



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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 144 OF 2018

The State of Maharashtra
Through : Public Prosecutor,
High Court, Bench at Aurangabad.

....Applicant

Versus

Subhash Madhavrao Kale
Age: 57 years, Occu.: Service,
R/o. Chandrabhaga Niwas, Shrirampur,
Behind Hotel Jatra, Near Telephone Officer,
Aadgaon Shivar, Nashik.

.....Respondent
(Ori. Accused)

.....

APP for Applicant : Ms.P.V. Diggikar
Advocate for Respondent : Ms.Monica Bagwe h/f.
Mr. C.P. Sengaonkar

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CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 19 NOVEMBER, 2025
PRONOUNCED ON : 20 NOVEMBER, 2025**

ORDER :

1. Vide instant application, State is seeking leave of this court to question judgment and order dated 20-03-2018 passed by learned Additional Sessions Judge, Sangamner in Special Case No.8 of 2011 thereby acquitting present respondent for offence under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

2. Learned APP pointed out that, ACB authorities received complaint against present respondent, who was working as Assistant Public Prosecutor in the Court of Sangamner. That, he had demanded bribe of Rs.1,000/- to favour the complainant in the Court proceedings. That, on receipt of complaint to that extent, Anti Corruption Bureau (ACB) authorities had planned and laid trap. Learned APP further pointed out that, complainant and independent pancha witness were party to the demand verification. That, thereafter, on getting confirmed about demand, trap was laid. That, there is both demand as well as acceptance by the respondent.

3. That, witnesses like PW1 Raju, complainant and PW2 Sanjeev, shadow pancha are crucial witnesses and they have remained consistent on such aspects. That, money was also accepted and kept in a diary after which trap was executed. Thus, according to her, offence was complete and therefore, accused was chargesheeted and tried.

4. Learned APP pointed out that, witnesses like PW1 complainant, PW2 shadow pancha, and PW4 Investigating Officer are consistent on the aspects of demand as well as acceptance.

According to her, even sanction was obtained which was on due application of mind.

Thus, according to her, a full proof case was made out, but learned trial Court failed to consider and appreciate such case and erred in acquitting accused by holding that witnesses are not consistent and aspects of demand and acceptance are not proved. Lastly, she submitted that, state has a good case on merits and hence she urges for leave.

5. Countering above submissions, learned counsel for respondent pointed out that prosecution has miserably failed in bringing home the charges. According to her, at the outset, sanction itself was not valid. That, in view of pay scale of accused, there was need for approval of the Chief Minister, but here, sanction is accorded by officer of rank of Joint Secretary, Home Department of Government of Maharashtra that too without any note of approval from Chief Minister's Office and as such, sanction itself was not valid. Further according to her, there is non-application of mind to the material available before according sanction. As regards to merits of the case is concerned, she would submit that there was no exercise of demand verification and improvised version was given before the Court and

the Investigating Officer, in his cross-examination, has admitted to that extent. She would further point out that, as regards to acceptance is concerned, according to prosecution witnesses, tainted currency was found in the diary kept on the table of accused whereas according to the Investigating Officer, amount was kept beneath the papers in a diary and as such there is contradiction and inconsistency, which primarily weighed learned trial court in disbelieving the case of prosecution.

According to her, on complete appreciation of evidence, when no case was made out on crucial points of demand, acceptance and sanction, learned trial Court has committed no error in acquitting the accused.

6. Heard. Perused the papers. Here, present respondent was chargersheeted and tried vide Special Case no.8 of 2011 on the premise of committing offence under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act.

Sum and substance of the prosecution launched was that, accused was working as Assistant Public Prosecutor in Court of law i.e. at Sangamner Court. He was assigned R.T.C. No.217 of 2006.

One Kishor @ Surendra had lodged report resulting into investigation and filing of chargesheet. It is alleged that, one Raju Adhav used to attend the Court and while evidence of one Ashok Gaikwad was recorded, it is alleged that accused accepted bribe of Rs.200/- from him. Similarly on 07-05-2010, when evidence of Mariyabai and Marthabai was recorded, at that time, accused allegedly demanded Rs.500/-, but negotiated and brought down to Rs.300/-. For favouring complainant in getting decision, it is alleged that, accused demanded Rs.3,000/- and finally negotiated and brought down the amount to Rs.1,000/-. Report to that extent exh.P-19 was lodged resulting into investigation, laying of trap, apprehending accused and chargesheeting accused.

7. Prosecution seems to have adduced evidence of PW1 Raju Adhav, complainant, PW2 Sanjeev, shadow pancha, PW3 Ramchandra Sankhe, Sanctioning Authority, PW4 Jayant Patil (PI), Investigating Officer, PW5 Prakash Sahane, Deputy Superintendent of Police, PW6 Ramnath Nehe, Surveyor and PW7 Vijay Dhopavkar, Deputy Superintendent of Police.

Here, as pointed out it is emerging that very Investigating Officer has admitted that, he did not undertake the exercise of

verification of demand. Therefore, mandatory exercise for ascertaining whether there was actual demand and whether further steps are necessary, itself is not carried out.

8. As pointed out by learned counsel for respondent, complainant has deposed that, on 14-06-2010, he had approached accused for recording evidence of Shantabai and at that time, his step brother namely Ashok Gaikwad was accompanying him and in his presence, there was said to be demand of Rs.3,000/- and finally accused had brought down the figure to Rs.1,000/-. However, as pointed out, Ashok Gaikwad, who was a crucial witness and who could have lend support to complainant's version is surprisingly not examined.

9. According to complainant and shadow pancha, when they approached accused, after questioning whether amount has been brought, complainant alleged that he was directed to keep the currency inside the diary kept on table. Such testimony itself shows that there is no acceptance and rather it is case of planting.

10. Learned counsel for respondent has pointed out that, the Investigating Officer failed to seize the very diary in which currency

was allegedly kept. From the judgment sought to be impugned herein, there is specific finding of the learned trial Court in paragraph 14 that, there is non-seizure of the diary. Therefore, very crucial piece of evidence has not been gathered by the Investigating Officer.

11. Another distinct feature, as pointed by learned counsel respondent, is that here sanction is accorded by PW3 Ramchandra Sankhe, who claims to be Joint Secretary, Home Department of Government of Maharashtra, but this witness in cross-examination has admitted that accused fell in the pay scale of Rs.10,750/- and above and therefore, approval of Chief Minister for sanction to prosecute was necessary. Even defence placed on record exh.66 issued by the Office of Assistant Director and Public prosecutor, Ahmednagar. Notification exh.63, which is also placed on record, goes to show that for granting sanction, approval of Chief Minister is necessary, but there is no material before the trial Court showing that any such exercise of seeking approval from Chief Minister or his office, was ever obtained. Therefore, for above reasons, even issue of sanction comes under shadow of doubt.

12. Therefore, in the light of above quality of evidence on record, it cannot be accepted that prosecution has a good case on merits and that learned trial Court has failed to appreciate the evidence in its correct perspective and erred in acquitting the accused. Therefore, no case being made on merits, leave is refused. Hence, following order :

ORDER

Application for Leave to Appeal by State is rejected.

(ABHAY S. WAGHWASE)
JUDGE