



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.103 OF 2022

The State of Maharashtra,
Through Sangamner City Police Station,
Tal. Sangamner,
Dist. Ahmednagar.

... Applicant

Versus

1. Shital Rajdhar Savale.
Age : 36 years, Occ. : Service,
R/o : Orange Corner. Sangamner.
Tal. Sangamner, Dist. Ahmednagar.

2. Subhash Vitthal Bharati,
Age : 55 years, Occu. Service,
R/o. Near Padhegaon Road Corner,
Tal. Kopargaon, Dist. Ahmednagar.

... Respondents
(Orig. Accused)

...
Mr. A.A.A. Khan, APP for Applicant/Appellant.
Mr. Joydeep Chatterji, Advocate for Respondent No.1.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 27th JUNE, 2024

PRONOUNCED ON : 9th JULY, 2024

ORDER :

1. Getting dissatisfied by the judgment and order of acquittal dated 19.05.2022 passed by learned Additional Sessions Judge, Sangamner, District Ahmednagar, thereby acquitting accused no.1/respondent no.1 herein from offence punishable under section 7 and 13(i)(d) r/w section 13(2) of the Prevention of Corruption Act, 1988.

2. Learned APP pointed out that, two accused were charge-sheeted by Sangamner City Police Station for commission of above offence, on the premise that, accused nos.1 and 2, who were resident Naib Tahsildar and Talathi, respectively, had demanded illegal gratification to the tune of Rs.20,000/- for not taking action in the case of theft of sand. On receipt of complaint, trap was arranged and planned. Pre-trap panchanama was drawn. Panchas were arranged. That, on 08.07.2014 trap was successful. That, accused no.2 had accepted bribe on behalf of accused no.1. They both were present at the time of raid. Therefore, prosecution succeeding in establishing the case. However, learned trial court acquitted main accused Naib Tahsildar and only convicted Talathi. That, learned trial court has not appreciated the evidence of complainant and panch witness. That, there is a good case on merits in appeal against acquittal. Hence, learned APP prays for leave.

3. On the other hand, learned counsel for respondent no.1 pointed out that, respondent no.1 was falsely implicated. That entire evidence of complainant/panch revolved around accused no.2 Talathi. That, even evidence of complainant clearly shows that, there was conversation between complainant and accused no.2. That, accused no.1 was never in picture. That, he had never

demanding any bribe nor had accepted it, and therefore, learned trial court correctly acquitted the respondent no.1 and he prays to refuse the leave.

4. Perused the papers. Sum and substance of the prosecution case in trial court was that, complainant was a beneficiary of tender of lifting sand on payment of royalty. But, the tender period has expired in September 2014. Talathi accused no.2 initiated action on two tractors for unauthorized lifting of sand. When complainant approached Talathi, he was directed to meet accused no.1 Naib Tahsildar. According to prosecution, accused no.1 demanded Rs.20,000/- for not initiating action. As complainant was not willing to pay bribe, he lodged complaint with ACB authorities to plan and arrange trap.

5. Prosecution has adduced evidence of complainant PW1 Uttam Varpe; shadow panch PW2 Vitthal, sanctioning authority; PW3 Subhash Patankar and PW4 Dy.S.P. Ashok Devare, Investigating Officer. Incidence of demand and acceptance gets unfolded from the testimony of complainant PW1 Uttam and PW2 Vitthal panch witness. Both in their testimonies seem to have deposed that, on 08.07.2014, visited Tahsil office in the afternoon. Complainant deposed that, they first approached accused no.2 Bharati. Accused no.2 said that he had already talked with accused

no.1 and it would suffice that payment is made to them. Rs.16,000/- were handed over and also accepted by accused no.2 and thereafter complainant relayed signal.

Likewise, PW2 Vitthal also in his evidence, in paragraph no.10, stated that, he saw and heard talks being taken place between complainant and accused no.2 and he gestured and asked whether amount has been brought. Complainant took out money from the pocket and accused no.2 accepted it by his right hand.

6. Therefore, testimonies of complainant and panch which is crucial, does not show that there was initial demand and acceptance by accused no.1.

7. Learned APP has relied on the case of ***Kannan v. State*** reported in ***AIROnline 2018 SC 202***. In the case relied herein by learned APP, facts are different. In that case, there was clear evidence about accused no.1 directing PW2 to pay money to accused no.2. Here, it is not so. There was said to be mere gesture. Such version is not finding place in the testimony of complainant. On this count, above judgment stands distinguished and cannot be taken aid of by the State.

8. Considering the above discussed material, there is no good ground made out to grant leave. Hence, prayer for leave to grant appeal are turned down. Accordingly, I proceed to pass the following order :-

ORDER

- (i) Leave is refused.
- (ii) Application is rejected.

(ABHAY S. WAGHWASE, J.)