



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 56 OF 2021

The State of Maharashtra,
Through Sengaon Police Station,
Tq. Sengaon, Dist. Hingoli.

... Applicant
(Orig. Complainant)

Versus

Syed Ayub s/o. Syed Rasul,
Age : 48 years, Occu. : Service,
Talathi Sajja, Sapatgaon,
Tq. Sengaon, Dist : Hingoli [Class-III],
R/o. Pensionpura, Near Old Maulana Azad,
High School, Hingoli, Dist. Hingoli.

... Respondent
(Orig. Accused)

...
Mrs. Chaitali - Chaudhari Kutti, APP for Applicant.
Mrs. A. N. Ansari, Advocate for Respondent.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 22nd APRIL, 2024

PRONOUNCED ON : 09th MAY, 2024

ORDER :

1. Instant leave to file appeal is by State on account of judgment and order of acquittal passed by learned Additional Sessions Judge-2, Hingoli, in Special ACB Case No.05 of 2017 dated 30.03.2021, acquitting accused from offence under section 7 and 13(1)(d) punishable under section 13(2) of Prevention of Corruption Act, 1988.

2. Apprising this court about nature of charge, learned APP pointed out that, complainant Ramdas was beneficiary of scheme of subsidy and incentive allowances under "*Swachh Bharat Mission Rural Scheme*". For availing such benefit, there was necessity of signature of Talathi and so complainant had approached accused Talathi for his signature, but accused demanded Rs.1,000/- for signing. Therefore, complaint was lodged with ACB authorities, who entertained the same, planned and laid trap. According to learned APP, there was demand as well as acceptance. That, complainant and shadow panch corroborated each other. That, sanction was also valid, but still learned trial Court acquitted the accused on the sole ground of no valid sanction. That, there is apparent improper appreciation of evidence by learned trial court. According to her, there is a good case on merits in appeal and so she prays for leave.

3. According to learned counsel for accused, prosecution miserably failed to establish, both, demand as well as acceptance. In fact, there was no demand, rather amount was towards agricultural cess. Further according to learned counsel, sanction was not by proper authority, and moreover, there was no application of mind and so according to her, no fault can be found in the conclusion and judgment of trial court being perfect and

hence she prays to refuse the leave.

4. Perused the papers, copies of depositions as well as judgment sought to be challenged. It seems that, case of prosecution is rested on the evidence of in all six witnesses and documentary evidence.

5. On going through judgment which is sought to be questioned, it is prima facie emerging that, learned trial court has acquitted the accused, holding that, sanction is invalid, by incompetent authority and that there is failure on the part of prosecution to establish essential ingredients. It is emerging that, learned trial court has taken into account several rulings reported in *Indian Kanoon* and recorded findings. It seems to be held that, while according sanction, PW5 Vivek has not inspected entire documents. Answers given by sanctioning authority in cross seems to have prima facie prevailed over the conclusions drawn. At the end, trial court has merely stated that, PW5 Vivek has no authority to grant sanction being Sub Divisional Officer. There are certain recent rulings of this court itself upholding authority of Sub Divisional Officer to grant or refuse sanction to prosecute the person holding post of Talathi. It also seems that, in paragraph no. 43 of the judgment, without elaborating which essential

ingredients are not established, it is held that, accused deserves to be acquitted.

Therefore, in the considered opinion of this court, it is a fit case for re-analysis in a fulfilled appeal. There is a ground made out to grant leave. Hence, the following order :-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to the prosecution to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands **admitted**.
- (v) Call record and proceedings.
- (vi) Action under section 390 of the Code of Criminal Procedure be taken against the respondent to the satisfaction of the trial court.

(ABHAY S. WAGHWASE, J.)