IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 183 OF 2018

The State of Maharashtra,
Through Police Station, Vazirabad,
Nanded, Tq. & Dist. Nanded. **... Applicant**
(Orig. Complainant)

Versus

Madhukar S/o. Amarsing Pawar,
Age : 53 years, Occu. : Government
Service, Junior Clerk, Zilla Parishad,
Nanded, Dist. Nanded. **... Respondent**
(Orig. Accused)

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Mrs. Chaitali Chaudhari – Kutti, APP for Applicant – State.
Mr. Satyajit S. Bora, Advocate for Respondent.

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 19th APRIL, 2024
PRONOUNCED ON : 29th APRIL, 2024

ORDER :

1. Judgment and order passed by learned Assistant Sessions Judge, dated 31.05.2018 in Special (A.C.B.) Case No. 1 of 2013, acquitting respondent from charges under sections 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988, prompted State to file instant leave application seeking permission to file appeal.

2. Learned APP pointed out that, informant a differently abled person was in need of Identity Card of his disability and so he

had approached office of Social Welfare, Zilla Parishad, Nanded and had approached respondent, a clerk of the said office for above document. That, accused demanded bribe of Rs.300/- and on negotiation brought it down to Rs.200/-. That, learned counsel pointed out that, complainant was not willing to pay bribe and so he lodged complaint (Exh.21), followed by ACB authorities, planning and laying trap. She pointed out that, complainant and shadow panch had visited the office of accused. Demand and acceptance were proved by these witnesses. However, according to learned APP, accused has been acquitted doubting the validity of sanction. According to learned APP, learned trial court has failed to appreciate the evidence as well as law and reached to erroneous conclusion. That, State has a good case in appeal and so she prays for leave.

3. In answer to above, learned counsel for respondent pointed out that, prosecution failed to establish the charges beyond reasonable doubt. That, there was no demand or acceptance. That, amount was deliberately thrusted in the drawer. According to him, testimonies of complainant and shadow panch are not consistent and they are variance at material count. Therefore, learned trial court rightly acquitted the accused and so supporting the judgment sought to be impugned, learned counsel prays to refuse the leave.

4. Heard both sides. Perused the grounds raised in the application as well as impugned judgment sought to be challenged. It transpires that, complainant Subhash, who is a differently abled person was in need of Identity Card of his disability and so he had visited Social Welfare Office and he claims to have come in contact with accused respondent, a clerk. Allegation of prosecution is that, for issuing renewed identity card, accused demanded Rs.300/-, but finally accepted to do the needful Rs.200/-. Therefore, complainant Subhash lodged report in ACB authorities, who planned and conducted raid and apprehended accused.

5. Complaint seems to be launched by PW1 Subhash on 22.02.2012. ACB authorities seems to be explained about the procedure on 23.02.2012. Exercise of verification of demand seems to have been carried out prior to raid. It transpires that, in that nexus, complainant is unable to state where exactly the conversation took place between him and accused i.e. inside the office or outside the office.

6. Complainant and shadow panch seem to have narrated the events that took place after visiting office of accused in their substantive evidence i.e. examination in chief. As regards to demand is concerned, complainant is the sole witness.

7. In view of nature of charge, obviously, primary burden on prosecution is to establish demand as well as acceptance. Mere possession of currency itself is no good ground to hold charge proved, is also a settled position. Here, it seems that, where actual demand was made i.e. inside the office or outside the office seems to have not been firmly established. As according to complainant, demand was made while accused was in his office, but very Investigating Officer PW4 Rahire contradict the same. That, when complainant went office of accused, there being rush, accused came out of the office room and put up demand. Shadow panch merely speaks that when he accompanied complainant, accused asked whether he brought the money. Therefore, such evidence on the point of very demand is not consistent.

8. Further admittedly, evidence of complainant and panch witness is that accused made gestures and thereafter complainant kept money in the drawer. Recovery is also from the drawer. Thus, accused has not come in contact with currency. His specific defence is of planting and thrusting. Evidence of complainant and shadow panch shows that, after keeping amount in the drawer, signal was relayed and trap was concluded.

9. Consequently, here with the above quality of evidence in trial court, firstly demand is not firmly and cogently proved. Likewise, acceptance is also not proved, though amount is found in the drawer of the table allegedly occupied by accused.

10. No good ground is made out before this court nor any patent perversity in the appreciation at the hands of learned trial court is brought to this court so as to hold existence of good case in appeal. Resultantly, no case being made out for grant of leave, this court proceed to pass the following order :-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)

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