



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 19 OF 2025

The State of Maharashtra,
Through the Police Station Officer,
Police Station, Sangamner City,
Tal. Sangamner, Dist. Ahilyanagar.

... Applicant

Versus

Pralhad Kashinath Lokhande,
Age : 50 years, Occu : Service,
R/o. Police Line, Sangamner,
Ori. R/o. Tal. Shrigonda,
Dist. Ahmednagar.

... Respondent

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Mrs. D. S. Jape, APP for the Applicant-State.
Mr. Joydeep Chatterji, Advocate for the Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 10.07.2025

Pronounced on : 14.07.2025

PER COURT :-

1. Instant leave to file appeal is at the instance of the State which is keen in questioning judgment and order of learned Special Judge, Sangamner dated 03.01.2025 passed in Special Case No. 107 of 2012 acquitting present respondent from charges under Sections 7 r/w 13(2) of the Prevention of Corruption Act, 1988.

2. Learned APP pointed out that present accused was working as a policeman. He had called complainant in the backdrop of some complaint and crime registered against 20 persons. That, at police station, he assured to file the report if demand of illegal gratification of Rs.20,000/- is met. Repeated demand was made on telephone and therefore complaint was lodged with ACB authorities. Learned APP pointed out that, ACB authorities planned trap by arranging panchas, giving necessary instructions and handing over tainted currency to be paid on demand. Learned APP pointed out that, complainant and shadow pancha were together when accused was approached. Demand raised was recorded in voice recorder. Pre trap panchanama was drawn, currency was demanded and it was duly accepted and kept in the pant pocket and the same was recovered from the accused.

3. Thus, according to learned APP, demand and acceptance is complete and offence is complete. However, in spite of such sterling evidence on record, she would point out that, learned trial court has acquitted accused doubting the demand. She pointed out that sanction was also doubted on the ground of non application of mind, when on the contrary, sanctioning authority had been examined by the prosecution. According to her, both, complainant and shadow

pancha, were lending support to each other. The aspect of demand and acceptance is substantiated and stated by both of them. She fairly pointed out that though PW3 pancha did deviate, however, in the cross faced by him, he has again supported prosecution. Therefore, there is good case on merits in appeal and hence she urges for leave to file appeal.

4. While opposing the leave application, learned counsel for accused respondent would submit that, prosecution miserably failed to establish the very demand. He pointed out that, complainant and pancha witnesses are not consistent. There is no corroboration to the testimony of complainant, as PW2 did not support. He further pointed out that, sanctioning authority had used draft sanction and has not properly applied mind while according sanction and learned trial court has, in detail, dealt with this aspect also. He further pointed out that, though learned APP is harping on the voice recording panchanama, prosecution failed to substantiate the same by issuing certificate under Section 65B of the Indian Evidence Act, which was mandatory for accepting electronic evidence. Thus, he supports the acquittal awarded by trial court and prays to reject the application.

5. Heard both sides. Perused the papers and judgment sought to be assailed. It is emerging that, PW1 Bhausahab was summoned by present respondent informing him about complaint being received and offence being registered against complainant, and 19 other persons. It is complainant's testimony that, to avoid action and to file the report, demand of Rs.20,000/- was made. On his complaint, ACB authorities planned trap by calling panchas. PW2 Dipak and PW3 Jitendra are the independent panchas. Complainant has testified and supported prosecution. However PW2 has not wholeheartedly supported prosecution. In cases of such nature, complainant being interested party, corroboration is insisted for. Here, PW2, who was allegedly accompanying complainant, as stated above, has partly supported prosecution and partly retracted. He is thus flip-flop witness and is not trustworthy.

6. PW2 did not support crucial aspect of demand. Evidence about demand in the form of corroboration is *sine qua non* for holding demand to be proved. Secondly, though panchanama of voice recording is drawn, as pointed out, prosecution failed to tender certificate under Section 65B of the Evidence Act and as such, such piece of evidence is rendered valueless.

7. Therefore, on major counts, case of prosecution has come under shadow of doubt. In the considered opinion of this Court, no purpose would be served by according leave to file appeal, as no case on merits is made out to that extent. Hence, the following order :

ORDER

The application is dismissed.

[ABHAY S. WAGHWASE, J.]

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