



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.218 OF 2019

The State of Maharashtra, Through
Shri S. R. Kauthale, Police Inspector,
Anti Corruption Bureau, Aurangabad ... Applicant

Versus

Raosaheb s/o. Shankarrao Bomble,
Age : 54 years, Occu. Police Head Constable,
B. No. 524, Police Station Bidkin,
Dist. Aurangabad. ... Respondent
(Orig. Accused)

...
Mr. S. M. Ganachari, APP for Applicant – State
Mr. Kishor Gadve Patil, Advocate for Respondent - Sole
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 07 FEBRUARY 2024

PRONOUNCED ON : 15 FEBRUARY 2024

ORDER :

1. Dissatisfied by the judgment and order of acquittal dated 20.10.2018 passed by learned Special Judge (under P.C. Act), Aurangabad acquitting respondent from offence under section 7, 13(1)(d) read with section 13(2) of Prevention of Corruption Act, 1988, (P.C. Act), as State intends to prefer appeal instant leave application is pressed into service.

2. Learned APP would submit that, one Shaikh Akbar Shaikh Mehboob was booked for offence under sections 379 and

353 of Indian Penal Code (IPC) and section 27(1), (2), (3), (4) and (5) of Mines and Minerals Act, on complaint lodged by Talathi Deepak Patki. That, as a result of such crime, *De facto* complainant had sought anticipatory bail and had been to Bidkin police station, approached present respondent accused and handed him the copy of bail order. It is pointed out that, accused said to him that though he has succeeding in getting anticipatory bail order, he would initiate prohibition proceedings against *de facto* complainant and again produce him before same Tahsildar and would sent him behind the bars.

3. Further accused suggested that, he could help him in investigation and other thing, but on payment of Rs.15,000/- as a bribe. Finally after settlement, it is pointed out that, accused agreed to obtain Rs.10,000/-, but as *de facto* complainant was not willing to pay the bribe amount, he approached Anti Corruption Bureau and lodged complaint against accused and Anti Corruption Bureau (ACB) authorities planned and laid trap by arranging two panchas.

4. It is pointed out that, all necessary procedural formalities like verifying demand in presence of panchas, drawing pre-trap panchanama, handing over tainted currency notes to accused with direction to complainant and panch to go together

and to pay amount on demand and then give signal were explained and scrupulously followed. He pointed out that, directions were also issued to use tape recorded to record the conversation. That, bribe amount was demanded on said day at the spot suggested by accused and after tainted currency was accepted by way of bribe, it is pointed out that, accused was apprehended. His hands on examination under u/v light reflected anthracene. Therefore, offence was complete. Both demand and acceptance being proved, and independent witnesses examined, learned APP submitted that prosecution had succeeded in bringing home the charge, but learned trial Judge unfortunately acquitted the accused on technical ground, like failure to prove demand and want of valid sanction. Thus it is submitted that, State has a good case on merits and hence he seeks leave.

5. On the other hand, learned counsel for respondent accused would point out that, offence under PC Act is required to be proved beyond reasonable doubt and that is the settled legal position. According to him, first and foremost prosecution has to establish that demand of illegal gratification and bribe was necessarily to be proved. That, it was expected of prosecution to demonstrate that some favour was sought in doing or not doing illegal act. Here, prosecution failed to establish very demand. He

pointed out that, both complainant and panch witness candidly admitted that, demand of bribe was never sought and even tape recorded conversation was silent on such crucial aspect. He further submitted that, even sanction to prosecute was accorded by authority, which was not authorized to accord sanction and as such the sanction not vitiated. Thus, according to him, there were fatal lacunas and therefore trial Judge committed no error and hence he prays to refuse the leave.

6. After considering the above submissions and on going through the papers as well as impugned Judgment dated 20.10.2018 in Special Case (ACB) No. 7 of 2012, it is emerging that, one Shaikh Akbar Shaikh Mehboob R/o Chitegaon was booked for offence punishable under sections 379 and 353 of IPC and for violating provisions of Mines and Minerals Act. Case set up by prosecution in trial court was that, when said person approached Bidkin Police Station getting equipped with anticipatory bail order, it is alleged that accused threatened to implicate him and initiate prohibitory proceedings and further offered to help in the investigation of the crime in which he was booked and therefore demand of Rs.15,000/- was made. It is further case of prosecution that, on negotiation the figure was brought down.

7. It is further case of prosecution that, *de facto* complainant Shaikh Akbar Shaikh Mehboob was not willing to give the bribe amount and therefore he lodged complaint with Anti Corruption Bureau, which was entertained, panchas were arranged and both complainant and panchas were apprised about the procedure. They were directed to carry tainted currency notes and the tape recorded to record conversation between complainant and accused and after demand and acceptance to give predetermined signal.

8. On going through the record and judgment of trial court, it transpires that, after lodgment of complaint dated 15.12.2011 and after completion of formalities, complainant and shadow panch left the ACB office to meet accused on 16.12.2011 at around 9:35 a.m. and they all sent at S.S. Transport Office. Raiding party was waiting in lay. Complainant paid Rs.10,000/- and accused kept it in his back paint pocket and thereafter signal was given and accused was to be apprehended.

9. In support of the case, evidence of *de facto* complainant, panch, Investigating Officer and sanctioning authority has been adduced by the prosecution. Complainant and panch reiterated about complaint being verified, verification of

demand being done, very trap panchanama being drawn, procedure of application of anthracene powder being explained and demanded amount carried by complainant with instructions to pay on demand and accused demanded and accepted the amount and therefore was apprehended.

10. However, it has been brought to the notice of this court by learned counsel for respondent accused that here very crucial aspect of demand which is sine qua non has not been proved. He invited attention of this court to the cross examination of complainant as well as panch witness.

11. In the light of such submissions and on going through the cross of complainant, more particularly in para 20 of the judgment, it is emerging that, he has admitted that after approaching police station with anticipatory bail order and while furnishing bail, there was no demand of money by accused. Even during telephonic call accused had not spoken about the money. Likewise, PW2 though reiterated in chief about acting as a panch, verifying complaint getting acquainted with procedure, accompanying accused to pay on demand, he also while under cross in para 26 of the judgment has admitted that, on 15.12.2011 i.e. on the day of verification, during the talks accused has not

opened the subject of money. Further, Investigating Officer in cross is also to be found admitting and there were talks between complainant and accused on phone, there was no demand from complainant. Therefore, above discussed material clearly shows that the crucial aspect of demand has not been cogently proved beyond reasonable doubt. Though attempt to record conversation was made, there is no conversation regarding demand.

12. Even in this case accused was said to be working as Police Head Constable, sanction to prosecute him seems to be by Additional Superintendent of Police while he was merely holding additional charge. This was also fatal to the prosecution.

13. Learned trial court seems to have elaborately dealt and discussed evidence of prosecution, substantive evidence has been scrupulously dealt and thereafter judgment of acquittal has been rendered. Judgment apparently said to be reasoned one and therefore in the considered opinion of this court when demand is not proved and there is no proper sanction, the view adopted by learned trial Judge cannot be faulted. In the considered opinion of this court, no fruitful purpose would be served by granting leave with such quality of evidence on record. Hence, I proceed to pass the following order :-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)