



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 44 OF 2025

The State of Maharashtra,
Through Police Inspector,
MIDC Waluj Police Station,
Dist. Aurangabad.

... Applicant

Versus

Bingi Rajlingam Vyankatswami,
Age : 54 years, Occu. Manager,
Employees Provident Fund,
R/o. Pandharpur, MIDC Waluj,
Aurangabad.

... Respondent
[Orig. Accused]

.....

Mr. S. A. Gaikwad, APP for the Applicant-State.
Ms. M. S. Bagwe h/f Mr. C. P. Sengaonkar, Advocate for the
Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 10.12.2025

Pronounced on : 12.12.2025

ORDER :

1. This leave to file appeal is at the instant of the State, as it is dissatisfied by the judgment and order of acquittal dated 12.08.2024 passed by learned Special Judge (P.C. Act), Aurangabad in Special Case (ACB) No. 100002/2012, acquitting the accused-respondent from charge under Sections 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 [PC Act].

2. Learned APP pointed out that, complainant's brother had met with an accident and was being treated at GHATI Hospital and was further directed to approach ESIC office at Pandharpur for compensation. That, accused, who was Manager there, had initially demanded Rs.2,500/- bribe and finally, on negotiations, agreed to accept Rs.1,500/- and complaint to that extent was received by ACB authorities.

3. Learned APP further pointed out that on receipt of complaint, Investigating Officer [IO] arranged panchas, introduced them with complainant and grievance of complainant was made known to them and thereafter such panchas had signed the complainant and had agreed to act as Pancha. He further submitted that, even demand verification was got done and both PW1 complainant and PW2 shadow pancha were made to visit office of accused with instructions to pay on demand. That, the trap was successful. According to learned APP, accused had demanded as well as accepted the tainted currency and had kept it in the drawer. Therefore, essential ingredients of demand and acceptance having been proved, it is his submission that, case of prosecution ought to have been accepted by learned trial Judge but it failed to do so and rather acquitted the accused holding that prosecution failed to bring home the charges.

4. Learned APP further pointed out that, undue importance is given to the deployment of shadow pancha in this case and that, he had acted as pancha in previous ACB cases. According to learned APP, the pancha is a Government official and as such, there is no bar for not using pancha in ACB cases.

5. He further submitted that, even sanctioning authority had applied its mind and therefore sanction being valid, case of prosecution was proved beyond reasonable doubt, but the same had not been accepted and rather benefit of doubt has been given to the accused which, according to him, is improper and undeserved. According to him, State has a good case on merits in appeal, and so he urges for leave.

6. Supporting the judgment of acquittal, learned counsel for the respondent would submit that prosecution has miserably failed to bring home the charges. She would point out that, very essence of demand is missing in the prosecution case. On this court, she would submit that though efforts were done to get the conversation of demand recorded, witnesses admitted that the conversation itself was not recorded or audible. Thus, according to her, the *sine qua non* of

demand itself is not proved and there is admission by very IO to that extent along with the panchas.

7. Learned counsel further pointed out that, here, there is no acceptance. Tainted currency was found in drawer of the table and there is no evidence that accused accepted it and thereafter kept it in the drawer. Thus, according to her, along with demand, acceptance is also not proved and resultantly, she would emphasize that prosecution failed to establish very demand and acceptance which are *sine qua non* for bringing home the charges.

8. She further pointed out that, here, shadow pancha was a stock pancha who had admitted for regularly acting as pancha in ACB cases. Therefore, he being stock witness, has rightly been disbelieved by learned trial court. Lastly she would submit that here, very motive of demanding bribe has itself come under shadow of doubt as, in view of non availability of very discharge card, there was no question of seeking compensation and for said reason also, it is her submission that, trial court rightly disbelieved the prosecution version and acquitted the accused and consequently she urges to refuse leave.

9. After hearing above submissions and on going through the record and papers as well as the impugned judgment, it is emerging

that the ACB authorities received complaint from PW1 regarding demand of bribe of Rs.1,500/- made by accused who was a Manager, for granting compensation to the brother of PW1, who had allegedly met with an accident. It seems that based on his complaint, investigating machinery planned trap. It is emerging that for verifying the demand, steps were taken to make complainant and shadow pancha together approach accused and as planned, even voice recorded was allegedly carried. However, while verifying conversation, it was noticed that, there was no proper recording. Consequently, the aspect of initial demand of bribe has itself come under shadow of doubt.

10. Even during main trap, efforts of recording conversation of demand seems to have been undertaken but complainant has admitted that, he was unable to hear the conversation so recorded.

11. As pointed out, PW2, who is a shadow pancha and is primarily looked upon as crucial being independent witness, has also admitted in cross that, he had appeared for ACB in other three cases. Surprisingly, in examination-in-chief itself, IO has specifically deposed that he had verified with the panchas whether they had previously acted as pancha or not. Therefore, apparently, PW2 is a stock pancha and therefore, unworthy of credence.

12. Further, as pointed out, it is noticed that witnesses are not consistent. According to PW1 and PW4, panchas were introduced to complainant on 29.07.2011, however, according to PW2, said visit was on 28.07.2011 and not 29.07.2011.

13. It is emerging that currency was found in drawer of the table. Learned trial court has observed that, PW1 complainant in his deposition has not stated that hands of accused were verified under ultra violate lamp. Defence case is of planting amount in the drawer and the same seems to have been probabilized.

14. Therefore, in the light of above material, *prima facie* order of acquittal seems to be proper. No valid ground raised on merits so as to accord leave and therefore no purpose would be served by granting leave. Hence, following order :

ORDER

- I. Leave refused.
- II. The application is rejected.

[ABHAY S. WAGHWASE, J.]