IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLN. FOR LEAVE TO APPEAL BY STATE NO. 51 OF 2020

The State of Maharashtra
Through :
Public Prosecutor,
Sessions Court, Aurangabad. ..... Applicant
(Ori. Respondent)

VERSUS

Baburao Kashinath Pawar,
Age : 58 Years, Occu. : Service,
R/o. Chincholi, Tq. Kannad,
At Present Jai Bhavani Colony,
Sillod, Tq. Sillod, Dist. Aurangabad. ..... Respondent
(Ori. Appellant)

.....

Advocate for Applicant-State : Mr. R.B. Dhaware
Advocate for Respondent : Mr. Shyam C. Arora

.....

WITH

CRIMINAL REVISION APPLICATION NO. 33 OF 2020

PANDURANG SHENFADU PAWAR

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

.....

Advocate for Applicant : Mr. V.D. Godbharle
APP for Respondent No.1-State : Mr. R.B. Dhaware

.....

CORAM : SANJAY A. DESHMUKH, J.

RESERVED ON : 15th January 2025
PRONOUNCED ON : 01st April 2025

ORDER :

1. This is an application for granting leave to file appeal under Section 378(1)(b) of the Code of Criminal Procedure, 1973 (for short “the Cr.P.C.”).

2. This application is preferred against the judgment and order passed by the learned Additional Sessions Judge, Aurangabad in Criminal Appeal No.187 of 2013, dated 19.12.2019, which was preferred against the judgment delivered by the learned Judicial Magistrate First Class, Court No.3, Kannad, Dist. Aurangabad (for short “the J.M.F.C.”) in R.C.C. No.52 of 1999, dated 30.07.2013.

3. In a criminal proceeding bearing R.C.C. No.52 of 1999, learned J.M.F.C. held the respondent liable under Section 471 of the Indian Penal Code, 1860 (for short “the I.P.C.”) and sentenced him to undergo six months of rigorous imprisonment and to pay fine of Rs.15,000/- and in default, to suffer simple imprisonment for 30 days.

4. An appeal was preferred in which the learned Additional Sessions Judge, Aurangabad held that offence punishable under Section 471 of I.P.C. is not proved. The appeal was allowed and the judgment of learned J.M.F.C. was set-aside and the respondent was acquitted.

5. Learned APP for the applicant-State submitted that there is cogent and clinching evidence of fabricating of the false documents and signatures. The criminal motive of the applicant is proved. The reasons and findings of the learned trial court are legal and correct. It has rightly relied upon the evidence of handwriting expert i.e. PW1, which is corroborated by the evidence of other witnesses and documentary evidence. The learned trial court rightly appreciated the evidence and relied upon the informant's evidence and handwriting expert's evidence. The reasons and findings of the learned Appellate Court are not legal and correct and not sustainable in the eyes of law. He submitted that leave to file appeal may be granted in the interest of justice. Considering serious nature of crime, he prayed to allow the application.

6. Learned Advocate for the respondent submitted that the respondent is acquitted by the learned First Appellate Court by giving convincing and acceptable reasons. The benefit of doubt is rightly given to the respondent as the incriminating evidence was not brought on record by the prosecution as held in para.24 of the impugned judgment. The sample signature of the informant was not taken. The admitted signature of the informant was not sent for comparison. Therefore, the evidence of the prosecution was not held

reliable. The appeal was therefore allowed. The report submitted by the official of the learned Charity Commissioner PW7 was not brought on record, in which findings of the learned Assistant Charity Commissioner regarding the complaint of fabricating false documents by making false signatures which was decided by the learned Assistant Charity Commissioner even in the appeal and it has reached to the finality. He submitted that there is no scope for interference in the findings and conclusion drawn by the learned First Appellate Court in the impugned judgment. He submitted to reject the application.

7. I have perused both the judgments. The prosecution has examined total eight witnesses. Both the courts have appreciated and re-appreciated the entire evidence. The learned First Appellate Court has held that sample signature and admitted signature of the informant was not sent for comparison to the handwriting expert, which was essential. However, the learned trial court has held that handwriting expert opined that it is handwriting of the accused-respondent, who had made these false signatures and fabricated the documents which were submitted in the proceedings before the learned Charity Commissioner.

8. At this stage, this Court cannot appreciate the evidence and also decide the legality and correctness of the reasons and findings of both the courts under correctional jurisdiction. Therefore, considering the peculiar set of the facts, nature of the alleged crime and test of sufficiency of the evidence about which both the courts have not concluded as to whether the evidence adduced by the prosecution is sufficient or not, this Court is of the view that such adjudication on merit is necessary in the interest of justice after hearing both the sides. For that purpose, both the parties are to be heard on merits by calling record and proceedings of the learned trial court. Therefore, it is necessary to grant the leave to file appeal to the applicant/State Government for the final decision on merit. For the reasons discussed above, the arguments of the learned Advocate for the respondent is not acceptable. The application deserves to be allowed.

9. It is clarified that the Revision Application No.33 of 2020 is filed by the informant. It must be heard finally on merits along with the appeal. Hence, the following order.

ORDER

I) The application is allowed.

II) Leave to file the appeal is granted vide Section 378(1)(b) of the Cr.P.C.

III) This application be treated as criminal appeal and it be heard along with Revision Application No.33 of 2020.

IV) Both the cases be tagged.

V) Call record and proceedings.

[SANJAY A. DESHMUKH]
JUDGE

asd