



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 77 OF 2023

The State of Maharashtra
Through : Police Inspector,
Jawaharnagar Police Station.
Tq. & Dist. Aurangabad
Dist. Aurangabad.

... Applicant

Versus

Sunil Rajaram Joshi.
Age : 40 years, Occu. Service,
P.Jo. A-2/3 M-7, CIDCO,
Aurangabad.
District-Aurangabad.

... Respondent
(Orig. Accused)

...

Mr. D. J. Patil, APP for Applicant – State.
Mr. Joydeep Chatterji, Advocate for Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 06th MAY, 2024

PRONOUNCED ON : 12th JUNE, 2024

ORDER :

1. State is hereby seeking leave to challenge the judgment and order passed by learned Additional Sessions Judge, Aurangabad in Special Case ACB No.22 of 2012, dated 23.03.2023, by which present respondent stood acquitted from the offence punishable under sections 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988 (P.C. Act).

2. In support of leave, learned APP for State pointed out

that, complaint was received against present respondent for demanding illegal gratification to favour brother of complainant by not making him to suffer P.C.R. and rather sending him to M.C.R. on account of his arrest in offence under section 307 of Indian Penal Code (IPC). Learned APP pointed out that, all required ingredients for attracting charges were very much available. Complainant and shadow panch are both consistent in their testimonies. That, sanctioning authority had applied its mind and had accorded sanction. In spite of offence being clearly made out, learned trial court has acquitted the accused from all the charges. According to learned APP, there is improper appreciation of both, evidence as well as law. That, there is a good case on merits in appeal and hence learned APP seeks leave.

3. Per contra, learned counsel for respondent pointed out that, prosecution had miserably failed to make out the case against the respondent. It is pointed out that, demand which is *sine qua non* has not been proved. That, the prosecution failed to establish the foundational facts of the case. That, there was no corroboration to the testimony of complainant. Cross of both, complainant as well as panch witness has rendered the case of prosecution weak. He lastly pointed out that, even there is improper application of mind and order of sanction is also mechanical. Taking into consideration

such evidence on record, learned trial court had correctly acquitted the respondent accused. Therefore, according to him, there is no merit in the application and he prays to dismiss the application.

4. After considering the submissions of both sides and on going through the papers, it appears that, present respondent was charge-sheeted for commission of offence under sections 7, 13(1) (d) read with section 13(2) of P.C. Act. The gist of complainant against respondent was that he was working as Writer of P.I. Warade. According to prosecution, brother of complainant was booked for a crime. When complainant approached police station, present respondent allegedly demanded Rs.30,000/- to see that P.C.R. of brother of complainant is not extended. That, as complainant was not willing to meet the demand, he lodged complaint, after which ACB authorities seem to have carried out further procedure as contemplated under law. That, trap was laid and the same was said to be successful on 18.11.2011. Prosecution claims that accused made demand from complainant and also accepted the illegal gratification and was caught red handed and thereafter arrested and charge-sheeted.

5. On going through the papers and evidence, it seems

that in complaint, complainant had informed that, he had approached Police Inspector Warade and said P.I. Warade made demand of Rs.50,000/- and further allegedly directed complainant to approach present respondent, who was said to be Writer of P.I. Warade. Complaint at Exh.37 clearly distinguishes the above aspect. Secondly, it appears that complainant has admitted that he was aware that present respondent was not In-charge of the said case so as to give relief, as assured, to the brother of complainant. Therefore, when respondent was not authorized or legally permitted to investigate the case, it is difficult to accept that he was in position to give any assurance or any further relief to the brother of complainant as is claimed by him. Therefore, prima facie, essential requirements for attracting section 7 of P.C. Act are patently missing.

6. That apart from it seems that, in the statement of complainant recorded at Exh.38, name of one Mohammad Aref has cropped up. According to complainant, it was conveyed that demand was made in presence of said Aref. However, he does not seem to have been examined. It also seems that there is no corroboration to the testimony of complainant. Shadow panch, who allegedly accompanied complainant, has admitted in cross that, he did not hear the entire conversation of demand and merely

partly overheard it. Therefore, with such answers on record from the witness who allegedly accompanied complainant, the aspect of demand is not firmly and cogently proved. Such evidence on record apparently has weakened the case of prosecution.

7. On cursorily going through the reasoning, learned trial court seems to have considered each of the aspect, i.e. examination-in-chief as well as cross of complainant and witness, who was star witness and settled law also seems to have been taken into account while passing the impugned order. No good case being made out to grant leave, I proceed to pass the following order :-

ORDER

Leave refused. Application is rejected.

(ABHAY S. WAGHWASE, J.)