



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**916 APPLN. FOR LEAVE TO APPEAL BY STATE NO. 9 OF 2024
WITH
CRIMINAL APPLICATION NO. 3280 OF 2025
IN ALS/9/2024**

The State of Maharashtra
Through : Taluka Jalna Police Station, Dist.Jalna.Applicant

Versus

Madhav Pandurang Ogale
Age: 52 years, Occu.: Service,
R/o. : Income Tax Colony,
Jalna, Dist.Jalna.

.....Respondent
(Original Accused)

.....
APP for Applicant : Mr.V.S.Badakh
Advocate for Respondent : Mr. Abhay Rajaram Rathod

.....
CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 10 SEPTEMBER, 2025
PRONOUNCED ON : 18 SEPTEMBER, 2025**

ORDER :

1. Present leave to file appeal is preferred by the applicant State on account of judgment and order passed by learned Judge, Special Court and the Additional Sessions Judge, Sessions Court, Jalna, in Special Case No.263 of 2021, acquitting present respondent for charge under Section 7 of the Prevention of Corruption Act.

2. According to the learned APP, accused was working in T.I.L.R. Office as a Surveyor. Complainant PW1 Shankarlal Ratanlal Pandure

had approached him for carrying out correction with regard to property and for doing the lawful duty, it is alleged that accused demanded Rs.5,000/- bribe, but finally on negotiation, brought it down to Rs.2,000/-. Learned counsel pointed out that, as Complainant was not willing to pay bribe, he approached ACB authorities, who arranged and planned trap by engaging shadow panch, independent witness. That, trap was successful as there was demand as well as acceptance. On obtaining sanction, accused was tried and according to learned APP, there was overwhelming evidence coupled with consistent testimonies of PW complainant and PW2 shadow pancha on demand and acceptance, however, the learned trial Court has failed to consider and appreciate the same. That, all legal requirements for attracting charge under Section 7 of the Prevention of Corruption Act were available. That, learned trial Court did not record any finding on the point of acceptance. Merely holding sanction to be invalid and noting some minor inconsistencies in the evidence of PW1 complainant and PW2 shadow pancha, there is acquittal from serious charge. According to learned APP, State has a good case on merits in appeal and hence, he seeks leave to file appeal.

3. In answer to above, learned counsel for respondent points out

that prosecution has miserably failed to demonstrate and establish very essentials like demand and acceptance. He pointed out that PW2 shadow pancha, who is an independent and star witness, has not lend support to testimony of PW1 complainant. That, demand and acceptance is not cogently proved. That, the amount demanded was towards measurement fees and not illegal gratification as claimed by PW1 complainant. That, even sanction was invalid being granted by incompetent person. Thus, learned counsel supports the findings and conclusion reached at by learned trial Judge and urges to reject the application for want of merits.

4. Heard. Perused the papers. It seems that present respondent faced trial for aforesaid offence. Substance of the prosecution case in trial Court was that the PW1 Complainant visited City Survey Office Jalna on 18-12-2020 for getting correction done in PR Card. He claims that present respondent, who works as Surveyor, demanded Rs.5,000/-, which subsequently reduced to Rs.2,000/- and as PW1 complainant was not willing to pay, he lodged report with Anti Corruption Bureau (ACB) authorities. Anti Corruption Bureau authorities summoned and engaged PW2 Devlal Karangle to act as pancha and to accompany complainant at the time of demand verification as well as at the time of trap. Accordingly, PW1

complainant and PW2 shadow pancha seem to have visited office of accused and it is alleged that there was demand as well as acceptance.

5. PW1 Shankarlal Pandure, Complainant, in his evidence has stated that when they went for pre-trap verification with voice recorder, there was demand of Rs.5,000/- and finally accused came down to Rs.2,000/-. At around 5:30 p.m., PW1 Complainant approached accused while in the company of PW2 Shadow Pancha and in the varandah of the office, it has come in the evidence of PW1 Complainant that he gave accused the demanded amount of Rs.2,000/-. Evidence of PW1 Complainant thus shows that there is no demand, rather there is direct offer after meeting accused in the varandah. Even PW2 Shadow Pancha deposed that, it was PW1 Complainant, who asked how much money is required to be paid. This also shows that prior to demand, there is offer. When PW1 Complainant claims that there was demand of Rs.5,000/- and on negotiations, amount to be brought to Rs.2,000/-, then it does not lie in the mouth of PW1 Complainant to depose in witness box that accused demanded Rs.5,000/-.

6. Though attempt was made to get demand recorded in voice

recorder, there was no proper seizer of memory card apart from failure to tender certificate under Section 65-B of the Indian Evidence Act. Therefore, very pre-trap panchanama has also come under shadow of doubt. As pointed out, in cross-examination, PW1 complainant has answered that PW2 shadow pancha was outside the hall when there was conversation between him and accused and even PW2 shadow pancha admitted that conversation was not audible to him. For said reasons, case of prosecution has indeed come under shadow of doubt.

7. With above quality of evidence, more particularly, with serious doubt about very demand and admission of PW2 shadow pancha regarding his inability to hear the conversation between complainant and accused, no fault can be found in the judgment and order of trial Court. No case being made out on merits to grant leave, following order is passed :

ORDER

- (i) Application for Leave to Appeal is rejected.
- (ii) Criminal Application No.3280 of 2025 is disposed of.

(ABHAY S. WAGHWASE)
JUDGE