



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.118 OF 2020

The State of Maharashtra,
At the instance of MIDC CIDCO P.S.,
Aurangabad

... Applicant
(Prosecution)

Versus

Sudhakar Shamrao Botule,
Age : 50 years, Occu. : Govt. Service,
R/o. Nutan Wasahat, House No.156/1,
Dattaji Bhale Vidyalaya Road, Ambad,
Tal. Ambad, Dist. Jalna

**... Respondent/
Non Applicant**
(Orig. Accused)

...
Mr. D. J. Patil, APP for Applicant – State
Mr. C. P. Sengaonkar, Advocate for Respondent (Non Applicant)
...

CORAM : ABHAY S. WAGHWASE, J.

DATED : 3rd MAY, 2024

PER COURT :

1. By instant application, State is seeking leave to question the judgment and order passed by learned Special Judge (ACB), Aurangabad in Special Case (ACB) No. 02 of 2018, dated 24.02.2020.

2. Learned APP pointed out that, complainant is a auto-rickshaw driver, whereas accused was working as Circle Inspector. That, for effecting mutation entry, accused had demanded

Rs.25,000/- and therefore, complaint was lodged. He further pointed out that, independent witness was summoned and both complainant and shadow panch were explained procedure of trap, which was arranged and laid. That, necessary ingredients for attracting offence were made out. That, there was valid sanction. Therefore, all essential ingredients being available, it is his submission that, guilt ought to have been recorded, but learned trial court having failed to consider and appreciate the available evidence, trial has resultantly into acquittal. That, there is a good case on merits and hence learned APP seeks leave of this court to file appeal.

3. Learned counsel for accused pointed that, prosecution has miserably failed to prove both demand as well as acceptance. He pointed out that, there is no corroboration to the testimony of complainant. That, shadow panch has not supported the complainant. That, sanction is also improper, and therefore, according to him, learned trial court committed no error whatsoever in acquitting the accused and he prays to refuse the leave.

4. Perused the papers. It seems that, respondent was charge-sheeted for commission of offence under sections 7, 13(1) (d) read with section 13(2) of Prevention of Corruption Act, 1988

and was tried by Special Case (ACB) No. 2 of 2018. The sum and substance of the prosecution case is that, Narayanrao Waghmare (Kulkarni) (PW1) had approached accused a Circle Officer/Inspector for sanctioning mutation entry. Accused allegedly demanded illegal gratification of Rs.25,000/- and therefore complaint has been lodged to that extent. Anti Corruption Bureau authorities planned and arranged trap by arranging panch and pre-trap panchnama as well as post-trap panchnama was drawn. Complainant and panch both went together. However, as pointed out panch in his cross has admitted that, he has not heard conversation of demand. Even at the time of acceptance, shadow panch does not seem to be a party. Therefore, literally there is no corroboration with the testimony of complainant in cases under Prevention of Corruption Act, complainant is always with upon as a interested witness. Therefore, law insists in corroboration to the testimony of complainant from independent corner. However, here it seems that, panch witness has not supported the complainant. Very essentials i.e. demand and acceptance not having been proved, prosecution version gets a jolt. Cross of sanctioning authority also creates doubt whether there is application of mind while according sanction. Therefore, on crucial aspects, prosecution seems to have failed. No fruitful purpose would be served by granting leave as prayed.

5. With such quality of evidence, the exercise would be ultimately fruitless. No case being made out on merit to grant leave, I proceed to pass the following order :-

ORDER

The application is hereby rejected.

(ABHAY S. WAGHWASE, J.)