



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 116 OF 2025

The State of Maharashtra,
Through : Police Inspector,
City Chowk Police Station,
Aurangabad.

... Appellant

Versus

Sunita Sudamrao Pophale,
Age : 52 years, Occu: Service,
(Maintenance Surveyor)
R/o. Flat No. 137, Parijatnagar,
N-4, CIDCO, Aurangabad.

... Respondent
[Orig. Accused]

.....
Mr. S. A. Gaikwad, APP for the Applicant-State
Mr. V. D. Salunke, Advocate for the Respondent
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 14.11.2025

Pronounced on : 18.11.2025

ORDER :

1. Vide instant application, the State is seeking leave of this Court to allow it to file appeal against the judgment and order of acquittal dated 17.10.2024 passed by learned Special Judge (A.C.B.), (Court No.11), Aurangabad in Special Case (A.C.B.) NO. 36 of 2018, thereby acquitting the respondent from offence under Sections 7 and 13(2) of the Prevention of Corruption Act.

2. Learned APP submitted that PW2 complainant had approached respondent, who worked in City Survey Office, for issuance of PR Card, i.e. after demise of her mother, for incorporating names of herself as well as her sister. That, for the said purpose, respondent demanded Rs.3,000/- bribe and as PW2 was not willing to pay bribe, she had approached ACB authorities and had lodged report.

3. Learned APP pointed out that after receipt of report, the Investigating Officer carried out demand verification by use of voice recorder and its panchanama was drawn in presence of shadow pancha. He further submitted that both, complainant and shadow pancha, had together been to the office of accused and that time also, as there was demand, tainted currency was handed over and it was accepted. Thus, according to learned APP, there is both, demand as well as acceptance. He further submitted that after obtaining sanction, prosecution was launched.

4. Therefore, according to learned APP, all required formalities were complied. However, according to learned APP, learned trial court misconstrued the evidence as well as legal position and acquitted the accused holding that there is variance in the statements

of complainant and shadow pancha and secondly, sanction is invalid, as the work for which bribe was allegedly sought, was already over. Learned APP emphasizes that such considerations for acquittal are unwarranted in the light of availability of overwhelming evidence of complainant, shadow pancha and Investigating Officer. Thus, learned APP urges to allow the application and grant of leave to file appeal.

5. In answer to above, learned counsel Mr. Salunke for the respondent would submit that prosecution has miserably failed to establish the charges. He pointed out that witnesses PW2 and PW3 are not consistent in spite of claiming to be together. He pointed out that, Investigating Officer has deposed about the tainted currency to be found in the drawer. Therefore, there was no acceptance. He further pointed out that even shadow pancha was permitted to study the papers before stepping into the witness box. That, even sanction was invalid and therefore, on several counts, as the case of prosecution had come under shadow of doubt, according to him, there is no error on the part of the trial court in acquitting the accused and he urges to refuse leave.

6. After considering the above submissions and on going through the papers, it seems that mother of PW2 had a house in her name and

after her demise, PW2 and her sister decided to enter their names in the property card and as such, on 21.05.2018, PW2 had approached the City Survey office. It is her testimony at Exhibit 28 that, accused demanded bribe for issuing PR card and therefore, she lodged report with ACB authorities. She further deposed about demand verification being done and subsequently, while she and shadow pancha PW3 went to the office of accuse, at that time, accused demanded amount and also accepted the same in her hand and on request of PW2, accused counted the cash and then kept it in the drawer. As pointed out by learned counsel for the respondent, PW3, regarding above episode, has deposed in his evidence at Exhibit 37 that, after accused asked about money, when complainant was handing over the cash to the accused, the accused instructed complainant to put the amount in the drawer of the table and accordingly, complainant herself kept the cash in the drawer. Therefore, above part of the testimony of PW2 and PW3 is not consistent and is rather contrary. The question of very acceptance has come under the shadow of doubt for above reasons.

7. As submitted, it is also noticed that the PR card was already ready and names of PW2 and her sister were already incorporated prior to lodgment of complaint. Both, Investigating Officer as well as sanctioning authority, admitted in cross to that extent. Therefore,

question of subsequent demand has also cropped up. Further, as pointed out, witness PW3 has stated that he was allowed to study the papers before stepping into the witness box.

8. For all above reasons, case of prosecution has indeed been rendered doubtful. By applying the principles to be followed while dealing with an appeal against acquittal, for above reasons and finding no merits in the application, the following order is passed :

ORDER

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

[ABHAY S. WAGHWASE, J.]