainant and accused no.1 was regarding file, but thereafter he could not hear the conversation properly as there was conversation between complainant and accused no.2 in low tone. Therefore, with such evidence of complainant and star witness PW2 i.e. shadow pancha, very aspect of demand has come under shadow of doubt.

17. As pointed out, even though investigating machinery took steps to record demand in a voice recorded, the voice is not demonstrated to be of only and only accused. Therefore, on account of such laps, even electronic evidence containing voice record of demand, has not been considered by learned trial court. Further, as pointed out that

initial demand of Rs.1,00,000/- was said to be brought down to Rs.50,000/- to Rs.60,000/-, but bribe amount of Rs.60,000/- has been paid. Even when there was no alleged agreement by accused to accept exactly such amount.

18. Accused have adduced evidence of accused no.2 Sudhakar and his evidence has inspired confidence, as the stand taken by accused no.1 while answering during statement under Section 313 of Cr.P.C. fortifies the version of said defence witness.

19. To sum up, here, apparently, demand is not proved cogently. Secondly, shadow pancha is not lending support to the complainant and he fairly conceded that he could not hear the conversation about demand. Accused no.1 has apparently not accepted the amount. There is no convincing evidence that accused no.2 was accepting amount on behalf of accused no.1 to connect both of them to the crime together. Moreover, evidence adduced by accused shows that he was not authorized to approve the proposal or issue no objection certificate. Therefore, on crucial aspects, case of prosecution has come under shadow of doubt. No good ground is brought to the notice of this Court so as to grant leave. Though learned APP submitted that there is demand and acceptance and the same is proved, however, the

same has not been demonstrated from the evidence and as such, which such quality of evidence, no purpose would be served by granting leave. Hence, I proceed to pass the following order:

ORDER

- I. Leave is refused.
- II. Application is rejected.

[ABHAY S. WAGHWASE, J.]

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