



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 162 OF 2019

The State of Maharashtra,
Police Station Officer, Taloda,
Tq. Taloda, Dist. Nandurbar.

... Applicant
(Orig. Complainant)

Versus

Sunil Mansaram Patil,
Age : 33 years, Occu. : Service [Junior Clerk]
R/o. Haraklal Nagar, Taloda,
Tq. Taloda, Dist. Nandurbar.

... Respondent
(Orig. Accused)

...
Mr. D. G. Patil, Advocate for Applicant
Mr. Joydeep Chatterji, Advocate for Respondent
...

CORAM : ABHAY S. WAGHWASE, J.

DATED : 18th MARCH, 2024

ORDER :

1. On account of judgment and order of acquittal passed by learned Additional Sessions Judge, Shahada dated 02.05.2019 in Special ACB Case No.13 of 2015, State is keen in filing appeal for questioning the legality of the judgment and order and hence the leave application.

2. Learned APP pointed out that, accused was working as a Junior Clerk in the office of Integrated Triable Development Project Officer at Taloda. Complainant had preferred transfer

application and in that connection accused had demanded Rs.1,00,000/- assuring to arrange transfer by putting up a word with Project Officer. That, there was demand of illegal gratification to the tune of Rs.1,00,000/- and complainant was not willing to pay and therefore he had approached ACB authorities and had lodged complaint. After receipt of complaint, all formalities were completed by ACB authorities and both complainant as well as PW2 shadow panch were apprised about the procedure of application of anthracene powder to the tainted currency and to pay the amount on demand.

3. That, even pre-trap and post trap panchanama was drawn. All witnesses i.e. PW1 Rajendra- complainant, PW2 Vilas - shadow Panch, PW3 Ashok Lokhande - Sanctioning Authority and PW4 PI Vijay Chaure - Investigating Officer have stuck up to their version in the trial court. However, learned trial Court has acquitted the accused on the ground of no demand. In fact, only upon demand being raised, complaint was filed, and therefore, learned trial court ought not to have acquitted the accused. According to learned APP, there is a good case on merits, and therefore, he seeks leave to file appeal.

4. Per contra, learned counsel for respondent would point

out that when essentials like demand was not proved, evidence of prosecution was not convincing. Essential ingredients for attracting none of the charges were available and therefore, learned trial court rightly acquitted the accused. According to him, there is no merits in the appeal and hence he prays to dismiss the leave application.

5. Heard both sides. Record shows that, prosecution has adduced testimonies of in all 4 witnesses. Crucial evidence is of informant PW1 Rajendra and PW2 Vilas shadow panch and their evidence is at Exhs. 9 and 23 respectively. According to complainant, he had approached one Dudhal seeking transfer. Transfer application is of 25.01.2015. His evidence suggest that he visited office of Dudhal on 19.03.2015 and after meeting him, said Dudhal allegedly told him that, he would look into the matter and thereafter he came in contact with accused Junior Clerk, who allegedly assured to get his transfer managed, but on payment of Rs.1,00,000/-. Said incident allegedly took place on 19.03.2015. Complainant has apparently approached ACB authorities on 25.03.2015. Evidence of complainant does not show that, between these two dates, accused demanded the money and complainant agreed to pay. Precisely, there is nothing to show that accused demanded the money for him. He is mere Junior Clerk.

Resultantly, prima facie crucial aspect of demand has apparently comes under shadow of doubt. Secondly, when efforts were done for getting demand proved by verification, shadow panch PW2 Vilas does not seem to have accompanied PW1 Rajendra. In cases of such nature, complainant being looked upon an interested witness, independent corroboration is insisted for. Here, the same is missing. Further repeated attempts for bribe seems to have been undertaken, but had apparently failed. Consequently, prosecution case, does, under shadow of doubt.

6. After hearing learned APP, no good ground is made out nor patent infirmity is brought to the notice in the appreciation at the hands of learned trial court so as to allow the application by granting leave. Hence, I proceed to pass the following order :-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)