



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION FOR LEAVE TO APPEAL (A.L.S.) NO.
221 OF 2018

The State of Maharashtra
Through Anti-Corruption Bureau,
Aurangabad, district Aurangabad.

...Appellant
(Original Prosecution)

VERSUS

Karbhari s/o Mohan Bahure,
Age; 62 years, Occ; Service,
R/o; Cidco, Aurangabad.

...Respondent
(Original Accused)

...
APP for Appellant/State : Mr. S.M. Ganachari
Advocate for Respondent No. 2 : Mr. Deepak K. Rajput
...

CORAM : ABHAY S. WAGHWASE, J.

Date of Reservation : 31.01.2024
Date of Pronouncement : 09.02.2024.

ORDER :

1. By way of instant application, State is hereby seeking leave to file appeal against the judgment and order of acquittal passed by the learned Additional Sessions Judge, Vaijapur in Special Case (ACB) No. 16 of 2012, dt. 27.06.2018.

2. In support of relief of leave to grant appeal, learned APP would submit that on 17.05.2011, on account of crime under Section 307 of IPC, against brother of complainant, he had been to police station. Accused police official demanded Rs. 50,000/- as bribe to not to arrest his brother, till he obtains anticipatory bail orders from the Court. It is submitted that thereafter complainant approached ACB authorities and lodged complaint against the said officer.

3. It is further pointed out that ACB authorities took timely steps for arranging panch, who accompanied the complainant to police station to verify the demand and thereafter the verification panchanama was drawn. Thereafter, the trap panchanama was drawn and tainted currency was handed over to defacto complainant to be paid to accused on demand and as such both complainant Mr. Ram Alone (PW 2) and independent panch had been to the police station. Demand was raised and on payment of amount it was accepted and as such offence under the Prevention of Corruption Act was complete. He further pointed out that the prosecution had established its case by adducing evidence of five witnesses i.e. complainant, shadow pancha, sanctioning authority and two Investigating Officers. Their evidence had remained intact, but learned trial Court

acquitted accused on flimsy grounds, like contradictions and discrepancies on the timeline stated by complainant and shadow pancha, on technical ground of want of proper sanction. That State has a good case on merits and so he prays to grant leave, as reasons assigned by the trial Judge are not convincing and are also not in consonance with the evidence on record.

4. Learned counsel for respondent while supporting the judgment would point out that prosecution miserably failed to bring home the charges. That in fact, the very demand so raised was suspicious as according to learned counsel, accused was not responsible for handling the crime in which arrest of brother of complainant was to be avoided till anticipatory bail order is obtained. He further pointed out that learned trial Judge has correctly appreciated evidence of complainant and panch and there are material omissions, contradictions and variances. Therefore, it is submitted that judgment is perfectly legal and no case is made out by the State on merit to grant leave as prayed.

5. After considering the submissions of both sides and on prima-facie going through the papers, it seems that allegations are that accused, the police officer, on being approached by the complainant on the backdrop of crime against brother of

complainant, demanded Rs. 50,000/- to not to arrest complainant's brother till he obtains anticipatory bail orders from Court. According to the prosecution, complainant therefore, lodged complaint with ACB authorities and finally after completing the procedure of trap accused/respondent was arrested.

6. It seems that in support of its case prosecution has examined in all 5 witnesses, i.e. PW-1 sanctioning authority, PW-2 complainant, PW 3 shadow pancha, PW-4 and PW-5 Dy.S.P. ranking officers.

7. It seems that learned trial Judge has arrived to a finding that considering the gazetted post of accused, PW-1 was not competent to accord sanction. Similarly, learned trial Court has recorded finding that evidence of complainant and shadow panch are not consistent as regards to timing of verification panchanama. Equally learned trial Court seems to have observed that in complaint, amount of demand quoted is in variance to the amount stated by the complainant in witness box. Even, learned trial Court has refused to accept prosecution evidence on noting that envelope/packet, in which accused allegedly kept the tainted amount, after acceptance did not carry

anthracene powder and therefore, for all the reasons prosecution case is doubted and acquittal is granted.

8. Before this Court learned APP has placed on record original Government Resolution dated 03.04.2000 defining competent authority and has also placed on record salary certificate of accused dated 09.04.2018. He has also sought reliance on various ruling of Hon'ble Apex Court on the point of sanction.

9. At this stage, the State is merely seeking leave and therefore, this Court is not expected to deal in detail with the merits of the case. It apparently emerges that sanction is accorded by PW-1, the Director General of Police, State of Maharashtra. Before trial Court, Government Resolution dated 03.04.2000 was placed on behalf of accused to show that competent authority who can accord sanction for the employee, whose salary was exceeding Rs. 10,650/-, is the Chief Minister. Here, salary certificate placed by the prosecution before this Court shows that, in May, 2011 his salary was Rs. 20,290/- + 5000/-. Occurrence of demand is of 16/17.05.2011 itself. Therefore, prima-facie, in view of the said Government

Resolution, PW-1 being D.I.G., cannot be said to be authorized to accord sanction.

10. On prima-facie going through the complaint Exh. 26, it is informed that demand of Rs. 50,000/- was made by respondent/accused. However, at the time of actual demand and payment, evidence shows about demand of Rs. 40,000/- being made and accepted.

Even as pointed out by the learned counsel for the accused, according to complainant after having talks with accused, he and panch witness came back to Waluj Police Station for verification panchanama regarding demand at about 2.00 to 2.30 p.m., but shadow panch PW-3 seems to have answered in cross that verification was done around 5.05 p.m. Above all, it is implicit from the testimony of Investigating Officer that present accused was not investigating the crime, in which brother of complainant was allegedly implicated, rather another officer by name Thale was in-charge. Under such circumstances further doubt crops up as to why at all then present respondent/accused would raise demand for not arresting brother of complainant till his anticipatory order is passed. Therefore, prosecution case comes under shadow of doubt for several reasons.

11. Taking above discussed material into consideration, prima-facie, this Court is convinced that material aspects are dealt by the trial Judge. Here, no case is made out on merits and no patent illegality is brought to the notice of this Court to grant leave. Hence the leave so sought cannot be granted. Accordingly, I proceed to pass following order :

ORDER

Leave to Appeal by State No. 221 of 2018 is refused.

**(ABHAY S. WAGHWASE)
JUDGE**

mahajansb/