



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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.58 OF 2023

The State of Maharashtra,
Through : Police Inspector,
Anti Corruption Bureau,
Osmanabad

.... APPLICANT

VERSUS

1. Surendra Trimbakrao Kadam,
Age : 48 years, Occu.: Service as a
Assistant Civil Engineer,
Construction Division, Office of
Panchyat Samiti,
Osmanabad Class-3,
Tq. & Dist. : Osmanabad

2. Dattatrya Sidramappa Shiral,
Age : 32 years, Occu.: Labour,
R/o.: Padoli, Tq. & Dist. Osmanabad RESPONDENTS
(Accused)

....
Mr. D. J. Patil, APP for the Applicant-State
Mr. Sartaj Khan H. Pathan, Advocate for Respondents
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CORAM : SANDIPKUMAR C. MORE, J.

**RESERVED ON : 29/01/2025
PRONOUNCED ON : 03/02/2025.**

P. C. :

1. The applicant -State under this application is seeking leave to challenge the judgment and order dated 17/01/2023 passed by the learned Special Judge, Osmanabad i.e. the learned trial court. The

respondents / accused are in fact acquitted under the aforesaid judgment by the learned trial court from the offence under Sections 7 and 13(1)(d) r.w. 12(2) of Prevention of Corruption Act, 1988 i.e. P. C. Act.

2. According to the complainant – Pashumiya Babulal Shaikh, Government had sanctioned an amount of Rs.78,000/- in the year 2011-2012 to him for construction of house under the scheme of Indira Awas Yojana. The Panchyat Samiti Office had distributed two installments of Rs.25,000/- each to him. Accordingly, he constructed a house in land Gut No.33 at village Mahalangi. However, after completion of the construction, he obtained necessary documents from village Gramsevak and submitted to the office of accused No.1 / respondent No.1, who was an Assistant Engineer at the relevant time. Since accused No.1 made a demand of Rs.1,000/- as illegal gratification for releasing the third installment, report was lodged by the complainant against him. On conducting trial, the learned trial court has acquitted both the respondents / accused from the aforesaid offence and hence this application.

3. The learned APP vehemently submitted that though the complainant failed to support the case of the prosecution, but panch

witness No.1 has supported the case. Moreover, the sanction was properly accorded by the sanctioning authority and despite that, the learned trial court erroneously acquitted both the respondents / accused as the bribe amount was recovered from the respondent No.2 / accused No.2, who had accepted the same as per the direction of respondent No.1 / accused No.1- Surendra Trimbakrao Kadam. He also relied on the following judgment :

***State of Madhya Pradesh vs. Harishankar
Bhagwan Prasad Tripathi, (2010) 8 SCC 655.***

4. On the contrary, the learned counsel for the respondents by pointing out latches in the evidence of prosecution and by relying on various judgments, argued that the aspect of demand is not at all proved by the prosecution, which is necessary for securing conviction under the aforesaid P.C. Act. He placed reliance on following judgments.

***A) State of Maharashtra vs. Baliram Vithoba
Bhute, 2024 ALL MR (Cri) 2150;***

***B) Jagtar Singh vs. State of Punjab, 2023 LiveLaw
(SC) 232;***

***C) Vijay Wasudeo Shende vs. The State of
Maharashtra, 2024 ALL MR (Cri) 2132;***

- D) Judgment of this court in Criminal Appeal No.756 of 1997 (Shrikant Chimaji Jahagirdar vs. The State of Maharashtra) delivered on 23/02/2024;***
- E) Manoj Ramesh Waghela vs. The State of Maharashtra, 2024 ALL MR (Cri) 2622;***
- F) A. Subair vs. State of Kerala, 2009(4) Mh.L.J. (Cri.);***
- G) N. Vijayakumar vs. State of Tamil Nadu; (2021) 3 SCC 687 and***
- H) Judgment of this court in Criminal Appeal No.1256 of 2012 (The State of Maharashtra vs. Shridhar Madhavrao Murti), delivered on 23/10/2020.***

5. Heard rival submissions. Also perused the impugned judgment alongwith other documents on record such as evidence of witnesses.

6. On going through the impugned judgment it is clearly evident that the complainant has not supported the case of the prosecution. On the contrary, PW-1 complainant in his cross-examination has clearly denied the suggestion that the respondent No.1 / accused No.1 had demanded the bribe amount and he assured to bring the same. Even though such statement is kept aside since the

complainant did not support the case but the other evidence on record is also not convincing. The evidence of panch witness Dattu Kulkarni (PW-2) indicates that he in the chief-examination itself has stated about the incident except the demand of bribe amount by the respondent No.1 / accused No.1. As such, there is no satisfactory and reliable evidence on record as regards the demand made by respondent No.1 / accused No.1 in respect of alleged bribe amount. Further, Fulchand Rathod (PW-4) in his cross-examination clearly stated that work of preparation of issuance of cheque was not assigned to respondent No.1 / accused No.1, but he was supposed to verify the construction and prepare estimate and submit to BDO for sanction. Further, he has also admitted that on 26/07/2012 he did not see PW-1 & 2 in the office of respondent No.1/ accused No.1 for verification of demand amount. Thus, it is clearly evident that the verification of bribe amount is not at all established in the instant case, which is the main ingredient to constitute the offence against the respondents / accused.

7. The learned trial court has also relied on various judgments in respect of valid sanction and demand of bribe and then come to the conclusion that the prosecution failed to establish the necessary ingredients of the offence levelled against the present respondents /

accused. Here also the learned counsel for the respondents / accused heavily relied on various judgments as mentioned above. However, when an important aspect of demand is not established, then there is no need to consider the aforesaid judgments again. From the record it is already established that the prosecution failed to prove the necessary ingredients in respect of offence against the present respondents / accused and therefore, it appears that the learned trial court has rightly acquitted them. As such, there is no need to consider the evidence on record and there is absolutely no requirement of granting leave to file an appeal against the impugned judgment. As such, the application stands dismissed and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)