



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 114 OF 2023

The State of Maharashtra
Through City Police Station, Chopda,
Taluka Chopda, District Jalgaon
(A.C.B., Jalgaon)

... Applicant

Versus

Prabhakar Ratan Chavan,
Age : 54 years, Occu: Service
Land Records Office, Chopda,
R/o-Hanuman Nagar, Shirud Naka,
Amalner, Taluka Amalner,
District Jalgaon.

... Respondent
[Orig. Accused]

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Mr. S. M. Ganachari, APP for the Applicant-State.
Mr. Joydeep Chatterji, Advocate for the Respondent.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 21.03.2024

Pronounced on : 02.04.2024

ORDER :

1. Aggrieved by the judgment and order of acquittal passed by learned Special Judge (ACB) and Additional Sessions Judge, Amalner, District Jalgaon in Special (ACB) Case No. 4 of 2014, acquitting present respondent from offence under Sections 7, 12, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 [PC Act], State is desirous of filing appeal and hence leave application.

2. Learned APP pointed out that accused was working in T.I.L.R. Complainant, a Branch Manager in Chopda Peoples Co-op. Bank, who was the owner of an agricultural field, had applied for measurement. For the same, necessary fees was paid, but still accused allegedly demanded Rs.1,000/- as bribe on the pretext of payments to be made to labours and for map. There was no such requirement of payment of fees. Complainant had therefore approached ACB authorities and due steps were taken. Pre-trap panchanama was drawn by procuring independent pancha witnesses and thereafter both, pancha as well as complainant had approached accused. There also, demand was made and while accepting bribe, raid was conducted and it was successful. That, there is proper sanction. Still learned trial court has acquitted accused holding that prosecution has failed to prove the charges beyond reasonable doubt.

3. It is further pointed out that complainant and pancha witness have consistently deposed. That, there is demand as well as acceptance and therefore offence is complete. But still there is acquittal and hence, there being a good case on merits, learned APP seeks leave of this Court to file appeal against said judgment and order.

4. Per contra, learned counsel for the respondent-accused pointed out that prosecution has miserably failed. That, complainant was not sure about not only the amount of bribe, but also for what purpose the payment was sought. He pointed out that though at the time of complaint, the demand was alleged to be of Rs.1,000/-, but in examination-in-chief itself, complainant has spoken about demand of Rs.800/-. Therefore, there is material variance. Even complainant had suo motu informed about money being brought. Therefore, there was no demand. According to learned counsel for the respondent, when the essential ingredients for attracting offence being not made out, learned trial court has rightly acquitted the accused.

5. After hearing submissions of both sides and on going through the papers, it seems that one Deek Lad had approached ACB office alleging that he owns a land and he wanted to get it measured and had accordingly paid necessary fees. However, according to him, accused, a cadastral surveyor, demanded Rs.1,000/- apart from fees for measurement. Therefore complaint was lodged and ACB authorities planned and arranged trap. Complainant and shadow pancha PW2 seems to have approached office of accused. In complaint Exhibit 31, complainant has alleged that date of

measurement was fixed on 05.03.2014. On that day measurement also took place. It is stated that P. R. Chavan i.e. accused took Rs.1,500/- apart from fees from complainant and also asked complainant that he would be required to pay Rs.1,000/- more. Therefore, complaint was lodged. Thereafter, ACB authorities seem to have engaged PW2 Vijay Sonar and they were given necessary instructions. Apparently, according to complainant, accused demanded Rs.1,000/- for measurement map and he lodged complaint to that extent. But in examination-in-chief itself, he speaks about accused calling him after one week and complainant telling him that he would give Rs.800/- and accused agreeing and asking him to bring that much money. Therefore, there is nothing to show that initial amount of Rs.1,000/- was agreed by accused to be brought down to Rs.800/-. Further, in spite of PW2 shadow pancha Sonar allegedly accompanying complainant, he also in examination-in-chief para 4 stated that he was unable to hear the conversation between accused and complainant. Law is fairly settled that complainant always being looked upon as interested witness, it is imperative for shadow pancha also to lend support to the testimony of complainant so as to strengthen the case of prosecution. Here, shadow pancha is not supporting.

6. On visiting evidence of DW1 Bhagwan at Exhibit 67, we find this witness quoting amount of Rs.800/- to be required for labour charge. Therefore, by adducing such evidence, accused has probabilized his defence. Learned trial court committed no error whatsoever in acquitting the accused. Consequently, with such quality of evidence, there is no merit in the case of prosecution and no good ground for granting leave as prayed. No case being made out on merits, I proceed to pass the following order :

ORDER

The application is rejected.

[ABHAY S. WAGHWASE, J.]

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