



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.166 OF 2019

The State of Maharashtra,
Through : Police Inspector,
Shrigonda Police Station, Tq. Shrigonda,
Dist. Ahmednagar.

... Applicant.

Versus

Jagannath Hanumant Mhaske,
Age : 58 years, Occu. : Service,
R/o. Talathi Saja Mudhekarwadi,
Tq. Shrigonda Dist. Ahmednagar
At present resident of
C/o. Adv. Pravin Kshirsagar,
Tq. Shrigonda, Dist. Ahmednagar.

... Respondent
(Orig. Accused)

...
Mr. S. M. Ganachari, APP for Applicant – State
Mr. Ajaykumar P. Jadhav h/f. Mr. D. R. Korade for Respondent
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 08 FEBRUARY 2024

PRONOUNCED ON : 12 FEBRUARY 2024

ORDER :

1. Acquittal of respondent from charges under sections 7 and (13)(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988 has prompted State to prefer instant application praying to grant leave to challenge the judgment and order dated 06.08.2018 passed by learned Judge, Special Court, Ahmednagar in Special Case No. 194 of 2017.

2. Briefing the background of case in trial court, learned APP pointed out that, accused was a Talathi. Complainant is an agriculturist. His mother-in-law had purchased land and therefore it was necessary to get her name mutated in the revenue record and so complainant had approached accused on 26.05.2017. For the said work, accused demanded Rs.5,000/- and therefore, complainant approached Anti Corruption Bureau, who arranged panchas and on verification of demand, pre-trap panchanama was drawn. Pancha had accompanied complainant with voice recorder. Both, PW2 complainant and PW1 panch witness, are consistent about demand and acceptance. In support of voice recording, certificate under section 65B of the Evidence Act was also placed on record and as such trap was successful on 30.05.2017 in the very house of accused. That, accused had accepted the bribe amount. Therefore, it is submitted that, all necessary requirements were completed and also established by adducing sufficient and cogent evidence. However, learned trial court unfortunately did not accept the case of prosecution.

3. He further pointed out that, accused had made demand by making gestures by rubbing fingers which is a usual mode to signify money. However, learned trial court has not appreciated said gesture and has held that demand is not proved. That,

important evidence like voice recorder, corroboration from independent witness shadow panch has not been taken into account and merely on said observations, accused has been acquitted. Demand and acceptance, which is essential, is cogently proved. Sanction is also proper. But, according to learned APP, such crucial aspects are not appreciated. Lastly, it is submitted that, there is improper appreciation and hence there being a good case in appeal, he seeks leave.

4. On the other hand, learned counsel for respondent would set up a case that it is a deliberate implication in false case. Evidence of prosecution is full of material contradictions. Amount was not demanded, rather it was thrust. Evidence of prosecution did not inspire confidence on the aspect of demand and therefore learned trial court rightly acquitted the accused and consequently he prays to refuse the leave.

5. After considering the submissions of both sides and going through the papers and impugned judgment, it transpires that, in support of above charge, prosecution has adduced evidence of shadow panch PW1, complainant PW2, sanctioning authority and Investigating Officer.

6. Sum and substance of the complain seems to be that, mother-in-law of complainant namely Surekha had purchased agricultural land at Chikalthanwadi and so application for mutation in her name in 7/12 extract was made. According to prosecution, accused demanded Rs.5,000/- from complainant i.e. son-in-law of Surekha on 26.05.2017. However, as he was not willing, he approached Anti Corruption Bureau (ACB).

7. It is further seen that, on deciding to lay trap, complainant and pancha Sagar together went for verification and conversation was allegedly recorded in a tape recorder and further reduced into writing by way of transcript. Tainted currency was handed over to complainant to be paid on demand.

8. *Prima facie*, it seems that, on 30.05.2017 complainant visited on house of accused as decided, whereas raiding party waited outside the lane. Thereafter complainant and pancha witness entered the house of accused and later complainant returned back and gave signal, upon which raiding party entered the house of accused and he was apprehended and was found to be in possession of bribe amount and his right hand fingers, palm and right side pocket of his pant revealed traces of anthracene and so accused was arrested.

9. On going through the judgment, after appreciating the evidence in paragraphs 26 and 27, there is observation about gestures made with fingers by raising rubbing fingers. Resultantly, learned trial Judge seems to have been held that there was no demand.

10. Therefore, from above discussion, it is clear that, issue whether gestures by fingers could at all be termed as raising demand needs to be dealt. Admittedly, respondent accused is apprehended with tainted currency for which there is no explanation under section 313 of Cr.P.C.

11. *Prima facie*, there is a arguable case on merits in appeal, in view of above point, which could be dealt on full-fledged appeal. Hence, prayers so raised by State deserves to be granted. Hence, I proceed to pass following order :-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to the prosecution to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands **admitted**.
- (v) Call record and proceedings.

- (vi) Action under section 390 of the Code of Criminal Procedure be taken against the respondent to the satisfaction of the trial court..

(ABHAY S. WAGHWASE, J.)