



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 11 OF 2025

The State of Maharashtra,
Through: Police Inspector,
Police Station, CIDCO,
Tq. & Dist. Aurangabad.

... Applicant

Versus

Dinesh S/o. Dnyaneshwar Kokate
Age : 39 years, Occu : Jr. Clerk at
Triable Government Boys Hostel, Jalna
R/o. Plot No.1, Vrundavan Colony, Jalna

... Respondent

.....
Mr. N. D. Raje, APP for Applicant – State.
Ms. N. S. Bagwe, Advocate for Respondent.
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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 18 DECEMBER 2025

PRONOUNCED ON : 19 DECEMBER 2025

ORDER :

1. This leave to file appeal is at the instance of State as it is keen in challenging the judgment and order dated 02.03.2024 passed by learned Additional Sessions Judge, Aurangabad in Special Case ACB No.36 of 2016, by which present respondent was acquitted from charge under section 7, 13(1)(d) r/w section 13(2) of the the Prevention of Corruption Act, 1988.

2. In nutshell, prosecution was launched against respondent on receipt of complaint from PW2 complainant regarding bribe amount of Rs.400/- by accused for preparing her salary bill for the month of November 2015. On receipt of complaint, ACB authorities completed formalities of planning, executed the trap and the accused was accordingly apprehended and tried vide Special Case ACB No. 36 of 2016, which ended up in acquittal.

Aggrieved by the above judgment and order of acquittal, as State is desirous of challenging the order of acquittal, instant leave application has pressed into service.

3. Learned APP would apprise the court about the background of the case, in which complainant was demanded bribe by accused, who, was responsible for drawing salary. Learned APP pointed out that, for preparing salary bill for the month of November 2015, accused had demanded Rs.400/- by way of bribe. As complainant PW2 was not willing to meet the demand of bribe, she approached ACB authorities and lodged complaint.

4. Learned APP further pointed out that, on receipt of complaint, Investigating Officer summoned independent panchas and apprised them about the grievance of the complainant. That, prior to

main trap, verification of demand was got done and its transcript was prepared. That, there was voice recording. That, both PW2 complainant and PW3 shadow panch were consistent on the point of demand, but such evidence has not been considered by learned trial court. He would further submit that, sanctioning authority had also accorded sanction after complete application of mind, but this aspect also is not appreciated. According to learned APP, State has a good case on merits, and therefore, he urges to accord leave to file appeal.

5. In answer to above, learned counsel for respondent pointed out that, firstly, sanctioning authority had not considered the entire material before according sanction, and there is discussion to that extent in the judgment. She further submitted that, here, very demand was alleged to be by way of gestures, but what was the exact gesture, was not brought on record, and therefore, according to her, very essential like demand itself was not proved and was rather rendered doubtful. As regards to acceptance is concerned, she pointed out that, very conversation between complainant and accused, of which there is clear admission by complainant that accused in response to offer a bribe had uttered that 'let it be' and as thereby refused to accept the money. Thus, according to her, even aspect of acceptance is not proved. She lastly pointed out that, though there was conversation at the time of

verification, the same has not come on record, and therefore, as on various counts, case of prosecution was rendered doubtful, she justifies the order of acquittal and prays to refuse leave for want of merits.

6. Heard. Perused the papers. It seems that, prosecution was launched against present respondent on receipt of complaint from PW2 complainant, who was also working with accused in the Triable Government Hostel, regarding demand of Rs.400/- for clearing the salary bill of PW2 complainant for the month of November 2015. PW2 complainant seems to have approached ACB authorities and reported the demand, resulting into further arrangements of laying trap to apprehend the accused, after there is demand and acceptance. In support of its case, prosecution seems to have adduced evidence of PW1 sanctioning authority, PW2 complainant, PW3 shadow panch and PW4 Investigating Officer.

7. Here, as pointed out, sanctioning authority has not taken into account the crucial aspect of salary of complainant already been approved and generated on 03.12.2015 and there is failure to consider that complaint was post approval and generation of salary of complainant for the month of November 2015 as complaint is of 04.12.2015. Even Investigating Officer had admitted that, salary was already generated on

03.12.2015 itself. Therefore, if this was the fact situation, and if at all sanctioning authority had perused the entire material, probably above aspect would have come to the notice of sanctioning authority, but the same does not seem to have been taken into account. In cross, this witness is unable to state whether the Triable Government Hostel where the accused and complainant were officiating, at all had any computer facility. His answer that, on going through the FIR and report received from ACB, sanction has been accorded, it goes to show that, other material has not been taken into account. There are reasons to hold that sanction is accorded in mechanical manner, without applying proper mind.

8. As pointed out, it does emerge that, complainant and shadow panch are not consistent and lending support to each other. According to complainant, there was verification of demand by recording voice conversation, then she and accused reaching the hostel and conversation taking between herself and accused regarding salary. According to her, at that time, accused had said unless Rs.400/- is paid he would not draw the salary, and therefore, she offered it to him by her right hand and accused pocketed the amount. Such is not the version of PW3 shadow panch because, in paragraph 6 of his examination-in-chief itself, he has stated when they went accused, accused was not present,

and therefore, complainant herself made him a phone call, but same was not responded. He further stated that, later on, accused was seeing coming towards the building and that time, complainant herself had told accused that, she had brought the money. Consequently, even before demand, according to this witness, there is offer of bribe. Therefore, aspect of demand itself come under shadow of doubt. It is fairly settled position that, when demand is not proved, entire case of prosecution collapsed and possession of tainted currency in absence of demand, cannot be considered.

9. Here, including sanctioning authority and Investigating Officer as well as complainant, there is admission that, salary bill of November 2015 was already generated prior to the complaint itself. PW3 shadow panch, in paragraph 9 of the cross, has admitted that, the bill for the month of November 2015 with signature of accused, was already generated. Therefore, there was no reason to lodge complaint on next day i.e. on 04.12.2015, as the purpose and work for which the demand was allegedly made, was not in existence and was rather over.

10. Further it is also emerging that, at the time of conversation between complainant and accused, while complainant had allegedly offered currency, accused had said 'let it be', meaning thereby that he

was not accepting the currency. This also contributes to the weakness of prosecution case regarding demand and acceptance.

11. Here, defence put up was that, complainant was disgruntled and annoyed for deducting allowance towards HRA of the complainant, who was occupying the Government residency in spite of orders of vacating and as such complaint was itself motivated. In cross, there are crucial admissions to this extent by complainant herself.

12. On consideration of above quality of evidence, in the considered opinion of this court, the view that has been taken by learned trial court regarding extension of benefit of doubt to the accused, is the possible view. No fruitful purpose would be served by granting leave to file appeal with such quality of evidence. Consequently no case being made out merits for granting leave, I proceed to pass following order :

ORDER

- (i) The leave is refused.
- (ii) The application is rejected.

(ABHAY S. WAGHWASE, J.)