



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.223 OF 2018

The State of Maharashtra,
Anti Corruption Bureau,
Through Deputy Superintendent of Police,
Anti Corruption Bureau, Jalgaon,
Dist. Jalgaon.

... Applicant

Versus

Pramod Namdeo Mahajan,
Age : 52 years,
R/o. Narayan Nagar, Lalbagh,
Burhanpur (M.P.)

... Respondent
(Orig. Accused)

...
Mr. N. D. Batule, APP for Applicant – State.
Mr. Joydeep Chatterji, Advocate for Respondent.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 20th JUNE, 2024

PRONOUNCED ON : 01st JULY, 2024

ORDER :

1. State is intending to question the judgment and order of acquittal passed by learned Special Judge and Additional Sessions Judge, Bhusawal, Dist. Jalgaon, dated 27.06.2018 in Special (ACB) Case No.5 of 2014, thereby acquitting present respondent from offense punishable under sections 7 and 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988.

2. In support of leave to file appeal, learned APP pointed out that, complaint was received from PW1 Atul against present respondent, a Junior Engineer working in MSEB for demanding Rs.10,000/- as illegal gratification for shifting electrical pole, which was obstructing public way. That, complaint was lodged with ACB authorities, Dhule. Panchas were called. That, trap was planned and it was successful. Amount was demanded and accepted and immediately respondent was apprehended. That, there is cogent and reliable evidence of complainant and pancha. That, sanctioning authority had after due application of mind, accorded sanction. That, offence was clearly and cogently brought home, but learned trial court acquitted the accused. That, There is improper appreciation of evidence as well as law and so according to learned APP, State is keen in filing appeal and they have every hope of success and hence he seeks leave.

3. Above application is opposed by learned advocate for respondent pointing out that, prosecution failed to establish the charges. That, evidence of complainant and pancha witness is not inspiring confidence. That, demand and acceptance is not proved. Prosecution witnesses are at variance. That, said sanctioning authority, at the outset, had no powers to grant sanction. Therefore, essentials for attracting the charges were missing and

on complete and meticulous appreciation of evidence, learned trial court has acquitted the accused. It is pointed out that, accused had adduced evidence of defence witness. That, there was deliberate implication out of political affiliations and complaint is motivated one. Hence, according to him, there is no need to disturb the findings, and moreover, according to him, no good ground is made out to grant leave.

4. After considering the respective submissions and on going through the record, it seems that, present respondent was charge-sheeted for offense under sections 7 and 13(1)(d) read with section 13(2) of P.C. Act, 1988. In all five witnesses were examined by prosecution i.e. PW1 Atul - complainant; PW2 Jitendrakumar - pancha witness; PW3 Pradeep Mate - Sanctioning Authority; PW4 Somnath Tambe, Dy.S.P.; PW5 Shivaji Deshmukh, Investigating Officer.

Defence has also adduced evidence of DW1 Devidas, an Assistant Lineman.

5. Substance of the complaint is that, complainant had approached respondent with a request to shift electric pole, which was on a public way. According to complainant, accused informed

him that amount of Rs.60,000/- would be required to be expended for shifting and also gave quotation. But, asked accused to bring Rs.10,000/- and as complainant was not willing to pay gratification, he lodged complaint. ACB authorities planned and laid trap. Both of them were instructed to visit the office and on demand, to pay the bribe amount. He and pancha approached accused as per the plan. Accused asked him, whether he brought the quotation amount of Rs.10,000/-. They went towards Dipraj General Stores, bribe amount was offered and it was accepted by complainant and then necessary signal was relayed and raiding party apprehended the accused.

6. Perused the impugned judgment under challenge. It appears from paragraph no.24 onwards, learned trial Judge analyzed and appreciated the available evidence. It is observed that, prosecution could not prove actual demand of bribe and its payment. It is further observed that, there are several material contradictions in cross examinations of all material witnesses. However, *prima facie*, it appears from the judgment that, there is no supportive analysis and reason as to why actual demand and acceptance is not proved by prosecution. What are material contradictions, are also not reflected in the said paragraph of the judgment. Aspects like failure to prepare demand verification

panchanama, filing complaint at Dhule in spite of office available at Jalgaon are taken into consideration. In view of residence of panch (PW2), his testimony is doubted. Non availability of signature of other persons of the locality on the application for removal of pole and application made on letterhead on BJP party also seems to have prevailed over the opinion of learned trial court.

7. Consequently, taking the same into consideration and also taking into consideration that complainant, panch witness are examined at length and acceptance of amount is brought on record, the above opinion reached by trial court, prima facie, does not tallying with the evidence. Moreover, evidence of sanctioning authority also shows that there is studied approach before according sanction and considering the designation of sanctioning authority, who very categorically deposed that he is appointing as well as removing authority, such testimony ought not to have been discarded on the ground of want of powers.

Hence, there is a good case and grounds exists to be dealt in appeal. Hence, leave as prayed deserves to be granted. Accordingly, I proceed to pass the 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.)