



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

910 APPLN. FOR LEAVE TO APPEAL BY STATE NO. 141 OF 2018

The State of Maharashtra
Through Police Station Kannad,
Tq.Kannad, Dist.Aurangabad.

....Applicant

Versus

Eknath S/o. Shankar Gaikwad
Age: 49 years, Occu.: Line Helper,
R/o. Maharashtra State Electricity
Distribution Co. Ltd., Kannad,
Tq.Kannad, Dist.Aurangabad.

.....Respondent

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APP for Applicant : Mrs.A.S.Mantri
Advocate for Respondent : Mr.Rajendra Deshmukh, Senior Counsel
a/w. Ms.Rakshanda R.Jaiswal i/b. Mr. Ramankumar Gopal Dodiya

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 09 SEPTEMBER, 2025

PRONOUNCED ON : 11 SEPTEMBER, 2025

ORDER :

1. State is hereby seeking leave to question judgment and order dated 02-02-2018 passed by the learned Special Judge (P.C.Act), Aurangabad in Special Case (ACB) No.09 of 2010 acquitting respondent from charge under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act.

2. According to learned APP, present respondent Eknath Shankar Gaikwad was working as a Line Helper in the then MSEB. There was some technical issue in the electric meter of complainant and to change the same, learned APP pointed out that, accused demanded bribe of Rs.3,500/-. That, prompt report was lodged. That, ACB authorities planned and executed trap. That, evidence of Complainant and Investigating Officer has remained unshaken. That, even shadow pancha has supported prosecution to the extent of core of the prosecution case. That, however, in view of some minor contradictions and omissions, learned trial Court has disbelieved prosecution version. She would point out that, in the very judgment, even learned trial Court discussed the evidence of complainant and shadow pancha, which was clearly suggesting demand as well as acceptance. However, merely holding shadow pancha to be habitual pancha and holding sanction to be invalid, respondent is acquitted. According to her, prosecution has a good case on merits and therefore, she seeks leave to file appeal.

In support of her submission, learned APP relied on the decision of this Court in the case of *Deepak Ghanshyam Naik v. State of Maharashtra, 1989, Mh.L.J. 276*.

3. Per contra, learned Senior Counsel Shri Deshmukh for respondent would point out that evidence of prosecution was not convincing. According to him, there are major contradictions and variances going to the root of the matter. He also took this court through observations of the learned trial Judge in the impugned judgment, more particularly, paragraph nos.26 and 44, and would submit that learned trial Court rightly appreciated the evidence of shadow pancha and finding him habitual pancha, coupled with variances in his evidence and evidence of complainant, their testimonies are disbelieved. He further pointed out that the Hon'ble Apex Court in the case of *State of Gujarat, through CBI v. Kumudchandra Pranjivan Shah, 1997 SCC (Cri) 750*, even which has been relied by the learned trial Court, evidence of shadow pancha, who was habitual, was kept out of purview of consideration. He further pointed out that, sanction was also invalid and on such count also case of prosecution suffered serious set back as valid sanction is essential. He pointed out that, sanctioning authority, who accorded sanction, was neither appointing authority or removing authority and there is admission to that extent in the cross-examination apart from admission that witness was confused about authority to accord sanction. Pointing to such material, learned Senior Counsel

supported the findings and conclusion drawn by the learned trial Court while acquitting the accused.

4. After considering the above submissions and on going through the impugned judgment sought to be challenged, it is emerging that present respondent, a Line Helper, was booked for commission of offence under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act. On receipt of report lodged by PW2 complainant, it seems that thereafter PW4 Investigating Officer carried out investigation, planned and arranged trap. PW3 shadow pancha was engaged and instructed to accompany complainant.

It is pointed out by learned APP that, learned trial Court has acquitted accused primarily on the ground of want of valid sanction and secondly shadow pancha is held to be habitual pancha.

On going through the evidence, more particularly of PW1 sanctioning authority, it appears that, he has given his designation as Executive Engineer and has claimed to have gone through the papers and granted sanction, however, in cross-examination, he has admitted that appointing authority was Executive Director. His such answer shows that this witness was not competent to accord sanction.

5. As regards to second ground resulting into acquittal, shadow pancha, apart from not being consistent with evidence of complainant, has also admitted in cross-examination that he has acted as pancha in previous cases also. Therefore, there is material suggesting this witness to be habitual pancha.

6. Resultantly, law being settled that unless there is valid sanction, Government employee cannot be prosecuted, here also there does not seem to be valid sanction by a person, who has authority to accord sanction. Learned trial Judge has relied on above referred judgment in the case of *Kumudchandra Pranjivan Shah (Supra)* wherein the Hon'ble Apex Court has refused to believe testimony of shadow pancha on noting that said pancha has acted for ACB previously on numerous times. In cases of such nature, shadow pancha is a star witness and law always expects shadow pancha to support testimony of complainant, who is considered as interested witness. Here exactly the reverse has happened as shadow pancha is shown to be a habitual pancha and therefore, trial Court rightly though it fit not to lean on his testimony.

7. For above reasons, no case being made out on merits so as to grant leave, application deserves to be rejected. Accordingly, following order is passed :

ORDER

- (i) Leave is refused.
- (ii) Application is rejected.

(ABHAY S. WAGHWASE)
JUDGE