



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 129 OF 2019

The State of Maharashtra,
Through Police Station Mudkhed,
Taluka Mudkhed, District Nanded.

... Applicant

versus

Sunil s/o Ramrao Parde,
Age 45 years, Occu. Gram Sewak,
R/o Shivray Nagar, Malegaon Road,
Taroda [Kd], Nanded.

... Respondent
[Orig. Accused]

.....

Mr. N. D. Batule, APP for the Applicant-State.
Mr. Joydeep Chatterji, Advocate for the sole Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 01.04.2024

Pronounced on : 04.04.2024

ORDER :

1. State is aggrieved by the judgment and order of acquittal of present respondent from charge under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 [PC Act], and is hereby seeking leave to question the said judgment and order passed by learned Additional Sessions Judge, Nanded in Special A.C.B. Case No. 4 of 2015 dated 02.03.2019.

2. Appraising this Court about prosecution against present respondent, learned APP submitted that under the Maharashtra Suvarna Mahotsavi Gramin Dalit Vasti Pani Purvatha Va Swachata Yojna, the Government of Maharashtra has sanctioned funds for erecting and constructing lavatories in villages. Government permitted villagers to construct lavatories and paid subsidies. According to learned APP, complainant Thorat approached accused Gram Sewak for receiving subsidy. However, accused did not release it and moreover, demanded Rs.500/- from five beneficiaries i.e. to the tune of Rs.2,500/-, but subsequently agreed to accept Rs.2,000/-. Therefore, complaint was lodged, shadow pancha PW2 was arranged and appraised about the complaint and he and complainant both approached accused. Verification of demand was done. Demand as well as acceptance was complete and therefore offence was made out. However, according to learned APP, accused has been acquitted on the sole ground that work was not allotted to the accused. There is apparently improper appreciation of evidence as well as law. According to him, there is good case on merits and so he seeks leave.

3. Per contra, learned counsel for the accused would submit that prosecution had miserably failed to establish its case. Moreover, complainant himself had not supported prosecution. There are vital

admissions even by the shadow pancha in cross, thereby rendering the case of prosecution weak. That, there is thorough and complete appreciation both, on merits as well as legal aspect, by the learned trial Judge before acquitting accused. According to him, there is no ground made out for grant of leave and so he prays to dismiss the application.

4. Perused the papers. On complaint of one Bhagwan Chandu Thorat, prosecution seems to have been launched for above offences on the premise that for releasing subsidy meant for constructing and erecting lavatory from Government, present respondent demanded Rs.2,500/- but agreed to accept Rs.2,000/-. As complainant was not willing to comply, he lodged complaint followed by ACB authorities planning and laying trap after arranging PW2 pancha and making them carry tainted currency to accused and to pay it on demand. On relevant day, trap was successful and accused was apprehended.

5. Primarily, case of prosecution is rested on testimony of PW1 complainant Thorat and PW2 shadow pancha Balaji. Learned APP on one hand submitted that there was verification of demand and after demand was made, there was acceptance of illegal gratification and as such, offence was complete. Per contra learned counsel for accused

invited attention of this court to the evidence of complaint PW1 and pancha PW2.

6. Evidence of complainant shows that he and other beneficiaries of the said scheme had approached one Kokate, who was Gram Sewak of village Pathrad, for inquiring about subsidy. According to complainant, said Kokate told him that he had not received papers from previous Gram Sewak i.e. present accused. Therefore, complainant's evidence categorically shows that complainant and others had approached for subsidy, not to present accused/respondent, but to one Kokate. This shows that on such date, accused was not officiating as Gram Sevak of village Pathrad. Further, as pointed out by learned counsel for accused, complainant himself has not supported prosecution as he deposed that when complainant approached accused and asked him about work, he allegedly said that work has already been done, but they should pay Rs.2,000/-. Further, according to complainant, he paid Rs.2,000/- to one Dalvi and not present accused. Even initially complaint was lodged against said Dalvi but subsequently his name was struck off and name of accused was kept as it is. Therefore, there are serious doubts about complainant's version.

7. Further, as pointed out, shadow pancha PW2 Balaji speaks of demand being made by way of gestures and his evidence is contrary to that of PW1 on many counts like, demand of bribe amount, amount being brought down to Rs.2,000/- after bargain and who received the amount. Further, PW2 shadow pancha has not heard accused making demand during conversation between complainant and accused. In cross PW2 has admitted that complainant was trying to give amount but accused was denying to take it. Therefore, crucial aspect of very demand is also coming under shadow of doubt. Thus, prosecution evidence is weak on crucial points. When learned APP could not point out there to be cogent, reliable and consistent evidence and more particularly complainant himself having retracted and cross of shadow pancha rendering case of prosecution doubtful, there is no reason to grant leave as prayed by learned APP. Hence, I proceed to pass the following order:

ORDER

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

[ABHAY S. WAGHWASE, J.]